

**ANALYSING THE THREE-FOLD RELATIONSHIP BETWEEN CORRUPTION,
SOCIO-ECONOMIC RIGHTS AND SOCIAL JUSTICE IN SOUTH AFRICA.**

by

Taylor Riley Morisse

2016123917

Dissertation submitted in fulfilment of the requirements for the degree
Master of Laws with specialisation in Constitutional Law and Philosophy of

Law

(Master of Laws BC380400)

in the

FREE STATE CENTRE FOR HUMAN RIGHTS

FACULTY OF LAW

UNIVERSITY OF THE FREE STATE

BLOEMFONTEIN

November 2023

SUPERVISOR: DR ANNELIE DE MAN

DECLARATION

I, Taylor Riley Morisse, declare that the Master's research dissertation that I herewith submit at the University of the Free State is my independent work and that I have not previously submitted it for qualification at another institution of higher education.

Taylor Riley Morisse

1 November 2023

I, Taylor Riley Morisse, declare that I am aware that the copyright is vested in the University of the Free State.

Taylor Riley Morisse

1 November 2023

I, Taylor Riley Morisse, declare that all royalties as regards intellectual property that was developed during the course of and/or in connection with the study at the University of the Free State will accrue to the University.

Taylor Riley Morisse

1 November 2023

I, Taylor Riley Morisse, declare that I am aware that the research may only be published with the Dean's approval.

Taylor Riley Morisse

1 November 2023

ACKNOWLEDGEMENTS

Romans 8:31: *"If God is for us, who can ever be against us?"* All glory to God for enabling me every step of the way.

Thank you to my family and my supervisor for all their support.

Universal Declaration of Human Rights Article 24.

TABLE OF CONTENTS

DECLARATION	ii
ACKNOWLEDGEMENTS	iv
LISTS OF TABLES	viii
LISTS OF ABBREVIATIONS	ix
CHAPTER 1	1
1.1 Introduction	1
1.2 Research Problem	3
1.3 Research questions	4
1.4 Motivation	4
1.5 The methodology and theoretical approach	8
1.6 Outline of chapters	10
1.6.1 Chapter 1: Introduction	10
1.6.2 Chapter 2: The definitions of corruption, human rights and social justice	10
1.6.3 Chapter 3: What is the extent of corruption within national departments in South Africa?	10
1.6.4 Chapter 4: Are socio-economic rights respected, protected, promoted and fulfilled in South Africa?	11
1.6.5 Chapter 5: Is there a connection between corruption, human rights, and social justice?	12
1.6.6 Chapter 6: Conclusion	12
CHAPTER 2: THE DEFINITIONS OF CORRUPTION, HUMAN RIGHTS AND SOCIAL JUSTICE	14
2.1 Introduction	14
2.2 What is corruption?	14

2.3	What are Human Rights?	23
2.4	What is social justice?	31
2.5	Conclusion	40
CHAPTER 3: THE EXTENT OF CORRUPTION WITHIN NATIONAL DEPARTMENTS IN SOUTH AFRICA		42
3.1	Introduction	42
3.2	The Secretive Nature of Corruption.....	44
3.3	Corruption Perception Index scores	45
3.4	Corruption Watch Statistics 2018-2022.....	50
3.5	Corruption in the Department of Health.....	54
3.6	Corruption in the Department of Education	71
3.7	State Capture	80
3.8	Conclusion	89
CHAPTER 4: ARE SOCIO-ECONOMIC RIGHTS RESPECTED, PROTECTED, PROMOTED AND FULFILLED IN SOUTH AFRICA?.....		90
4.1	Introduction	90
4.2	International perspective on human rights fulfilment in South Africa	93
4.3	Government obligations under socio-economic rights.....	96
4.3.1	International obligations.....	96
4.3.2	Regional obligations	99
4.3.3	National obligations	100
4.4	The interpretation of socio-economic rights in South Africa	103
4.5	Section 27(1)(a): The right to access healthcare services	105
4.6	Section 29(1)(a): Everyone has the right to a basic education	128
4.7	Conclusion	142

CHAPTER 5: THE RELATIONSHIP BETWEEN CORRUPTION, HUMAN RIGHTS AND SOCIAL JUSTICE.....	144
5.1 Introduction	144
5.2 The Link Between Corruption and Human Rights	146
5.3 The link Between Human Rights And Social Justice.....	154
5.3.1 What does the achievement of social justice depend on?	159
5.4 The Five Suggested Key Connections between Human Rights and Social Justice	168
5.5 The Three-Fold Relationship.....	171
5.6 Human rights Respect, Protection, Promotion, and Fulfilment are Necessary TO Achieve Social Justice	173
5.7 Conclusion	174
CHAPTER 6.....	176
6.1 Introduction	176
6.2 Summary of Findings	176
6.3 Concluding remarks	178
BIBLIOGRAPHY.....	179

LISTS OF TABLES

TABLE 1: Corruption Perception Index Scores

48

LISTS OF ABBREVIATIONS

CFI	- Corporate Finance Institute
Covid-19	- Coronavirus Disease of 2019
CPI	- Corruption Perception Index
ECOSOC	- United Nations Economic and Social Council
HIV/AIDS	- Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome
ICCPR	- International Covenant on Civil and Political Rights 1966.
ICESCR	- International Covenant on Economic, Social and Cultural Rights 1966
NGO	- Non-governmental Organisation
PRECCA	- <i>Prevention and Combating of Corrupt Activities Act 12/2004</i>
SAA	- South African Airways
Stats SA	- Statistics South Africa
UDHR	- Universal Declaration of Human Rights
TI	- Transparency International
UN	- United Nations
UNGA	- United Nations General Assembly
UNICEF	- United Nations Children's Fund

CHAPTER 1

1.1 INTRODUCTION

This study analyses the three-fold relationship between corruption, socio-economic rights, and social justice in South Africa. This analysis consists of a review of three concepts and the relationship between these concepts in a South African context. Referred to as the three core concepts, the research problem that this study addresses and the research questions that emanate from it revolve categorically around (a) corruption, specifically governmental corruption; (b) human rights, specifically socio-economic rights; and (c) social justice. The aim of this study is two-fold. First, this study aims to combine academic comprehension of these core concepts.

This study's second and overriding aim is to establish how these concepts relate, this second aim relates directly to the objective of this study which is to analyse the three-fold relationship between corruption, socio-economic rights, and social justice in South Africa. To establish this three-fold relationship between these concepts, each concept is investigated in terms of its attributed meanings, suggested consequences, assigned obligations, and debated achievement views. This investigation is done by analysing ample differing academic views.

As it relates to the first core element of this study, corruption within government in South Africa is probed with the objective possibly to show its extent and gravity as its existence is well documented. The consequences of corruption within government are elucidated due to their potential contribution to understanding this element's role within this three-fold relationship. A commonly suggested consequence of corruption within government is that it adversely affects the fulfilment of human rights. To understand whether anything is undermining human rights fulfilment in South Africa, an assessment of the respect, protection, promotion, and fulfilment of human rights is applicable. Regarding the evaluation of human rights, the scope of this study is limited to the assessment of two socio-economic rights recognised in the *Constitution of the Republic of South Africa, 1996 (the Constitution)*. Note below the applicable sections of the *Constitution* that guarantee these rights and the limitations of this study.

Sections 27(1)(a)-(c) of the *Constitution* guarantee the following socio-economic rights: (a) everyone has the right to access healthcare (including reproductive healthcare), (b) everyone has the right to access to sufficient food and water, and (c) everyone has the right to access to social security. This study is limited to assessing the right to access healthcare as contained in Section 27(1)(a). This assessment includes the evaluation of the availability of pre-exposed HIV/AIDS (Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome) medications for mother-to-child transmission, including nevirapine, but excludes the evaluation of reproductive healthcare. The space limitation of this study does not allow for this subset of rights to be addressed.

Section 29 of the *Constitution* guarantees that everyone has the right: (a) to basic education, including adult basic education and (b) to further education, which the state, through reasonable measures, must make progressively available and accessible. This study is limited to assessing the right to a basic education as contained in Section 29(a). This assessment excludes the evaluation of adult basic education due to the space limitation of this study. Therefore, the assessment of corruption within government in national departments in South Africa focuses on the Department of Health and the Department of Education as these departments are arguably the national departments responsible for enabling the realisation of the rights contained in Sections 27(1)(a) and 29(a) of the *Constitution*.

Considering modernity and the aim of providing an updated viewpoint, it must be acknowledged that governments have ever changing variables, when assessing a government, ongoing changes and challenges must be considered. The inclusion of current events does this. Befittingly, corruption in state-owned enterprises as it relates to the investigation into state capture in South Africa carried out by the *Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State* (the Zondo Commission) is included because it is the most recent investigation into corruption within government in South Africa. The findings of the Zondo Commission are included to demonstrate that it is not only corruption in national departments that has a potential plummeting effect on government funding in South Africa. Arguably, it is also corruption in state-owned

enterprises that erodes the availability of government resources.¹ Although there are other variables that impact the availability of government resources this study is limited to the assessment of the above mentioned.

Given the last core element of this study, the conceptual idea of social justice and what is believed to be necessary to achieve social justice is analysed to understand whether it is possible to achieve social justice in South Africa if socio-economic rights are not respected, protected, promoted, and fulfilled for everyone. An idea of social justice is to see all people be equal under the law and have equal opportunities to develop their potential.² Social justice includes the fair distribution of rights, resources, and opportunities.³ The achievement of social justice within a society is necessary because its potential to enable and promote human rights fulfilment including the fulfilment of socio-economic rights, redress injustices, ensure equality, create opportunities and an overall better standard of living.⁴

1.2 RESEARCH PROBLEM

The proposed dissertation highlights the knowledge gap to demonstrate that corruption, human rights, specifically socio-economic rights, and social justice have a three-fold interconnected relationship, at times a destructive relationship. The proposed dissertation examines corruption within national departments, namely the Department of Health and the Department of Education in South Africa - and briefly state-owned enterprises investigated in the Zondo Commission - as it relates to the governments' (at times) inability to provide human rights enabling-services⁵ to all

¹ Discussing corruption and its effects of the composition of government expenditure see, Mauro 1998:263-279.

² Mapp 2014:23-24.

³ Barry 2005: Preface, 17.

⁴ There are varying understandings of why the achievement of social justice is necessarily see generally, Barry 2005:3-100. See also, Mapp 2014:1-25; Richards-Schuster et al. 2019:27-38; Miller 2001:30-40. According to Miller the first principle of social justice is human rights fulfilment. See Millers principles for social justice below in Section 5.3.1 of this study in consideration of why the achievement of social justice within a society is necessary.

⁵ For the purposes of this study the term *human rights-enabling services* refers to services provided by the government of South Africa as it relates specifically to the fulfilment of the socio-economic rights recognised in Sections 27 and 29 of the *Constitution*.

people of South Africa, furthermore, the proposed dissertation addresses whether social justice can be achieved if socio-economic rights are not respected, protected, promoted, and fulfilled for all people within the jurisdiction of South Africa.

1.3 RESEARCH QUESTIONS

1. What are the definitions of corruption, human rights, and social justice?
 - 1.1. What is corruption?
 - 1.2. What are human rights?
 - 1.3. What is social justice?
2. What is the extent of corruption within national departments in South Africa?
3. Are socio-economic rights respected, protected, promoted, and fulfilled in South Africa?
4. Is there a connection between corruption, human rights, and social justice?
5. Is the realisation of social justice achievable if human rights are not respected, protected, promoted, and fulfilled for all people of South Africa?

1.4 MOTIVATION

The Preamble of the *Constitution* states that the *Constitution* aims to "heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights." In considering whether the constitutional aim to establish a society based on social justice and fundamental human rights is achieved in South Africa, this study addresses the effect of corruption within government on human rights respect, protection, promotion, and fulfilment in South Africa. This study provides an interesting yet important opportunity to advance the understanding of the conceptual ideas behind the terms (a) corruption, (b) human rights and (c) social

justice and establish what degree of relation these concepts have. This study aims to establish a three-fold relationship between these three concepts and elucidate the degree of relation between these concepts.

Prompted by the academic debate surrounding these core concepts and ample views on their possible implications towards each other, including, for example, the view observed by Chetwynd *et al.*⁶ that '[c]orruption lowers the quality of public infrastructure' this study aims to assess whether corruption within government in specific national departments in South Africa adversely affects the respect, protection, promotion, and fulfilment of socio-economic rights. This study aims to understand whether the quality of public infrastructure, including human rights-enabling services, has been impacted by corruption within government to the degree that a relation can be established. Can it be established that the quality of public services and infrastructure in South Africa has been impacted to the point of impeding the fulfilment of human rights in South Africa, and if so, where does that leave South Africa in terms of achieving social justice? Can the public of South Africa experience social justice if their human rights are not respected, protected, promoted, and fulfilled? Answering these questions allows this study to contribute to future academic consideration relating to various topics, including, for example, studies of either of these core concepts, the effects of governmental corruption, the existence of corruption within government in South Africa at the time of this study and the achievement of social justice, including what role human rights play in social justice.

An ongoing requirement through this inquiry into this three-fold relationship was to acknowledge and accredit that although this study takes a unique approach in examining these core concepts and how these concepts relate to each other, various academics have deliberated on these core concepts. Literature can be found discussing these concepts individually, and beyond that, literature analyses these concepts simultaneously at times. For example, the consequences of corruption and whether this affects the government's ability to fulfil human rights have been examined in ample literature. The question of what role human rights play in the realisation of

⁶ Chetwynd *et al.* 2003:15.

social justice has also been scrutinised by various authors. Mindful academic deliberation was necessary in acknowledging that not all who write on the connection between corruption and human rights agree on the connection, and the same goes for those who write on the connection between human rights and social justice.⁷

Thus, always bearing this in mind, a significant contribution of this study is weighing up all viewpoints and finding the right balance to explain how these concepts all affect each other. This study's significance is found in its aim to address and contribute towards a gap in literature relating to the interconnectedness of the connection between (a) corruption and human rights and (b) human rights and social justice. This study aims to contribute to understanding the degree of relation between all three of these concepts.

The World Health Organisation recommends 4.45 medical practitioners for every 1000 citizens, meaning 44.5 medical practitioners per 10,000 citizens.⁸ The Health System's Trust estimates that South Africa has 3.2 medical practitioners per 10,000 citizens.⁹ This study questions whether statistics like South Africa's medical practitioner-to-patient ratio are adversely impacted by corruption within government in the South African Department of Health. The public healthcare sector in South Africa was a corruption hotspot in Corruption Watch¹⁰ annual reports in 2012, 2013, 2015, 2018 to 2022. The view provided by Chetwynd *et al.*¹¹ supports that corruption within government adversely impacts human rights fulfilment. This view was also seen in the

⁷ (a) Corruption see generally, Tanzi 1998:566-568; Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):1; Olaniyan 2014:16; Holmes 2015:2-4; Rose-Ackerman 2016:7-11; (b) Human rights see generally, Nussbaum 1997:273; Mubangizi 2004:1-81; Griffin 2009:1; Woods 2010:51-111; Moyn 2012:15; Mkabela 2014:283-29; Clapham 2015:1-3; Roberts 2015:Preface; Nugmanova *et al.* 2020:168-167; Ife *et al.* 2022:6-34. (c) Social justice see generally, Novak 2000:11-12; Young 2000:181-183; Rawls 2001:42-43; Miller 2001:2-18, 30-40, 63-78, 79-81, 86-107, 231-237, 247-258, 302-323; Barry 2005:3-100; Zajda *et al.* 2006:1-12; Van der Walt 2008:325-346; Craig *et al.* 2008:4-6; Nussbaum 2011:143-184; Mapp 2014:1-25; Hibbert 2017:1-16; Ornstein 2017:541-548; Kraynak 2018:3; Richards-Schuster *et al.* 2019:27-38.

⁸ World Health Organization 2016.

⁹ Investec "Is SA's healthcare system prepared for Covid-19?", https://www.investec.com/en_za/focus/beyond-wealth/is-south-africas-healthcare-system-prepared-for-covid-19.html (accessed on 30 August 2021).

¹⁰ Corruption Watch "Annual Reports", <https://www.corruptionwatch.org.za/reading-and-media-room/annual-reports-2/> (accessed on 19 June 2023).

¹¹ Chetwynd *et al.* 2003:15.

case of *Glenister v President of the Republic of South Africa & Others*.¹² However, the consequences of corruption within government are not agreed upon by all. Whether human rights and social justice are connected is not agreed upon by all. This study is motivated to weigh up the instances of proven corruption within government in the Department of Health and the Department of Education alongside general corruption within government in South Africa, as that investigated in the state capture enquiry compared to the statistics on human rights fulfilment to show that these two concepts are connected.

In 2017, more than 75 per cent of nine-year-olds in South African public schools could not read properly. In the same year, less than 60 per cent of learners went to high school. Of those, less than 50 per cent stayed until grade 12 and passed their matriculation.¹³ The South African public education sector was named a corruption hotspot by Corruption Watch in all annual reports from 2012 to 2022.¹⁴ It is statistics like this that motivates this study to comprehensively compile a suggested understanding of the relationship between (a) governmental corruption, (b) human rights, specifically the rights contained in Sections 27 and 29 of the *Constitution* and (c) social justice.

¹² 2011 (3) SA 347 (CC).

¹³ Amnesty International "Submission to Department of Basic Education – 5 July 2022", <https://amnesty.org.za/research/submission-to-department-of-basic-education-5-july-2022/> (accessed on 2 May 2023). See generally, Spaul 2013b:1-65; Spaul 2013a:436-447.

¹⁴ See generally, Corruption Watch "Annual Reports", <https://www.corruptionwatch.org.za/reading-and-media-room/annual-reports-2/> (accessed on 19 June 2023); Corruption Watch "Annual Report 2016", <https://www.corruptionwatch.org.za/wp-content/uploads/2017/02/Corruption-Watch-Annual-Report-27-02-2017-Low-Res-Version.pdf> (accessed on 3 August 2022); Corruption Watch "Annual Report 2017", <https://www.corruptionwatch.org.za/wp-content/uploads/2018/04/Corruption-Watch-Annual-Report-04042018-FA-Single-Pages-CompressedV2-2.pdf> (accessed on 21 June 2022); Corruption Watch "Annual Report 2018", <https://www.corruptionwatch.org.za/wp-content/uploads/2019/05/CW-Annual-Report-2018-Upholding-Democracy-Single-Pages-Agent-Orange-Design-10042019.pdf> (accessed on 21 June 2022); Corruption Watch "Annual Report 2019", https://www.corruptionwatch.org.za/wp-content/uploads/2020/03/CRW0320_7171_AnnualReport-2019.pdf (accessed on 21 June 2022); Corruption Watch "Annual Report 2020", <https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021).

1.5 THE METHODOLOGY AND THEORETICAL APPROACH

This study relies on primary and secondary literature sources. Therefore, the desktop-based research method is used. Information gathered from these literature sources is analysed using the socio-legal research method. This method involves situating law and legal research in a social context. The applicability of this method stems from this method's aim to understand the law in a social context. This study assesses the public's experience of socio-economic rights in South Africa. Conceptual understandings of the three core concepts alongside the social and legal elements involved in this study are contextualised by evaluation of what the *Constitution* and other human rights legislative instruments applicable to South Africa guarantee regarding socio-economic rights alongside the assessment of the public's experience of the respect, protection, promotion, and fulfilment of these rights.

The socio-legal research method considers the social phenomenon of the impact that the law has. The law and society are interconnected, therefore using the socio-legal research method helps inform this study of the social impact that the law and case law discussed throughout this study could have. Socio-legal research aims to understand how laws and legal systems shape and are shaped by various factors within a society including culture, economic and social factors.¹⁵

Arguably the law could be said to fall short when it comes to addressing social issues that unfold within a society in real time, making the socio-legal research method valuable due to its ability to consider the social impact when studying legal documents, legislation, case law, current academic discourse and more. This study constantly considers the possible social impact of corruption within government and the possible social impact of corruption within government hampering the respect, protection, promotion, and fulfilment of socio-economic rights.

Corruption within government in the Department of Health and its possible societal impacts is discussed in Section 3.5 of this study. This section includes various discussion on the legal recognition of the right to access healthcare as seen in Section

¹⁵ See generally, Nyathi 2023:365-386; Budianto 2020:1339-1346.

27 of the Constitution, South African case law surrounding this right, current events, statics on the fulfilment of this right and more is interpreted through the socio-legal research method to understand how the community of South Africa is possibly impacted by these issues.¹⁶

Corruption within government in the Department of Education and its possible social impacts is discussed in Section 3.6 of this study. This section includes various discussion on the legal recognition of the right to a basic education as seen in Section 29 of the Constitution, South African case law, current events and more surrounding this right is interpreted through the socio-legal research method to understand how the community of South Africa as a whole is possibly impacted by these issues.¹⁷ This study also briefly considers corruption within government entities as investigated by the Zondo Commission which is assessed through the socio-legal research method to see what the possible social implications of the findings of this commission have on the availability of government resources which availability could have effects on the society of South Africa.¹⁸

Using the socio-legal research method helps provide a deeper understanding of the impact that legal systems and legal documents have on communities and individuals.

¹⁶ See (a) below in the introduction of Section 4.1 on page 92-93 of this study setting out the right to access healthcare as follows "Section 27: The right to access healthcare services (including reproductive healthcare), sufficient food and water, and social security. This study is limited to assessing the right to access healthcare as contained in Section 27(1)(a). This assessment includes the evaluation of the availability of pre-exposure HIV/AIDS medications for mother-to-child transmission, including nevirapine, but excludes the evaluation of reproductive healthcare." Note that the subset right of reproductive healthcare as also recognised in Section 27 of the *Constitution* does not form part of this study's assessment of this right due to the space constraints of this study.

¹⁷ See (b) below in the introduction of Section 4.1 on page 92-93 of this study setting out the right to a basic education as follows "(b) Section 29: Everyone has the right — (a) to a basic education, including adult basic education and (b) to further education, which the state, through reasonable measures, must make progressively available and accessible. This study is limited to assessing the right to a basic education as contained in Section 29(a)." This assessment excludes the evaluation of adult basic education due to the space limitations of this study.

¹⁸ Explaining why this study includes a brief discussion of the Zondo Commission see Chapter 1 of this study the introduction in Section 1.1 above reads, "Considering modernity and the aim of providing an updated viewpoint, it must be acknowledged that governments have ever changing variables, when assessing a government, ongoing changes and challenges must be considered. The inclusion of current events does this. Befittingly, corruption in state-owned enterprises as it relates to the investigation into state capture in South Africa carried out by the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State (the Zondo Commission) is included because it is the most recent investigation into corruption within government in South Africa." See generally, Mauro 1998:263-279.

Legal documents such as for example the *Constitution* or the Universal Declaration of Human Rights (UDHR) are discussed throughout this study constantly considering their impact on the community of South Africa.

1.6 OUTLINE OF CHAPTERS

1.6.1 Chapter 1: Introduction

Chapter 1 introduces the research problem and sets out the research questions that have emanated from the research problem. This chapter includes the motivation for this study and the significance of establishing and understanding the three-fold relationship between (a) corruption, (b) human rights and (c) social justice.

1.6.2 Chapter 2: The definitions of corruption, human rights and social justice

Chapter 2 sets the foundation of the three core concepts that make up the research question of this study. This chapter accredits the available conceptual understandings of each core concept. The academic debate surrounding each concept is addressed. These concepts' origins, attributed meanings, and varying definitions are encapsulated. The consequences or obligations assigned to these concepts applicable to this study's assessment of the suggested three-fold relationship are evaluated. The foundation of each concept is set out in this chapter to pave the way for the following chapters, in which each concept is analysed individually in a South African context. In this chapter, provisional links between these three core concepts are established. These provisional links are elaborated on in detail in Chapter 5.

1.6.3 Chapter 3: What is the extent of corruption within national departments in South Africa?

Due to corruption being the first core concept of this study, this chapter focuses on corruption within government in the Department of Health and the Department of

Education in South Africa. Corruption Perception Index (CPI) scores provided by Transparency International are summarised to understand how corrupt the South African public sector is internationally perceived. Statistical data evidencing proven instances of corruption alongside corruption trends and hotspots for corruption in South Africa are evaluated. Indicators of corruption and corruption occurrences not included in the statistical data are delineated. Lastly, a summary explains the investigation into state capture in South Africa conducted by the Zondo Commission. The findings of the Zondo Commission are included to demonstrate that it is not only corruption in national departments that has a plummeting effect on government funding in South Africa - it is also corruption in state-owned enterprises that erodes the availability of government resources.

1.6.4 Chapter 4: Are socio-economic rights respected, protected, promoted and fulfilled in South Africa?

The discussion shifts to the second core concept of this study, namely human rights, specifically socio-economic rights. Chapter 4 examines whether the rights contained in Section 27(1)(a) and Section 29(a) of the *Constitution* are respected, protected, promoted, and fulfilled for everyone in South Africa. The obligations stemming from international, regional, and national human rights are outlined. Instances of non-fulfilment, including when a right was not respected, protected, or promoted, are addressed. South African case law in which applicants believed their rights had not been fulfilled is reflected. An evaluation is done on the pending unresolved obstacles in the Department of Health and the Department of Education, which departments should progressively enable the realisation of the rights in Sections 27(1)(a) and 29(a). This evaluation is done in support of this study's suggestion that various underlying factors, including longstanding unresolved obstacles such as procurement irregularities, maladministration, and corruption within these departments, contribute to instances of non-fulfilment, including at times that a right is not respected, protected or promoted. This chapter establishes a connection between corruption within government and socio-economic rights in South Africa.

1.6.5 Chapter 5: Is there a connection between corruption, human rights, and social justice?

This chapter is the culmination of the three core concepts and their relation to each other. This study's suggestion of the three-fold relationship between (a) corruption, (b) human rights, and (c) social justice is explained. This relationship is explained by first setting out the interconnectedness between corruption and human rights. Secondly, the interconnections between human rights and social justice are addressed. Then, this study suggests five main exemplifications of the connection between human rights and social justice. This chapter concludes by synthesising all the illustrated interconnections to reveal the holistic three-fold relationship between these core concepts.

This chapter focuses on the last core concept of this study, namely, social justice and how social justice connects to human rights and fits into the three-fold relationship. To understand whether there is a connection between corruption, human rights, and social justice, it needs to be understood that human rights and social justice are connected. Answering the last research question, Is the realisation of social justice achievable if human rights are not respected, protected, promoted, and fulfilled for all people of South Africa? To find a balanced answer regarding social justice in today's world, this concept needs to be addressed from a current and a historical viewpoint. What is believed necessary to achieve social justice based on the views of classic authors and modern-day contributors is examined. Considering both these historical and current viewpoints on social justice, this chapter addresses what role human rights fulfilment plays in achieving social justice. This chapter concludes with a probe of whether achieving social justice in South Africa is attainable if human rights are not respected, protected, promoted, and fulfilled for all people of South Africa (discussed in this study as *everyone*).

1.6.6 Chapter 6: Conclusion

The totality of notions examined in the inquiry into this study's suggested three-fold relationship is concluded in this chapter. A summary sets out the main findings of this

three-fold relationship. Based on the extrapolations of these findings, this study provides two practical ways in which the viewpoint of this three-fold relationship could be used to create positive change, resulting in the propulsion of social justice in South Africa.

CHAPTER 2: THE DEFINITIONS OF CORRUPTION, HUMAN RIGHTS AND SOCIAL JUSTICE

2.1 INTRODUCTION

The central question of this study is to analyse the three-fold relationship between corruption, human rights, specifically socio-economic rights, and social justice. This chapter aims to develop an understanding of the three core concepts that make up this threefold relationship, namely, (a) corruption, (b) human rights and (c) social justice. In this chapter, it will be seen that there are varying definitions for each of these three core concepts. These various definitions will be set out to build on the general understanding of the concepts at play and to show preliminary links to the interplay between these concepts.

2.2 WHAT IS CORRUPTION?

There is no clear answer as to precisely what corruption is.¹⁹ Several attempts have been made to define corruption. Therefore, various definitions exist.²⁰ However, not one concrete definition of corruption is accepted by all.²¹ Corruption is a crime that can take various forms and have many consequences.²² Farrales²³ notes that it is impossible to arrive at a single definition of corruption that can accurately always identify all possible cases under all forms of government. The definition of corruption

¹⁹ Holmes recognises the academic debate surrounding what corruption means, See Holmes 2015:1. "Corrupt behaviour can arise in a number of different contexts", See Caiden 2007:77. See generally, The World Bank "Helping Countries Combat Corruption: The Role of the World Bank"; Tanzi 1998:559-594; Rose-Ackerman 2016:7-11.

²⁰ Tanzi 1998:559-594; Mauro 1998:263-279; Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022); Olaniyan 2014:15; Holmes 2015:1-4; Rose-Ackerman 2016:7-11.

²¹ Tanzi 1998:8-10; Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):1; Olaniyan 2014:16; Holmes 2015:2-4; Rose-Ackerman 2016:7-11.

²² Mauro 1996:8; Rose-Ackerman 2016:7-14; Olaniyan 2014:2-4.

²³ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):32.

has been debated since the early 1950s.²⁴ A significant problem in attempts to combat corruption is that analysts cannot fully agree on what corruption is.²⁵ Most definitions of corruption include abusing a position of power for personal gain.²⁶ One of the reasons that corruption is difficult to define is because corruption consists of various practices that some societies view as a crime. However, other societies view those same practices as socially acceptable practices.²⁷ Prasad *et al.*²⁸ claim that corruption persists in many countries because of the uncertainty surrounding the definition and what acts fall within the definition. For example, according to Prasad *et al.*,²⁹ there is uncertainty over what constitutes a gift and a bribe.

Tanzi³⁰ claims that one of the few agreed-upon facts of the crime of corruption is that there are various definitions. According to Tanzi,³¹ most definitions of corruption lack concreteness and a sense of certainty. Tanzi³² suggests that corruption is like an elephant. Even though it may be difficult to describe or could be described differently by different people, it is usually not difficult to recognise when seen. Farrales³³ agrees that there is currently no universally accepted definition of corruption. Farrales³⁴ points out that there are varying understandings of what the crime of corruption encompasses and that various scholars offer different explanations of corruption. The most enduring

²⁴ Farrales points out that corruption scholar Robert Klitgaard says that corruption is as old as organised human life and perhaps as old as government itself. See, Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):5.

²⁵ Holmes 2015:2.

²⁶ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):13-43; The World Bank 1997; Corruption Watch "Our definition of corruption", <https://www.corruptionwatch.org.za/learn-about-corruption/what-is-corruption/our-definition-of-corruption/> (accessed on 23 November 2020).

²⁷ "It has been difficult to universally define corruption there are forms of corruption that are difficult to identify and there are forms that may not be seen as corruption by exponents of, for instance social gestures such as gifting". See, Mudau & Madzivhandila 2022:16. Holmes notes that the concept of corruption varies somewhat across cultures, See Holmes 2015:1. See generally, Hassan 1970:142-143; Svenssen 2005:19-42; Caiden 2007:77; Melgar *et al.* 2010:121; Prasad *et al.* 2019:96-132.

²⁸ Prasad *et al.* 2019:96-132.

²⁹ Prasad *et al.* 2019:96-132.

³⁰ Tanzi 1998:559-594.

³¹ Tanzi 1998:559-594.

³² Tanzi 1998:559-594.

³³ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):32.

³⁴ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):10.

aspect of the literature on corruption has been the continued difficulty in defining and conceptualising corruption.³⁵

Agreeing with Tanzi³⁶ and Farrales,³⁷ Olaniyan³⁸ discusses the fact that there are various definitions of corruption, explaining that there is confusion surrounding the concept of corruption due to these multiple definitions. Olaniyan³⁹ argues that defining corruption is problematic, and definitions of corruption that do exist are ambiguous. Rose-Ackerman⁴⁰ agrees with the views of Tanzi, Farrales, Olaniyan and others on the lack of clarity surrounding the definition and argues that corruption has many connotations and interpretations.

In the 1980s and 1990s, Nye's⁴¹ definition of corruption gained widespread popularity. Nye⁴² explains corruption as "behaviour which deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private clique) wealth or status gains; or violates rules against the exercise of certain types of private-regarding influence." Farrales⁴³ claims that today's most used definition of corruption is a shortened version of Nye's⁴⁴ classic definition. For many scholars today, corruption means *the misuse of public office for private gain* (my emphasis).⁴⁵

³⁵ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):1.

³⁶ Tanzi 1998:559-594.

³⁷ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):10.

³⁸ Olaniyan 2014:16.

³⁹ Olaniyan 2014:16-43.

⁴⁰ Rose-Ackerman 2016:7.

⁴¹ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):13-43. See also, The World Bank 1997.

⁴² Cited in Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):13-43.

⁴³ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):13-43.

⁴⁴ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022).

⁴⁵ See generally, Mauro 1998:263-279; Sandholtz & Koetzle 2000:31; Gyimah-Boadi 2002:1; Shah & Schacter 2004:1; Bhargava 2005:1; Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):27; Rose-Ackerman 2016:9.

The World Bank⁴⁶ reminds us that corruption is complex and covers many human activities. To encompass the ideas behind the crime of corruption, the World Bank⁴⁷ has settled upon a simple definition, "the abuse of public office for private gain." Historically, the origin of the word corruption comes from the Latin adjective *corruptus*, which means something that is perverted, spoiled, or corrupted.⁴⁸ According to the Oxford Learner's Dictionary,⁴⁹ corruption means "dishonest or illegal behaviour, especially of people in authority." Malherbe⁵⁰ notes the Pocket Oxford Dictionary definition of corruption as "rotten; depraved; wicked; influence by or using bribery." Thornhill⁵¹ defines corruption as "offering or granting, directly or indirectly to a public official or any other person, of any goods of monetary value, or other benefits, such as a gift, favour, promise or advantage for himself or herself or any other person or entity, in exchange for any acts or omission in the performance of his/her public functions."

Farrales⁵² describes corruption as a cross-systematic, cross-cultural, and cross-temporal phenomenon, and corruption can exist in any country, at any time, under any form of government. Farrales⁵³ references definitions of corruption given by other academics, such as Gardiner and Lyman,⁵⁴ who define corruption as "the exchange of money or material benefits in return for preferential treatment by a public agent."

⁴⁶ The World Bank 1997.

⁴⁷ The World Bank 1997; Mauro 1998:263-279; Farrales points out that by the late 1990's the World Bank and Transparency International had both formally adopted the definition of corruption as "the misuse of public office for private gain". See, Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):27.

⁴⁸ Bauer 2005:51; Kota & Hingston "South Africa's corruption busters: short-changed on funding and political commitment", <https://theconversation.com/south-africas-corruption-busters-short-changed-on-funding-and-political-commitment-173072> (accessed on 30 March 2022); Merriam-Webster International Online Dictionary "Corruption", <https://www.merriam-webster.com/dictionary/corruption> (accessed on 25 May 2022); Mudau & Madzivhandila 2022:16.

⁴⁹ Oxford Learner's Dictionaries "Corruption", https://www.oxfordlearnersdictionaries.com/definition/american_english/corruption#:~:text=corrupti%20on,noun,promised%20to%20fight%20police%20corruption (accessed on 31 January 2022).

⁵⁰ Malherbe 2001:110.

⁵¹ Thornhill 2012:140; Mwenda 2011:21.

⁵² Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):3.

⁵³ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):18.

⁵⁴ Gardiner & Lyman 1978. See also, Dormaels 2010:220-223.

Clarke⁵⁵ suggests, "corruption is the abuse of bureaucratic or political office for personal or factional gain." Leff⁵⁶ notes that "corruption is an extra-legal institution used by individuals or groups to gain influence over the actions of the bureaucracy."

Olaniyan⁵⁷ argues that corruption refers to "the deliberate and 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." Note Olaniyan's⁵⁸ mention of human rights. Budhram and Geldenhuys⁵⁹ defines corruption as "the intentional abuse of authority or power to gain or facilitate the obtaining of a benefit or advantage, which the recipient or beneficiary is not legally entitled to."

Rose-Ackerman⁶⁰ refers to the definition of corruption used by Transparency International. Transparency International⁶¹ is a global movement working in over 100 countries to end the injustice of corruption. Transparency International⁶² defines corruption as "the abuse of entrusted power for private gain." Rose-Ackerman⁶³ claims the most popular measure of corruption is the Corruption Perception Index (CPI), published annually by Transparency International since 1995. The CPI is further discussed in Section 3.3 of this study. Corruption Watch⁶⁴ is a South African-based independent civil society organisation, a non-profit anti-corruption organisation.

⁵⁵ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):26.

⁵⁶ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):15.

⁵⁷ Olaniyan 2014:20.

⁵⁸ Olaniyan 2014:20.

⁵⁹ Budhram & Geldenhuys 2018:30.

⁶⁰ Rose-Ackerman 2016:9.

⁶¹ Transparency International "About Transparency International", <https://www.transparency.org/en/about> (accessed on 21 June 2022).

⁶² Transparency International "Corruption Perceptions Index. New Zealand", <https://www.transparency.org/en/cpi/2020/index/nzl> (accessed on 25 February 2021).

⁶³ Rose-Ackerman 2016:15.

⁶⁴ Corruption Watch "About Corruption Watch", <https://www.corruptionwatch.org.za/about-us/who-we-are/about-corruption-watch/> (accessed on 21 June 2022).

Corruption Watch⁶⁵ defines corruption as "the abuse of public resources or public power for personal gain".

Corruption takes various forms, and since there is no universally accepted definition of corruption, there is also no universally valid typology.⁶⁶ Some examples of forms of corruption include (a) abuse of office, (b) abuse of discretion, (c) bribery, (d) budget corruption, (e) electoral corruption, (f) embezzlement, (g) extortion, (h) favouritism, (i) fraud, (j) identity theft, (k) illegal contributions, (l) illicit financial flows, (m) insider trading, (n) intimidation, (o) kickbacks, (p) misappropriation of public resources, (q) money laundering, (r) nepotism, (s) public procurement irregularities, (t) receiving unlawful gratuity, (u) theft, and more.⁶⁷

In 2003, the UN adopted the UN Convention against Corruption.⁶⁸ This Convention highlights the consequences of corruption, explaining that corruption is a plague that has a wide range of corrosive effects on societies.⁶⁹ This Convention⁷⁰ explains that corruption "undermines democracy and the 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."⁷¹ Note that this Convention⁷² mentions that corruption leads to human rights violations. Also note that this Convention⁷³ does not define corruption. Corruption not being defined in an international legal instrument such as this Convention⁷⁴ that is explicitly designed to combat corruption globally again demonstrates that there is not one agreed-upon definition of corruption that is

⁶⁵ Corruption Watch "Our definition of corruption", <https://www.corruptionwatch.org.za/learn-about-corruption/what-is-corruption/our-definition-of-corruption/> (accessed on 23 November 2020).

⁶⁶ Vargas-Hernández 2009:132. "Corrupt behaviour can arise in a number of different contexts" See, Caiden 2007:77. See also, Rose-Ackerman 2016:1-215.

⁶⁷ Vargas-Hernández 2009:133. See also, Rose-Ackerman 2016:1-215; Suleiman & Othman 2017:102-108.

⁶⁸ UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422.

⁶⁹ UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422:Foreword.

⁷⁰ UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422.

⁷¹ UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422:Foreword. Note that stating corruption "undermines democracy" means that an adverse effect of corruption on government is see.

⁷² UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422.

⁷³ UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422.

⁷⁴ UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422.

accepted throughout literature and that some legislative instruments designed to combat corruption do not even attempt to define the crime.⁷⁵

In terms of the African continent, there is the African Union Convention on Preventing and Combating Corruption.⁷⁶ Article 2 of this Convention states that the Convention's objective is to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.⁷⁷ Article 4(1)(a)-(1) of this Convention defines acts that constitute corruption.⁷⁸ For example, Article 4(1)(d) states:

The diversion by a public official or any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the State or its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position.

South Africa has enacted legislation to provide for the strengthening of measures to prevent and combat corruption within South Africa, domestically the South African legislation that governs the crime of corruption is the *Prevention and Combating of Corrupt Activities Act 12/2004 (PRECCA)*. The crime of corruption as defined in this Act⁷⁹ can be explained as follows: the general crime of corruption happens when someone (a) gives (or offers to give) someone in a position of power, (b) something to use their power, illegally and unfairly, for the advantage of (a) or someone not directly involved.

Alongside the meaning of corruption not being agreed upon, in the early debates on corruption, the consequences of corruption were also not agreed upon.⁸⁰ In the late

⁷⁵ For authors who do not attempt to define the crime of corruption see generally,

⁷⁶ African Union, African Union Convention on Preventing and Combating Corruption, 11 July 2003. See also, Baillat 2013:3-27.

⁷⁷ African Union, African Union Convention on Preventing and Combating Corruption, 11 July 2003.

⁷⁸ African Union, African Union Convention on Preventing and Combating Corruption, 11 July 2003:art. 4 sec. 1(a)-(i).

⁷⁹ PRECCA:sec. 25.

⁸⁰ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022).

1970s, authors Krueger⁸¹ and Rose-Ackerman⁸² argued that corruption harms political and economic development.⁸³ Corruption has its roots in economic, societal, and political factors and has economic, social, and political repercussions. Corruption is an obstacle to sustainable economic, political, and social development.⁸⁴ Rose-Ackerman⁸⁵ suggests that public sector corruption deserves particular emphasis because it undermines development and distributional goals. It also conflicts with democratic and republican values.⁸⁶ Note the suggestion that public sector corruption undermines development and distributional goals.

Commenting on the consequences of corruption, Baillat⁸⁷ claims corruption violates the core human rights principles of transparency, accountability, non-discrimination, and meaningful participation in every aspect of life of the community. Budhram and Geldenhuys⁸⁸ note that corruption undermines democracy and the rule of law, leading to human rights violations. Note that Budhram and Geldenhuys⁸⁹ suggest that corruption leads to human rights violations. This view was also noted by Olaniyan⁹⁰ below. Furthermore, according to them, corruption increases business costs, discourages investment, and wastes public resources.⁹¹ Budhram and Geldenhuys⁹² specifically observe corruption in South Africa and point out that South Africa is plagued by public sector corruption. Chapter 3 of this study will elaborate on corruption within government in South Africa.

⁸¹ Krueger 1974:291-303.

⁸² Rose-Ackerman 1978:417-427.

⁸³ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):7.

⁸⁴ Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):34; Budhram & Geldenhuys 2018:26.

⁸⁵ Rose-Ackerman 2016:7.

⁸⁶ Amongst various adverse effects Olaniyan notes that corruption within government undermines democracy and the rule of law and leads to human rights violations. See Olaniyan 2014:6.

⁸⁷ Baillat 2013:3.

⁸⁸ Budhram & Geldenhuys 2018:26.

⁸⁹ Budhram & Geldenhuys 2018:26. Discussing corruption as a violation of basic human rights in South Africa see generally, Mantzaris 2017:15-30.

⁹⁰ Olaniyan 2014:6 & 20.

⁹¹ Budhram & Geldenhuys 2018:26.

⁹² Budhram & Geldenhuys 2018:26.

Empirical evidence suggests that corruption invariably impedes sustainable development and thus disproportionately affects the economically and socially vulnerable members of society.⁹³ Olaniyan⁹⁴ argues that corruption adversely impacts human rights fulfilment, explaining that corruption poses challenges to the enjoyment of human rights. Olaniyan⁹⁵ links protecting and promoting human rights to the need to combat corruption. Note this link between corruption and human rights made by him. According to Olaniyan,⁹⁶ the relationship between corruption and human rights law is one of international law's most fundamental yet least studied questions.

Considering the definitions mentioned above and the consequences of corruption, the individual-centred nature of corruption, which aims to benefit one person or group at the expense of the overall group, is noted. The most common element seen from the above definitions of corruption is the abuse of entrusted power, which abuse is dishonest, illegal, and unethical, done for private gain. This study relies on the definition of corruption as *the abuse of public office for private gain*.⁹⁷ A provisional link between corruption, specifically public sector (governmental corruption), its consequences, and human rights fulfilment has been established. This link will be elaborated on in Chapter 5. The existence and extent of corruption in government departments in South Africa will be discussed in Chapter 3 of this study, specifically in Sections 3.5 which discusses corruption within government in the Department of Health and 3.6 which discusses corruption within government in the Department of Education.

⁹³ Olaniyan 2014:3.

⁹⁴ Olaniyan 2014:4.

⁹⁵ Olaniyan 2014:2.

⁹⁶ Olaniyan 2014:5.

⁹⁷ The World Bank 1997. Farrales points out that by the late 1990's the World Bank and Transparency International had both formally adopted the definition of corruption as "the misuse of public office for private gain." See, Farrales "What is corruption?: A history of corruption studies and the great definitions debate", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022):27. See also, Mauro 1998:263-279.

2.3 WHAT ARE HUMAN RIGHTS?

Human rights are rights that we all have simply by being human, described as the birthright of humankind.⁹⁸ Human rights are an individual's rights and freedoms, which form the basis for the relationship between individuals and each other and between the state and the individuals.⁹⁹ According to Moyn,¹⁰⁰ the concept known internationally as human rights in the modern world is a version of the ancient commitment by Plato, Cyrus and Deuteronomy to the cause of justice.¹⁰¹ Heard¹⁰² regards human rights as a product of a global philosophical debate that has been prolonged for over two thousand years. Griffin¹⁰³ claims in the introduction of his book, "On Human Rights", that this book is prompted by the belief that we do not yet have a clear enough idea of what human rights are. The law is commonly seen as the primary mechanism for safeguarding human rights and preventing human rights abuses.¹⁰⁴ Below, various legal instruments that relate to human rights are discussed alongside different definitions of human rights.

Historically, it is accepted that the earliest recognition of human rights as a concept dates back to 539 BC when the troops of Cyrus the Great conquered Babylon, and Cyrus freed the enslaved people.¹⁰⁵ Cyrus further declared that all people had the right to choose their religion and established racial equality.¹⁰⁶ Known today as the Cyrus

⁹⁸ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III):art 1. "All human beings are born free and equal in dignity and rights." Griffin suggests the enlightenment notion of human rights is that a human right is a right that we have simply by virtue of being human. See, Griffin 2009:13. See also, Moyn 2012:15.

⁹⁹ See generally, Moyn 2012:1-15; Clapham 2015:1-7; Goodhart 2016:2-6; The University of Law "Human Rights Law", <https://www.law.ac.uk/employability/legal-practice-areas/human-rights-law/> (accessed on 9 October 2023).

¹⁰⁰ See, Moyn 2012:4-5.

¹⁰¹ "Human rights are only a particular modern version of the ancient commitment by Plato and Deuteronomy—and Cyrus—to the cause of justice." See, Moyn 2012:4-5.

¹⁰² Heard *Human rights: Chimeras in sheep's clothing?*. <https://www.sfu.ca/~aheard/intro.html> (accessed on 4 October 2023).

¹⁰³ Griffin 2009:1. See also, Mubangizi 2004:1-81; Ife *et al.* 2022:6-34.

¹⁰⁴ Ife *et al.* 2022:31.

¹⁰⁵ United for Human Rights "The Background of Human Rights", <https://www.humanrights.com/course/lesson/background-of-human-rights/the-background-of-human-rights.html> (accessed on 27 May 2022); Van der Spek 2014:233-264.

¹⁰⁶ Van der Spek 2014:233-264. See generally, Finkel 2013:8; Ramcharan 2015:1-7; Sander "Human Rights and the Cyrus Cylinder. Artefact. The actual artwork site is located on a median strip bordered by a 6 Lane Avenue, LA, USA", <http://www.farhang.org/freedom> (accessed on 9 October 2023); Sutto 2019:18.

Cylinder, these declarations and other decrees made by Cyrus were recorded on a baked-clay cylinder in the Akkadian language with cuneiform script. This ancient record has been historically recognised as the world's first charter of human rights.¹⁰⁷ Its provisions parallel the first four articles of the Universal Declaration of Human Rights (UDHR).¹⁰⁸ Today, the UDHR is the most commonly agreed-upon declaration that recognises human rights. Human rights exist notwithstanding any political acts by humans.

Internationally, the UDHR is a profoundly recognised human rights document.¹⁰⁹ According to Foster,¹¹⁰ the UDHR expresses an overwhelming international consensus on how human rights should be treated internationally. One of the most important events of the 1940s was the creation of the UDHR. The UN General Assembly adopted the UDHR at its 183rd meeting in Paris on 10 December 1948.¹¹¹ The creation of the UDHR resulted from the experience of the Second World War. The UN Commission and the UDHR vowed never to allow atrocities like those of that conflict to

¹⁰⁷ United for Human Rights "The Background of Human Rights", <https://www.humanrights.com/course/lesson/background-of-human-rights/the-background-of-human-rights.html> (accessed on 27 May 2022). See also, Finkel 2013:8; Ramcharan 2015:1-7.

¹⁰⁸ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III). The UDHR "is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages. The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles)." See, United Nations 1949. See also, Moyn 2012:70-72; Clapham 2015:4-5; Ife *et al.* 2022:18; Foster 2021:Introduction.

¹⁰⁹ See generally, Foster 2021:Introduction; Moyn 2012:71; Mapp 2014:15; United Nations "History of the Declaration", <https://www.un.org/en/about-us/udhr/history-of-the-declaration> (accessed on 27 May 2022).

¹¹⁰ Foster 2021:Introduction.

¹¹¹ Mapp 2014:15. See also, Barry 2005:3-100; Moyn 2012:70-72.

happen again.¹¹² The UDHR consist of 30 articles, each containing a human right and explaining that specific human right.¹¹³ South Africa is a member state of the UDHR.¹¹⁴

On 16 December 1966, the UN adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹¹⁵ In the Preamble of the ICESCR, the UN recognises in accordance with the UDHR the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone can enjoy economic, social and cultural rights. In this Preamble, recognition is also given of the inherent dignity and the equal and inalienable rights of all humans, which rights are the foundation of justice, freedom, and peace in the world.¹¹⁶ The ICESCR recognises human rights as the foundation of justice in the world, South Africa ratified the ICESCR on 12 January 2015.¹¹⁷ Note generally that in South Africa the role of international law, including a legislative instrument such as the ICESCR is outlined in Sections 39 and 231 to 233 of the *Constitution*.

In 1948, when the UN adopted the UDHR, sovereign African countries barely existed.¹¹⁸ Most of Africa was still under colonial rule, very few African states were consulted on the adoption of the UDHR.¹¹⁹ Almost 40 years later, the African continent created its own human rights declaration, the African Charter on Human and Peoples'

¹¹² Eleanor Roosevelt, the widow of American President Franklin D. Roosevelt, chaired this Commission. See, United Nations "History of the Declaration", <https://www.un.org/en/about-us/udhr/history-of-the-declaration> (accessed on 27 May 2022). See also, Mapp 2014:15; Moyn 2012:2; Roberts 2015:1-2.

¹¹³ United for Human Rights "The Background of Human Rights", <https://www.humanrights.com/course/lesson/background-of-human-rights/the-background-of-human-rights.html> (accessed on 27 May 2022).

¹¹⁴ United Nations "Member States", <https://www.un.org/en/about-us/member-states#gotoS> (accessed on 23 August 2023).

¹¹⁵ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

¹¹⁶ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3:Preamble. See also, Saul *et al.* 2014:1-5.

¹¹⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), UN Committee on Economic, Social and Cultural Rights: Concluding Observations, Canada, 22 May 2006, E/C.12/CAN/CO/4; E/C.12/CAN/CO/5. See also, UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3; Basson 2020:850-852.

¹¹⁸ Kuwonu 2019:24-25.

¹¹⁹ Kuwonu 2019:24-25.

Rights,¹²⁰ adopted on 21 October 1986. The African Charter recognises civil, political, economic, social, and cultural rights. In the African Charter on Human and Peoples' Rights Preamble, there is acknowledgement of the UDHR.¹²¹ South Africa acceded to the African Charter on 9 July 1996.¹²²

In South Africa, human rights are provided for in Chapter 2 of the *Constitution* in the Bill of Rights. One of the distinguishing features of the South African *Constitution* is its far-reaching commitment to the principle of interdependency of all human rights, including civil, political, economic, social, and cultural rights.¹²³ The *Constitution* does not define human rights. However, the *Constitution* does guide how human rights should be interpreted. In Chapter 2 of the *Constitution*, Sections 39(1) sets out how the human rights contained in the Bill of Rights should be interpreted.¹²⁴ The interpretation of socio-economic rights in South Africa is discussed in Section 4.4.

Accepting that there are various explanations as to what the term human rights encapsulates, the following definitions are noted. The UN¹²⁵ defines human rights as "rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or another status." Everyone is entitled to these rights without

¹²⁰ African Charter on Human and Peoples' Rights 1986.

¹²¹ African Charter on Human and Peoples' Rights 1986. See also, Kuwonu 2019:24-25.

¹²² Justice and Constitutional Development "General Measures of Implementation Chapter 3", <https://www.justice.gov.za/policy/african%20charter/afr-charter03.html> (accessed on 22 September 2023).

¹²³ See, Liebenberg 2006:1, "[t]he *Constitution* is renowned for its entrenchment of a range of socio-economic rights, including rights to housing, health care, food, water, social security and assistance, education and more." The *Constitution* sec. 7(2) provides that "[t]he state must respect, protect, promote and fulfil the rights in the Bill of Rights." All rights in the Bill of Rights are subject to the general limitations clause in sec. 36 of the *Constitution*.

¹²⁴ The *Constitution*:sec. 39:

"(1) When interpreting the Bill of Rights, a court, tribunal or forum—

- (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
 - (b) must consider international law; and
 - (c) may consider foreign law.
- (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
- (3) The Bill of Rights does not deny the existence of any other rights or freedoms that recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill."

¹²⁵ United Nations 2016.

prejudice. Human rights are inherent to everyone everywhere, and a government does not have the autonomy to grant or take them away.¹²⁶

The UN International Children's Emergency Fund¹²⁷ suggests, "[h]uman rights are standards that recognise and protect the dignity of all human beings. Human rights govern how individual human beings live in society and with each other, as well as their relationship with the State and the obligations that the State have towards them." The UN Population Fund¹²⁸ observes that "[h]uman rights are universal and inalienable; indivisible; interdependent and interrelated. They are universal because everyone is born with and possesses the same rights, regardless of where they live, their gender or race, or their religious, cultural or ethnic background." Human rights apply to all equally.¹²⁹

According to the Council of Europe,¹³⁰ "[h]uman rights are like armour: they protect you; they are like rules because they tell you how you can behave, and they are like judges because you can appeal to them." Human rights are abstract, like emotions, and like emotions, they belong to everyone. A right is a claim that we are justified in making. Accepting human rights means acknowledging that everyone is entitled to make these claims.¹³¹

Mubangizi¹³² claims that human rights are fundamental and/or basic human rights that must not be taken away by any legislation or act of the government and are often set out in the country's fundamental law, for example, in the Bill of Rights in the *Constitution*. Mkabela¹³³ criticises the individualistic approach to universal human

¹²⁶ United Nations 2016. See also, United Nations "What are Human Rights?", <https://www.ohchr.org/en/what-are-human-rights> (accessed on 27 May 2022).

¹²⁷ United Nations International Children's Emergency Fund (UNICEF) "What are Human Rights?", <https://www.unicef.org/child-rights-convention/what-are-human-rights> (accessed on 27 May 2022).

¹²⁸ United Nations Population Fund "Human rights principles", <https://www.unfpa.org/resources/human-rights-principles> (accessed on 30 May 2022).

¹²⁹ United Nations Population Fund "Human Rights Principles", <https://www.unfpa.org/resources/human-rights-principles> (accessed on 30 May 2022).

¹³⁰ Council of Europe "What are Human Rights?", <https://www.coe.int/en/web/compass/what-are-human-rights-> (accessed on 30 May 2022).

¹³¹ Council of Europe "What are Human Rights?", <https://www.coe.int/en/web/compass/what-are-human-rights-> (accessed on 30 May 2022).

¹³² Mubangizi 2004:1-81.

¹³³ Mkabela 2014:283-291. See also, Nugmanova *et al.* 2020:168-184.

rights derived from Western cultures. Mkabela¹³⁴ suggests the importance of a unique set of values guiding human behaviour in different communities, specifically communities that do not have Western cultures. Mkabela,¹³⁵ therefore, in his discussion of human rights, refers to ubuntu as "a traditional value system pertinent to the African continent, incorporating moral values such as humility, modesty, conformity, and empathy forming the basis upon which individuals are viewed through a lens placing more emphasis on individual duties and responsibilities than on individual human rights."

Moyn¹³⁶ suggests that human rights evoke hope and provoke action, and human rights pride themselves on offering victims worldwide the possibility of a better life. Moyn¹³⁷ observes that human rights imply an agenda for improving the world. This agenda includes bringing about a new world in which the dignity of everyone enjoys secure international protection. This study agrees with Moyn¹³⁸ that human rights have the potential to bring about an improved world, including an improved standard of living for everyone.

Olaniyan¹³⁹ suggests that human rights have long been recognised as the foundation of the world's freedom, peace, and justice. Note his connection between human rights and justice. As seen in the Preamble of the ICESCR, this connection was also noted above. Olaniyan¹⁴⁰ argues that human rights are founded on the fundamental principles of human dignity, respect, and equality.¹⁴¹ Human rights represent moral thresholds below which people should not fall.¹⁴² Human rights are inalienable, meaning they cannot be taken from a person.¹⁴³ Human rights are also interdependent

¹³⁴ Mkabela 2014:283-291.

¹³⁵ Mkabela 2014:283-291.

¹³⁶ Human rights have come to define the most elevated aspirations of both social movements and political entities. See, Moyn 2012:1.

¹³⁷ Moyn 2012:1.

¹³⁸ Moyn 2012:1.

¹³⁹ Olaniyan 2014:13.

¹⁴⁰ Olaniyan 2014:13.

¹⁴¹ Olaniyan 2014:61.

¹⁴² Olaniyan 2014:14.

¹⁴³ Parliament of the Republic of South Africa "Human rights", https://www.parliament.gov.za/storage/app/media/EducationPubs/human_rights_email_eng.pdf (accessed on 3 June 2022).

and indivisible. One right affects the other, and no human right is more or less important than another.¹⁴⁴ These rights also come with certain obligations, for example, the responsibility to respect the human rights of others.¹⁴⁵

Socio-economic rights are fundamental human rights which all human beings have and cannot live without as recognised in the *Constitution*, the UDHR, the ICESCR and the African Charter on Human and Peoples' Rights.¹⁴⁶ Liebenberg¹⁴⁷ notes that the ICESCR reaffirms that all human rights are universal, interdependent, and interrelated, recognising that these rights derive from the inherent dignity of the human person. Socio-economic rights are economic, social, and cultural rights. Socio-economic rights include the right to access to (a) healthcare, (b) adequate food and water, (c) housing, (d) water and sanitation, (e) education, (f) social security, and more.

In Sections 27(1)(a)-(c) of the *Constitution*, the following socio-economic rights are listed: (a) everyone has the right to access healthcare (including reproductive healthcare), (b) everyone has the right to access to sufficient food and water, and (c) everyone has the right to access to social security. This study is limited to assessing the right to access healthcare as contained in Section 27(1)(a). This assessment includes the evaluation of the availability of pre-exposer HIV/AIDS medications for mother-to-child transmission, including nevirapine, but excludes the evaluation of reproductive healthcare.

Section 29 of the *Constitution* guarantees that everyone has the right - (a) to basic education, including adult basic education and (b) to further education, which the state, through reasonable measures, must make progressively available and accessible. The right to education is also a socio-economic right. This study is limited to assessing

¹⁴⁴ Parliament of the Republic of South Africa "Human rights", https://www.parliament.gov.za/storage/app/media/EducationPubs/human_rights_email_eng.pdf (accessed on 3 June 2022).

¹⁴⁵ Parliament of the Republic of South Africa "Human rights", https://www.parliament.gov.za/storage/app/media/EducationPubs/human_rights_email_eng.pdf (accessed on 3 June 2022).

¹⁴⁶ See Sections 4.3.1 – 4.3.3 of this study.

¹⁴⁷ Liebenberg 1995:359-378.

the right to a basic education as contained in Section 29(a). This assessment excludes the evaluation of adult basic education.

Heyns and Brand¹⁴⁸ point out where socio-economic rights fit into the picture of human rights in South Africa. Heyns and Brand¹⁴⁹ argue that "the very structure of the Bill of Rights is designed to emphasise the fact that socio-economic rights in the South African Bill of Rights are part and parcel of the wider concept of human rights." In the Bill of Rights, socio-economic rights are not listed separately or grouped under their heading.¹⁵⁰

Mapp¹⁵¹ characterises socio-economic rights as positive freedoms due to their dependence on government intervention for realisation. These rights impose both positive and negative obligations on the government. The positive obligation entails the need for government action to fulfil these rights. The negative obligation is that these rights place a duty on the government to refrain from interfering with the enjoyment of these rights. As such, it must be understood that socio-economic rights are "access" rights which impose positive duties on the government to make provision of resources that can be used to facilitate these rights.¹⁵² Section 4.4 and 4.5 below discusses a South African case that emphasises the positive obligation on the government created by socio-economic rights.¹⁵³

From the above definitions of human rights, it is clear that human rights are inherent to all human beings, founded on human dignity, respect and equality, and that human rights are the foundation of freedom, peace and justice in the world. For this study, human rights are principles that recognise and protect the dignity of all human beings. These rights represent moral thresholds below which human beings should not fall and are founded on the fundamental principles of human dignity, respect, and equality.

¹⁴⁸ Heyns & Brand 1998:157.

¹⁴⁹ Heyns & Brand 1998:157.

¹⁵⁰ Heyns & Brand 1998:157. Liebenberg explains that socio-economic rights were included in the Bill of Rights because a lack of access to social and economic resources and services constitutes an impediment to people's ability to participate as equals in a democracy. See, Liebenberg 2006:3-9.

¹⁵¹ Mapp 2014:17.

¹⁵² Mapp 2014:17. See also, Brand & Heyns 2005:2-188; Lombard & Twikirize 2014:313-325.

¹⁵³ The case of *Minister of Health & Others v Treatment Action Campaign & Others* 2002 (5) SA 721 (CC) emphasises the positive obligation on the government created by socio-economic rights.

These rights govern how human beings live in society and with each other, as well as their relationship with the government and the obligations that the government has towards them. For this study, socio-economic rights are fundamental human rights that all humans have. These rights entitle people to the material goods necessary to live in conditions consistent with human dignity, respect, and equality. These rights exist to enable individuals to reach their full potential.

2.4 WHAT IS SOCIAL JUSTICE?

The concept of social justice has religious roots dating back to 1843.¹⁵⁴ The Italian philosopher and priest Luigi Taparelli d'Azeglio is connected to the early recognition of social justice in 1843.¹⁵⁵ However, not all authors agree on the origin of the concept.¹⁵⁶ As well as the origin of the concept not being agreed upon by all, what the concept of social justice encapsulates is also not agreed upon by all.¹⁵⁷ There are various definitions of social justice alongside varying understandings of why social justice is important.¹⁵⁸

Still, it is, according to Younkins,¹⁵⁹ who argues that the idea of justice, including social justice, has been debated for thousands of years. Books and treaties have been written about social justice without defining it.¹⁶⁰ Social justice is a broad term that affects many areas of social life, public policy and public administration, including

¹⁵⁴ Novak 2000:11-12. See generally, Kraynak 2018:3-29; Barry 2005:5; Burke 2010:97-106; Bankston 2010:165-178.

¹⁵⁵ In the mid-1800s, the Italian Jesuit Luigi Tapparelli d'Azeglio first introduced the term as an economic concept. Seeing extreme levels of inequality and economic distress caused by the social class system in Europe. See generally, Novak 2000:11-12; Novak "Social justice: Not what you think it is". The Heritage Foundation, <https://www.heritage.org/poverty-and-inequality/report/social-justice-not-what-you-think-it> (accessed on 7 October 2023):2-10; Burke 2010:97-106; Ornstein 2017:541-548.

¹⁵⁶ Burke 2010:97-106. See also, Kraynak 2018:3-29.

¹⁵⁷ See generally, Novak 2000:11-12; McCormick 2003:7-25; Kraynak 2018:3-29; Younkins "Justice in a Free Society", <http://www.quebecoislibre.org/younkins27.htm> (accessed on 6 June 2022).

¹⁵⁸ Barry 2005:3-100. See also, Mapp 2014:1-25; Richards-Schuster *et al.* 2019:27-38.

¹⁵⁹ Younkins "Justice in a Free Society", <http://www.quebecoislibre.org/younkins27.htm> (accessed on 6 June 2022). See also, Novak 2000:11-12.

¹⁶⁰ Novak 2000:11-12.

healthcare, gender equality, education, employment and more.¹⁶¹ Varying definitions of social justice are noted below. The various mentions of human rights fulfilment connected to social justice are also noted.

One of the primary principles of social justice is equality.¹⁶² The earliest legal concept of social justice arose in Europe during the Industrial Revolution in the early 19th century, intending to bring equality.¹⁶³ Equal opportunities and wealth distribution have been a social justice theme since the 19th century.¹⁶⁴ In the 19th century, social justice was created to establish more egalitarian societies and remedy human labourers' capitalistic exploitation.¹⁶⁵ Since the 19th century, social justice has developed over time.¹⁶⁶ By the 20th century, social justice had expanded from being primarily concerned with economics to including other spheres of social life.¹⁶⁷ The concept of social justice expanded to include ideas like equality, race, gender, and other causes and manifestations of inequality in societies worldwide.¹⁶⁸

¹⁶¹ See generally, Kraynak 2018:3-29; Barry 2005:3-100; Kent State Online "The five principles of social justice", <https://onlinedegrees.kent.edu/political-science/master-of-public-administration/community/five-principles-of-social-justice> (accessed on 10 February 2022).

¹⁶² Miller 2001:31. See also, Barry 2005:3-100; Pachamama Alliance "What is social justice?", <https://www.pachamama.org/social-justice/what-is-social-justice> (accessed on 11 May 2022).

¹⁶³ Pachamama Alliance "What is social justice?", <https://www.pachamama.org/social-justice/what-is-social-justice> (accessed on 11 May 2022). See also, Novak "Social justice: Not what you think it is." The Heritage Foundation, <https://www.heritage.org/poverty-and-inequality/report/social-justice-not-what-you-think-it> (accessed on 7 October 2023):2-10; Rawls 1971; Rawls 1973; Rawls 1999; Weinar "John Rawls", <https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022); Encyclopedia Britannica "A theory of justice", <https://www.britannica.com/topic/A-Theory-of-Justice> (accessed on 11 May 2022); Constitutional Rights Foundation "Justice as Fairness: John Rawls and his theory of justice", <https://www.crf-usa.org/bill-of-rights-in-action/bria-23-3-c-justice-as-fairness-john-rawls-and-his-theory-of-justice> (accessed on 30 May 2022).

¹⁶⁴ Pachamama Alliance "What is social justice?", <https://www.pachamama.org/social-justice/what-is-social-justice> (accessed on 11 May 2022). See also, Miller 2001:2-18, 30-40, 63-78, 79-81, 86-107, 231-237, 247-258, 302-323; Barry 2005:3-100; Ornstein 2017:541-548.

¹⁶⁵ Pachamama Alliance "What is social justice?", <https://www.pachamama.org/social-justice/what-is-social-justice> (accessed on 11 May 2022); Miller 2001:1-4; Ornstein 2017:541-548.

¹⁶⁶ Pachamama Alliance "What is social justice?", <https://www.pachamama.org/social-justice/what-is-social-justice> (accessed on 11 May 2022). See also, Rawls 1971; Rawls 1973; Rawls 1999.

¹⁶⁷ Freeman 2007:Preface, 5-28, 39-41; Maffettone 2010:8-9, 26-30, 38-45; Pachamama Alliance "What is social justice?", <https://www.pachamama.org/social-justice/what-is-social-justice> (accessed on 11 May 2022); Rawls 1971; Weinar "John Rawls", <https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022).

¹⁶⁸ Maffettone 2010:8-9, 26-30, 38-45; Pachamama Alliance "What is social justice?", <https://www.pachamama.org/social-justice/what-is-social-justice> (accessed on 11 May 2022); Weinar "John Rawls", <https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022).

Many decades later, in the 1970s, social justice received more attention after Rawls,¹⁶⁹ an American political philosopher, published "A Theory of Justice" in 1971. This publication became known to be his best work. Rawls is one of the most well-known early writers on social justice.¹⁷⁰ He agrees that there are various understandings of justice and social justice and explains that what is just and unjust is usually disputed.¹⁷¹ He argues that an injustice is acceptable only when avoiding an even greater injustice is necessary.¹⁷² He writes about the philosophy behind political and social justice. He was influenced by those who wrote before him, like Jean Jacques Rousseau and John Locke.¹⁷³ Rawls¹⁷⁴ writes on various forms of justice like distributive justice, justice as fairness and social justice.

According to Rawls,¹⁷⁵ justice is the first virtue of social institutions. He argues that truth and justice are the first virtues of human activities and are, as such, uncompromising.¹⁷⁶ A public conception of justice should constitute the fundamental characteristic of a well-ordered human association.¹⁷⁷ Rawls¹⁷⁸ claims that justice is defined by its principles' role in assessing rights and duties and determining the appropriate division of social advantages. Note Rawls¹⁷⁹ mention of rights when discussing justice. According to him, a just social system defines the scope within which individuals must develop their aims and provides a framework of rights and

¹⁶⁹ Freeman 2007:Preface, 5-28; Online MSW Programmes "Introduction to social justice in social work", <https://www.onlinemswprograms.com/social-work/what-is-social-justice/> (accessed on 10 February 2022); Weinar "John Rawls", <https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022).

¹⁷⁰ Freeman 2007:5-28; Weinar "John Rawls", <https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022).

¹⁷¹ Rawls 1999:3-7.

¹⁷² Rawls 1999:3-7.

¹⁷³ Freeman 2007:Preface, 8; Weinar "John Rawls", <https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022).

¹⁷⁴ Freeman 2007:5-28; Maffettone 2010:8-9, 26-30, 38-45; Weinar "John Rawls", <https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022). See also, Rawls 1973; Rawls 1999; Rawls 2001; Constitutional Rights Foundation "Justice as Fairness: John Rawls and his theory of justice", <https://www.crf-usa.org/bill-of-rights-in-action/bria-23-3-c-justice-as-fairness-john-rawls-and-his-theory-of-justice> (accessed on 30 May 2022).

¹⁷⁵ Rawls 1999:3-7.

¹⁷⁶ Rawls 1999:3-7.

¹⁷⁷ Rawls 1999:3-7.

¹⁷⁸ Rawls 1999:9.

¹⁷⁹ Rawls 1999:9.

opportunities.¹⁸⁰ A society is well-ordered when it is designed to advance the good of its members and when a public conception of justice effectively regulates it.¹⁸¹

Rawls¹⁸² contributed to theories on justice and social justice in various ways, including creating a theory on social justice called justice as fairness. In his explanation of justice as fairness, he suggests that social justice comprises two principles. The first principle¹⁸³ relates to political institutions, and the second relates to social and economic institutions. The first principle relating to political institutions states that "[e]ach person has the same and inalienable (permanent) claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all." This principle entails that Rawls¹⁸⁴ recognises everyone has the same fundamental liberties, which can never be taken away. Under this principle, he recognises that private individuals have certain rights and freedoms. Under this principle, he mentions the right to freedom of speech, the right to work and the right to own property, amongst others.

Under the second principle, Rawls¹⁸⁵ suggests social and economic inequalities are to satisfy two conditions, namely, (a) "they are to be attached to offices and positions open to all under conditions of fair equality of opportunity" and (b) "they are to be to the greatest benefit of the least-advantaged members of society." This principle means that Rawls¹⁸⁶ recognises that inequalities within any community will or do exist.

¹⁸⁰ Rawls 1999:28.

¹⁸¹ Rawls 1999:3-7.

¹⁸² Constitutional Rights Foundation "Justice as Fairness: John Rawls and his theory of justice", <https://www.crf-usa.org/bill-of-rights-in-action/bria-23-3-c-justice-as-fairness-john-rawls-and-his-theory-of-justice> (accessed on 30 May 2022). See also, Miller 2001:2-18, 30-40, 63-78, 79-81, 86-107, 231-237, 247-258, 302-323; Rawls 1973; Rawls 1999; Rawls 2001:42-43; Freeman 2007:5-41; Weiner "John Rawls", <https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022).

¹⁸³ Constitutional Rights Foundation "Justice as Fairness: John Rawls and his theory of justice", <https://www.crf-usa.org/bill-of-rights-in-action/bria-23-3-c-justice-as-fairness-john-rawls-and-his-theory-of-justice> (accessed on 30 May 2022); Maffettone 2010:38-45. See also, Miller 2001:50-60.

¹⁸⁴ Maffettone 2010:38-45. See also, Rawls 1973; Rawls 1999; Constitutional Rights Foundation "Justice as Fairness: John Rawls and his theory of justice", <https://www.crf-usa.org/bill-of-rights-in-action/bria-23-3-c-justice-as-fairness-john-rawls-and-his-theory-of-justice> (accessed on 30 May 2022).

¹⁸⁵ Maffettone 2010:38-45; Miller 2001:50-60; Constitutional Rights Foundation "Justice as Fairness: John Rawls and his theory of justice", <https://www.crf-usa.org/bill-of-rights-in-action/bria-23-3-c-justice-as-fairness-john-rawls-and-his-theory-of-justice> (accessed on 30 May 2022).

¹⁸⁶ Maffettone 2010:38-45; Freeman 2007:5-41; Constitutional Rights Foundation "Justice as Fairness: John Rawls and his theory of justice", <https://www.crf-usa.org/bill-of-rights-in-action/bria-23-3-c-justice-as-fairness-john-rawls-and-his-theory-of-justice>

However, he believes that a just society should find ways to reduce inequalities in areas where it can, and that social justice aims to reduce these existing inequalities to the best benefit of the most disadvantaged members of society. This study suggests that human rights fulfilment is a pragmatic pathway to reduce existing inequalities, and the reduction of inequalities will be to the best benefit of the most disadvantaged members of society.

Rawls¹⁸⁷ points out that the principles of social justice provide a way of assessing rights and duties in society's primary institutions, and they define the appropriate distribution of the burdens and benefits within society. He maintains that a conception of social justice is to be regarded as providing a standard whereby the distributive aspects of the basic structure of society are to be assessed.¹⁸⁸ He suggests that social justice must entail fair and equal access to opportunities, including earning wealth. He further contributed to the theories of justice and social justice by outlining the need for certain rights to be guaranteed to everyone.¹⁸⁹ Rawls,¹⁹⁰ therefore, links social justice to human rights. He attempted to develop a justification for a democratic political order characterised by fairness, equality, and individual rights.¹⁹¹ These characteristics of his explanation of social justice, namely (a) fairness, (b) equality, and (c) individual rights, closely connect to the characteristics of human rights as we know them today. Throughout his writings on justice and social justice, Rawls¹⁹² links human rights to the realisation of justice.

justice-as-fairness-john-rawls-and-his-theory-of-justice (accessed on 30 May 2022); Weinar "John Rawls", <https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022).

¹⁸⁷ Rawls 1999:3-7.

¹⁸⁸ Rawls 1999:8.

¹⁸⁹ Weinar "John Rawls", <https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022). See also, Miller 2001:2-18, 30-40, 63-78, 79-81, 86-107, 231-237, 247-258, 302-323; Rawls 1973; Rawls 1999; Rawls 2001:42-43; Freeman 2007:5-41; Maffettone 2010:8-45; Weinar "John Rawls", <https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022).

¹⁹⁰ Weinar "John Rawls", <https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022).

¹⁹¹ Encyclopedia Britannica "A theory of justice", <https://www.britannica.com/topic/A-Theory-of-Justice> (accessed on 11 May 2022). See also, Rawls 1973; Rawls 1999; Rawls 2001.

¹⁹² See generally, Rawls 1973; Rawls 1999; Rawls 2001; Constitutional Rights Foundation "Justice as Fairness: John Rawls and his theory of justice", <https://www.crf-usa.org/bill-of-rights-in-action/bria-23-3-c-justice-as-fairness-john-rawls-and-his-theory-of-justice> (accessed on 30 May 2022); Weinar "John Rawls", <https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022).

In the writings of most contemporary political philosophers, social justice is regarded as an aspect of distributive justice.¹⁹³ Distributive justice is a theory of justice that focuses on how the burdens and benefits within any society are distributed among its members. Principles of distributive justice provide moral guidance for the political structures and processes affecting society's benefits and burdens distribution.¹⁹⁴

A German philosopher, Kant wrote on topics including ethics and social justice. However, at the time of his writings, the concept was not called social justice, although it relates to what is referred to today as social justice. Concerning justice, Kant¹⁹⁵ suggests that individuals should be treated as equals and have equal access to basic freedoms and rights. This study agrees with Kant¹⁹⁶ that social justice requires equal access to basic rights. Kant¹⁹⁷ notes the importance of fair and impartial treatment in legal and political institutions. Kants¹⁹⁸ discussion of social justice mentions principles for a just society, and he suggests that principles of social justice should be based on universality and rationality. Furthermore, key principles of social justice are treating all individuals as equals and respecting their rights and freedoms. Note Kants¹⁹⁹ mention of rights when discussing social justice.

Agreeing with Younkins²⁰⁰ that there are various definitions of social justice, Novak²⁰¹ notes that the trouble with social justice begins with the term's meaning. According to Mapp,²⁰² social justice is perceived as a vague concept. Mapp²⁰³ proposes that the UDHR can guide the implementation of this vague concept. Noting that Mapp²⁰⁴

¹⁹³ Miller 2001:2.

¹⁹⁴ Rawls 1999. See also, Rawls 1973; Rawls 2001:42-43; Maffettone 2010:8-45.

¹⁹⁵ Jensen "Kant's Theory of Justice", <https://cla.umn.edu/philosophy/news-events/story/kants-theory-justice> (accessed on 12 July 2023).

¹⁹⁶ Jensen "Kant's Theory of Justice", <https://cla.umn.edu/philosophy/news-events/story/kants-theory-justice> (accessed on 12 July 2023).

¹⁹⁷ Jensen "Kant's Theory of Justice", <https://cla.umn.edu/philosophy/news-events/story/kants-theory-justice> (accessed on 12 July 2023).

¹⁹⁸ Jensen "Kant's Theory of Justice", <https://cla.umn.edu/philosophy/news-events/story/kants-theory-justice> (accessed on 12 July 2023).

¹⁹⁹ Jensen "Kant's Theory of Justice", <https://cla.umn.edu/philosophy/news-events/story/kants-theory-justice> (accessed on 12 July 2023).

²⁰⁰ Younkins "Justice in a free society", <http://www.quebecoislibre.org/younkins27.htm> (accessed on 6 June 2022). See also, Novak 2000:11-12.

²⁰¹ Novak 2000:11-12.

²⁰² Mapp 2014:23-24.

²⁰³ Mapp 2014:23-24.

²⁰⁴ Mapp 2014:23-24.

suggests that the whole concept of social justice could be guided by human rights law shows more than a link between social justice and human rights. It almost shows a mirror of one reflecting the other. Kraynak²⁰⁵ notes the uncertainty surrounding the concept, explaining that "[s]ocial justice is a powerful idea today, but its origins and meaning are unclear." Agreeing with Younkings,²⁰⁶ Novak,²⁰⁷ Kraynak²⁰⁸ and others, Miller²⁰⁹ maintains that it is not clear what social justice means. Barry²¹⁰ suggests that the modern concept of social justice emerged from the early industrialisation in France and Britain in the 1840s. Barry²¹¹ claims the idea of social justice has evolved, agreeing that an explicit conception of social justice is absent.

Miller²¹² proposes that social justice "requires the notion of a society made up of independent parts with an institutional structure that affects the prospects of each member and that is capable of deliberate reform by an agency such as the state in the name of fairness." Miller²¹³ points out that the quest for social justice is a natural consequence of the spread of enlightenment and that when we talk about social justice, we are talking about how the good and bad things in life should be distributed among members of society. The realisation of social justice will allow each person to contribute fully to the social well-being of society.

Barry²¹⁴ maintains that social justice is about treating and reducing inequalities, arguing that institutions are essential to realising social justice. Social justice includes the fair distribution of rights, resources, and opportunities. These equal opportunities can be achieved only in a society that keeps the range of inequality within narrow bounds. Barry²¹⁵ points out the definition of social justice offered by Smith, which

²⁰⁵ Kraynak 2018:3.

²⁰⁶ Younkings "Justice in a free society", <http://www.quebecoislibre.org/younkings27.htm> (accessed on 6 June 2022). See also, Novak 2000:11-12.

²⁰⁷ Novak 2000:11-12.

²⁰⁸ Kraynak 2018:3.

²⁰⁹ Miller explains that people may be committed to social justice in the abstract and yet disagree about the meaning of the concept and about what should be done about some concrete social problems such as unemployment. See, Miller 2001:Preface.

²¹⁰ Barry 2005:5.

²¹¹ Barry 2005:10.

²¹² Miller 2001:4.

²¹³ Miller 2001:1-4.

²¹⁴ Barry 2005: Preface, 17.

²¹⁵ Barry 2005:7.

suggests that "unjust inequalities should be reduced and as far as possible be eliminated." Mapp²¹⁶ suggests that the idea of social justice is to see all people be equal under the law and have equal opportunities to develop their potential.

Social justice is both a process and a goal. The goal of social justice is full and equal participation of all groups in a mutually shaped society to meet their needs.²¹⁷ Social justice includes a vision of a society where the distribution of resources is equitable, and all members are psychologically and physically safe and secure.²¹⁸ Social justice can be explained as the manifestation of human rights in peoples' everyday lives at every level of society.²¹⁹ Social justice includes the fair and just distribution of all opportunities, benefits, privileges and burdens in society. Social justice is arguably only possible through the equal enjoyment of all rights and freedoms, regardless of human diversity.²²⁰

Social justice revolves around creating a fair and equal society in which each individual matters, a society in which rights are recognised and protected, and decisions are made in fair and honest ways.²²¹ Social justice is focused on human rights, respect, and fulfilment.²²² A characteristic of social justice is that it aims at the good of the

²¹⁶ Mapp 2014:23-24.

²¹⁷ Brandeis University "Our social justice definitions", <https://www.brandeis.edu/diversity/resources/definitions.html> (accessed on 10 June 2022). One of the aims of social justice is to bring about equal participation in society. See, Freeman 2007:131-132, 320-322, 483.

²¹⁸ Brandeis University "Our social justice definitions", <https://www.brandeis.edu/diversity/resources/definitions.html> (accessed on 10 June 2022).

²¹⁹ LexisNexis "Social justice hub", <https://www.lexisnexis.co.za/lexis-digest/resources/covid-19-resource-centre/practice-areas/social-justice-hub> (accessed on 28 January 2022).

²²⁰ LexisNexis "Social justice hub", <https://www.lexisnexis.co.za/lexis-digest/resources/covid-19-resource-centre/practice-areas/social-justice-hub> (accessed on 28 January 2022).

²²¹ Novak 2000:11-12. See generally, Barry 2005:3-100; Mapp 2014:1-15; Central Connecticut State University "John Lewis Institute for Social Justice", <https://www.ccsu.edu/johnlewisinstitute/terminology.html> (accessed on 25 May 2022); Oxford Reference "Social Justice", <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100515279#:~:text=Quick%20Reference,Subjects%3A%20Social%20sciences> (accessed on 31 January 2022).

²²² See generally, LexisNexis "Social justice hub", "Social justice hub", <https://www.lexisnexis.co.za/lexis-digest/resources/covid-19-resource-centre/practice-areas/social-justice-hub> (accessed on 28 January 2022); Novak 2000:11-13; Mapp 2014:23-24; Zajda *et al.* 2006:1-12; Lombard & Twikirize 2014:313-325.

group, society, or community and not at the good of one person or specific group, as seen with corruption.²²³

Contemporary human rights are based upon the ideal of social justice.²²⁴ Social justice is centred around human rights, respect, protection, promotion and fulfilment, equality and the redress of past injustices.²²⁵ Social justice is a communal effort dedicated to creating and sustaining a fair and equal society in which everyone and all groups are valued and affirmed.²²⁶ Social justice promotes empowering individual and communal action to support restorative justice and fully implement human and civil rights.²²⁷

Achieving social justice is also connected to healing the injustices of the past. Social justice encompasses efforts to end systemic violence and racism and all systems devaluing any person's dignity and humanity.²²⁸ A theme recognised within the social justice theory is that the legacy of past injustices remains around us.²²⁹ Advocating for social justice could promote policies addressing systematic barriers, allowing the past divisions to heal.²³⁰ In the Preamble of the *Constitution*, social justice and human rights fulfilment are jointly set out as one of the aims of the *Constitution*. The *Constitution* aims to "[h]eal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights."

²²³ Novak 2000:11-13.

²²⁴ Mapp 2014:23-24.

²²⁵ See generally, Miller 2001:2-18, 30-40, 63-78, 79-81, 86-107, 231-237, 247-258, 302-323; Barry 2005:3-100; Lundy 2011:Preface, 5-7, 29-34, 41-44; Ife 2012:4-51, 89-134, 151-228; Lombard & Twikirize 2014:313-325; Mapp 2014:1-25; Human Rights Careers "What does social justice mean?", <https://www.humanrightscareers.com/issues/what-does-social-justice-mean/> (accessed on 28 January 2022); Turnbull "Social justice and human rights", <https://www.bih.org.uk/blog/social-justice-and-human-rights> (accessed on 25 April 2022); Human Rights Careers "Four principles of social justice", <https://www.humanrightscareers.com/issues/four-principles-of-social-justice/> (accessed on 23 March 2022).

²²⁶ Central Connecticut State University "John Lewis Institute for Social Justice", <https://www.ccsu.edu/johnlewisinstitute/terminology.html> (accessed on 25 May 2022).

²²⁷ Central Connecticut State University "John Lewis Institute for Social Justice", <https://www.ccsu.edu/johnlewisinstitute/terminology.html> (accessed on 25 May 2022).

²²⁸ Central Connecticut State University "John Lewis Institute for Social Justice", <https://www.ccsu.edu/johnlewisinstitute/terminology.html> (accessed on 25 May 2022).

²²⁹ Central Connecticut State University "John Lewis Institute for Social Justice", <https://www.ccsu.edu/johnlewisinstitute/terminology.html> (accessed on 25 May 2022).

²³⁰ Kent State Online "The five principles of social justice", <https://onlinedegrees.kent.edu/political-science/master-of-public-administration/community/five-principles-of-social-justice> (accessed on 10 February 2022).

The following findings from the above definitions and discussions of social justice are noted. First, the authors discussed above have recognised the role of human rights fulfilment in the achievement of social justice social. Thus, a preliminary link between these two concepts has been established. Secondly, justice is about equality, fairness and equal access to all rights and privileges for everyone, including the fair distribution of opportunities and burdens within society. Thirdly, social justice is centred around human rights, respect, protection, promotion, and fulfilment. Fourthly, social justice is a collective effort and is aimed at the collective improvement of everyone's lives. Note that the collective nature of social justice, which aims to benefit everyone's lives, contrasts the individual-centred nature of corruption. As noted above in Section 2.2, the individual-centred nature of corruption aims at the benefit of one person or one group of persons at the expense of the overall group. Thus, there is evidence of a conflict between what these two concepts achieve or aim to achieve. Lastly, when human rights are undermined, the possibility of achieving social justice drastically decreases. For this study, social justice is defined as:²³¹

The manifestation of human rights in the everyday lives of people at every level of society. Social justice includes the fair and just distribution of all opportunities, benefits, privileges and burdens in a society. Social justice is only possible through the equal enjoyment of all rights and freedoms, regardless of human diversity.

2.5 CONCLUSION

In this chapter, the three core concepts that make up the central question of this study, (a) corruption, (b) human rights, and (c) social justice, have been introduced. This study focuses specifically on corruption within government and socio-economic rights as included in human rights. The consequences or, at times, obligations or expectations that result from these three concepts have been shown. It is accepted that there are various definitions for corruption, human rights, and social justice.

²³¹ LexisNexis "Social justice hub", <https://www.lexisnexis.co.za/lexis-digest/resources/covid-19-resource-centre/practice-areas/social-justice-hub> (accessed on 28 January 2022).

Corruption can take multiple forms and has various consequences. Chapter 3 will address corruption within government in South Africa.

Human rights represent moral thresholds below which people should not fall. Human rights belong to everyone simply by virtue of being human, and in South Africa, human rights are guaranteed to everyone in the *Constitution*. The respect, protection, promotion, and fulfilment of specific socio-economic rights in South Africa are examined in Chapter 4. Human rights, respect and fulfilment have been mentioned in achieving social justice. The theory involved in social justice accepts that past injustices are still all around us. Social justice is concerned with healing these past injustices. One of the main themes of social justice is human rights fulfilment, followed by the idea of equality, including the fair distribution of rights, burdens, resources, and opportunities. The achievement of social justice in South Africa is discussed in Chapter 5.

This chapter has laid the foundation of this study, encompassing the three core concepts that make up this study. As the study progresses into subsequent chapters, the central question that persists is the degree of interconnectedness between these three concepts. To comprehend the role of corruption within this three-fold relationship, Chapter 3 focuses on corruption in government departments in South Africa, particularly two departments associated with the realisation of the socio-economic contained in Sections 27 and 29 of the *Constitution*, namely the Department of Health and the Department of Education. This study is limited to assessing the right to access healthcare as contained in Section 27(1)(a) and the right to a basic education in Section 29(a). Due to this limitation, the two government departments examined in Chapter 3 are the Department of Health and the Department of Basic Education.

CHAPTER 3: THE EXTENT OF CORRUPTION WITHIN NATIONAL DEPARTMENTS IN SOUTH AFRICA

3.1 INTRODUCTION

In Chapter 1, it has been established that the knowledge gaps this study aims to address is to demonstrate that corruption, specifically governmental corruption, human rights, specifically socio-economic rights, and social justice, have a three-fold interconnected relationship. Therefore, an element of this study is to examine corruption within government in national departments in South Africa as it relates to the government's (at times) inability to provide human rights-enabling services to all people of South Africa. Note that for the purposes of this study the term human rights-enabling services refers to services provided by the government of South Africa as it relates specifically to the fulfilment of the socio-economic rights recognised in Sections 27 and 29 of the *Constitution*.

This chapter will address corruption within government in two specific government departments in South Africa, namely Department of Health and the Department of Education in South Africa. See below Section 3.5 on the Department of Health and Section 3.6 on the Department of Education. Before addressing these two specific departments this chapter provides a background to existing evidence of corruption within government in South Africa for example statistics from the Corruption Perception Index and Corruption Watch are summarised to prove a brief context of corruption within government in South Africa.

First, to depart, this chapter introduces the nature of the crime of corruption. The secretive nature of this crime must be acknowledged to understand what type of evidence of corruption is available. Secondly, international perceptions of public sector corruption in South Africa compared to international perceptions of public sector corruption in ten other territories are summarised to assess whether the South African public sector is internationally perceived to be corrupt compared to other territories.

Transparency International provides statistics on these international perceptions of public sector corruption.²³²

Thirdly, specific incidents of proven corruption in South Africa, provided by the anti-corruption agency Corruption Watch,²³³ are discussed before addressing corruption within specific South African government departments. These government departments include (a) the Department of Health and (b) the Department of Basic Education. These specific government departments are discussed because they relate to the fulfilment of human rights in Sections 27 and 29 of the Bill of Rights in the *Constitution*.

This chapter concludes with a brief discussion of the investigation into state capture in South Africa. This discussion of state capture in South Africa is included to show that governmental funding stolen and misappropriated by state-owned enterprises via corruption drains and distorts the whole of the national government budget, adversely affecting the fact that government funding could be more readily available and used more effectively. If the government's budget were not drained by corruption in state-owned enterprises, the government would have more funding to invest in the public service sector.

Corruption in South Africa is not a new topic.²³⁴ The South African Special Investigating Unit was created in 1997 by the first democratically elected President of South Africa, Nelson Mandela.²³⁵ Mandela created this unit because corruption in South Africa had reached such high levels.²³⁶ By 1999, the Special Investigating Unit investigated over 90,000 corruption cases involving approximately R7 billion.²³⁷ In 2021, more than 20 years after the creation of the Special Investigating Unit, South

²³² Transparency International "The ABCs of the CPI: How the Corruption Perceptions Index is calculated", <https://www.transparency.org/en/news/how-cpi-scores-are-calculated> (accessed on 1 August 2022).

²³³ Corruption Watch "About Corruption Watch", <https://www.corruptionwatch.org.za/about-us/who-we-are/about-corruption-watch/> (accessed on 21 June 2022).

²³⁴ Basopu 2010:3-86. See also, Rose-Ackerman 2016:1-215; Olaniyan 2014:1-399; Rispel *et al.* 2016:239-249.

²³⁵ Grobler & Joubert 2004:90-102.

²³⁶ Grobler & Joubert 2004:90-102.

²³⁷ Grobler & Joubert 2004:90-102.

African Finance Minister Enoch Godongwana warned in the Medium-Term Budget Policy Statement that rampant corruption was a persistent issue draining public finances.²³⁸ Thus, this unit was created in 1997 due to the pressing need to combat governmental corruption; more than 20 years later, this need still exists. Budhram and Geldenhuys²³⁹ note, "[t]here is little doubt about the widespread incidence of corruption in South Africa." Budhram and Geldenhuys²⁴⁰ further point out that South Africa has been experiencing continued high levels of corruption within government over the past few years. This corruption, they claim, is acknowledged by the government of South Africa, and continuously exposed in the media.

3.2 THE SECRETIVE NATURE OF CORRUPTION

Corruption is an elusive crime.²⁴¹ Unfortunately, very little concrete information is publicly available on the extent and impact of corruption.²⁴² Corruption is by nature secretive and concealable under many different disguises.²⁴³

Due to the element of elusion connected to this crime, factual data of when corruption has occurred and to what extent is scarce.²⁴⁴ There is a gap in the literature regarding the actual current occurrences of corruption.²⁴⁵ Olaniyan²⁴⁶ suggests that it is almost impossible to determine precisely how deep corruption flows partly because of the notorious secrecy within which corruption occurs. Literature, including data that can be used as evidence to show corruption occurrences, is typically only published long after the corrupt act has occurred.²⁴⁷ Rispel *et al.*²⁴⁸ agree that due to the nature of the

²³⁸ Kota & Hingston "South Africa's corruption busters: short-changed on funding and political commitment", <https://theconversation.com/south-africas-corruption-busters-short-changed-on-funding-and-political-commitment-173072> (accessed on 5 May 2022).

²³⁹ Budhram & Geldenhuys 2018:26.

²⁴⁰ Budhram & Geldenhuys 2018:26-27.

²⁴¹ Grobler & Joubert 2004.

²⁴² Basopu 2010:33.

²⁴³ Rose-Ackerman 2016:1-215; Olaniyan 2014:1-399; Basopu 2010:3-86; Rispel *et al.* 2016:239-249.

²⁴⁴ Rispel *et al.* 2016:239-249.

²⁴⁵ Rose-Ackerman 2016:14.

²⁴⁶ Olaniyan 2014:4.

²⁴⁷ Olaniyan 2014:4.

²⁴⁸ Rispel *et al.* 2016:239-249.

crime of corruption, finding empirical evidence and data on the occurrence of the crime is not a simple task. Malherbe²⁴⁹ points out that corruption is difficult to detect and notoriously difficult to prove in court once disclosed.

Rose-Ackerman²⁵⁰ attests to this gap in the literature, describing corruption as a crime involving various activities, all done secretly. Objective measures of corruption are challenging to find because most corrupt actors seek to conceal their actions. However, according to Rose-Ackerman,²⁵¹ even perceptions of corruption can be valuable. Rose-Ackerman²⁵² claims that perceptions of corruption, like those provided by Transparency International in their annual CPI, can be useful when researching public sector corruption. These perceptions can be used as an indicator of where or whether public sector corruption occurs.²⁵³ These perceptions of public sector corruption are discussed below.

3.3 CORRUPTION PERCEPTION INDEX SCORES

Transparency International has annually awarded CPI scores since 1995.²⁵⁴ These scores indicate how corrupt a country's public sector is perceived.²⁵⁵ Going further than suggesting that perceptions of corruption like those provided by Transparency International are valuable, Rose-Ackerman²⁵⁶ argues that the most popular measure of public sector corruption is Transparency International's CPI. Olaniyan²⁵⁷ agrees that

²⁴⁹ Malherbe 2001:111.

²⁵⁰ Rose-Ackerman 2016:14.

²⁵¹ Rose-Ackerman 2016:14.

²⁵² Rose-Ackerman 2016:14.

²⁵³ Rose-Ackerman 2016:14. Discussing perceptions of corruption see generally, Melgar *et al.* 2010:121-131.

²⁵⁴ Rose-Ackerman 2016:15. See also, "The extraordinary pioneering work of Transparency International, founded in 1993, has been instrumental in legitimizing efforts to focus on transparency, corruption and honesty around the world." Shordt *et al.* 2006:9.

²⁵⁵ Rose-Ackerman 2016:15.

²⁵⁶ Rose-Ackerman 2016:15. "Respected as a leading global indicator of perceptions of public sector corruption, the CPI scores and ranks 180 countries and territories around the world based on those perceptions. It draws on 13 expert assessments and surveys, and scores countries on a scale of zero to 100, where zero is highly corrupt and 100 is very clean. Corruption Watch "Annual Report 2022", https://www.corruptionwatch.org.za/wp-content/uploads/2023/04/Corruption-Watch_Report_Final_4April.pdf (accessed on 19 June 2023).

²⁵⁷ Olaniyan 2014:2.

this corruption index is the most used and acceptable tool for assessing public sector corruption. Transparency International²⁵⁸ explains, "The CPI ranks 180 countries and territories worldwide by their perceived levels of public sector corruption." The results are given on a scale of 0, indicating highly corrupt, to 100, indicating no corruption has been reported for the specific country.²⁵⁹

Corruption Perception Index scores are calculated according to a list of various forms of corruption within a territory.²⁶⁰ The forms of corruption included in the calculation of a CPI score include the following: (a) diversions of public funds, (b) bribery, (c) nepotistic appointments in the public sector, (d) access to information on government activities and public affairs, (e) officials using their public office for private gain, and (f) the ability of governments to contain corruption in the public sector, amongst others.²⁶¹

To set the background for the discussion of whether there is corruption in the public sector in South Africa, the summary below shows how corrupt the public sector in South Africa is internationally perceived to be according to Transparency International. This summary includes the CPI scores that South Africa has received from 2010 to 2022 alongside the CPI scores of ten other territories received from 2010 to 2022, including (a) Australia, (b) Botswana, (c) Brazil, (d) Germany, (e) India, (f) New Zealand, (g) the United Kingdom, (h) the United States of America (i) Zambia, and (j) Zimbabwe.

These territories have been selected from continents across the globe to give a broad scope to the comparison. These territories have been selected randomly to keep the comparison free from bias. Three territories, namely Botswana, Zambia and Zimbabwe, have been chosen from Africa to compare South Africa with territories on

²⁵⁸ Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2021> (accessed on 2022).

²⁵⁹ Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2021> (accessed on 2022).

²⁶⁰ Transparency International "The ABCs of the CPI: How the Corruption Perceptions Index is calculated", <https://www.transparency.org/en/news/how-cpi-scores-are-calculated> (accessed on 1 August 2022). Discussing perceptions of corruption see generally, Melgar *et al.* 2010:121-131.

²⁶¹ Transparency International "The ABCs of the CPI: How the Corruption Perceptions Index is calculated", <https://www.transparency.org/en/news/how-cpi-scores-are-calculated> (accessed on 1 August 2022).

the same continent. Other territories like the United States of America and the United Kingdom have been included alongside Brazil and India to include a perspective of various continents worldwide.

Territory	2010 CPI ²⁶²	2011 CPI ²⁶³	2012 CPI ²⁶⁴	2013 CPI ²⁶⁵	2014 CPI ²⁶⁶	2015 CPI ²⁶⁷	2016 CPI ²⁶⁸	2017 CPI ²⁶⁹	2018 CPI ²⁷⁰	2019 CPI ²⁷¹	2020 CPI ²⁷²	2021 CPI ²⁷³	2022 CPI ²⁷⁴
Australia	87	88	85	81	80	79	79	77	77	77	77	74	75
Botswana	58	61	65	64	63	63	60	61	61	61	60	55	60
Brazil	37	38	43	42	43	38	40	37	35	35	38	38	38
Germany	79	80	79	78	79	81	81	81	80	80	80	80	79

²⁶² Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2010> (accessed on 31 October 2022).

²⁶³ Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2011> (accessed on 31 October 2022).

²⁶⁴ Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2012> (accessed on 31 October 2022).

²⁶⁵ Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2013> (accessed on 31 October 2022).

²⁶⁶ Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2014> (accessed on 31 October 2022).

²⁶⁷ Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2015> (accessed on 31 October 2022).

²⁶⁸ Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2016> (accessed on 21 June 2022).

²⁶⁹ Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2017> (accessed on 21 June 2022).

²⁷⁰ Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2018> (accessed on 21 June 2022).

²⁷¹ Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2019> (accessed on 21 June 2022).

²⁷² Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2020> (accessed on 21 June 2022).

²⁷³ Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2021> (accessed on 21 June 2022).

²⁷⁴ Transparency International "Corruption Perception Index", <https://www.transparency.org/en/cpi/2022> (accessed on 13 June 2023).

India	33	31	36	36	38	38	40	40	41	41	40	40	40
New Zealand	93	95	90	91	91	91	90	89	87	87	88	88	87
South Africa	45	41	43	42	44	44	45	43	43	44	44	44	43
The United Kingdom	76	78	74	76	78	81	81	82	80	77	77	78	73
The United States of America	71	71	73	73	74	76	74	75	71	69	67	67	69
Zambia	30	32	37	38	38	38	38	37	35	34	33	33	33
Zimbabwe	24	22	20	21	21	21	22	22	22	24	24	23	23

Olaniyan,²⁷⁵ in observing various CPI scores, specifically mentions territories in Africa and their consistently low CPI ranking by Transparency International. Olaniyan²⁷⁶ argues that the CPI scores of territories on the African continent show that public sector corruption remains embedded. The above data set of CPI scores received by South Africa shows that South Africa has scored consistently below 50 over the last thirteen years, meaning South Africa is scoring persistently closer to 0, indicating highly corrupt. As discussed below in Section 3.7, the investigation into state capture in South Africa demonstrates that this perceived high level of public sector corruption is accurate. In this data set, New Zealand has consistently scored as the least corrupt territory, and Zimbabwe has consistently scored as the most corrupt territory. To elaborate on corruption within government in South Africa, statistics of reported incidents of corruption are summarised below.

3.4 CORRUPTION WATCH STATISTICS 2018-2022

As mentioned in Section 2.2, Corruption Watch is a South African-based independent civil society organisation.²⁷⁷ Corruption Watch was started in 2012 to expose corruption in South Africa. Corruption Watch receives tips from the public on corrupt experiences, which this organisation then investigates. This organisation releases annual reports of corruption trends, occurrences, and investigations in South Africa.²⁷⁸ Below, the annual reports of Corruption Watch from 2018 to 2022 are summarised.

The "2018 Annual Report" notes South Africa's CPI score of 43, explaining that this score is the same as the previous year. A CPI score of 43 shows that the perception

²⁷⁵ Olaniyan 2014:2.

²⁷⁶ Olaniyan 2014:3.

²⁷⁷ Corruption Watch "About Corruption Watch", <https://www.corruptionwatch.org.za/about-us/who-we-are/about-corruption-watch/> (accessed on 21 June 2022).

²⁷⁸ Corruption Watch "About Corruption Watch", <https://www.corruptionwatch.org.za/about-us/who-we-are/about-corruption-watch/> (accessed on 21 June 2022).

of corruption in the public sector in South Africa remains high.²⁷⁹ In 2018, the primary forms of reported corruption were abuse of public power, bribery, employment corruption, and public procurement corruption. The most corrupt sectors in 2018 were the school, policing and licensing sectors.²⁸⁰ By 2018, Corruption Watch had received 24,500 reports of corruption. Note that although this organisation started in 2012, 57 per cent of the reports received are from 2016 to 2018. In 2018, they received 4,200 reports of corruption.²⁸¹

The "2019 Annual Report" notes that bribery and public procurement corruption were the most common forms of corruption reported.²⁸² In 2019, Corruption Watch received an average of 10 reported incidents of corruption a day. During this period, the school, policing, and mining sectors were the hotspots for corruption. By 2019, Corruption Watch had received 28,196 reports of corruption, with 3,694 reports received in 2019.²⁸³

The "2020 Annual Report" points out that this year had 4,780 reports of alleged corruption. The 2020 figure of 4,780 follows 2017's record number of 5,334 reported incidents of corruption - 2017 and 2020 were record-breaking years regarding the number of reported corruption incidents.²⁸⁴ During 2020, public procurement corruption, fraud, and public maladministration were the most common forms of

²⁷⁹ Corruption Watch "Annual Report 2018", <https://www.corruptionwatch.org.za/wp-content/uploads/2019/05/CW-Annual-Report-2018-Upholding-Democracy-Single-Pages-Agent-Orange-Design-10042019.pdf> (accessed on 21 June 2022).

²⁸⁰ Corruption Watch "Annual Report 2018", <https://www.corruptionwatch.org.za/wp-content/uploads/2019/05/CW-Annual-Report-2018-Upholding-Democracy-Single-Pages-Agent-Orange-Design-10042019.pdf> (accessed on 21 June 2022).

²⁸¹ Corruption Watch "Annual Report 2018", <https://www.corruptionwatch.org.za/wp-content/uploads/2019/05/CW-Annual-Report-2018-Upholding-Democracy-Single-Pages-Agent-Orange-Design-10042019.pdf> (accessed on 21 June 2022).

²⁸² Corruption Watch "Annual Report 2019", https://www.corruptionwatch.org.za/wp-content/uploads/2020/03/CRW0320_7171_AnnualReport-2019.pdf (accessed on 21 June 2022).

²⁸³ Corruption Watch "Annual Report 2019", https://www.corruptionwatch.org.za/wp-content/uploads/2020/03/CRW0320_7171_AnnualReport-2019.pdf (accessed on 21 June 2022).

²⁸⁴ Corruption Watch "Annual Report 2020", <https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021).

corruption reported. In 2020, the healthcare sector was highlighted as one of the most corrupt.²⁸⁵

The "2021 Annual Report" points out South Africa's CPI score 44. This report claims that this score shows an urgent need for government to implement existing anti-corruption commitments. Emphasis is made in this report on the belief of Corruption Watch that corruption undermines the government's ability to guarantee their people's human rights.²⁸⁶ The main forms of corruption reported were abuse of public authority, public procurement corruption and public maladministration. Sectors with the most reported incidents of corruption were the school and policing sectors alongside Coronavirus disease 2019 (hereafter Covid-19) related corruption.²⁸⁷ In 2021, Corruption Watch received 3,248 reports of corrupt incidents. Since its inception in 2012, Corruption Watch has received a total of 36,224 reports of corruption.²⁸⁸

In 2021, Corruption Watch published an article examining an investigation by the Special Investigating Unit on the misuse of funding provided by the South African government in 2020. These funds were intended to combat the fight against the spread of Covid-19 and provide relief to communities during this health pandemic.²⁸⁹ The total amount budgeted by the government of South Africa towards Covid-19 relief was R500 billion. This investigation exposes that the Special Investigating Unit unearthed 6,140 government officials fraudulently claiming from the Unemployment Insurance Fund "to the value of R41,009,737."²⁹⁰ This exposure of the fraudulent and corrupt theft of

²⁸⁵ Corruption Watch "Annual Report 2020", <https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021).

²⁸⁶ Corruption Watch "Annual Report 2021: From crisis to action", <https://www.corruptionwatch.org.za/wp-content/uploads/2022/03/cw-2021-annual-report-10-years-20220330-spreads.pdf> (accessed on 3 August 2022).

²⁸⁷ Corruption Watch "Annual Report 2021: From crisis to action", <https://www.corruptionwatch.org.za/wp-content/uploads/2022/03/cw-2021-annual-report-10-years-20220330-spreads.pdf> (accessed on 3 August 2022). See also, Rispel *et al.* 2021:1-28.

²⁸⁸ Corruption Watch "Annual Report 2021: From crisis to action", <https://www.corruptionwatch.org.za/wp-content/uploads/2022/03/cw-2021-annual-report-10-years-20220330-spreads.pdf> (accessed on 3 August 2022).

²⁸⁹ Corruption Watch "SIU on the trail of government officials abusing Covid-19 procurement", <https://www.corruptionwatch.org.za/siu-on-the-trail-of-govt-officials-abusing-covid-19-procurement/> (accessed on 2 March 2021). See also, Rispel *et al.* 2021:1-28.

²⁹⁰ Corruption Watch "SIU on the trail of government officials abusing Covid-19 procurement", <https://www.corruptionwatch.org.za/siu-on-the-trail-of-govt-officials-abusing-covid-19-procurement/> (accessed on 2 March 2021).

government funding is evidence that more relief could have been felt during the pandemic in South Africa if this funding had not been stolen. When funding is aimed at relief, the theft of such funding inevitably says that more relief could have been felt had that theft not occurred.

A total of 10 per cent of corruption reports received by Corruption Watch from 2012 to 2021 related to corruption in the Department of Basic Education. The corruption reported in this Department included abuse of authority in the recruitment and procurement processes, misappropriation of public resources, bribery, and sextortion. From 2012 to 2021, 48 per cent of public healthcare corruption reports related to public procurement irregularities.²⁹¹

In 2022, Corruption Watch received 2,168 reports of corruption. The most predominant forms of corruption reported were bribery, employment irregularities, public procurement corruption, fraud, public maladministration, and extortion. The most common forms of corruption in the public sector were abuse of authority, bribery, public procurement corruption, extortion, and dereliction of duty. Corruption hotspots in 2022 were the school, policing, licensing, mining, healthcare, business, and construction sectors. In 2022, Gauteng was rated as the most corrupt province, with 43 per cent of corruption reports relating to this province. In 2022, the top implicated municipality was the City of Johannesburg municipality, also located in Gauteng; 36 per cent of reports received related to this municipality.²⁹² Reports relating to

²⁹¹ See generally, Corruption Watch "Annual Report 2018", <https://www.corruptionwatch.org.za/wp-content/uploads/2019/05/CW-Annual-Report-2018-Upholding-Democracy-Single-Pages-Agent-Orange-Design-10042019.pdf> (accessed on 21 June 2022); Corruption Watch "Annual Report 2019", https://www.corruptionwatch.org.za/wp-content/uploads/2020/03/CRW0320_7171_AnnualReport-2019.pdf (accessed on 21 June 2022); Corruption Watch "Annual Report 2020: From crisis to action", <https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021); Corruption Watch "Annual Report 2021", <https://www.corruptionwatch.org.za/wp-content/uploads/2022/03/cw-2021-annual-report-10-years-20220330-spreads.pdf> (accessed on 3 August 2022); Corruption Watch "Annual Report 2022", https://www.corruptionwatch.org.za/wp-content/uploads/2023/04/Corruption-Watch_Report_Final_4April.pdf (accessed on 19 June 2023).

²⁹² Corruption Watch "Annual Report 2022", https://www.corruptionwatch.org.za/wp-content/uploads/2023/04/Corruption-Watch_Report_Final_4April.pdf (accessed on 19 June 2023); Corruption Watch "2022 Executive Summary", <https://www.corruptionwatch.org.za/wp-content/uploads/2022/09/corruption-watch-ACT-2022-digital-combined-agent-orange-design-20220907.pdf> (accessed on 19 June 2023).

corruption in the Department of Basic Education were the highest in Gauteng, receiving 51 per cent of the reports on public education corruption. Gauteng also received the most reports for public healthcare corruption, with 39 per cent of public healthcare corruption reports relating to Gauteng.²⁹³ The Gauteng Department of Health is discussed in Section 4.5.

The "2022 Annual Report" addresses procurement corruption as one of the most common forms of public sector corruption in South Africa. This report notes that due to the vast amounts of public procurement corruption, Corruption Watch launched Procurement Watch in 2021. Procurement Watch was launched to monitor the public procurement sector and provide a platform to report corrupt activities within public procurement. Corruption Watch states unequivocally in this report that corruption within government remains central to human rights abuse.²⁹⁴ Since 2012, Corruption Watch²⁹⁵ has received over 38,000 reports of alleged corruption, equating to roughly 3,490 reports per annum, meaning roughly nine reports of alleged corruption daily. Note that since not all corruption is reported and that corruption that is reported is not necessarily reported to Corruption Watch, this is a large number of reported corruptions received by them.

3.5 CORRUPTION IN THE DEPARTMENT OF HEALTH

Corruption in the public healthcare sector in South Africa is indeed a serious issue.²⁹⁶ The public healthcare sector was a corruption hotspot in the following Corruption

²⁹³ Corruption Watch "2022 Executive Summary", <https://www.corruptionwatch.org.za/wp-content/uploads/2022/09/corruption-watch-ACT-2022-digital-combined-agent-orange-design-20220907.pdf> (accessed on 19 June 2023).

²⁹⁴ Corruption Watch "2022 Executive Summary", <https://www.corruptionwatch.org.za/wp-content/uploads/2022/09/corruption-watch-ACT-2022-digital-combined-agent-orange-design-20220907.pdf> (accessed on 19 June 2023).

²⁹⁵ Corruption Watch "Annual Report 2022", https://www.corruptionwatch.org.za/wp-content/uploads/2023/04/Corruption-Watch_Report_Final_4April.pdf (accessed on 19 June 2023).

²⁹⁶ Maphumulo & Bhengu 2019:1-9; Rheeder 2021:84. See generally, Mudau & Madzivhandila 2022:18-19; Rispel *et al.* 2021:1-28; Dhai & Mahomed 2018(a):8-10; Dhai 2023:76; The Presidency of the Republic of South Africa "Launch of Health Sector Anti-Corruption Forum", <https://www.thepresidency.gov.za/press-statements/launch-health-sector-anti-corruption-forum> (accessed on 2 February 2023).

Watch²⁹⁷ annual reports: 2012, 2013, 2015, 2018, to 2022. Corruption in the public healthcare sector in South Africa has explicitly received negative press and has been investigated by various organisations and academics.²⁹⁸ The public healthcare sector has suffered immensely under mismanagement, corruption, and incompetence, which has been detrimental to the public.²⁹⁹ Van Staden,³⁰⁰ a Parliament of South Africa member, maintains that corruption within government has ultimately brought the public healthcare sector to its knees.

In the following discussion, there are mentions of corruption related to the Covid-19 pandemic - note that although some may argue that this corruption is situational and occurred only because of the situation at hand and that, therefore, it does not reflect the state of corruption under normal circumstances. This study suggests that although this is partly true, it is also possible that these corrupt occurrences when there was an influx of opportunity show the weaknesses within the internal control policies and that the accountability mechanisms are pliable to corrupt actions. Corruption during this time also shows the moral fibre of those willing to be corrupt if the opportunity presents itself.

To set the backdrop to the state of public healthcare in South Africa, note that in 2016, Aaron Motsoaledi,³⁰¹ the then South African Minister of Health, said the healthcare sector was very distressed. Motsoaledi³⁰² pointed out the following problems,

²⁹⁷ Corruption Watch "Annual Reports", <https://www.corruptionwatch.org.za/reading-and-media-room/annual-reports-2/> (accessed on 19 June 2023).

²⁹⁸ Corruption Watch "Annual Report 2020", <https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021).

²⁹⁹ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023). See generally, Maphumulo & Bhengu 2019:1-9 discussing the challenges of quality improvement of healthcare in post-apartheid South Africa.

³⁰⁰ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

³⁰¹ News 24 "Health minister outlines plan of action", <https://www.news24.com/News24/health-minister-outlines-plan-of-action-20180609> (accessed 30 August 2021).

³⁰² News 24 "Health minister outlines plan of action", <https://www.news24.com/News24/health-minister-outlines-plan-of-action-20180609> (accessed 30 August 2021). Note that in South Africa overcrowding in public healthcare is one of the main obstacles to the fulfilment of the right to access

"overcrowding, long waiting lists for treatment, irregular buying of goods, poor financial management and a chronic shortage of human resources." The current public healthcare system in South Africa in 2023 is described as riddled with corruption, as seen below in the words of South African President Cyril Ramaphosa. Arguably, these challenges stem from the rampant corruption in the Department of Health, as shown below.³⁰³ Suppose these healthcare sector challenges of overcrowding, staff shortages, and poor financial management are not addressed. In that case, these challenges will have a detrimental long-term effect on this department's ability to deliver healthcare services to everyone.³⁰⁴ As seen in Section 4.5, these issues mentioned by Motsoaledi have persisted. Rispel *et al.*³⁰⁵ maintain that corruption in the Department of Health in South Africa is evident and rampant. Rispel *et al.* note that corruption within a healthcare sector has a detrimental impact on the provision of healthcare services:³⁰⁶

Corruption in the health sector is a global problem, and the magnitude is significant in both rich and poor countries. Corruption has negative consequences for economic growth and development and adversely affects health service delivery, accessibility, affordability, efficiency and equity. Corruption also affects health policy and spending priorities, and can be deadly in some instances.

Concerning corruption in South Africa in general, Rispel *et al.*³⁰⁷ point out that South Africa has high levels of corruption across the public sectors and undermines the country's ability to achieve various social and developmental goals. Note the mention

healthcare, as will be discussed in Section 4.5 of this study See generally, Van De Ruit & Wallis 2020:52-57.

³⁰³ See generally, Rispel *et al.* 2016:239-249; Maphumulo & Bhengu 2019:1-9; Mudau & Madzivhandila 2022:18-19; Dhai 2023:76; Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023); Kota & Hingston "South Africa's corruption busters: short-changed on funding and political commitment", <https://theconversation.com/south-africas-corruption-busters-short-changed-on-funding-and-political-commitment-173072> (accessed on 5 May 2022).

³⁰⁴ Auditor General South Africa 2022:54. Discussing the challenges of quality improvement of healthcare in post-apartheid South Africa, see generally, Maphumulo & Bhengu 2019:1-9.

³⁰⁵ Rispel *et al.* 2016:239-249.

³⁰⁶ Rispel *et al.* 2016:240.

³⁰⁷ Rispel *et al.* 2016:241.

by Rispel *et al.*³⁰⁸ that public sector corruption undermines social and developmental goals. This consequence of corruption was also noted in Section 2.2. Rispel *et al.*³⁰⁹ interviewed informants when conducting their research on corruption in the South African Department of Health. Rispel *et al.*³¹⁰ noted that most of the informants they spoke to indicated they knew of corruption within the public healthcare sector. The informants "were of the opinion that corruption is pervasive, particularly in the public health sector. For example, respondents comment on corruption in the public sector that it is 'rampant'... and has reached uncontrollable levels." Furthermore, all the informants believed there was corruption in the South African public healthcare sector and that they had personal experience of hearing about or dealing with an incident of corruption.³¹¹ From the findings of Rispel *et al.*,³¹² suppliers and service providers were implicated in corruption within the public healthcare sector in South Africa.³¹³ Rheeder³¹⁴ points out that Corruption Watch received a large and increasing number of complaints about corruption in the public healthcare sector during the first six months of 2018. State capture and corruption were identified as primary risk factors for the South African public healthcare sector.³¹⁵ This, Rheeder³¹⁶ argues, is confirmed by the fact that the Special Investigating Unit launched a new programme to focus specifically on corruption, waste and fraud in the public healthcare sector because "the sector is suspected of extensive corruption and is regarded as the area most vulnerable to corruption."

On 1 October 2019, President Ramaphosa officiated the launch of the Health Sector Anti-Corruption Forum.³¹⁷ The reason for the launch of this anti-corruption forum

³⁰⁸ Rispel *et al.* 2016:241.

³⁰⁹ Rispel *et al.* 2016:244.

³¹⁰ Rispel *et al.* 2016:244.

³¹¹ Rispel *et al.* 2016:244.

³¹² Rispel *et al.* 2016:244.

³¹³ Rispel *et al.* 2016:244.

³¹⁴ Rheeder 2021:84.

³¹⁵ Rheeder 2021:84.

³¹⁶ Rheeder 2021:84.

³¹⁷ The Presidency of Republic of South Africa "Launch of Health Sector Anti-Corruption Forum", <https://www.thepresidency.gov.za/press-statements/launch-health-sector-anti-corruption-forum> (accessed on 2 February 2023).

focusing specifically on the healthcare sector is explained by the government of South Africa as follows:³¹⁸

The health sector - public and private - is vulnerable to fraud and corruption because of large and varied numbers of transactions on goods and services in terms of fraudulent orders, tender irregularities, fiscal dumping by government departments through non-governmental organisations, bribery, over-pricing, poor governance, transfer of liabilities to the state, and bogus and fraudulent qualifications.

The launch of the Health Sector Anti-Corruption Forum by the government of South Africa proves that the government acknowledges corruption in the Department of Health. In 2019, Advocate Andy Mothibi,³¹⁹ Head of the Special Investigating Unit, reported that fraud, waste and abuse of finances in the healthcare sector totalled R39 billion annually. In 2020, the healthcare sector was highlighted as the most corrupt sector by Corruption Watch.³²⁰ In July 2020, Corruption Watch released a report on corruption in the public healthcare sector in South Africa based on the whistle-blower reports that the organisation received from the public.³²¹ This report revealed trends, patterns, and hotspots of corruption in the public healthcare sector. The statistics from this report show that even when South Africa faced the Covid-19 pandemic, corruption

³¹⁸ The Presidency of Republic of South Africa "Launch of Health Sector Anti-Corruption Forum", <https://www.thepresidency.gov.za/press-statements/launch-health-sector-anti-corruption-forum> (accessed on 2 February 2023).

³¹⁹ Ramaphosa "President Cyril Ramaphosa on Health Sector Anti-Corruption Forum", <https://www.gov.za/speeches/president-cyril-ramaphosa-health-sector-anti-corruption-forum-2-oct-2019-0000> (accessed on 2 February 2023).

³²⁰ Corruption Watch "Annual Report 2020", <https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021).

³²¹ Corruption Watch "Annual Report 2020", <https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021).

did not slow down.³²² The following are highlighted in this report about corruption within the public healthcare sector in South Africa:³²³

We highlighted almost 700 cases of healthcare corruption, and we emphasised that those entrusted with our well-being failed to heed the call for action. As a result, the country's health system is under immense pressure.

From April 2020 to June 2021, the total Covid-19 expenditure by South African government departments exceeded R138 billion.³²⁴ Of this amount, R14.8 billion is under investigation by the Special Investigating Unit.³²⁵ In 2021, there were so many allegations of corruption under investigation by the Special Investigating Unit that the 2021 report to Parliament's Standing Committee on Public Accounts took two and a half hours to present and consisted of 118 PowerPoint slides.³²⁶ As Rheeder³²⁷ points out, one of many examples of corruption under investigation was procuring personal protective equipment from unlicensed suppliers. This form of procurement corruption during Covid-19 is also pointed out by Mudau and Madzivhandila³²⁸ below.

In 2021, the Health Sector Anti-Corruption Forum and the Special Investigating Unit took on numerous cases of alleged corruption in provincial public healthcare departments.³²⁹ Irregularities in the public procurement process within the public healthcare sector were exposed when former Minister of Health Zweli Mkhize resigned in August 2021 after being implicated in the irregular procurement of a Covid-19-related communication service tender, which resulted in the alleged misappropriation of R150 million.³³⁰

³²² Corruption Watch "Annual Report 2020", <https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021). See also, Rispel *et al.* 2021:1-28,16(12).

³²³ Corruption Watch "Annual Report 2020", <https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021).

³²⁴ Rheeder 2021:84-88.

³²⁵ Rheeder 2021:84-88.

³²⁶ Rheeder 2021:84-88.

³²⁷ Rheeder 2021:84-88.

³²⁸ Mudau & Madzivhandila 2022:18-19. See also, Rispel *et al.* 2021:1-28.

³²⁹ Amnesty International "South Africa 2021", <https://www.amnesty.org/en/location/africa/southern-africa/south-africa/report-south-africa/> (accessed on 22 June 2022).

³³⁰ Amnesty International "South Africa 2021", <https://www.amnesty.org/en/location/africa/southern-africa/south-africa/report-south-africa/> (accessed on 22 June 2022).

In 2021, Kota³³¹ emphasised the presence of corruption in the public healthcare sector in South Africa, reiterating the amount of R14.8 billion associated with Covid-19 spending the Special Investigating Unit told Parliament was being investigated for procurement irregularities. It can only be imagined that if this amount of R14.8 billion were not being investigated but were seen in, for example, the construction of public hospitals, the state of public healthcare in South Africa would already appear healthier. Kota³³² discusses corruption in general, claiming that in South Africa, an estimated R27 billion is lost to corruption within government annually. Kota³³³ points out that this "represents over one-third of the 2021/22 health budget. In addition, between R159 and R400 billion is lost in illicit financial flows annually in the country."

Mudau and Madzivhandila³³⁴ point out the Special Reports of the Auditor-General on corruption within Covid-19 initiatives. These Special Reports of the Auditor-General were based on the financial management of the government's Covid-19 initiatives and sought to undertake an audit of financial management initiatives and funds at selected municipalities across South Africa.

The 2020 Special Report laid bare the extent to which corruption is deeply rooted in the structures of public healthcare service provision in South Africa.³³⁵ This report highlights the red flags of payment to deceased people, duplicate payments and overpayments in the Unemployment Insurance Fund and the Covid-19 Temporary Employer/Employee Relief Scheme.³³⁶ Mudau and Madzivhandila³³⁷ suggest that a common synopsis of the Auditor-General's first and second special reports on Covid-19 initiatives is the poor financial management of public institutions and the

³³¹ Kota & Hingston "South Africa's corruption busters: short-changed on funding and political commitment", <https://theconversation.com/south-africas-corruption-busters-short-changed-on-funding-and-political-commitment-173072> (accessed on 5 May 2022).

³³² Kota & Hingston "South Africa's corruption busters: short-changed on funding and political commitment", <https://theconversation.com/south-africas-corruption-busters-short-changed-on-funding-and-political-commitment-173072> (accessed on 5 May 2022).

³³³ Kota & Hingston "South Africa's corruption busters: short-changed on funding and political commitment", <https://theconversation.com/south-africas-corruption-busters-short-changed-on-funding-and-political-commitment-173072> (accessed on 5 May 2022). See also, Rispel *et al.* 2021:1-28.

³³⁴ Mudau & Madzivhandila 2022:18-19.

³³⁵ Mudau & Madzivhandila 2022:18-19.

³³⁶ Mudau & Madzivhandila 2022:18-19.

³³⁷ Mudau & Madzivhandila 2022:18-19.

embezzlement of public funds. They argue that the Covid-19 pandemic created an opportunity for corruption to flourish in public healthcare and other sectors of the economy.³³⁸

Regarding the third Special Report of the Auditor-General, Mudau and Madzivhandila³³⁹ claim that municipalities failed to respond to the increased risk of fraud in a crisis by not adjusting their fraud risk management processes and implementing potent preventative controls. In terms of the procurement of personal protective equipment during the Covid-19 pandemic, Mudau and Madzivhandila³⁴⁰ note the shortfalls of this procurement process, emphasising that "the procurement of PPE was a testament to the haphazard manner in which municipalities responded to the crisis." They also point out that there were no adequate analyses of all possible suppliers before procuring personal protective equipment. There was also unfairness in awarding government tenders, and caution was not exercised to avoid overpricing.³⁴¹ Mudau and Madzivhandila³⁴² argue that where funds were supposed to be utilised for quarantine sites and temporary shelters, inadequate planning by some municipalities resulted in the facilities being over or underutilised. These reports of the Auditor-General are a testament to the rampant corruption during the Covid-19 pandemic in South Africa.³⁴³ Many scholars agree that COVID-19 highlighted the inequalities embedded in South Africa and exposed the rampant corruption permeating through the structures of public service and the Department of Health.³⁴⁴

Tembisa Hospital is a public hospital in South Africa located in Gauteng. This hospital has come under immense criticism for issues such as corruption, procurement

³³⁸ Mudau & Madzivhandila 2022:18-19.

³³⁹ Mudau & Madzivhandila 2022:18-19.

³⁴⁰ Mudau & Madzivhandila 2022:18-19

³⁴¹ Mudau & Madzivhandila 2022:18-19.

³⁴² Mudau & Madzivhandila 2022:18-19.

³⁴³ Mudau & Madzivhandila 2022:18-19.

³⁴⁴ Rheeder 2021:84-88; Rispel *et al.* 2021:1-28; Mudau & Madzivhandila 2022:14-20; Mlambo & Masuku 2020: 549-565; Kota & Hingston "South Africa's corruption busters: short-changed on funding and political commitment", <https://theconversation.com/south-africas-corruption-busters-short-changed-on-funding-and-political-commitment-173072> (accessed on 5 May 2022).; Corruption Watch "Annual Report 2020", <https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021).

irregularities, maladministration, theft, infrastructure concerns, etc.³⁴⁵ In 2021, Babita Deokaran worked at the Gauteng Department of Health and raised concerns about alleged corruption in Tembisa Hospital, amounting to more than R850 million. Babita Deokaran was assassinated in 2021.³⁴⁶ The South African Special Investigating Unit was tasked with investigating corruption at Tembisa Hospital after Babita Deokaran blew the whistle on this amount of R850 million. In 2023, this investigation into corruption at Tembisa Hospital is ongoing and has developed into investigating an R1 billion tender scandal.³⁴⁷ A report of the investigation by the Special Investigating Unit exposes serious maladministration and irregular procurement processes at Tembisa.³⁴⁸

The discussion of corruption, procurement irregularities, mismanagement, shameful public service delivery and the like at Tembisa could create a study of its own. For this study, note that there are various accounts of corruption in this hospital, and there are likewise various accounts of patients believing that their right to access healthcare was

³⁴⁵ The Gauteng Department of Health has reported that almost 800 babies died at Tembisa Hospital from 2020 to 2023. See, Sobuwa "Almost 800 infants have died at Tembisa Hospital since 2020", <https://www.news24.com/news24/southafrica/news/almost-800-infants-have-died-at-tembisa-hospital-since-2020-20230607> (accessed on 18 July 2023). See also, Seleka "Tembisa Hospital back in spotlight after video surfaces of shocking conditions in casualty ward", <https://www.news24.com/news24/southafrica/news/tembisa-hospital-back-in-spotlight-after-video-surfaces-of-shocking-conditions-in-casualty-ward-20221216> (accessed on 18 July 2023); Wicks "SIU Recommends prosecution of two bigwigs in Tembisa hospital corruption scandal", <https://ewn.co.za/2022/12/13/siu-recommends-prosecution-of-two-bigwigs-in-tembisa-hospital-corruption-scandal> (accessed on 18 July 2023).

³⁴⁶ News24 Investigations "Silenced | No investigation, no protection: Inside department head's big lie to Babita Deokaran", <https://www.news24.com/news24/investigations/silenced-no-investigation-no-protection-inside-department-heads-big-lie-to-babita-deokaran-20220801> (accessed on 18 July 2023); Singh "Corruption at Tembisa Hospital involves firms flagged by Babita Deokaran", <https://www.businesslive.co.za/bd/national/2022-12-13-corruption-at-tembisa-hospital-involves-firms-flagged-by-babita-deokaran/> (accessed on 18 July 2023).

³⁴⁷ Pongweni "Hawks raid properties of top ANC figure in R1bn Tembisa Hospital tender corruption probe", <https://www.dailymaverick.co.za/article/2023-03-29-hawks-raid-properties-of-top-anc-figure-in-r1bn-tembisa-hospital-tender-corruption-probe/> (accessed on 18 July 2023). See also, News24 Investigations "Silenced | No investigation, no protection: Inside department head's big lie to Babita Deokaran", <https://www.news24.com/news24/investigations/silenced-no-investigation-no-protection-inside-department-heads-big-lie-to-babita-deokaran-20220801> (accessed on 18 July 2023); Singh "Corruption at Tembisa Hospital involves firms flagged by Babita Deokaran", <https://www.businesslive.co.za/bd/national/2022-12-13-corruption-at-tembisa-hospital-involves-firms-flagged-by-babita-deokaran/> (accessed on 18 July 2023).

³⁴⁸ Wicks "SIU Recommends prosecution of two bigwigs in Tembisa hospital corruption scandal", <https://ewn.co.za/2022/12/13/siu-recommends-prosecution-of-two-bigwigs-in-tembisa-hospital-corruption-scandal> (accessed on 18 July 2023).

not fulfilled due to the practices of this hospital.³⁴⁹ South African Minister of Health Joe Phaahla mentions Tembisa Hospital in 2023 in an address to the South African National Assembly, saying it should be remembered that not all public hospitals are as corrupt and mismanaged as Tembisa.³⁵⁰

Concerning the death of Babita Deokaran after she drew attention to corruption in this hospital and discussed corruption in the public healthcare sector in general, Van Staden³⁵¹ questioned how many more whistle-blowers need to die before this sector's corruption gets the attention it deserves. See the discussion below from both Phaahla³⁵² and Van Staden³⁵³ on the current corruption in this department.

In 2022, in the National Assembly, Van Staden³⁵⁴ moved a subject for discussion on the prevalence of corruption, incompetence and poor management in public

³⁴⁹ See generally, Mndzebele 2014:396-408; Chaponda, *et al.* 2017:1-6; Sobuwa "Tembisa hospital weighed down by staff shortages, ageing infrastructure", <https://www.news24.com/citypress/news/tembisa-hospital-weighed-down-by-staff-shortages-ageing-infrastructure-20220421> (accessed on 18 July 2023); Wicks "Six months of nothing: Tembisa Hospital staff who helped R1 billion tender mafia still at work", <https://www.news24.com/news24/investigations/six-months-of-nothing-tembisa-hospital-staff-who-helped-r1-billion-tender-mafia-still-at-work-20230629> (accessed on 18 July 2023); Democratic Alliance Gauteng "Tembisa Hospital endangers sick patients by discharging them early due to bed shortage", <https://dagauteng.org.za/2022/11/tembisa-hospital-endangers-sick-patients-by-discharging-them-early-due-to-bed-shortage> (accessed on 18 July 2023).

³⁵⁰ Parliament of the Republic of South Africa "Press Release: The National Assembly passes the National Health Insurance Bill and the Land Court Bill", <https://www.parliament.gov.za/press-releases/press-release-national-assembly-passes-national-health-insurance-bill-and-land-court-bill> (accessed on 10 June 2023); Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

³⁵¹ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

³⁵² Parliament of the Republic of South Africa "Press Release: The National Assembly passes the National Health Insurance Bill and the Land Court Bill", <https://www.parliament.gov.za/press-releases/press-release-national-assembly-passes-national-health-insurance-bill-and-land-court-bill> (accessed on 10 June 2023).

³⁵³ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

³⁵⁴ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

healthcare. Van Staden³⁵⁵ argued that the state of public healthcare in South Africa had violated the constitutional right to access healthcare as contained in Section 27 of the *Constitution*. Van Staden³⁵⁶ expressed his argument on this violation, claiming, "[i]t is clear that the current government is in violation of Section 27 of the *Constitution*, our public hospitals are in such a mess that the lives of patients, doctors and nurses are seriously being jeopardised in terms of constitutional and human rights." Van Staden³⁵⁷ accused the government of turning public hospitals into mortuaries through mismanagement, corruption, maladministration, and incompetence. Van Staden³⁵⁸ claimed that these factors have led to the death of the South African public healthcare sector. From the argument made by Van Staden,³⁵⁹ a link is seen between corruption in the public healthcare sector and the services provided by this sector. It is seen that corruption in this sector is adversely affecting the service delivery provided by this sector, and this has a direct effect on human rights fulfilment.

Emphasising the prevalence of corruption and the danger that whistle-blowers face in South Africa, Van Staden³⁶⁰ pointed out that "[w]hen a loyal public servant is assassinated for blowing the whistle in Gauteng Department of Health, we have come to a point where action is urgently needed to completely eradicate corruption and mismanagement ... how many whistle-blowers out there are too scared to speak out?"

³⁵⁵ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

³⁵⁶ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

³⁵⁷ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

³⁵⁸ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

³⁵⁹ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

³⁶⁰ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

Dr Suzan Thembekwayo,³⁶¹ another member of Parliament in the debate, agreed that there is corruption, poor management, and incompetence in the public healthcare sector in South Africa.

Dhai,³⁶² observing corruption in the healthcare sector in 2022, notes that "[a]s 2022 came to a close, it became patently clear that the fight against corruption in South Africa was no longer an uphill battle, but a mammoth crusade. The reality that corruption had become endemic and pervasive was overwhelming." The devastating impact of corruption affects every aspect of life for the entire population. In South Africa, corruption within government has infiltrated all aspects of the public healthcare sector. Nepotism in this sector has persisted for almost three decades, resulting in political appointees occupying critical positions in public hospitals, public healthcare accounting bodies, and regulators.³⁶³ This nepotism allows politicians to manipulate the public procurement process, human resources, licensing and more for their gain, further deteriorating the state of the public healthcare sector.³⁶⁴ Maphumulo and Bhengu³⁶⁵ agree with Dhai³⁶⁶ on nepotism and corruption in this sector. They argue that misconduct, corruption, and nepotism among the Department of Health officials have caused the South African government to fail in fulfilling its constitutional mandate to deliver the right to access healthcare.³⁶⁷

This sector is characterised by illegal expenditure that costs South Africa billions of rands annually.³⁶⁸ Irregular expenditure, which violates the legal supply chain process, strongly indicates corruption. Irregular expenditure is profound in the Gauteng Department of Health. This Department accumulated R3.8 billion in irregular

³⁶¹ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

³⁶² Dhai 2023:76.

³⁶³ Dhai 2023:76.

³⁶⁴ Dhai 2023:76

³⁶⁵ Maphumulo & Bhengu 2019:5.

³⁶⁶ Dhai 2023:76.

³⁶⁷ Maphumulo & Bhengu 2019:5; Dhai 2023:76. See also, Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

³⁶⁸ Dhai 2023:76.

expenditure during 2020/2021.³⁶⁹ This is more than double the amount incurred for irregular expenditure during 2019/2020.³⁷⁰

On 12 June 2023, the South African National Assembly passed the National Health Insurance Bill.³⁷¹ This Bill will create mechanisms for effectively and efficiently utilising the national insurance fund's resources to meet users' health needs. The Bill also addresses existing barriers to healthcare access in South Africa. This Bill creates a financing system allowing South Africans to access quality healthcare based on their needs instead of their socio-economic status.³⁷² At the second South African Presidential Health Summit hosted in 2023, President Ramaphosa and others, including Minister Phaahla, addressed the passing of this Bill and discussed public healthcare in South Africa in general. At this summit, the President and the Minister remarked on the current corruption within the South African healthcare sector.³⁷³ One of the papers prepared for the summit states that whatever good intentions informed the first Presidential Health Summit in 2018 "and whatever administrative initiatives have been taken by the National Department of Health, the sector is yet to implement a clear, decisive and systemic effort to confront corruption and maladministration."

³⁶⁹ Dhai 2023:76. See also, Dhai & Mahomed 2018(a):8-10.

³⁷⁰ Dhai & Mahomed 2018(a):8-10; Van Den Heever "How do you stop a hospital heist? Appoint a plunder-proof board", <https://www.dailymaverick.co.za/article/2022-08-17-how-do-you-stop-a-hospital-heist-appoint-a-plunder-proof-board/> (accessed on 19 June 2023).

³⁷¹ Parliament of the Republic of South Africa "Press Release: The National Assembly passes the National Health Insurance Bill and the Land Court Bill", <https://www.parliament.gov.za/press-releases/press-release-national-assembly-passes-national-health-insurance-bill-and-land-court-bill> (accessed on 10 June 2023); Government of South Africa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023).

³⁷² Second Presidential Health Summit May 2023; Parliament of the Republic of South Africa "Press Release: The National Assembly passes the National Health Insurance Bill and the Land Court Bill", <https://www.parliament.gov.za/press-releases/press-release-national-assembly-passes-national-health-insurance-bill-and-land-court-bill> (accessed on 10 June 2023); Government of South Africa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023); Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

³⁷³ Parliament of the Republic of South Africa "Press Release: The National Assembly passes the National Health Insurance Bill and the Land Court Bill", <https://www.parliament.gov.za/press-releases/press-release-national-assembly-passes-national-health-insurance-bill-and-land-court-bill> (accessed on 10 June 2023); Government of South Africa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023).

Thus, corruption within this sector is recognised, and recognition is also given that it has not yet been addressed effectively.³⁷⁴ This paper states the existence of the shortfalls in the public health sector in South Africa:³⁷⁵

Fiscal constraints and budget shortfalls are eroding the capabilities of the public healthcare system in South Africa, contributing directly to falling levels of service provision. The retrogression in the resource envelope for healthcare is likely to continue and intensify in the years ahead. In this context it is doubtful that the plans laid out in the Presidential Health Compact to strengthen the South African health system will be adequately resourced.

From the quote mentioned above, it is important to note the following. First, it is suggested that these fiscal constraints and budget shortfalls, as mentioned, are, to a degree, a result of the rampant corruption in this sector. Fiscal constraints would be somewhat alleviated if corruption was not rampant in this sector. Secondly, there is an acknowledged decline in public healthcare service provision due to these fiscal constraints. It is suggested that if these fiscal constraints could be alleviated by addressing corruption, this decline in service delivery would simultaneously be addressed. Thirdly, according to them, the regression in the resource envelope for healthcare is likely to continue and intensify in the years ahead. It is not explained why they believe this resource retrogression will only worsen. Lastly, this quote shows a direct link between fiscal constraints and budgetary shortfalls, also known as a lack of resources and the impact this has on the services delivered by the public healthcare sector.

Mentioning another form of corruption occurring in the public healthcare sector in South Africa, President Ramaphosa addressed moonlighting by public healthcare workers. The President explained that healthcare workers are moonlighting, thereby defrauding the government and taxpayers in illegal payments for hours not worked in

³⁷⁴ Heywood "Second Presidential Health Summit – summiting while the health system burns", <https://www.dailymaverick.co.za/article/2023-05-02-presidential-health-summit-summiting-while-the-health-system-burns/> (accessed on 11 July 2023).

³⁷⁵ Heywood "Second Presidential Health Summit – summiting while the health system burns", <https://www.dailymaverick.co.za/article/2023-05-02-presidential-health-summit-summiting-while-the-health-system-burns/> (accessed on 11 July 2023).

the public sector.³⁷⁶ At the 2023 Health Summit, President Ramaphosa said the following about corruption in this sector:³⁷⁷

All the crooks and the thieves conspire; it is in healthcare where they are waiting to plunder and where they're going to siphon money ... So making funding available should mean that we need to use money properly. We need to watch the money that is given [to] the health sector with a hawk's eye and make sure that it is properly used – no overcharging, no overspending, or incidents of non-spending because sometimes money is not spent because people are trying to find ways of siphoning the money.

From the above words of President Ramaphosa, corruption in the public healthcare sector in South Africa is a persistent issue. This corruption being acknowledged by the President of South Africa is non-rebuttable proof of the point that this study aims to demonstrate. This study agrees with President Ramaphosa that money in this sector needs to be used properly.

Note that based on the above words from the President, this study suggests first that to watch this money with a so-called hawk's eye, better accountability measures need to be put in place. Those overseeing accountability measures need to be watched more closely and held to a higher standard of accountability than what is currently being implemented. Secondly, more regularly mandated reporting on pricing research, including tender research, is necessary to ensure that pricing contracts and tenders have been awarded fairly based on all available options.

Thirdly, mandatory reporting on all occurrences of underspending within a particular budget must be compulsory. Lastly, there needs to be stricter investigation and prosecution measures taken against those in charge of accountability oversight when an allegation of corruption is made and when corruption is proven. There needs to be

³⁷⁶ Second Presidential Health Summit May 2023; How "Ramaphosa proclaims 'health revolution' at second presidential health summit", <https://www.spotlightnsp.co.za/2023/05/08/ramaphosa-proclaims-health-revolution-at-second-presidential-health-summit/> (accessed on 11 July 2023).

³⁷⁷ How "Ramaphosa proclaims 'health revolution' at second presidential health summit", <https://www.spotlightnsp.co.za/2023/05/08/ramaphosa-proclaims-health-revolution-at-second-presidential-health-summit/> (accessed on 11 July 2023).

a clear understanding of the *fiduciary duty* (my emphasis) of those tasked with overseeing accountability. They should not be the ones abusing the system.

At this 2023 Health Summit, Minister Phaahla³⁷⁸ addressed his concerns about the corruption within this sector and how it needs to be "rooted out." He argued that the public healthcare sector would function better if there were less corruption and more accountability for the management within the sector. Minister Phaahla³⁷⁹ addressed the National Assembly concerning the passing of the National Health Insurance Bill. He discussed both what this Bill aims to achieve in bringing about access healthcare and the corruption that currently exists within the public healthcare sector of South Africa.³⁸⁰ This was again an acknowledgement of the current corruption in this sector. Minister Phaahla noted that although there is fear of corruption and mismanagement within the public healthcare sector, remembrance should be given to public hospitals in South Africa that have been managed effectively. He claims examples of good-functioning public hospitals include Steve Biko and Groote Schuur.³⁸¹ He says not all South African public hospitals should be equated to Tembisa Hospital. Hence, current corruption within government in this sector was addressed in the second Presidential Health Summit and the address to the National Assembly on the passing of the National Health Insurance Bill. The above work is summarised and concluded below.

³⁷⁸ Second Presidential Health Summit May 2023; Parliament of the Republic of South Africa "Press Release: The National Assembly passes the National Health Insurance Bill and the Land Court Bill", <https://www.parliament.gov.za/press-releases/press-release-national-assembly-passes-national-health-insurance-bill-and-land-court-bill> (accessed on 10 June 2023); Government of South Africa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023); Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

³⁷⁹ Parliament of the Republic of South Africa "Press Release: The National Assembly passes the National Health Insurance Bill and the Land Court Bill", <https://www.parliament.gov.za/press-releases/press-release-national-assembly-passes-national-health-insurance-bill-and-land-court-bill> (accessed on 10 June 2023).

³⁸⁰ Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

³⁸¹ Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

As seen from the arguments and statements made by Rispel *et al.*,³⁸² Motsoaledi,³⁸³ Van Staden,³⁸⁴ President Ramaphosa,³⁸⁵ Minister Phaahla³⁸⁶ and more, it is evident that the South African Department of Health is riddled with corruption and problems that flow from the existence of this corruption.³⁸⁷ These long-standing problems in the South African public healthcare sector include corruption in the procurement process, nepotism in the employment process, poor financial management, weak accountability mechanisms, and maladministration, to name a few.³⁸⁸ Section 4.5 of this study will elaborate on how these problems within the Department of Health adversely impact the right to healthcare in South Africa.

These problems already negatively impacted public healthcare service provision and adding a pandemic into the equation resulted in an unmanageable demand during the Covid-19 crisis. All the evidence indicates that the Covid-19 relief budget was not

³⁸² Rispel *et al.* 2016:240.

³⁸³ News 24 "Health minister outlines plan of action", <https://www.news24.com/News24/health-minister-outlines-plan-of-action-20180609> (accessed 30 August 2021).

³⁸⁴ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

³⁸⁵ Second Presidential Health Summit May 2023; Parliament of the Republic of South Africa "Press Release: The National Assembly passes the National Health Insurance Bill and the Land Court Bill", <https://www.parliament.gov.za/press-releases/press-release-national-assembly-passes-national-health-insurance-bill-and-land-court-bill> (accessed on 10 June 2023); Government of South Africa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023).

³⁸⁶ Parliament of the Republic of South Africa "Press Release: The National Assembly passes the National Health Insurance Bill and the Land Court Bill", <https://www.parliament.gov.za/press-releases/press-release-national-assembly-passes-national-health-insurance-bill-and-land-court-bill> (accessed on 10 June 2023); Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

³⁸⁷ News 24 "Health minister outlines plan of action", <https://www.news24.com/News24/health-minister-outlines-plan-of-action-20180609> (accessed 30 August 2021).

³⁸⁸ See generally, Rispel *et al.* 2016:240; Dhai & Mohammed 2018(a):8-10; Maphumulo & Bhengu 2019:1-9; Rheeder 2021:84-88; Mudau & Madzivhandila 2022:18-19; Dhai 2023:76; Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023); Van den Heever "How do you stop a hospital heist? Appoint a plunder-proof board", <https://www.dailymaverick.co.za/article/2022-08-17-how-do-you-stop-a-hospital-heist-appoint-a-plunder-proof-board/> (accessed on 19 June 2023); News 24 "Health minister outlines plan of action", <https://www.news24.com/News24/health-minister-outlines-plan-of-action-20180609> (accessed 30 August 2021); Corruption Watch "Annual Report 2020", <https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021).

appropriately handled and that there were various acts of corruption within the handling of this budget. Although this budget and the abuse thereof occurred under different circumstances than usual, this proven corruption shows that when there was an influx of money and opportunity that should have been used for good, the actors at play took the chance to abuse this budget as much as possible. It must be accepted that this evidences how easily corruption can be committed and shows how pliable control measures are within this sector and those in charge of them. Furthermore, aside from the Covid-19 budget, budgets, procurement, employment, and more have not been handled correctly in the past, and there is a systemic failure due to these concurring problems.³⁸⁹ The financial health of the public healthcare sector in South Africa has been under immense pressure for years because of budget constraints and poor financial management.³⁹⁰ It is suggested that the issues mentioned by Motsoaledi³⁹¹ in 2016 and the current issues of budget constraints and the like could be addressed if corruption in this sector were addressed.

3.6 CORRUPTION IN THE DEPARTMENT OF EDUCATION

The public education sector was named a corruption hotspot by Corruption Watch in all annual reports from 2012 to 2022.³⁹² South Africa has one of the worst-performing

³⁸⁹ Dhai & Mohammed 2018(a):8-10; Rispel *et al.* 2016:239-249; Rispel *et al.* 2021:1-28; Dhai 2023:76-76; News 24 "Health minister outlines plan of action", <https://www.news24.com/News24/health-minister-outlines-plan-of-action-20180609> (accessed 30 August 2021).

³⁹⁰ Auditor General South Africa 2022:53.

³⁹¹ News 24 "Health minister outlines plan of action", <https://www.news24.com/News24/health-minister-outlines-plan-of-action-20180609> (accessed 30 August 2021).

³⁹² See generally, Corruption Watch "Annual Reports", <https://www.corruptionwatch.org.za/reading-and-media-room/annual-reports-2/> (accessed on 19 June 2023); Corruption Watch "Annual Report 2016", <https://www.corruptionwatch.org.za/wp-content/uploads/2017/02/Corruption-Watch-Annual-Report-27-02-2017-Low-Res-Version.pdf> (accessed on 3 August 2022); Corruption Watch "Annual Report 2017", <https://www.corruptionwatch.org.za/wp-content/uploads/2018/04/Corruption-Watch-Annual-Report-04042018-FA-Single-Pages-CompressedV2-2.pdf> (accessed on 21 June 2022); Corruption Watch "Annual Report 2018", <https://www.corruptionwatch.org.za/wp-content/uploads/2019/05/CW-Annual-Report-2018-Upholding-Democracy-Single-Pages-Agent-Orange-Design-10042019.pdf> (accessed on 21 June 2022); Corruption Watch "Annual Report 2019", https://www.corruptionwatch.org.za/wp-content/uploads/2020/03/CRW0320_7171_AnnualReport-2019.pdf (accessed on 21 June 2022); Corruption Watch "Annual Report 2020", <https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021).

public education sectors in the world, plagued by incompetence and corruption.³⁹³ In fact, according to the World Bank, South Africa is the world's biggest underperformer in education relative to per capita income.³⁹⁴ The Centre for Development and Enterprise released several reports on South Africa's public education sector, outlining its failures, the factors responsible for its failures, and recommendations for the actions needed to improve public education in South Africa.³⁹⁵ These reports detailed the corruption within government that is plundering the public education sector into the ground. These reports highlight that alongside corruption, a significant contribution to the deplorable state of public education in South Africa is nepotism and employment irregularities in this sector, which has adversely impacted the quality of teachers in public schools.³⁹⁶

Titled "The Forgotten Story of State Capture in Education",³⁹⁷ reports published in 2023 from the Centre for Development and Enterprise explain the enduring corruption and its problems in the Department of Basic Education. These reports emphasise the

³⁹³ According to professor Lant Pritchett, a specialist in education reform, South Africa is the single biggest learning underperformer relative to GDP per capita among low and middle-income countries. See, BusinessTech "The shocking state of education in South Africa", <https://businesstech.co.za/news/business-opinion/676069/the-shocking-state-of-education-in-south-africa/> (accessed on 20 June 2023); "[E]ducational outcomes remain relatively poor. For example, a recent international survey found that more than three quarters of children aged nine cannot read for meaning. In some provinces this is as high as 91% in Limpopo and 85% in the Eastern Cape. And of 100 learners that start school, 50-60 will make it to matric, 40-50 will pass matric, and only 14 will go to university." See, Amnesty International "South Africa: Broken and unequal education perpetuating poverty and inequality", <https://www.amnesty.org/en/latest/news/2020/02/south-africa-broken-and-unequal-education-perpetuating-poverty-and-inequality/> (accessed on 21 February 2023). See also, Mlachila & Moeletsi 2019:8-29; Baxter *et al.* 2018:4; Meier 2004:1-12.

³⁹⁴ Centre for Development and Enterprise "The silent crisis: Time to fix South Africa's schools" <https://www.cde.org.za/the-silent-crisis-time-to-fix-south-africas-schools-2/> (accessed on 22 August 2023).

³⁹⁵ Centre for Development and Enterprise "The silent crisis: Time to fix South Africa's schools" <https://www.cde.org.za/the-silent-crisis-time-to-fix-south-africas-schools-2/> (accessed on 22 August 2023); BusinessTech "The shocking state of education in South Africa", <https://businesstech.co.za/news/business-opinion/676069/the-shocking-state-of-education-in-south-africa/> (accessed on 20 June 2023).

³⁹⁶ BusinessTech "The shocking state of education in South Africa", <https://businesstech.co.za/news/business-opinion/676069/the-shocking-state-of-education-in-south-africa/> (accessed on 20 June 2023); Centre for Development and Enterprise "The silent crisis: Time to fix South Africa's schools" <https://www.cde.org.za/the-silent-crisis-time-to-fix-south-africas-schools-2/> (accessed on 22 August 2023).

³⁹⁷ Centre for Development and Enterprise "The forgotten story of state capture in education", <https://www.cde.org.za/wp-content/uploads/2023/03/The-Silent-Crisis-The-forgotten-story-of-state-capture-in-education.pdf> (accessed on 22 August 2023).

longevity of the corruption in this sector, noting that in 2014, Minister of Basic Education Motshekga set up a ministerial task team to investigate corruption in the public education sector.³⁹⁸ Unfortunately, the task teams' findings were widespread corruption and institutional capture by the country's largest teacher union, the South African Democratic Teachers Union.³⁹⁹ In this report, nepotism and employment irregularities in this sector are focused on - the report details the corruption in the so-called cash-for-jobs schemes, stating, "it is an open secret in teaching that if you want a promotion post, you have to pay." In this cash-for-jobs scheme, "principal and deputy principal positions were routinely sold for between R30,000 and R45,000 in KwaZulu-Natal."⁴⁰⁰

In the Department of Education, the most common forms of corruption reported include (a) maladministration, including the mismanagement of funds and fruitless and wasteful expenditure; (b) misappropriation of resources, including theft and embezzlement of funds; (c) abuse of authority, (d) procurement irregularities including corruption within the tender processes, and (e) employment irregularities including bribery and sextortion.⁴⁰¹ These alleged acts of corruption in the Department of Education span the length and breadth of the country. The hotspots for reported corruption in this sector are the Eastern Cape, Gauteng, and KwaZulu-Natal.⁴⁰² This

³⁹⁸ Centre for Development and Enterprise "The silent crisis: The forgotten story of state capture in education", <https://www.cde.org.za/wp-content/uploads/2023/03/The-Silent-Crisis-The-forgotten-story-of-state-capture-in-education.pdf> (accessed on 22 August 2023).

³⁹⁹ Centre for Development and Enterprise "The silent crisis: The forgotten story of state capture in education", <https://www.cde.org.za/wp-content/uploads/2023/03/The-Silent-Crisis-The-forgotten-story-of-state-capture-in-education.pdf> (accessed on 22 August 2023).

⁴⁰⁰ Centre for Development and Enterprise "The silent crisis: The forgotten story of state capture in education", <https://www.cde.org.za/wp-content/uploads/2023/03/The-Silent-Crisis-The-forgotten-story-of-state-capture-in-education.pdf> (accessed on 22 August 2023).

⁴⁰¹ Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023); Corruption Watch "Annual Report 2022", https://www.corruptionwatch.org.za/wp-content/uploads/2023/04/Corruption-Watch_Report_Final_4April.pdf (accessed on 19 June 2023). See also, Schirmer "Letter: It is World Bank data putting SA among the poorest schools performers", <https://www.cde.org.za/it-is-world-bank-data-putting-sa-among-the-poorest-schools-performers/> (accessed on 22 August 2023).

⁴⁰² Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023); Corruption Watch "Annual Report 2022", https://www.corruptionwatch.org.za/wp-content/uploads/2023/04/Corruption-Watch_Report_Final_4April.pdf (accessed on 19 June 2023).

corruption in the public education sector was reported on by Corruption Watch in a 2022 publication, and the South African Democratic Teachers Union commented on the findings of this report and remarked that the Union is outraged by the corruption in South Africa's public education sector.⁴⁰³

Corruption Watch⁴⁰⁴ and Baxter *et al.*⁴⁰⁵ maintain that nepotism and irregularities in the employment process contribute to the continuous failures of the public education system in South Africa. Corruption Watch⁴⁰⁶ reported on a whistle-blower allegation that was investigated and proven accurate: "a person was recruited and appointed into a managerial position at a college despite the fact they had a criminal record of several offences." A person being appointed into a managerial position at a college even though they have a criminal record indicates possible employment irregularities. Baxter *et al.*⁴⁰⁷ claim that the Department of Basic Education creates appointments not based on ability or skills but on a union membership or cash-for-jobs basis.

From 2021 to 2021, Corruption Watch⁴⁰⁸ received over 36,000 allegations of corruption in the public school sector. These allegations reveal (a) disregard of official processes, (b) mismanagement of resources, and (c) criminal acts, amongst others. Persons holding positions of influence, including principals and school governing body members, are purportedly the primary culprits. Corruption in schools is among the top three areas in the data reports released by Corruption Watch exposing corruption over

⁴⁰³ Chabalala "Sex for grades and jobs for families - Sadtu 'outraged' at Corruption Watch findings on education sector", <https://www.news24.com/news24/southafrica/news/sex-for-grades-and-jobs-for-families-sadtu-outraged-at-corruption-watch-findings-on-education-sector-20220827> (accessed on 20 June 2023).

⁴⁰⁴ Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023); Baxter *et al.* 2018:1-17.

⁴⁰⁵ Baxter *et al.* 2018:10.

⁴⁰⁶ Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023).

⁴⁰⁷ Baxter *et al.* 2018:10.

⁴⁰⁸ Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023).

the past decade.⁴⁰⁹ According to Corruption Watch,⁴¹⁰ the apathy of government and law enforcement to act upon the corrupt practices of schools, unions, board members, educators, principals, and administrators has resulted in the growing rate of corrupt occurrences in this sector. As mentioned above, sextortion⁴¹¹ is a prominent form of corruption in this sector. Concerning sextortion, reports have shown that principals recruit persons with close relations to administrative posts who are often required to perform sexual acts to secure their recruitment and position in future.⁴¹² According to reports received by Corruption Watch,⁴¹³ this type of corruption extends primarily to female students, who are asked to sleep with educators for good grades.

The most corrupt provinces concerning public school corruption are Gauteng, with 32 per cent of reports relating to this province, followed by KwaZulu-Natal, with 16 per cent of reports and the Eastern Cape, with 12 per cent.⁴¹⁴ In Gauteng, proven instances of corruption related predominantly to (a) misappropriation of resources, (b) abuse of authority and (c) maladministration. In KwaZulu-Natal, (a) misappropriation of resources, (b) maladministration and (c) employment corruption were the most common forms of proven corruption.⁴¹⁵ Note that employment corruption in KwaZulu-Natal was also exposed by the Centre for Development and Enterprise reports

⁴⁰⁹ Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023).

⁴¹⁰ Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023).

⁴¹¹ Sextortion is a type a type of corruption "where women are told that they have to provide sexual favours to benefit financially or career-wise." Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023).

⁴¹² Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023).

⁴¹³ Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023).

⁴¹⁴ Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023).

⁴¹⁵ Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023).

discussed above.⁴¹⁶ In the Eastern Cape, the most common forms of proven corruption were (a) misappropriation of resources, (b) maladministration and (c) abuse of authority.⁴¹⁷

Transparency International observes the following concerning corruption in the South African public school sector, the high risk of embezzlement, and the lack of transparency and accountability. The highest risk of embezzlement in this sector relates to the procurement process, specifically when remunerating staff, procuring learning materials, and constructing schools. Within schools, the main corruption risks identified by the school's governing bodies were (a) sexual harassment of learners and educators, (b) staff absenteeism, (c) irregular staff appointments and promotions and (d) the misuse of school funds.⁴¹⁸ Corruption between schools and suppliers is noted, and the lack of integrity in the relationship between schools and suppliers results in corrupt transactions. This corruption and the risk thereof derive from the absence of appropriate mechanisms to regulate the relationship between schools and suppliers or the failure to apply such mechanisms.⁴¹⁹

In South Africa in 2012, this form of corruption between schools and suppliers was addressed concerning public schools in Limpopo, exposing corruption, maladministration and employment nepotism in the public school sector. This incident in Limpopo involved an R680 million contract awarded to EduSolutions not because of its ability to provide the service but because of political connections.⁴²⁰ This

⁴¹⁶ Centre for Development and Enterprise "The silent crisis: The forgotten story of state capture in education. <https://www.cde.org.za/wp-content/uploads/2023/03/The-Silent-Crisis-The-forgotten-story-of-state-capture-in-education.pdf> (accessed on 22 August 2023).

⁴¹⁷ Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023).

⁴¹⁸ Døssing *et al.* "Mapping Transparency, Accountability and Integrity in Primary Education in South Africa", https://www.un.org/en/ecosoc/newfunct/pdf/luxembourg_tisda_south_africa_report_web.pdf (accessed on 20 June 2023).

⁴¹⁹ Døssing *et al.* "Mapping Transparency, Accountability and Integrity in Primary Education in South Africa", https://www.un.org/en/ecosoc/newfunct/pdf/luxembourg_tisda_south_africa_report_web.pdf (accessed on 20 June 2023).

⁴²⁰ Masuku & Kelbrick "SA's top economic undergrads examine the costs of corruption", <https://www.news24.com/citypress/voices/sas-top-economic-undergrads-examine-the-costs-of-corruption-20180220> (accessed on 5 May 2022); Veriava "The 2012 Limpopo textbook crisis",

corruption resulted in learners at public schools in Limpopo not having textbooks. This is an old incident of corruption. However, it is noted concerning the observations provided by Transparency International. Namely, Transparency International's above observation of the high risk of embezzlement in this sector. One of the highest risk areas observed by Transparency International is corruption within the procurement process, which was seen in this 2012 example when textbook procurement was corrupted.

Basopu⁴²¹ points out that the challenges of corruption have crippled the Department of Education in the Eastern Cape. To examine the extent of corruption in the Department of Education in the past, the 2010 publication by Basopu⁴²² assesses the reports from the Auditor-General for this Department from 2005 to 2009 to show the existence of irregular, wasteful, fruitless, and unauthorised expenditure, and other corruption indicators. Basopu⁴²³ emphasises that according to the Interim Management Report 2000, in the 1997/98 financial year, mismanagement of finances in the Department of Education in the Eastern Cape Province alone led to a deficit of R1.314 billion.⁴²⁴ In his 2010 report, the total amounts identified from 2005 to 2009 relating to irregular, wasteful, fruitless, and unauthorised expenditure is more than R 2 billion.⁴²⁵

In this report by Basopu,⁴²⁶ various other issues relating to leadership deficiencies, lack of oversight, supply chain process contraventions, weaknesses in internal control policies and more are also evidenced. Notably, fruitless, wasteful, irregular, or unauthorised expenditure does not necessarily mean corruption. However, it could indicate corruption. Furthermore, leadership deficiencies or other issues mentioned above do not expressly prove that corruption exists. However, weaknesses in

<http://section27.org.za/wp-content/uploads/2013/10/The-2012-Limpopo-Textbook-Crisis1.pdf> (accessed on 20 June 2023).

⁴²¹ Basopu 2010:9-86.

⁴²² Basopu 2010:9-86.

⁴²³ Basopu 2010:9.

⁴²⁴ Basopu 2010:9.

⁴²⁵ Basopu 2010:63-75.

⁴²⁶ Basopu 2010:63-75.

leadership or internal control policies could indicate corruption and allow corruption to occur.

Below, the annual reports of the Department written by the Auditor-General from 2017 to 2021 are summarised, showing financial amounts relating to irregular, wasteful, fruitless, and unauthorised expenditure, leadership deficiencies and more. In the 2017/18 annual report, irregular expenditure of R154.478 million was identified, resulting from improper supply chain processes.⁴²⁷ Improper supply chain processes mean supply chain processes that are in contravention of the regulated supply chain processes, which indicates, amongst other things, procurement corruption. Irregular expenditure of R33.534 million was still under investigation.⁴²⁸ Furthermore, the fruitless and wasteful expenditure of R83.789 million was still under investigation.⁴²⁹

The 2018/19 annual report shows insufficient appropriate audit evidence for the approved and contracted capital expenditure commitment for disbursements. The Department could not substantiate the R167.306 million relating to professional service provider fees.⁴³⁰ Regarding irregular expenditures, the Department did not include all irregular expenditures in the financial statement notes.⁴³¹ All irregular expenditure was not included in the 2018/19 annual report, payments made in contravention of the supply chain management prescripts and processes were not included, which resulted in irregular expenditure of R177.498 million not being disclosed at the time.⁴³²

In the 2019/20 annual report, the Department again did not include all irregular expenditures in the notes to the financial statements.⁴³³ All irregular expenditure was not included in the 2019/20 annual report. Payments made in contravention of the supply chain management processes were not included. These payments not being

⁴²⁷ Department of Basic Education 2018.

⁴²⁸ Department of Basic Education 2018.

⁴²⁹ Department of Basic Education 2018.

⁴³⁰ Department of Basic Education 2019.

⁴³¹ Department of Basic Education 2019.

⁴³² Department of Basic Education 2019.

⁴³³ Department of Basic Education 2020.

resulted in irregular expenditure of R41.305 million not being disclosed.⁴³⁴ Between 2019 and 2020, irregular expenditure amounted to R2.704 billion, and fruitless and wasteful expenditure amounted to R76.992 million.⁴³⁵ Fruitless and wasteful expenditure from previous years of R65.968 million was still under investigation.⁴³⁶ The report states that R2.704 billion does not reflect the full extent of the irregular expenditure incurred.⁴³⁷

According to the 2020/21 annual report, the Department incurred irregular expenditure of R3.209 billion during this period.⁴³⁸ R2.797 billion of this amount relates to irregular expenditure identified between 2020 and 2021, related to prior years.⁴³⁹ This irregular expenditure is primarily due to implementing agents not following the correct procurement processes and contract management prescripts for school infrastructure projects.⁴⁴⁰ The report states that effective and appropriate steps were not taken to prevent irregular expenditure.⁴⁴¹ Adequate steps were also not taken to prevent fruitless and wasteful expenditure of R17.369 million.⁴⁴²

In 2023, it was again exposed that corruption in the Eastern Cape (one of the poorest provinces in South Africa) Department of Education resulted in R872 million not being paid to no-fees public schools in this province, affecting more than 1.8 million learners'

⁴³⁴ Department of Basic Education 2020.

⁴³⁵ Department of Basic Education 2020.

⁴³⁶ Department of Basic Education 2020.

⁴³⁷ Department of Basic Education 2020.

⁴³⁸ Department of Basic Education 2021.

⁴³⁹ "In the current financial year, the Department disclosed irregular expenditure of R3.209 billion. However, only R413 million of this amount was incurred in the current financial year. The balance of R2.796 billion relates to expenditure which was already incurred in previous financial years from 2012 to 2022, but was discovered during the year under review." See, Department of Basic Education 2021.

⁴⁴⁰ Department of Basic Education 2021.

⁴⁴¹ Department of Basic Education 2021.

⁴⁴² "Effective steps were not taken to prevent fruitless and wasteful expenditure amounting to R17,369 million as disclosed in note 27.1 to the annual financial statements, as required by section 38(1)(c)(ii) of the PFMA and treasury regulation 9.1.1. The majority of the fruitless and wasteful expenditure was caused by infrastructure projects that was stopped as the same projects was implemented by different implementing agents." See, Department of Basic Education 2021.

education experience.⁴⁴³ According to Mkancu,⁴⁴⁴ the reality of the public education system in South Africa is that corruption and incompetence go on for a long without punishment. Unfortunately, children from among the most disadvantaged families in South Africa are enrolled in public schools and bear the brunt of this corruption and incompetence.

Corruption in the public education sector in South Africa hampers access to education, undermines the quality of education, reduces trust in public institutions, and perpetuates socio-economic disparities. Nepotism and bribery in this sector have resulted in the appointment of unqualified personnel, compromising the quality of teaching and administrative functions across all public schools in South Africa. Financial mismanagement and embezzlement of funds intended for education projects lead to inadequate infrastructure, poor learning environments, and a lack of resources, which resources are necessary to enable the right to basic education. Public schools with inadequate infrastructure that lack various essential resources to enable the right to basic education are discussed in Section 4.6. Next, the investigation into state capture in South Africa and its widespread impact on all governmental functions are discussed.

3.7 STATE CAPTURE

In South Africa, the allegation of state capture was investigated by the *Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State* (the Zondo Commission) from 21 August 2018

⁴⁴³ Mkancu "Inefficiency costs lives: The case of the Eastern Cape Department of Education", <https://www.corruptionwatch.org.za/inefficiency-costs-lives-the-case-of-the-ec-department-of-education/> (accessed on 22 August 2023).

⁴⁴⁴ Mkancu "Inefficiency costs lives: The case of the Eastern Cape Department of Education", <https://www.corruptionwatch.org.za/inefficiency-costs-lives-the-case-of-the-ec-department-of-education/> (accessed on 22 August 2023).

to 2022.⁴⁴⁵ State capture is a form of corruption involving the government.⁴⁴⁶ Chetwynd *et al.*⁴⁴⁷ suggest that "state capture describes the situation where businesses have undue influence over the decisions of public officials." Olaniyan⁴⁴⁸ claims that large-scale public sector corruption encourages state capture, whereby a company unduly influences laws, government institutions or government policy.

State capture is a complex process of undermining a country's governing systems and institutions. It involves influential government officials exploiting their positions to redirect state resources for their gain on a large scale. State capture is a form of corruption representing a collusion between private individuals, private-sector firms and the top echelons of government.⁴⁴⁹ The investigation into state capture in South Africa exposed the kleptocracy of the South African government. Corruption Watch⁴⁵⁰ claims that "in South Africa, there was an attempt to ensure maladministration and corruption took root and is normalised such that it could become an unstoppable and perpetual force." All the evidence from the Zondo Commission findings shows that this corrosive endeavour has been ongoing for about ten years, though some argue it has been happening for more than ten years. The origins of state capture investigated by this Commission can be traced back to when Jacob Zuma was the President.

⁴⁴⁵ The Presidency of the Republic of South Africa "The Presidency receives Part Four of the State Capture Commission Report", <https://www.thepresidency.gov.za/press-statements/presidency-receives-part-four-state-capture-commission-report> (accessed on 2 June 2022); Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Part I", https://www.statecapture.org.za/site/files/announcements/673/OCR_version_-_State_Capture_Commission_Report_Part_1_Vol_I.pdf (accessed on 16 May 2022); Commission of Inquiry into State Capture "Final Reports", <https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023). See also, Pillay *et al.* 2023:152-173.

⁴⁴⁶ Chetwynd *et al.* 2003:9. See also, "In bribery, societal interests use extra-legal payments or bribes to influence the content of state policy or its implementation. At a broader, more systemic level, this form of corrupt influence can take on the characteristics of 'state capture', whereby an entire agency or institution operates on behalf of societal interests." Morris 2011:11.

⁴⁴⁷ Chetwynd *et al.* 2003:9.

⁴⁴⁸ Olaniyan 2014:21.

⁴⁴⁹ For a definition of state capture see generally, Hellman *et al.* 2000:1-41; Chetwynd *et al.* 2003:9; Olaniyan 2014:21; Fazekas & Tóth 2016:320-334; Corruption Watch "State capture: What to do with the offender?", <https://www.corruptionwatch.org.za/state-capture-what-to-do-with-the-offenders/> (accessed on 22 August 2023); Pillay *et al.* 2023:152-173.

⁴⁵⁰ Corruption Watch "Annual Report 2022", https://www.corruptionwatch.org.za/wp-content/uploads/2023/04/Corruption-Watch_Report_Final_4April.pdf (accessed on 19 June 2023).

The Zondo Commission's valuable work included almost four years of work, interviewing over 300 witnesses, and publishing six reports comprising 17 volumes, amongst many other efforts that went into this investigation. These six reports detail various occurrences of corruption within government in South Africa. These reports exposed the rot of corruption within government across the public sector in South Africa. Chief Justice Raymond Zondo, who headed the Commission, writes in his introduction to the report that if the Commission were to investigate all instances of state capture brought to its attention across provincial municipalities and departments, this investigation would have taken ten years.⁴⁵¹

The establishment and findings of the Zondo Commission serve as evidence of corruption within government in South Africa. First, this is because the establishment of the Commission was to investigate, among other things, the degree of corruption present in South Africa. Secondly, the findings of the Commission evidence that state capture did indeed take place in South Africa, involving various forms of governmental, private and business corruption.⁴⁵² Between 2014 and 2017, it had already been estimated that state capture cost South Africa roughly R250 billion.⁴⁵³ Testifying at the Zondo Commission, National Treasury's acting chief procurement officer, Willie Mathebula, noted that in 2017, more than 50 per cent of the annual R800 billion public procurement budget was lost due to intentional abuse of the system.⁴⁵⁴

⁴⁵¹ Corruption Watch "Annual Report 2022", https://www.corruptionwatch.org.za/wp-content/uploads/2023/04/Corruption-Watch_Report_Final_4April.pdf (accessed on 19 June 2023); Democratic Alliance "Track the consequences of Zondo's State Capture reports", <https://www.da.org.za/statecaptureconsequences> (accessed on 19 June 2023); Commission of Inquiry into State Capture "Final Reports", <https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 19 June 2023).

⁴⁵² In terms of the Commissions "Terms of References" in section 1.5. the Commission is used to investigate, amongst others, "[t]he nature and extent of corruption, if any, in the awarding of contracts, tenders to companies, business entities or organisations by public entities listed under Schedule 2 of the Public Finance Management Act No. 1 of 1999 as amended." See, Protocol 3 Government Gazette 2018(396)41772.

⁴⁵³ Dhai 2023:76; The Citizen Online "R250bn lost to state capture in the last three years, says Gordhan", <https://www.citizen.co.za/news/south-africa/r250bn-lost-to-state-capture-in-the-last-three-years-says-gordhan/> (accessed on 19 June 2023).

⁴⁵⁴ Institute for Security Studies Africa "South Africa's mixed message on procurement corruption", <https://issafrica.org/iss-today/south-africas-mixed-messages-on-procurement-corruption> (accessed on 20 October 2023).

Amongst others, former President of South Africa Jacob Zuma, who established this Commission, was interviewed as a witness regarding his compliance and involvement with corruption within government that occurred while he was President.⁴⁵⁵ This Judicial Commission cost South Africa more than any prior judicial commission in South Africa's history. This Commission is estimated to cost the South African government close to R1 billion.⁴⁵⁶ In 2022, the reports of the findings of the Zondo Commission were published.⁴⁵⁷ These reports contain the recommendations the Commission advises the President of South Africa to take.⁴⁵⁸ All six reports implicated dozens of high-profile businesspeople, companies, state-owned enterprises and politicians.⁴⁵⁹

The first report already implicated former President Zuma, who would continue to feature throughout the following reports.⁴⁶⁰ The first report focused at length on South African Airways (SAA) and the collapse of this state-owned enterprise.⁴⁶¹

⁴⁵⁵ The Presidency of the Republic of South Africa "The Presidency receives Part Four of the State Capture Commission Report", <https://www.thepresidency.gov.za/press-statements/presidency-receives-part-four-state-capture-commission-report> (accessed on 2 June 2022).

⁴⁵⁶ The Presidency of the Republic of South Africa "The Presidency receives Part Four of the State Capture Commission Report", <https://www.thepresidency.gov.za/press-statements/presidency-receives-part-four-state-capture-commission-report> (accessed on 2 June 2022). See generally, Pillay *et al.* 2023:152-173; Buthelezi & Vale 2023:2-211.

⁴⁵⁷ Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Report, Part I", https://www.statecapture.org.za/site/files/announcements/673/OCR_version_-_State_Capture_Commission_Report_Part_1_Vol_I.pdf (accessed on 16 May 2022).

⁴⁵⁸ Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Report, Part I", https://www.statecapture.org.za/site/files/announcements/673/OCR_version_-_State_Capture_Commission_Report_Part_1_Vol_I.pdf (accessed on 16 May 2022).

⁴⁵⁹ Corruption Watch "Zondo Report: A summary of the first four parts, and who it implicated", <https://www.corruptionwatch.org.za/zondo-report-a-summary-of-the-first-four-parts-and-who-it-implicated/> (accessed on 20 October 2023); Commission of Inquiry into State Capture "Final Reports", <https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

⁴⁶⁰ Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Report, Part I", https://www.statecapture.org.za/site/files/announcements/673/OCR_version_-_State_Capture_Commission_Report_Part_1_Vol_I.pdf (accessed on 16 May 2022).; Corruption Watch "Zondo Report: A summary of the first four parts, and who it implicated", <https://www.corruptionwatch.org.za/zondo-report-a-summary-of-the-first-four-parts-and-who-it-implicated/> (accessed on 20 October 2023).

⁴⁶¹ Corruption Watch "Zondo Report: A summary of the first four parts, and who it implicated", <https://www.corruptionwatch.org.za/zondo-report-a-summary-of-the-first-four-parts-and-who-it-implicated/> (accessed on 20 October 2023).

The second report dealt with evidence relating to corruption allegations at two state-owned enterprises, Transnet and Denel.⁴⁶² The third report focused on the investigation into Bosasa.⁴⁶³ Bosasa was a state-owned enterprise specialising in providing services to the government.⁴⁶⁴ The fourth report highlights that Zuma and the current ruling political party, the African National Congress (ANC), featured prominently throughout the first four reports.⁴⁶⁵ The fourth report was about the Treasury, Eskom, the former Free State premier Ace Magashule and more. The former premier of the Free State was investigated regarding the failed asbestos project debacle and the housing debacle regarding an amount of R1 billion that was under investigation. Corruption at Eskom was exposed. In total, R14.7 billion of Eskom's contracts are calculated to have been afflicted by state capture and corruption.⁴⁶⁶ The

⁴⁶² Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Part II", <https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

⁴⁶³ Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Part II", <https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

⁴⁶⁴ Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Part II", <https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023). See also, "Bosasa was controversial for its involvement in corruption allegations exposed during the Zondo commission investigation." Corruption Watch "Zondo Report: A summary of the first four parts, and who it implicated", <https://www.corruptionwatch.org.za/zondo-report-a-summary-of-the-first-four-parts-and-who-it-implicated/> (accessed on 20 October 2023).

⁴⁶⁵ Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Report, Part IV", https://www.statecapture.org.za/site/files/announcements/680/OCR_version_-_State_Capture_Commission_Report_Part_IV_Vol_I_-_NT,EOH,COJ,Alexkor.pdf (accessed on 5 October 2023); Corruption Watch "Zondo Report: A summary of the first four parts, and who it implicated", <https://www.corruptionwatch.org.za/zondo-report-a-summary-of-the-first-four-parts-and-who-it-implicated/> (accessed on 20 October 2023); Talane "Zondo names main players in Eskom capture", <https://www.bizcommunity.com/Article/196/880/227453.html> (accessed on 22 August 2023).

⁴⁶⁶ Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Report, Part IV", https://www.statecapture.org.za/site/files/announcements/680/OCR_version_-_State_Capture_Commission_Report_Part_IV_Vol_I_-_NT,EOH,COJ,Alexkor.pdf (accessed on 5 October 2023)

Commission's findings throughout these first four reports are evidence of corruption in the South African government and its state-owned enterprises.⁴⁶⁷

The fifth report focused on the State Security Agency, Criminal Intelligence, the South African Broadcasting Commission, the Waterkloof Landing and the Passenger Rail Agency of South Africa.⁴⁶⁸ The fifth report details various corrupt occurrences and contracts in the focus mentioned above areas. The sixth and final report, titled "State Capture Established",⁴⁶⁹ contained the findings of investigations into the Vrede Integrated Dairy Project and the closure of bank accounts of Gupta companies. This report contained discussions on the concepts of state capture in the Commission's terms of reference, the evidence of South African President Cyril Ramaphosa, the ruling party's role, and parliamentary oversight.⁴⁷⁰

Going into more detail on each report is not suitable for this study. What is essential to note is that the Commission found that state capture did indeed take place in South

⁴⁶⁷ Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Report, Part IV", https://www.statecapture.org.za/site/files/announcements/680/OCR_version_-_State_Capture_Commission_Report_Part_IV_Vol_I_-_NT,EOH,COJ,Alexkor.pdf (accessed on 5 October 2023).

⁴⁶⁸ Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Report, Part IV", https://www.statecapture.org.za/site/files/announcements/680/OCR_version_-_State_Capture_Commission_Report_Part_IV_Vol_I_-_NT,EOH,COJ,Alexkor.pdf (accessed on 5 October 2023).

⁴⁶⁹ Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Part VI Volume 1", <https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).; Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Part VI Volume 2", <https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).; Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Part VI Volume 3", https://www.gov.za/sites/default/files/gcis_document/202206/electronic-state-capture-commission-report-part-vi-vol-iii.pdf (accessed on 7 July 2023); Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Part VI Volume 4", https://www.statecapture.org.za/site/files/announcements/683/OCR_version_-_State_Capture_Commission_Report_Part_IV_Vol_IV_-_Eskom.pdf (accessed on 20 October 2023).

⁴⁷⁰ Judicial Commission of Enquiry "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Part V Volume 2", <https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

Africa. Corrupt government contracts, employment irregularities, corrupt agreements, public procurement corruption and government tender corruption, amongst others, were evidenced throughout all six reports.⁴⁷¹ The Commission found that interference from executive members in the public procurement function of government was one of the ways state capture thrived in South Africa.⁴⁷² The Commission estimated the total amount of money spent by the government, which was contaminated by state capture, to be roughly R57 billion.⁴⁷³ Notably, over 97 per cent of this estimated R57 billion resulted from corrupt activities at Eskom and Transnet. Shockingly, it is estimated that the Gupta enterprise unlawfully received at least R15 billion.⁴⁷⁴ The Commission found that the primary way money has been extracted illegally from government institutions is through public procurement. The Commission's findings uncovered noticeable trends concerning particular state-owned enterprises and organisations that aimed to profit from government contracts unlawfully. The entities strategically positioned their members within the government, and governance structures and rules were changed to centralise power in the wrong hands, sidestepping the checks and balances to ensure a fair process. The Commission also found that government workers who raised concerns about unethical behaviour were

⁴⁷¹ Corruption Watch "Zondo Recommendations: Public procurement is the space to watch", <https://www.corruptionwatch.org.za/public-procurement-is-the-space-to-watch/> (accessed on 7 July 2023). See also, Pillay *et al.* 2023:152-173.

⁴⁷² Corruption Watch "Zondo Recommendations: Public procurement is the space to watch", <https://www.corruptionwatch.org.za/public-procurement-is-the-space-to-watch/> (accessed on 7 July 2023).

⁴⁷³ Public Affairs Research Institute "The Zondo Commission: A bite-sized summary", <https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf> (accessed on 19 June 2023); Commission of Inquiry into State Capture "Final Reports", <https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

⁴⁷⁴ Commission of Inquiry into State Capture "Final Reports", <https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

subjected to marginalisation, disempowerment, and even retaliation.⁴⁷⁵ The Zondo Commission's findings can be summarised as follows:⁴⁷⁶

State capture in the South African context evolved as a project by which a relatively small group of actors, together with their network of collaborators inside and outside of the state, conspired systematically (criminally and in defiance of the *Constitution*) to redirect resources from the state for their own gain. This was facilitated by a deliberate effort to exploit or weaken key state institutions and public entities, but also including law enforcement institutions and the intelligence services. To a large extent this occurred through strategic appointments and dismissals at public entities and a reorganisation of procurement processes. The process involved the undermining of oversight mechanisms, and the manipulation of the public narrative in favour of those who sought to capture the state.

It has been suggested that the damage caused by state capture impacted the South African economy so negatively that it effectively undid the efforts of former Presidents of South Africa, Nelson Mandela and Thabo Mbeki.⁴⁷⁷ In light of the Zondo Commission reports, it is accepted that, in general, corruption within government is currently rife in South Africa, and this corruption within government is long-standing.⁴⁷⁸ This investigation into state capture shows the allegation of and proof of corruption in the South African government. These corruption trends in government affairs, including state-owned enterprises, show a moral degeneration of the South African government.

As noted by Budhram and Geldenhuys⁴⁷⁹ at the beginning of this chapter, it is emphasised that South Africa has been experiencing continued high levels of

⁴⁷⁵ Public Affairs Research Institute "The Zondo Commission: A bite-sized summary", <https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf> (accessed on 19 June 2023); Commission of Inquiry into State Capture "Final Reports", <https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023); Corruption Watch "Annual Report 2022", https://www.corruptionwatch.org.za/wp-content/uploads/2023/04/Corruption-Watch_Report_Final_4April.pdf (accessed on 19 June 2023); EWN "Reading List: Everything you need to know about the final state capture report", <https://ewn.co.za/2022/06/23/everything-you-need-to-know-about-the-final-state-capture-report> (accessed on 19 June 2023).

⁴⁷⁶ Public Affairs Research Institute "The Zondo Commission: A bite-sized summary", <https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf> (accessed on 19 June 2023).

⁴⁷⁷ Dhai 2023:76.

⁴⁷⁸ Basopu 2010:2.

⁴⁷⁹ Budhram & Geldenhuys 2018:26-27.

corruption within government over the past years. Corruption in the public procurement process is one of the South African government's biggest challenges.⁴⁸⁰ When the public procurement process is compromised through corruption, the quality of the outputs is suspect, and the outcomes create poor public service delivery.⁴⁸¹ Corruption Watch⁴⁸² suggests the stains of state capture will be very hard to remove, noting the evident damage to South Africa. They argue that "[t]he marks of state capture are engraved in the potholes that have disfigured roads across South Africa, the hospitals that are dysfunctional, schools with inadequate infrastructure."⁴⁸³

The adverse effects of corruption within government on respecting, protecting, promoting, and fulfilling human rights have been mentioned in Section 2.2. A concluding thought for this chapter is that corruption in the South African government, including within the government's state-owned enterprises, institutions or departments, arguably adversely affects the government's ability to carry out its socio-economic rights obligations.⁴⁸⁴ This view is correctly argued by Rose-Ackerman,⁴⁸⁵ who maintains that when corruption in national departments diverts government funds into unspecified channels, funding for projects aimed at achieving social good is either depleted or lost entirely. The findings of the Zondo Commission show that corruption within government occurred in South Africa's state-owned enterprises like South African Airways, Transnet, Denel and Bosasa. Although these state-owned enterprises do not directly relate to the fulfilment of the socio-economic rights recognised in Sections 27 and 29 of the *Constitution*, it could be accepted that government funding could have been more readily available to create human rights-

⁴⁸⁰ Mudau & Madzivhandila 2022:17.

⁴⁸¹ Mudau & Madzivhandila 2022:17.

⁴⁸² Corruption Watch "2022 Executive Summary", <https://www.corruptionwatch.org.za/wp-content/uploads/2022/09/corruption-watch-ACT-2022-digital-combined-agent-orange-design-20220907.pdf> (accessed on 19 June 2023); Corruption Watch "Annual Report 2022", https://www.corruptionwatch.org.za/wp-content/uploads/2023/04/Corruption-Watch_Report_Final_4April.pdf (accessed on 19 June 2023); EWN "Reading List: Everything you need to know about the final state capture report", <https://ewn.co.za/2022/06/23/everything-you-need-to-know-about-the-final-state-capture-report> (accessed on 19 June 2023). See generally, Pillay *et al.* 2023:152-173.

⁴⁸³ EWN "Reading List: Everything you need to know about the final state capture report", <https://ewn.co.za/2022/06/23/everything-you-need-to-know-about-the-final-state-capture-report> (accessed on 19 June 2023). See generally, Pillay *et al.* 2023:152-173.

⁴⁸⁴ Baillat 2013:3. See also, Budhram & Geldenhuys 2018:23-46.

⁴⁸⁵ Rose-Ackerman 2016:51.

enabling services if state-owned enterprises were not corruptly misappropriating government funding. Due to the financing that corruption within government diverts away from government budgets and national government departments, some of which are entrusted with advancing socio-economic rights, this study suggests that corruption within government in South Africa is an obstacle - amongst other obstacles - to realising human rights, specifically the socio-economic rights recognised in Sections 27 and 29 of the *Constitution*.⁴⁸⁶

3.8 CONCLUSION

The literature discussed in this chapter bears testimony that, in South Africa, corruption within government is not a contemporary phenomenon. This chapter attests to the past and current corruption within government in South Africa. In this chapter, the secretive nature of corruption was explained. The available data that evidences the existence of corruption within government in South Africa, including scores from the CPI, reports from Corruption Watch and the Zondo Commission, amongst others, have been explained, and it is therefore accepted that there is corruption within government in national departments and state-owned enterprises in South Africa. This corruption within government in South Africa is causing a significant drain on public finances. It is asserted that this corruption within government in national government departments and state-owned enterprises diverts government funds into unspecified channels. Therefore, funding for projects that could create human rights-enabling services is either depleted or lost entirely. Chapter 4 will address this assertion. Chapter 4 examines the fulfilment of socio-economic rights in South Africa to build on the understanding of whether socio-economic rights are fulfilled for all people of South Africa, despite the proven existence of corruption within government or whether this corruption within government is hampering the government's ability to fulfil the socio-economic rights of all its people.

⁴⁸⁶ Baillat 2013:3. See also, Budhram & Geldenhuys 2018:23-46.

CHAPTER 4: ARE SOCIO-ECONOMIC RIGHTS RESPECTED, PROTECTED, PROMOTED AND FULFILLED IN SOUTH AFRICA?

4.1 INTRODUCTION

It has been established that there is no universally agreed-upon understanding of what corruption is, what human rights encapsulate, and what social justice means. In Chapter 2, the consequences of corruption within government were seen to be an obstacle to the fulfilment of human rights.⁴⁸⁷ Chapter 2 showed a link between corruption within government and its effects on the fulfilment of human rights. Thus, at the start of this chapter, this point is emphasised in the context of the overall research aim of this study. Corruption and poor governance are both a cause of poverty and a barrier to overcoming it. Corruption in the public sector affects human rights fulfilment, and the poorest members of society suffer from this form of corruption the most. Transparency International attests to this, claiming that where transparency and accountability mechanisms are lacking, the needs of the poor are marginalised, and funds intended for human rights-enabling services such as education, healthcare, and water are at risk of being lost, misused, or misallocated.⁴⁸⁸

However, note importantly that not all shortcoming of the government of South Africa are because of corruption. There are also shortcomings that exist within the socio-economic rights fulfilment process because of limited resources or bad administration. However, corruption within government undoubtedly exacerbates these problems.

⁴⁸⁷ "Corruption is an enormous obstacle to the realization of all human rights — civil, political, economic, social and cultural, as well as the right to development. Corruption violates the core human rights principles of transparency, accountability, non-discrimination and meaningful participation in every aspect of life of the community. Conversely, these principles, when upheld and implemented, are the most effective means to fight corruption." See, Baillat 2013:3 quoting High Commissioner for Human Rights, Navi Pillay.

⁴⁸⁸ Døssing *et al.* "Mapping Transparency, Accountability and Integrity in Primary Education in South Africa", https://www.un.org/en/ecosoc/newfunct/pdf/luxembourg_tisda_south_africa_report_web.pdf (accessed on 20 June 2023). Acknowledging the adverse effects of corruption within government on human rights, see generally, Basopu 2010:34-86; Camerer 2001:7-60; Chetwynd *et al.*, 2003:3-15; Malherbe 2001:109-126; Mantzaris 2017:15-30; Mauro 1998:263-279; Mbonu 2003:3-11; Olaniyan 2014:5; Rose-Ackerman 2016:1-215; Tanzi 1998:559-594; UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422:Foreword.

Chapter 3 evidenced corruption in the South African public sector in national departments and state-owned enterprises.⁴⁸⁹ The evidence from the Zondo Commission established that state capture took place in South Africa. Furthermore, it was established that there is limited available evidence on what type of corruption is happening and to what extent. The existence of corruption is difficult to measure due to the secrecy connected to this crime. Therefore, although there are proven instances of corruption in national departments and state-owned enterprises in South Africa, it must be accepted that there is still uncertainty regarding the occurrences and prominence of corruption. This limitation on the exact current occurrences of corruption must be kept in mind when considering whether the respect, protection, promotion and fulfilment of socio-economic rights are adversely impacted by corruption in South Africa.

This chapter assesses the respect, protection, promotion, and fulfilment of the socio-economic rights in Sections 27 and 29 of the *Constitution*. The rights contained in Sections 27 and 29 of the *Constitution* are summarised as follows:

- (a) Section 27: The right to access healthcare services (including reproductive healthcare), sufficient food and water, and social security. This study is limited to assessing the right to access healthcare as contained in Section 27(1)(a). This assessment includes the evaluation of the availability of pre-exposure HIV/AIDS medications for mother-to-child transmission, including nevirapine, but excludes the evaluation of reproductive healthcare.

Note that the subset right of reproductive healthcare as also recognised in Section 27 of the *Constitution* does not form part of this study's assessment of this right due to the space constraints of this study.

- (b) Section 29: Everyone has the right — (a) to a basic education, including adult basic education and (b) to further education, which the state, through

⁴⁸⁹ The departments discussed in Sections 3.5 and 3.6 of this study are the specific departments which should ensure the creation of human rights-enabling services for all people of South Africa concerning the socio-economic human rights contained in Secs. 27 and 29 of the *Constitution*.

reasonable measures, must make progressively available and accessible. This study is limited to assessing the right to a basic education as contained in Section 29(a).

Note that this assessment excludes the evaluation of adult basic education due to the space limitations of this study.

The violations-based approach assesses human rights fulfilment based on instances where the right was violated.⁴⁹⁰ This approach focuses on identifying instances where a right has been violated via the right being either not respected, protected, promoted or fulfilled or a combination of these. On the one hand, this approach can help identify instances where rights are being violated. On the other hand, this approach is not always accurate for several reasons. Some examples of these reasons include: First, this approach depends on case law that shows instances of a right being violated. However, there are instances where a right is violated that is not contained within case law or public publication. Secondly, this approach does not always consider the context in which human rights are violated. This approach does not consider the broader structural and societal factors contributing to human rights violations. Lastly, this approach does not capture the full extent of the implementation of a right. Respecting, protecting, promoting, and fulfilling a right requires more than simply avoiding violations of a right.

Relying exclusively on the violations-based approach can lead to a skewed understanding of human rights fulfilment. There is a need to assess the South African government's overall compliance with its human rights obligations. In addition to instances of specific violations, significant to the assessment of socio-economic rights fulfilment is the obligation of the government to *take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of a right* (my emphasis). Due to these reasons, the violations-based approach will be used

⁴⁹⁰ There are various approaches to measuring human rights and using human rights indicators. See generally, Landman & Carvalho 2009:1-6; Landman 2018:48-59; OHCHR "Methodical Approaches to Human Rights Indicators", https://www.ohchr.org/sites/default/files/documents/issues/HRIndicators/AGuideMeasurementImplementationChapterIII_en.pdf (accessed on 17 July 2023).

in conjunction with other information in this chapter. Other information discussed includes weaknesses in the national departments responsible for realising the rights in Sections 27 and 29 of the *Constitution*. This study suggests that these weaknesses could make these rights not respected, protected, promoted, and fulfilled for everyone. South African court cases in which applicants argued that their rights in Sections 27 and 29 were not respected, protected, promoted, and fulfilled will also be discussed.

First, this chapter starts with a summary of an international perspective on human rights fulfilment in South Africa, setting the foundation for the following discussions. Secondly, international, regional, and national human rights treaties and legislative instruments will be discussed to understand where socio-economic rights and corresponding duties emanate. Thirdly, the obligations created by human rights in South Africa, namely that human rights must be respected, protected, promoted, and fulfilled, will be summarised. The interpretation of socio-economic rights in South Africa is briefly noted. Lastly, the respect, protection, promotion, and fulfilment of the rights in Sections 27 and 29 of the *Constitution* are examined.

4.2 INTERNATIONAL PERSPECTIVE ON HUMAN RIGHTS FULFILMENT IN SOUTH AFRICA

The point of departure is an international perspective on human rights in South Africa. According to Human Rights Watch, public confidence in the government's willingness to tackle corruption, human rights violations, and respect for the rule of law has eroded in South Africa. South Africa's record on respecting and fulfilling human rights remains poor.⁴⁹¹ Reports from Human Rights Watch and Amnesty International provide insights into the challenges facing human rights fulfilment in both the public healthcare sector and the public school sector in South Africa and the impact of these challenges on the

⁴⁹¹ Human Rights Watch "World Report: South Africa 2018", <https://www.hrw.org/world-report/2018/country-chapters/south-africa> (accessed on 2 May 2023); Human Rights Watch "World Report: South Africa 2019", <https://www.hrw.org/world-report/2019/country-chapters/south-africa> (accessed on 2 May 2023).

realisation of these rights for everyone.⁴⁹² Both organisations have claimed in various publications that the right to access healthcare and basic education is not fulfilled for everyone in South Africa.⁴⁹³

Amnesty International, discussing the status of human rights fulfilment in South Africa, explains how things have not been improving and have sometimes gotten worse.⁴⁹⁴ President of South Africa Cyril Ramaphosa took office in 2018. President Ramaphosa promised in his first State of the Nation address to usher in a new dawn and deal with the lack of public service delivery, poverty, and unemployment, among other things.⁴⁹⁵ Despite these promises, there has only been a slight tangible improvement in people realising their human rights, and in some cases, the situation has worsened.⁴⁹⁶ Emphasis is made on the promise to deal with the lack of public service delivery.

⁴⁹² See generally, Amnesty International "Amnesty International Report 2017/18 - South Africa", <https://www.refworld.org/docid/5a993868a.html> (accessed 24 August 2023); Human Rights Watch "World Report 2017: South Africa", <https://www.hrw.org/world-report/2017/country-chapters/south-africa> (accessed on 11 May 2023); Human Rights Watch "World Report: South Africa 2019", <https://www.hrw.org/world-report/2019/country-chapters/south-africa> (accessed on 2 May 2023).

⁴⁹³ See generally, Khumalo & Hodgson 2017:104-127; Human Rights Watch "World Report: South Africa 2019", <https://www.hrw.org/world-report/2019/country-chapters/south-africa> (accessed on 2 May 2023); Odhiambo "Stop making excuses: Accountability for maternal health care in South Africa", <https://www.hrw.org/report/2011/08/08/stop-making-excuses/accountability-maternal-health-care-south-africa> (accessed on 24 August 2023); Martínez "Complicit in exclusion: South Africa's failure to guarantee inclusive education for children with disabilities", <https://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children> (accessed on 22 August 2022); Amnesty International "South Africa: Struggle for maternal health: Barriers to antenatal care in South Africa", <https://www.amnesty.org/en/documents/afr53/006/2014/en/> (accessed 24 August 2023); Amnesty International "South Africa: Submission on the amendments to the regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure", <https://amnesty.org.za/research/submission-to-department-of-basic-education-5-july-2022/> (accessed on 2 May 2023).

⁴⁹⁴ Amnesty International "SONA 2023: President Cyril Ramaphosa has failed the nation on the delivery of basic human rights", <https://amnesty.org.za/sona-2023-president-cyril-ramaphosa-has-failed-the-nation-on-the-delivery-of-basic-human-rights/> (accessed on 21 February 2023).

⁴⁹⁵ Government Communications "Highlights of the State of the Nation Address", https://www.gov.za/sites/default/files/gcis_documents/SoNA201hHighlights_0.pdf (accessed 24 August 2023).

⁴⁹⁶ See generally, Khumalo & Hodgson 2017:104-127; Maphumulo & Bhengu 2019:1-9; Naher et al. 2020:1-16; Van De Ruit & Wallis 2020:52-57; Dhai 2023:76-76; Amnesty International "SONA 2023: President Cyril Ramaphosa has failed the nation on the delivery of basic human rights", <https://amnesty.org.za/sona-2023-president-cyril-ramaphosa-has-failed-the-nation-on-the-delivery-of-basic-human-rights/> (accessed on 21 February 2023).

In 2018 and 2019, Human Rights Watch⁴⁹⁷ reported significant restrictions to the enjoyment of human rights in South Africa. The 2018 report⁴⁹⁸ states, "[c]orruption, poverty, high unemployment, and violent crime significantly restricted South Africans' enjoyment of their rights." The 2019 report⁴⁹⁹ pointed out, "[c]uts to health and education services also compromised quality and access to these rights." Note here that this study agrees that corruption has restricted South Africans' enjoyment of their rights. This study furthermore agrees with and discusses below that resource allocation, specifically the lack thereof, has adversely affected the fulfilment of the right to healthcare and basic education in South Africa.⁵⁰⁰

In numerous publications, Human Rights Watch has focused on the right to access healthcare, claiming it is not fulfilled for everyone.⁵⁰¹ In 2017, Human Rights Watch

⁴⁹⁷ Human Rights Watch "World Report: South Africa 2018", <https://www.hrw.org/world-report/2018/country-chapters/south-africa> (accessed on 2 May 2023); Human Rights Watch "World Report: South Africa 2019", <https://www.hrw.org/world-report/2019/country-chapters/south-africa> (accessed on 21 October 2023).

⁴⁹⁸ Human Rights Watch "World Report: South Africa 2018", <https://www.hrw.org/world-report/2018/country-chapters/south-africa> (accessed on 2 May 2023).

⁴⁹⁹ Human Rights Watch "World Report: South Africa 2019", <https://www.hrw.org/world-report/2019/country-chapters/south-africa> (accessed on 21 October 2023).

⁵⁰⁰ In 2018 Human Rights Watch argued that the right to access healthcare is not fulfilled for everyone and documented the experiences of women who had faced barriers to accessing maternal healthcare in the public healthcare sector. The barriers faced by these women included poor infrastructure, inadequate staffing, and discrimination just to name a few. See, Human Rights Watch "World Report 2018: South Africa", <https://www.hrw.org/world-report/2018/country-chapters/south-africa> (accessed on 11 May 2023). Regarding the non-fulfilment of the right to access healthcare and the rights to a basic education see generally, Human Rights Watch "World Report 2017: South Africa", <https://www.hrw.org/world-report/2017/country-chapters/south-africa> (accessed on 11 May 2023); Human Rights Watch "World Report: South Africa 2019", <https://www.hrw.org/world-report/2019/country-chapters/south-africa> (accessed on 2 May 2023); Amnesty International "SONA 2023: President Cyril Ramaphosa has failed the nation on the delivery of basic human rights", <https://amnesty.org.za/sona-2023-president-cyril-ramaphosa-has-failed-the-nation-on-the-delivery-of-basic-human-rights/> (accessed on 21 February 2023); Centre for Human Rights University of Pretoria "Justice Van der Westhuizen says that continued non-compliance with constitutional obligation by SA Human Rights Commission and government endangers our democracy", <https://www.chr.up.ac.za/latest-news/3405-justice-van-der-westhuizen-says-that-continued-non-compliance-with-constitutional-obligation-by-sa-human-rights-commission-and-government-endangers-our-democracy> (accessed on 10 July 2023).

⁵⁰¹ See generally, Human Rights Watch "Stop making excuses: Accountability for maternal health care in south Africa", <https://www.hrw.org/report/2011/08/08/stop-making-excuses/accountability-maternal-health-care-south-africa> (accessed on 24 August 2023); Human Rights Watch "South Africa: Older people lack basic care, support", <https://www.hrw.org/news/2023/06/27/south-africa-older-people-lack-basic-care-support> (accessed on 24 August 2023); Human Rights Watch "World Report 2017: South Africa", <https://www.hrw.org/world-report/2017/country-chapters/south-africa> (accessed on 11 May 2023); Human Rights Watch "World Report 2018: South Africa", <https://www.hrw.org/world-report/2018/country-chapters/south-africa> (accessed on 11 May 2023); Human Rights Watch "World Report: South Africa 2019", <https://www.hrw.org/world-report/2019/country-chapters/south-africa> (accessed on 21 October 2023).

said that healthcare access was compromised.⁵⁰² In 2018, Amnesty International documented significant inequalities in women's access to healthcare rights in South Africa.⁵⁰³ The perceived non-fulfilment of the right to access healthcare is discussed below in Section 4.5.

In the 2017 and 2019 reports and various other bygone publications, Human Rights Watch⁵⁰⁴ emphasised enduring challenges in implementing the right to a basic education in South Africa. In the 2019 report, Human Rights Watch⁵⁰⁵ states, "[t]he government did not fulfil the right to education for many of South Africa's children and young adults with disabilities." This perceived non-fulfilment of this right is discussed in Section 4.6. The discussion moves to understand where human rights, specifically socio-economic rights, originate from and what obligations these rights place on the government of South Africa.

4.3 GOVERNMENT OBLIGATIONS UNDER SOCIO-ECONOMIC RIGHTS

4.3.1 International obligations

International human rights law lays down obligations which member states are bound to respect. When becoming a party to international human rights treaties, member states assume duties and obligations under international law to respect, protect and fulfil specified human rights.⁵⁰⁶ According to the UN, the so-called International Bill of

report/2019/country-chapters/south-africa (accessed on 2 May 2023); Human Rights Watch "Africa: Covid-19 exposes healthcare shortfalls", <https://www.hrw.org/news/2020/06/08/africa-covid-19-exposes-healthcare-shortfalls> (accessed on 24 August 2023).

⁵⁰² Human Rights Watch "World Report: South Africa 2019", <https://www.hrw.org/world-report/2019/country-chapters/south-africa> (accessed on 2 May 2023).

⁵⁰³ Amnesty International "Amnesty International Report 2017/18 - South Africa", <https://www.refworld.org/docid/5a993868a.html> (accessed 24 August 2023).

⁵⁰⁴ Amnesty International "Amnesty International Report 2017/18 - South Africa", <https://www.refworld.org/docid/5a993868a.html> (accessed 24 August 2023).

⁵⁰⁵ Human Rights Watch "World Report 2019", <https://www.hrw.org/world-report/2019> (accessed on 13 March 2022).

⁵⁰⁶ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI:arts. 55(c), 56, 76(c); Nampewo *et al.* 2022:2; Ruggie 2011:224-253; Donnelly & Whelan 2020:5-44; OHCHR "International Human Rights Law", <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (accessed on 27 March 2023).

Human Rights is made up of (a) the UDHR,⁵⁰⁷ (b) the International Covenant on Civil and Political Rights and the two optional Protocols⁵⁰⁸ that follow from it, and (c) the ICESCR.⁵⁰⁹ South Africa is a member state of the International Covenant on Civil and Political Rights and the two optional Protocols.⁵¹⁰ As mentioned in Section 2.3 and as will be discussed below, South Africa is a member state of these three international human rights treaties.⁵¹¹ As also set out in Section 2.3, the role of international law in South Africa is outlined in Sections 39 and 231-233 of the *Constitution*.

The Charter of the UN was created before the UDHR. The Charter of the UN is the constitutive instrument of the UN, signed on 26 June 1945.⁵¹² It sets out the rights and obligations of member states and establishes the principal organs and procedures of the UN.⁵¹³ The UDHR⁵¹⁴ and the Charter of the UN⁵¹⁵ maintain that member states undertake to respect, protect and fulfil human rights.⁵¹⁶ This claim can be seen in Articles 1(3), 55(c), 56 and 76(c) (including its reference to the purpose of the UN as

⁵⁰⁷ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

⁵⁰⁸ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

⁵⁰⁹ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3. Discussing the international covenant on economic, social and cultural rights and its implications for South Africa see generally, Liebenberg 1995:359-378. See also, OHCHR "International Human Rights Law", <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (accessed on 27 March 2023); UN General Assembly, International Bill of Human Rights, 10 December 1948, A/RES/217(III)A-E; Roberts 2015:Preface.

⁵¹⁰ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

⁵¹¹ United Nations "Member States", <https://www.un.org/en/about-us/member-states#gotoS> (accessed on 23 August 2023); United Nations Human Rights Treaty Bodies "UN Treaty Body database", https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=162&Lang=EN (accessed on 23 August 2023); UN Committee on Economic, Social and Cultural Rights (CESCR), UN Committee on Economic, Social and Cultural Rights: Concluding Observations, Canada, 22 May 2006, E/C.12/CAN/CO/4; E/C.12/CAN/CO/5. See also, Basson 2020:850-852. Discussing the international covenant on economic, social and cultural rights and its implications for South Africa see generally, Liebenberg 1995:359-378.

⁵¹² United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

⁵¹³ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

⁵¹⁴ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

⁵¹⁵ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

⁵¹⁶ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III):Preamble; OHCHR "International Human Rights Law", <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (accessed on 27 March 2023); UN General Assembly, International Bill of Human Rights, 10 December 1948, A/RES/217(III)A-E; United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI; Ruggie 2011:224-253; Nampewo *et al.* 2022:2.

set out in Article (1), amongst others, in the Charter of the UN.⁵¹⁷ In Chapter 9 of the Charter, under the heading International Economic and Social Cooperation, Article 55 states that:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: (a) higher standards of living, full employment, and conditions of economic and social progress and development, (b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation, and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Note specifically (c) of Article 55 above. Article 56 of the Charter stipulates that the member states pledge to take joint and separate action in cooperation with the UN to promote universal respect for and observance of human rights.⁵¹⁸ The UN asserts that through the ratification of these international human rights treaties, governments undertake to ensure that legislative measures and domestic practices are put in place in compliance with the treaty obligations.⁵¹⁹ Internationally, human rights obligations are understood as follows: (a) the obligation to respect a human right means that the government must not interfere with or prohibit the enjoyment of a human right, (b) the obligation to protect a human right requires the government to protect individuals and groups against human rights abuses, and (c) the obligation to fulfil a human right means that the government must take positive action to facilitate the enjoyment of human rights.⁵²⁰

⁵¹⁷ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI:arts. 1(3), 55(c), 76(c).

⁵¹⁸ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI:arts. 1(3) & 55(c) & 56 & 76(c).

⁵¹⁹ OHCHR "International Human Rights Law", <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (accessed on 27 March 2023). The consequence of incorporation of an international agreement into South African domestic law under sec. 231(4) of the *Constitution* is that the agreement becomes law in the Republic. See, *Glenister v President of the Republic of South Africa & Others*:par. 100.

⁵²⁰ OHCHR "International Human Rights Law", <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (accessed on 27 March 2023).

South Africa ratified the ICESCR on 12 January 2015.⁵²¹ The ratification of the ICESCR has resulted in the provisions becoming binding on South Africa. Article 2⁵²² of ICESCR sets out the obligations that state parties must comply with to ensure the realisation of economic, social, and cultural rights. Therefore, Article 2 places specific obligations on the government of South Africa. Article 2 of ICESCR states:⁵²³

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, 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.

Emphasis is given to the two primary obligations contained in Article 2, namely (a) to the maximum of its available resources and (b) to progressively achieve the full realisation of the rights contained in the Covenant.⁵²⁴

4.3.2 Regional obligations

As mentioned in Section 2.3, the African continent has its own human rights legislation, the African Charter on Human and Peoples' Rights.⁵²⁵ This Charter recognises civil, political, economic, social, and cultural rights. Article 16 of the Charter guarantees the right to healthcare, and Article 17(1) guarantees the right to education. In the Charter, Article 22 guarantees the right to social and economic development. The obligation created by Article 22 is that state parties have the duty, individually or collectively, to ensure the exercise of the right to development. As used in this Charter, the word development includes all socio-economic rights. Article 22 states, "[a]ll peoples shall have the right to their economic, social and cultural development with due regard to

⁵²¹ Basson 2020:850-852.

⁵²² UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

⁵²³ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3. See also, Baillat 2013:10.

⁵²⁴ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

⁵²⁵ African Charter on Human and Peoples' Rights 1986. See also, Kuwonu 2019:24-25.

their freedom and identity and in the equal enjoyment of the common heritage of mankind." South Africa acceded to the African Charter on 9 July 1996.⁵²⁶

4.3.3 National obligations

In South Africa, human rights are provided for in Chapter 2 of the *Constitution* in the Bill of Rights. As mentioned in Section 2.3, a distinguishing feature of the South African *Constitution* is its far-reaching commitment to the principle of the interdependency of all human rights.⁵²⁷ Section 7(2) of the *Constitution* places a duty on the government to respect, protect, promote and fulfil human rights.⁵²⁸ In South Africa, these obligations are understood as follows: To respect a human right means that the government must refrain from hampering the enjoyment of a human right.⁵²⁹ The obligation to protect a human right means that the government must create legislation and policies that progressively work towards preventing human rights violations. Under the duty to protect human rights, the government must also investigate allegations of human rights abuses and hold actors who commit human rights abuses accountable.⁵³⁰ The obligation to promote human rights is unique to South Africa. This obligation entails a duty on the government to bring awareness to human rights.⁵³¹ An example of how the South African government shows awareness and recognition of human rights is the national public holiday dedicated to human rights on 21 March.

There are two separate obligations created under the duty to fulfil human rights. First, the government must provide resources to achieve human rights, such as building and

⁵²⁶ African Charter on Human and Peoples' Rights.

⁵²⁷ See generally, The *Constitution*; Liebenberg 2006:1; Lombard & Twikirize 2014:313-325.

⁵²⁸ *Qwelane v South African Human Rights Commission & Another* 2021 (6) SA 579 (CC):par. 51.

⁵²⁹ *Qwelane v South African Human Rights Commission & Another*:par. 51.

⁵³⁰ The government's duty to protect human rights is a proactive obligation that requires the creation of legislation and policies that promote a right and includes the establishment of effective institutions and mechanisms to investigate and remedy human rights abuses. See, Carnelley 2016:229-249. See also, *Khosa & Others v Minister of Defence & Military Defence & Military Veterans & Others* 2020 (5) SA 490 (GP):par. 1. This case serves as an important reminder of the government's obligation to protect human rights.

⁵³¹ Promoting human rights can be achieved in various ways, including bringing awareness to human rights by advocating for the adoption of and compliance with international and regional human rights declarations and treaties, thereby further incorporating human rights into national legislation and domestic practices. See, Ramalekana 2017:199-215.

maintaining public schools to fulfil the right to a basic education. The second obligation is that the government must holistically ensure that the government is proactive in ensuring the progressive realisation of human rights.⁵³² The work of government must be such that it facilitates access to human rights-enabling services, for example, public hospitals being managed in such a way that the right to access healthcare can be progressively realised.⁵³³ Under the obligation to fulfil human rights, the effective management of government resources is essential.⁵³⁴

Section 27(2) of the *Constitution* further obligates the government of South Africa to "take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right." Note the view of progressive realisation observed by Chenwi:⁵³⁵

Progressive realisation introduces an element of flexibility in terms of the obligations of states and also in the enforcement of rights. The concept recognises that the full realisation of socio-economic rights would not generally be achieved in a short period of time. The obligation on states therefore is to move as expeditiously and effectively as possible towards full realisation.

This view held by Chenwi⁵³⁶ aligns with the Committee on Economic, Social and Cultural Rights. Furthermore, in Chapter 10 of the *Constitution*, Section 195(1) & (2)

⁵³² Progressive realisation is described by the United Nations as follows: "The principle of progressive realization applies to the positive State obligations to fulfil and to protect human rights, in particular economic, social and cultural rights. The human right to health, for example, does not guarantee the right of everyone to be healthy. However, it does oblige States, in accordance with their respective economic capabilities, social and cultural traditions as well as international minimum standards, to establish and maintain a public health system that can in principle guarantee access to certain basic health services for all. Progressive realization means that States should, for example, establish targets and benchmarks in order to progressively reduce the infant mortality rate, increase the number of doctors per 1000 inhabitants, raise the percentage of the population that has been vaccinated against certain infectious and epidemic diseases, or improve basic health facilities." See, United Nations 2016. See also, Kälin & Künzli 2009.

⁵³³ The High Court of Durban emphasised the government's obligation to take reasonable measures within its availed resources to progressively realise the right to access healthcare for all. See, *P H obo S H v MEC for Health for the Province of KwaZulu-Natal* 2021 (1) SA 530 (KZD).

⁵³⁴ *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC) highlights the government's multifaceted obligations to respect, protect, promote and fulfil human rights, particularly in the context of healthcare and the right to life. See also, *Qwelane v South African Human Rights Commission & Another*:par. 51: "It requires of the State not only to refrain from infringing on fundamental rights, but also to take positive steps to ensure that these rights are realised. We must be cognizant of the requirement that measures taken in terms of sec. 7(2) must be reasonable and effective."

⁵³⁵ Chenwi 2013:744.

⁵³⁶ Chenwi 2013:744; Committee on Economic, Social and Cultural Rights 2007:1-4.

emphasises that the constitutional principles and values must be underpinned by a high standard of professional ethics promoted and maintained alongside efficient, economical and effective use of resources at all times.⁵³⁷ Concerning human resources and the work of government, as mentioned below, note Section 195(1)(h) of the *Constitution*, "[g]ood human-resource management and career-development practices, to maximise human potential, must be cultivated." Part of the obligation of the government to respect, protect, promote and fulfil a right entail that the government must ensure that adequate work is done relating to the progressive realisation of a right. This obligation of progressive realisation involves the government taking positive steps to ensure the timeous progressive realisation of human rights for everyone.⁵³⁸ Bearing this in mind, this study suggests that this obligation includes various sub-obligations. These sub-obligations suggested by this study include: (a) that the government must holistically ensure that the acts of government, including the budgeting of government resources, are underpinned by the constitutional values and principles, are of a high standard of professional ethics and are proactive in ensuring progressive realisation, (b) public administration also known as the work of government must be development-orientated, (c) to progressively realise human rights the collective work of government must be such that it creates access to human rights-enabling services, and (d) government attempts at enabling progressive realisation must be correctly managed, to name a few.⁵³⁹

⁵³⁷ The *Constitution*:secs. 195(1) & (2).

⁵³⁸ "Progressive realisation therefore includes some immediate (as well as tangible) obligations on states. For instance, in the context of the ICESCR, the obligation to take steps towards progressive realisation must be taken within a reasonably short time, after entry into force of the ICESCR for the state concerned." See, Chenwi 2013:754. See for example the case of *P H obo S H v MEC for Health for the Province of KwaZulu-Natal*. In this case, the High Court of Durban emphasised the government's obligation to take reasonable measures within its available resources to progressively realise the right for everyone. See also, OHCHR 2008:11-15; UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3:art. 2(1); Committee on Economic, Social and Cultural Rights (CESCR) "An evaluation of the obligation to take steps to the "maximum of available resources" under an Optional Protocol to the Covenant. Document No.: E/C, 12(2007)", <https://www2.ohchr.org/english/bodies/cescr/docs/statements/Obligationtotakesteps-2007.pdf> (accessed on 1 October 2023):1-4.

⁵³⁹ Section 27(2) of the *Constitution* says the government must "take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right." The wording here of "its available resources", does not confine itself to saying within its available financial resources thus it is argued that this means all resources and thereby includes human resources. Thus this includes but is not limited to the passing of laws by Parliament and the

4.4 THE INTERPRETATION OF SOCIO-ECONOMIC RIGHTS IN SOUTH AFRICA

The socio-economic rights in Section 27 of the *Constitution* are qualified in South Africa. These rights are qualified in the sense that they are access rights that are limited to the available resources of the government. These rights are qualified by Section 27(2) of the *Constitution*, which states that "[t]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right."

According to Liebenberg, at the time that the article was written,⁵⁴⁰ three major South African Constitutional Court cases directly interpret socio-economic rights in South Africa. These cases are (a) *Government of the Republic of South Africa & Others v Grootboom & Others*,⁵⁴¹ (b) *Soobramoney v Minister of Health, KwaZulu-Natal*,⁵⁴² and (c) *Minister of Health & Others v Treatment Action Campaign & Others*.⁵⁴³

The value of the Constitutional Court's judgement in *Government of the Republic of South Africa & Others v Grootboom & Others* is briefly summarised as follows. Regarding qualified socio-economic rights, the Constitutional Court merely has to determine whether the measures adopted by the government to progressively realise the right over time are reasonable and does not have to consider whether a better policy could facilitate the right more progressively.⁵⁴⁴ There is no universal definition of reasonableness.⁵⁴⁵ However, the Constitutional Court in South Africa framed three

provincial legislatures. Therefore, the work of government at all levels must contribute proactively towards the progressive realisation of a right. Section 195(1)(c) of the *Constitution* states that public administration must be development-oriented. See generally, the mandate of the South African Human Rights Commission, Chenwi 2013:742-769; OHCHR "About good governance", <https://www.ohchr.org/en/good-governance/about-good-governance> (accessed on 30 May 2023). For a discussion of how everyone in South Africa has a human responsibility to enable human rights, including the government of South Africa see, Nugmanova *et al.* 2020:167-184.

⁵⁴⁰ Liebenberg 2006:2-27.

⁵⁴¹ *Government of the Republic of South Africa & Others v Grootboom & Others* 2001 (1) SA 46.

⁵⁴² *Soobramoney v Minister of Health, KwaZulu-Natal*.

⁵⁴³ *Minister of Health & Others v Treatment Action Campaign & Others* (No 2) 2002 (5) SA 721 (CC).

⁵⁴⁴ See, par. 41: "[a] court considering reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable."

⁵⁴⁵ Steinberg 2006:264-284; Griffey 2011:275-327; Corten 1999:613; Brynard 2013:69-83; Quinot & Liebenberg 2011:639-663; International Commission of Jurists "5.3 Reasonableness",

key thresholds a policy must meet to be considered reasonable. This determination is known as the standard of reasonableness or the reasonableness review.⁵⁴⁶ This reasonableness review was first set out in the case of *Government of the Republic of South Africa & Others v Grootboom & Others*. The three key thresholds of a reasonable policy include (a) such a policy must take into consideration the situation of those in crisis, (b) such a policy must not exclude a disproportionate percentage of the population, and (c) such a policy must address the needs of those in desperate condition.⁵⁴⁷

Soobramoney v Minister of Health, KwaZulu-Natal,⁵⁴⁸ dealt with the right to healthcare versus the right to access. This case emphasised the qualifying provision of socio-economic rights: access rights limited to the government's available resources. The Constitutional Court confirmed that the government could not be held liable if it did not have the available resources.⁵⁴⁹ Alongside this judgment showing how socio-economic rights should be interpreted as access rights, this judgment has additional added value. It can be used to understand why the violations-based approach to assessing human rights is inaccurate. From the Constitutional Court's judgement in this case, it is accepted that when a patient is denied healthcare due to the public hospital claiming that it cannot assist the patient because of capacity issues, the government is not necessarily liable for violating this right. This denial of access is covered by the qualifying provision of this right that says the government only has to provide access within its available resources.⁵⁵⁰ This shows that assessing whether a right has been violated does not mean it was respected, protected, promoted and

<https://www.icj.org/chapter-5-standards-and-techniques-of-review-in-domestic-adjudication-of-esc-rights-2/5-3-reasonableness/> (accessed on 18 July 2023).

⁵⁴⁶ The reasonableness review test is derived from the government's duty in sec. 27(2) of the *Constitution*.

⁵⁴⁷ *Government of the Republic of South Africa & Others v Grootboom & Others*: paras. 43, 44, 64. See also, Liebenberg 2001:232-257; Nkrumah 2019:47-64.

⁵⁴⁸ *Soobramoney v Minister of Health, KwaZulu-Natal*.

⁵⁴⁹ *Soobramoney v Minister of Health, KwaZulu-Natal*.

⁵⁵⁰ *Soobramoney v Minister of Health, KwaZulu-Natal*: paras. 1-36.

fulfilled in all instances where it is not violated. In this case, the right was not violated, but technically it was not fulfilled.⁵⁵¹

The case of *Minister of Health & Others v Treatment Action Campaign & Others (No 2)* addressed the positive obligation on the government created by socio-economic rights. In this case, the Constitutional Court reiterated the judgement from *Government of the Republic of South Africa & Others v Grootboom & Others*, reaffirming that a policy cannot be reasonable if it excludes a significant segment of society.⁵⁵² The Constitutional Court rejected the government's claim that it did not have the resources to extend this specific healthcare programme to everyone and reaffirmed the positive obligation on the government created by socio-economic rights. The Constitutional Court emphasised that the obligation to fulfil means that the government must take positive action to facilitate the enjoyment of the right for everyone.

4.5 SECTION 27(1)(A): THE RIGHT TO ACCESS HEALTHCARE SERVICES

The right to access healthcare is contained alongside other socio-economic rights in Sections 27(1)(a)-(c) of the *Constitution*. As mentioned above in Section 4.4, these socio-economic rights are qualified. Alongside the right to healthcare, these rights include adequate food, water, and social security. Internationally, these socio-economic rights are provided for in Article 25(1) of the UDHR⁵⁵³ and Article 11 of the ICESCR.⁵⁵⁴ The UDHR⁵⁵⁵ and the ICESCR⁵⁵⁶ are not the only legal documents that provide for socio-economic rights, various legal instruments and documents recognise socio-economic rights for specific groups and persons located in places across the

⁵⁵¹ The violations-based approach to accessing human rights is inaccurate because respecting, protecting, promoting and fulfilling a right imposes various obligations on the government, not only the obligation not to violate the right.

⁵⁵² *Minister of Health & Others v Treatment Action Campaign & Others (No 2)*:paras. 67-73.

⁵⁵³ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

⁵⁵⁴ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

⁵⁵⁵ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

⁵⁵⁶ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

world.⁵⁵⁷ Regarding healthcare, Article 12(1) of the ICESCR asserts the universal right of all people to the highest attainable standard of physical and mental health. These socio-economic rights are regionally provided for in Articles 16 and 22 of the African Charter on Human and Peoples' Rights.⁵⁵⁸

In South Africa, the Department of Health is the national Department responsible for enabling the realisation and fulfilment of the right to access healthcare.⁵⁵⁹ In South Africa, there are considerable challenges in the implementation process of the right to access healthcare.⁵⁶⁰ Due to the growth of the South African population and the existence of past and current inequalities, millions of people depend on public healthcare.⁵⁶¹ The needs of these dependants exceed the capacity of the public healthcare sector. Marginalised communities and minority groups suffer most

⁵⁵⁷ For example regionally on the African continent the recognition of socio-economic rights can be seen in the African Charter on Human and Peoples' Rights 1986:arts. 16 & 22. Another example that socio-economic rights are recognised for different groups and persons within specific territories across the globe is that regionally in India the socio-economic rights recognised for the people of India are found within the Constitution of India 1950. However, the Constitution of India is not the only legal document recognising socio-economic rights for the people within this region. For a discussion on how socio-economic rights in India are recognised within various legal documents see, Abeyratne 2014:8-39. As well as the fact that socio-economic rights are provided for in varying legal documents across the world, there are various international, regional and national committees that monitor the fulfilment of socio-economic rights across the world. An example of an international committee that is dedicated to the monitoring of socio-economic rights fulfilment internationally is the UN Committee on Economic, Social and Cultural Rights (CESCR), UN Committee on Economic, Social and Cultural Rights: Concluding Observations, Canada, 22 May 2006, E/C.12/CAN/CO/4; E/C.12/CAN/CO/5. An example of a domestic human rights committee that is focused on the fulfilment of human rights, including socio-economic rights in South Africa is the South African Human Rights Commission. Note in summary that globally, regionally and domestically socio-economic rights are recognised for various persons and groups of persons across the world in varying legal documents and various committees exist to monitor human rights fulfilment including socio-economic rights fulfilment.

⁵⁵⁸ African Charter on Human and Peoples' Rights 1986:arts. 16 & 22.

⁵⁵⁹ The mandate of this national department is to protect, promote, and maintain the health, safety and well-being of patients and the public by ensuring quality pharmaceutical services for all South Africans. The mandate of this department is derived from the *National Health Act* 61/2003. See, *National Health Act*: Preamble and Chapter 1.

⁵⁶⁰ See generally, London 2007:1-10; Heywood 2009:14-36; Magennis & Van Zyl 2009:8-28; Meyer 2010:3-44; Meier *et al.* 2010:19-30; Rispel *et al.* 2016:239-249; Dhai & Mohammed 2018(a):8-10; Douwes *et al.* 2018:185-196.

⁵⁶¹ See generally, Balfour 2006:47-48; Wallis & Twomey 2007:1276-1280; Maphumulo & Bhengu 2019:1-9; Van de Ruit & Wallis 2020:52-57; See, Stats SA 2017(a); Ramaphosa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyрил-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023); Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

profoundly in accessing public healthcare.⁵⁶² In South Africa, societal factors like structural inequality, poverty, and geography adversely impact healthcare accessibility.⁵⁶³ These factors, coupled with the systematic challenges and failures in the Department of Health, create a more than an undesirable possibility for everyone to respect, protect, promote, and fulfil this right.⁵⁶⁴

Various academics and international organisations have written about the inequalities in the public healthcare sector and how the right to access healthcare is not fulfilled for everyone in South Africa. Publications from Amnesty International,⁵⁶⁵ Dhai,⁵⁶⁶ Meyer,⁵⁶⁷ Meier *et al.*,⁵⁶⁸ Maphumulo and Bhengu,⁵⁶⁹ Heywood,⁵⁷⁰ Human Rights

⁵⁶² See generally, Health Systems Trust "South Africa Health Review 2018", <https://www.hst.org.za/publications/Pages/SAHR2018.aspx> (accessed on 9 October 2023):1-13, 13-23, 23-33, 51-59, 77, 83, 99-107, 125-135, 226; Health Systems Trust "South Africa Health Review 2019", <https://www.hst.org.za/publications/Pages/SAHR2019.aspx> (accessed on 9 October 2023):3-17, 17-29, 55-69, 69-81, 81-89, 89-105, 145-155, 173-183, 183-193. Ramaphosa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023).

⁵⁶³ Addressing social determinants such as poverty will facilitate the fulfilment of the right to access healthcare for more people, acknowledging poverty-stricken marginalised communities in South Africa. Note the viewpoint provided by Heywood, "[t]here is a particularly crucial need in South Africa for government to improve infrastructure in rural communities, where some primary healthcare centres even lack piped water – a clear sign that the public health system is overburdened and incapable of providing consistent quality care." See, Heywood 2014:8. See also, Maphumulo & Bhengu 2019:1-9; According to President Cyril Ramaphosa, in South Africa access to healthcare is still largely influenced by where you live. See, Ramaphosa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023).

⁵⁶⁴ Dhai & Mohammed 2018(a):8-10. See generally, Heywood 2009:14-36; Meier *et al.* 2010:19-30, 2; Rispel *et al.* 2016:239-249; Douwes *et al.* 2018:185-196; Maphumulo & Bhengu 2019:1-9; Rensburg "Healthcare in South Africa: How inequity is contributing to inefficiency", <https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753> (accessed on 30 August 2021).

⁵⁶⁵ Amnesty International "SONA 2023: President Cyril Ramaphosa has failed the nation on the delivery of basic human rights", <https://amnesty.org.za/sona-2023-president-cyril-ramaphosa-has-failed-the-nation-on-the-delivery-of-basic-human-rights/> (accessed on 21 February 2023).

⁵⁶⁶ Dhai & Mohammed 2018(a):8-10.

⁵⁶⁷ Meyer 2010:3-44.

⁵⁶⁸ Meier *et al.* 2010:19-30.

⁵⁶⁹ Maphumulo & Bhengu 2019:1-9.

⁵⁷⁰ Heywood 2009:14-36.

Watch,⁵⁷¹ Rensburg,⁵⁷² Rispel *et al.*,⁵⁷³ and the South African Human Rights Commission,⁵⁷⁴ amongst others, show that this right is not always respected, protected, promoted, and fulfilled for everyone in South Africa. This is due to the shortcomings within the Department of Health, amongst other factors.⁵⁷⁵ Other factors include resource constraints (also referred to as limited resources) that exist within the government of South Africa as recognised in Section 27(2) of the *Constitution*.⁵⁷⁶ This Section of the *Constitution* recognises that the "available resources" must be used to progressively realise each socio-economic right. Therefore, note when considering corruption and its possibly adverse effects on the fulfilment of socio-economic rights in South Africa, it is not only the corruption spoken about within this study that is affecting the fulfilment of socio-economic rights.

The various shortcomings that exist in the public healthcare sector in South Africa are not a new topic.⁵⁷⁷ In this Section, information on public healthcare in South Africa from 2016 to 2019 will be used to show the most recent state of the public healthcare

⁵⁷¹ Human Rights Watch "World Report 2017: South Africa", <https://www.hrw.org/world-report/2017/country-chapters/south-africa> (accessed on 11 May 2023); Human Rights Watch "World Report: South Africa 2018", <https://www.hrw.org/world-report/2018/country-chapters/south-africa> (accessed on 2 May 2023); Human Rights Watch "World Report 2019", <https://www.hrw.org/world-report/2019> (accessed on 13 March 2022).

⁵⁷² Rensburg "Healthcare in South Africa: how inequity is contributing to inefficiency", <https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753> (accessed on 30 August 2021).

⁵⁷³ Rispel *et al.* 2016:239-249, 31(2).

⁵⁷⁴ South African Human Rights Commission 2019; South African Human Rights Commission "Rahima Moosa Hospital: The hospital has violated the right to access to health", <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1653-rahima-moosa-hospital-the-hospital-has-violated-the-right-of-access-to-health-says-sahrc> (accessed on 21 October 2023).

⁵⁷⁵ See generally, London 2007:1-10; Coovadia *et al.* 2009:817-834; Heywood 2009:14-36; Magennis & Van Zyl 2009:8-28; Meyer 2010:3-44; Meier *et al.* 2010:19-30; Rispel *et al.* 2016:239-249; Dhai & Mohammed 2018(a):8-10; Douwes *et al.* 2018:185-196; Treatment Action Campaign 2018 "State of Provincial Healthcare System Spotlight on Gauteng", <https://www.tac.org.za/wp-content/uploads/2018/06/tac-gauteng-state-of-health-report-may-2018.pdf> (accessed on 20 October 2023); South African Human Rights Commission 2019(a) "; Rensburg "Healthcare in South Africa: how inequity is contributing to inefficiency", <https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753> (accessed on 30 August 2021).

⁵⁷⁶ "The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights." sec. 27(2) of the *Constitution*.

⁵⁷⁷ Discussing the fact that there are various and longstanding shortcomings in the public healthcare sector in South Africa, see generally, Heywood 2009:14-36; Meyer 2010:3-44; Meier *et al.* 2010:19-30; Rispel *et al.* 2016:239-249, 31(2); Dhai & Mohammed 2018(a):8-10; Maphumulo & Bhengu 2019:1-9.

sector before the Covid-19 pandemic.⁵⁷⁸ The outbreak of Covid-19 was a worldwide crisis, leaving public healthcare sectors across the globe under different circumstances than normal.⁵⁷⁹ Thus, information on public healthcare in South Africa from 2020 to 2023 is arguably all affected by the outbreak of Covid-19, which will not give a clear reflection of this sector under normal circumstances.⁵⁸⁰ However, since 2023 is almost three years since the initial outbreak of Covid-19, at the end of this Section, a brief insight into public healthcare in South Africa in 2023 will be summarised.

The case law discussed in this Section dates back further than 2016. This bygone case law is used to show that there are enduring problems in accessing public healthcare in South Africa - the longstanding existence of these problems is evidence that challenges in accessing healthcare are not a new subject. These cases are discussed to emphasise that some problems in accessing public healthcare have not been addressed adequately. Furthermore, it will be seen that these challenges sometimes result in the right to access healthcare not being fulfilled for everyone.

In 2016, the then South African Minister of Health, Aaron Motsoaledi, said the public healthcare sector was immensely distressed.⁵⁸¹ Motsoaledi⁵⁸² pointed out problems

⁵⁷⁸ See generally, Rispel 2016:19; Dhai & Mohammed 2018(a):8; Landman 2018:48-59; Health Systems Trust "South Africa Health Review 2017", <https://www.hst.org.za/publications/Pages/HST-South-African-Health-Review-2017.aspx> (accessed on 9 October 2023):1-11, 13-25, 25-41, 41-49, 59-71, 99-125, 193; Health Systems Trust "South Africa Health Review 2018", <https://www.hst.org.za/publications/Pages/SAHR2018.aspx> (accessed on 9 October 2023):1-13, 13-23, 23-33, 51-59, 77, 83, 99-107, 125-135, 226; South African Human Rights Commission 2019; South African Human Rights Commission "Rahima Moosa Hospital: The hospital has violated the right to access to health", <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1653-rahima-moosa-hospital-the-hospital-has-violated-the-right-of-access-to-health-says-sahrc> (accessed on 21 October 2023).

⁵⁷⁹ See generally, Silubonde *et al.* 2023:1-15; Mboweni & Risenga 2022:1-11; Adebisi *et al.* 2021:233-236.

⁵⁸⁰ See generally, Silubonde *et al.* 2023:1-15; Mboweni & Risenga 2022:1-11; Adebisi *et al.* 2021:233-236.

⁵⁸¹ News 24 "Health minister outlines plan of action", <https://www.news24.com/News24/health-minister-outlines-plan-of-action-20180609> (accessed 30 August 2021).

⁵⁸² News 24 "Health minister outlines plan of action", <https://www.news24.com/News24/health-minister-outlines-plan-of-action-20180609> (accessed 30 August 2021). See generally, Van De Ruit & Wallis 2020:52-57.

related to overcrowding, long waiting lists for treatment, and a chronic shortage of human resources.⁵⁸³

The 2017 South African Health Review highlighted the following problems in public healthcare: (a) healthcare inequity, (b) both non-nationals and South African nationals face challenges in accessing healthcare, (c) unequal distribution of healthcare resources and services, (d) resource availability constraints, (e) the lack of a coordinated strategy to ensure continuous access to care, treatment, and support for chronic conditions, (f) healthcare worker shortages, especially in rural areas, (g) insufficient funding, (h) inefficiencies in healthcare spending, and (i) inadequate healthcare infrastructure and equipment, amongst others.⁵⁸⁴

In the 2018 South African Health Review, many of the challenges discussed in the 2017 review remained the same. This review points out further challenges, including (a) persistent inequalities in access healthcare between different population groups, predominantly in informal settlements and rural areas, (b) high levels of patient dissatisfaction, (c) the absence of effective planning in the current public healthcare sector, (d) the high rate of medical errors, (e) poor quality of healthcare services, and (f) insufficient funding and resources leading to the lack of equipment, medicines, and infrastructure. This review emphasises that the collapse of oncology services in the North West and KwaZulu-Natal provinces in 2017 and 2018 are severe shortages threatening the public sector's service delivery capacity. These point to the effects of a lack of adequate planning and systemic challenges.⁵⁸⁵ Note that these reports mention the same challenges year after year, displaying the continuity of these challenges.

⁵⁸³ Note that any of the above-mentioned problems pointed out by Minister Motsoaledi could be as a result of resource constrains also referred to as limited resources see pages 109-110 of this study.

⁵⁸⁴ Health Systems Trust "South Africa Health Review 2017", <https://www.hst.org.za/publications/Pages/HST-South-African-Health-Review-2017.aspx> (accessed on 9 October 2023):1-11, 13-25, 25-41, 41-49, 59-71, 99-125, 193. See generally, Mauro 1998:263-279.

⁵⁸⁵ Health Systems Trust "South Africa Health Review 2018", <https://www.hst.org.za/publications/Pages/SAHR2018.aspx> (accessed on 9 October 2023):1-13, 13-23, 23-33, 51-59, 77, 83, 99-107, 125-135, 226.

The 2019 Review emphasises the need for change in the public healthcare sector to address the ruthless efficiency and equality challenges with access to public healthcare. This review mentions the same challenges as in 2017 and 2018, respectively. The financial and human resource constraints are emphasised alongside the immense overcrowding in public healthcare. This overcrowding is predominant in urban areas that are densely populated. This overcrowding is attributed to equipment shortages, inadequate infrastructure, and shortages of healthcare professionals, particularly in densely populated abysmal urban areas. A severe problem in the public healthcare sector is fragmentation and lack of coordination between different levels of healthcare services.⁵⁸⁶ Overcrowding, as mentioned in 2016, is in some form mentioned in all the reviews from 2017 to 2019.⁵⁸⁷ Overcrowding is a problem in public hospitals in urban areas and emergency departments. This overcrowding leads to challenges like increased risk of infections, longer waiting times, and, in some instances, compromised patient dignity and privacy.⁵⁸⁸ Overcrowding is partly due to insufficient resources and infrastructure to cope with the demand for services and the high burden of diseases like HIV/AIDS, amongst other factors.⁵⁸⁹

This study suggests that overcrowding could be alleviated if government funding was not diverted by corruption in this sector, as identified in Section 3.5. Suppose corrupt activities do not drain government funding. In that case, the government will have more money to invest in building new public healthcare facilities to enable these facilities to

⁵⁸⁶ Health Systems Trust "South Africa Health Review 2019", <https://www.hst.org.za/publications/Pages/SAHR2019.aspx> (accessed on 9 October 2023):3-17, 17-29, 55-69, 69-81, 81-89, 89-105, 145-155, 173-183, 183-193.

⁵⁸⁷ These reviews mention various issues that fall under the scope of the system's capacity not being large enough, including challenges like bed shortages and the need for improved hospital management to reduce waiting times.

⁵⁸⁸ See generally, Balfour 2006:47-48; Wallis & Twomey 2007:1276-1280; Maphumulo & Bhengu 2019:1-2; Van De Ruit & Wallis 2020:52-57.

⁵⁸⁹ Maphumulo & Bhengu 2019:1-9. See also, Balfour 2006:47-48; Wallis & Twomey 2007:1276-1280; Van De Ruit & Wallis 2020:52-57; Human Rights Watch "Stop Making Excuses: accountability for maternal health care in South Africa", <https://www.hrw.org/report/2011/08/08/stop-making-excuses/accountability-maternal-health-care-south-africa> (accessed on 24 August 2023); Ramaphosa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023); Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

cater to the needs of everyone who depends on public healthcare. Infrastructure problems within current public healthcare facilities, as identified by various role players, including authors, human rights activists, and members of the South African Parliament, could also be addressed if budgets are distorted less by corruption, maladministration and mismanagement, as identified in Section 3.5.

The South African public healthcare sector is overburdened and is not large enough to cater to everyone who needs it.⁵⁹⁰ Statistics South Africa (Stats SA) attests to the overcrowding in the public healthcare sector.⁵⁹¹ This sector being overburdened means everyone who needs healthcare might be unable to access healthcare, which can result in the right not being fulfilled. However, because of the qualification of this right, when people are denied access to public healthcare, this does not automatically mean that the government violated this right. An example like this demonstrates why the violations-based approach to assessing human rights fulfilment is not accurate enough. Although it would be found that the government has not violated this right, this does not mean that this right was respected, protected, promoted, and fulfilled, as seen above in the case of *Soobramoney v Minister of Health, KwaZulu-Natal*.⁵⁹²

Two of the most critical challenges in South African public healthcare are overcrowded and understaffed facilities.⁵⁹³ Rensburg⁵⁹⁴ correctly emphasises the overwhelming demand on the South African public healthcare sector and how this adversely impacts

⁵⁹⁰ Rensburg "Healthcare in South Africa: how inequity is contributing to inefficiency", <https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753> (accessed on 30 August 2021). See also, Maphumulo & Bhengu 2019:1-9.

⁵⁹¹ According to Stats SA, roughly 45 million, or 82 out of every 100 South Africans, depend on public healthcare. See, Stats SA 2017(a).

⁵⁹² *Soobramoney v Minister of Health, KwaZulu-Natal*. See generally, Landman & Carvalho 2009:1-6, 32-38; Landman 2018:48-59; OHCHR "Methodical Approaches to Human Rights Indicators", https://www.ohchr.org/sites/default/files/documents/issues/HRIndicators/AGuideMeasurementImplementationChapterIII_en.pdf (accessed on 17 July 2023).

⁵⁹³ See generally, Rispel 2016:19; Dhai & Mohammed 2018(a):8; Maphumulo & Bhengu 2019:1-9; Van De Ruit & Wallis 2020:52-57; News 24 "Health minister outlines plan of action", <https://www.news24.com/News24/health-minister-outlines-plan-of-action-20180609> (accessed 30 August 2021); Stats SA 2017(a); Fonn *et al.* 2011:657–668.

⁵⁹⁴ Rensburg "Healthcare in South Africa: how inequity is contributing to inefficiency", <https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753> (accessed on 30 August 2021). See also, Stats SA 2017(a).

the fulfilment of this right, noting, "South Africa's biggest problem is that the health needs of its people exceeds capacity."

The World Health Organisation recommends 4.45 medical practitioners for every 1000 citizens, meaning 44.5 medical practitioners per 10,000 citizens.⁵⁹⁵ The Health System's Trust estimates that South Africa has 3.2 medical practitioners per 10,000 citizens.⁵⁹⁶ South Africa is nowhere near the World Health Organisation's recommendation. Unnervingly, South Africa is in a deficit of more than ten times the per cent of this recommendation. Statistically, the South African public healthcare sector does not have sufficient staff to cater to those relying on public healthcare.⁵⁹⁷ This insufficiency in this sector results in this right not always being fulfilled, but this non-fulfilment does not necessarily evidence that this right was violated. This was seen above in *Soobramoney v Minister of Health, KwaZulu-Natal*.⁵⁹⁸ These statistics on overcrowding show the need for more to be done by the government to progressively realise this right, which progressive realisation is an obligation under the government's duty to fulfil. Technically, a lack of resources means the government's obligation to fulfil a right has not been met.⁵⁹⁹ When a government fails to allocate sufficient

⁵⁹⁵ WHO 2016.

⁵⁹⁶ Investec "Is SA's healthcare system prepared for Covid-19?", https://www.investec.com/en_za/focus/beyond-wealth/is-south-africas-healthcare-system-prepared-for-covid-19.html (accessed on 30 August 2021).

⁵⁹⁷ See generally, Fonn *et al.* 2011:657–668; Rispel 2016:19; Dhai & Mohammed 2018(a):8; Van De Ruit & Wallis 2020:52-57; Rensburg "Healthcare in South Africa: how inequity is contributing to inefficiency", <https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753> (accessed on 30 August 2021).

⁵⁹⁸ *Soobramoney v Minister of Health, KwaZulu-Natal*.

⁵⁹⁹ "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." See UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 6:art. 2(1). See also, "[a]ccording to the 'obligation to fulfil', States are required to take positive action to ensure that human rights can be realized. The extent of the obligation to fulfil varies according to the right concerned and the State's available resources. Generally speaking, however, States should create the legal, institutional and procedural conditions that rights holders need in order to realize and enjoy their rights in full." See, Kälin & Künzli 2009. According to the United Nations the obligation to fulfil the right to access healthcare is summarised to mean, "[a]n adequate number of hospitals and other public health-care facilities shall provide services equally accessible to all." The obligation to fulfil the right to education is summarised as, "[t]he authorities shall take positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all. See, United Nations 2016.

resources or take appropriate measures to ensure sufficient resources in the future, it can be said that the obligation to fulfil a right has not been met due to the lack of resources.⁶⁰⁰

As noted by Dhai,⁶⁰¹ implementing this right in South Africa is riddled with impediments. Alongside the two most critical challenges that public healthcare faces, there are various other challenges, as mentioned in the reviews above, including (a) budgetary constraints, (b) financial maladministration, including dishonest administration, (c) inefficient financial management, (d) ineffective functioning of accountability structures, (e) mismanagement of public hospitals and clinics, (f) the deplorable infrastructure of public facilities, (g) medication shortages, and (h) medical equipment that is missing and unmaintained, to name a few.⁶⁰² These challenges in the public healthcare sector adversely impact the government's ability to respect, protect, promote and fulfil this right for everyone. These challenges sometimes result in this right not being fulfilled for everyone. Dhai⁶⁰³ notes that in 2018, people dependent on public healthcare in South Africa were, in instances, denied access healthcare services, resulting in this right not being fulfilled for everyone. Considering this non-fulfilment, Dhai attested to the problems in the public healthcare sector and noted the need for government intervention to realise this right progressively.⁶⁰⁴

Healthcare in South Africa (SA) is in crisis...The public sector provides healthcare access to 84% of patients in SA, and this group is being denied access to healthcare in the country. The fundamental right to healthcare is affirmed in the *Constitution*; however, its implementation is riddled with impediments. Urgent intervention is necessary to address the crisis.

⁶⁰⁰ Chenwi 2013:742-769. See also, OHCHR 2008:11-15; UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3:art. 2(1); CESCR 2007:1-4.

⁶⁰¹ Dhai & Mohammed 2018(a):8-10.

⁶⁰² Dhai & Mohammed 2018(a):8-10. See also, Stats SA 2017(a). See also, South African Human Rights Commission 2019(a); Treatment Action Campaign "State of Provincial Healthcare System. Spotlight on Gauteng", <https://www.tac.org.za/wp-content/uploads/2018/06/tac-gauteng-state-of-health-report-may-2018.pdf> (accessed on 20 October 2023); News 24 "Health minister outlines plan of action", <https://www.news24.com/News24/health-minister-outlines-plan-of-action-20180609> (accessed 30 August 2021).

⁶⁰³ Dhai & Mohammed 2018(a):8-10.

⁶⁰⁴ Dhai & Mohammed 2018(a):8-10. See generally, Dhai 2023:76-77.

In 2019, Maphumulo and Bhengu advocated in agreement with Dhai⁶⁰⁵ for the urgent need to address the public healthcare crisis that is resulting in the non-fulfilment of this right.⁶⁰⁶

There is overwhelming evidence that the quality of health care in South Africa has been compromised by various challenges that impact negatively on healthcare quality. Improvement in quality care means fewer errors, reduced delays in care delivery, improvement in efficiency Decline in quality health care has caused the public to lose trust in the healthcare system in South Africa. Huge efforts have been made to improve the quality of healthcare delivery in South Africa since 1994 elections, but several issues have been raised by the public regarding public institutions. Among the many, the following seven issues are discussed in this article: prolonged waiting time because of shortage of human resources, adverse events, poor hygiene and poor infection control measures, increased litigation because of avoidable errors, shortage of resources in medicine and equipment and poor record-keeping.

The implementation of this right, being riddled with impediments, is attested to by the South African Human Rights Commission.⁶⁰⁷ In 2018, the Commission emphasised the impediments in the Gauteng Department of Health.⁶⁰⁸ Gauteng is one of nine provinces in South Africa with roughly 26.3 per cent of South Africa's population, and it could be called the commercial and industrial powerhouse of the country.⁶⁰⁹ The Gauteng Department of Health has come under immense criticism regarding fulfilling the right to access healthcare. Authors Rispel *et al.*,⁶¹⁰ Freeman,⁶¹¹ Dhai,⁶¹² Wessels and Naidoo,⁶¹³ and Mohlabi *et al.*,⁶¹⁴ amongst others, and organisations like Treatment

⁶⁰⁵ Dhai & Mohammed 2018(a):8-10.

⁶⁰⁶ Maphumulo & Bhengu 2019:1-2. See also, Dhai 2023:76-76.

⁶⁰⁷ See generally, Makgoba 2016; South African Human Rights Commission "Rahima Moosa Hospital "The hospital has violated the right of access to health" – says SAHRC", <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1653-rahima-moosa-hospital-the-hospital-has-violated-the-right-of-access-to-health-says-sahrc> (accessed on 21 October 2023); South African Human Rights Commission 2019(a).

⁶⁰⁸ South African Human Rights Commission 2019(a); South African Human Rights Commission "Rahima Moosa Hospital _"The hospital has violated the right of access to health" – says SAHRC", <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1653-rahima-moosa-hospital-the-hospital-has-violated-the-right-of-access-to-health-says-sahrc> (accessed on 21 October 2023)

⁶⁰⁹ Rispel *et al.* 2021:1-28. See also, Rispel 2016:19.

⁶¹⁰ Rispel *et al.* 2016:239-249.

⁶¹¹ Freeman 2018:765-768.

⁶¹² Dhai & Mohammed 2018(a):8-10.

⁶¹³ Wessels & Naidoo 2019:138-172.

⁶¹⁴ Mohlabi *et al.* 2010:249-254.

Action Campaign,⁶¹⁵ have documented the failures in this Department of Health. These failures in this Department have resulted in this right not being respected, protected, promoted, and fulfilled for everyone.⁶¹⁶

In 2018, the South African Human Rights Commission highlighted the following problems in public healthcare in Gauteng: (a) the dilapidated state of public healthcare infrastructure, (b) hospitals in a state of dysfunction, (c) severe shortage of human resources, (d) ineffective accountability structures, (e) shortages of medical equipment including medication and (f) financial maladministration, amongst others. These problems indicate that the right to access healthcare in Gauteng is perpetually fragile. The Commission emphasised a specific violation of this right in a Gauteng public hospital,⁶¹⁷ "[m]anagement of the Rahima Moosa Mother and Child Hospital in Coronationville, Johannesburg, conceded that it violated patients' rights to high-quality healthcare after nine babies died there earlier in 2018."

In 2018, the Treatment Action Campaign brought numerous concerns regarding public healthcare in Gauteng.⁶¹⁸ Treatment Action Campaign investigated various failures in the Gauteng Department of Health and public hospitals in Gauteng. Concerns

⁶¹⁵ Treatment Action Campaign "State of Provincial Healthcare System. Spotlight on Gauteng", <https://www.tac.org.za/wp-content/uploads/2018/06/tac-gauteng-state-of-health-report-may-2018.pdf> (accessed on 20 October 2023); *Treatment Action Campaign & Others v Minister of Health & Others* (No 1) 2002 (5) SA 721 (C); *Minister of Health & Others v Treatment Action Campaign & Others* (No 2).

⁶¹⁶ See generally, Dhai & Mohammed 2018(a):8-10; Dhai 2023:76-76; Rispel 2016:19; Rispel *et al.* 2016:239-249; Rispel *et al.* 2021:1-28; Maphumulo & Bhengu 2019:1-9; Mohlabi *et al.* 2010:249-254; Makgoba 2016; South African Human Rights Commission "Rahima Moosa Hospital – The hospital has violated the right of access to health" – says SAHRC", <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1653-rahima-moosa-hospital-the-hospital-has-violated-the-right-of-access-to-health-says-sahrc> (accessed on 21 October 2023); Treatment Action Campaign "State of Provincial Healthcare System. Spotlight on Gauteng", <https://www.tac.org.za/wp-content/uploads/2018/06/tac-gauteng-state-of-health-report-may-2018.pdf> (accessed on 20 October 2023); Freeman 2018:765-768; South African Human Rights Commission 2019(a); Wessels & Naidoo 2019:138-172.

⁶¹⁷ South African Human Rights Commission 2019(a). See also, South African Human Rights Commission "Rahima Moosa Hospital – The hospital has violated the right of access to health" – says SAHRC", <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1653-rahima-moosa-hospital-the-hospital-has-violated-the-right-of-access-to-health-says-sahrc> (accessed on 21 October 2023).

⁶¹⁸ Treatment Action Campaign "State of Provincial Healthcare System Spotlight on Gauteng" <https://www.tac.org.za/wp-content/uploads/2018/06/tac-gauteng-state-of-health-report-may-2018.pdf> (accessed on 20 October 2023); *Treatment Action Campaign & Others v Minister of Health & Others* (No 1); *Minister of Health & Others v Treatment Action Campaign & Others* (No 2).

investigated included (a) how staff shortages adversely affected patient treatment, (b) infrastructure problems, (c) a hospital that collapsed due to unmaintained infrastructure, and (d) mismanagement of resources, just to name a few. The conclusion of this report demonstrates the failure within the Gauteng Department of Health.⁶¹⁹

Overall, the persistent and severe challenges outlined in this report result in people who depend on the public healthcare system receiving inadequate, poor quality and undignified healthcare. The Gauteng healthcare system is broken. This dysfunction impacts disproportionately on the poorest and those in rural communities.

Accepting that the right to access healthcare is not fulfilled for everyone, Heywood⁶²⁰ emphasises the importance of combining legal action and social mobilisation to realise this right's fulfilment for everyone progressively. Two cases brought by the Treatment Action Campaign exemplified how legal action and social mobilisation resulted in this right being further realised.⁶²¹ Treatment Action Campaign is a South African HIV/AIDS activist group that advocated access to antiretroviral therapy for people living with HIV/AIDS in South Africa. The advocacy work of the Treatment Action Campaign in two cases brought against the Minister of Health enabled this right to be realised more progressively. It showed instances in which this right had been violated.⁶²²

Referred to as TAC 1, the first case is *Treatment Action Campaign & Others v Minister of Health & Others*.⁶²³ This landmark case in South African constitutional law relates to the right to access antiretroviral medication as part of the right to healthcare. In this case, Treatment Action Campaign challenged the South African government's policies on the prevention of mother-to-child transmission of HIV/AIDS. The Constitutional Court held that the government policies preventing mother-to-child transmission

⁶¹⁹ Treatment Action Campaign "State of Provincial Healthcare System Spotlight on Gauteng" <https://www.tac.org.za/wp-content/uploads/2018/06/tac-gauteng-state-of-health-report-may-2018.pdf> (accessed on 20 October 2023).

⁶²⁰ Heywood 2009:14-36.

⁶²¹ *Treatment Action Campaign & Others v Minister of Health & Others* (No 1); *Minister of Health & Others v Treatment Action Campaign & Others* (No 2).

⁶²² *Minister of Health & Others v Treatment Action Campaign & Others* (No 2).

⁶²³ *Treatment Action Campaign & Others v Minister of Health & Others* (No 1).

violated the right to access healthcare. The Constitutional Court ruling favouring the plaintiffs found that their right to healthcare, life and dignity had been violated. These rights were violated because they were not fulfilled. These rights were not fulfilled because of the government's inadequate policies on antiretroviral medication distribution. These policies did not ensure that everyone who needed antiretroviral medication had access to them.

This case is significant because it is one of the first cases in which the South African Constitutional Court ruled on the right to healthcare. The further significance of this case is that it shows that this right was not fulfilled for everyone. The Constitutional Court emphasised the government's obligation to provide access healthcare services, including medication and antiretroviral medication. The Constitutional Court would not have used this as an opportunity to remind the government of its obligation if it was satisfied that the government was fulfilling its obligation.

The second case brought by Treatment Action Campaign, referred to as TAC 2, is *Treatment Action Campaign & Others v Minister of Health & Others*.⁶²⁴ This case was about a medication called nevirapine. Nevirapine is an antiretroviral medication that reduces the likelihood of mother-to-child transmission of HIV/AIDS at birth (a pre-exposure medication). Government policy at the time only made nevirapine available at a few public hospitals in each province (known as pilot sites).⁶²⁵ The government claimed that access to nevirapine had to be limited due to resources. Central to this case was assessing whether this limited availability of nevirapine infringed on the right to access healthcare.⁶²⁶

⁶²⁴ *Minister of Health & Others v Treatment Action Campaign & Others* (No 2).

⁶²⁵ The distribution of nevirapine being so limited meant that for a long period of time the treatment for mother-to-child transmissions wouldn't be generally available throughout the public healthcare system. The government put forward several reasons for confirming the provisions of nevirapine to the pilot states. These reasons included that the government claimed that the public healthcare system lacked the capacity to deliver the drug nationally, that nevirapine still needed to be evaluate for effectiveness in preventing HIV/AIDS transmission, and that the government doubted the safety of nevirapine and the efficacy of nevirapine, amongst other things.

⁶²⁶ The Constitutional Court addressed the interpretation of the right to access healthcare as contained in sec. 27 of the *Constitution* and the reasonableness of limiting the availability of nevirapine to these pilot sites.

The Constitutional Court held that access to nevirapine being limited to these pilot sites fails to address the needs of mothers who do not have access to these sites. The policy of government in so far as it confines the availability of this medication constitutes a breach of the government's obligation under Section 27(1)(a) and 27(2) of the *Constitution*.⁶²⁷ The court, emphasising the rationale and findings in the case of *Government of the Republic of South Africa & Others v Grootboom & Others*,⁶²⁸ found that a programme cannot progressively realise a right if such a programme excludes a proportion of society. Finding the policy unreasonable, the Constitutional Court further rejected the assertion that the government did not have the available resources as the provincial governments had already begun to extend the availability of nevirapine, and the government had recently allocated additional resources to deal with the HIV/AIDS crisis.⁶²⁹ The Constitutional Court issued an order declaring the government's policy on the distribution of nevirapine unconstitutional because it infringed Section 27(1) of the *Constitution*. The Constitutional Court ordered the government to develop a comprehensive plan to provide nevirapine in all government hospitals and clinics.⁶³⁰

As correctly noted by Liebenberg,⁶³¹ this is an essential case considering the interpretation of socio-economic rights in South Africa. However, beyond interpretation, this case is significant for three reasons. First, this case showed that the right to access healthcare had been violated because it was not fulfilled for everyone. Secondly, it shows that the Constitutional Court went beyond reminding the government of its obligations. The Constitutional Court obligated the government to take specific steps to rectify the situation in which this right was violated. Lastly, this case contrasts the argument accepted that the government did not have the available

⁶²⁷ A policy of waiting for a protracted period before taking a decision on the use of nevirapine beyond the research and training sites is also not reasonable within the meaning of sec. 27(2) of the *Constitution*. See, *Minister of Health v Treatment Action Campaign & Others* (No 2):paras. 80-81.

⁶²⁸ *Government of the Republic of South Africa & Others v Grootboom & Others*.

⁶²⁹ *Minister of Health & Others v Treatment Action Campaign & Others* (No 2):paras. 67-73. Concerning the enduring challenge of the high rate of HIV/AIDS in South Africa see, Human Rights Watch "Stop making excuses: Accountability for maternal health care in South Africa", <https://www.hrw.org/report/2011/08/08/stop-making-excuses/accountability-maternal-health-care-south-africa> (accessed on 24 August 2023).

⁶³⁰ *Minister of Health & Others v Treatment Action Campaign & Others* (No 2):paras. 96-106.

⁶³¹ Liebenberg 2006:2-27. See also, Liebenberg 2001:232-257.

resources, as seen in *Soobramoney v Minister of Health, KwaZulu-Natal*.⁶³² The Constitutional Court, in the TAC 2 case, highlighted that resources were available. Thus, the government averring that they do not have the resources available does not always satisfy the court.

Both cases mentioned above happened in South Africa in the early 2000s. However, almost 20 years later, publications still criticise the South African government's implementation of HIV/AIDS prevention measures, particularly concerning the distribution and availability of pre-exposure medication.⁶³³ Despite a comprehensive national HIV/AIDS Strategic Plan in South Africa, the prevalence of HIV/AIDS has continued to increase, indicating inadequate implementation of the plan. The South African government's implementation of prevention measures is inadequate to meet the needs of everyone. The ineffective distribution of HIV/AIDS antiretroviral and pre-exposure medication results in the right to access healthcare not being fulfilled for everyone.⁶³⁴ In 2023, not everyone who needs access to antiretroviral medication has access to it.⁶³⁵

Another case that shows that the right to access healthcare had been violated because it had not been fulfilled is the case of *P H obo S H v MEC for Health for the Province of KwaZulu-Natal*.⁶³⁶ In this case, a woman needed dialysis treatment from a public

⁶³² *Soobramoney v Minister of Health, KwaZulu-Natal*.

⁶³³ See generally, Hopkins *et al.* 2018:1-6; Winkelman 2022:105-115; Staff Reporter, Mail & Guardian. "We can't accept the new HIV, TB plan' - Treatment Action Campaign", <https://mg.co.za/article/2017-04-04-00-we-cant-accept-the-new-hiv-tb-plan/> (accessed on 10 October 2023); Ramaphosa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023); Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

⁶³⁴ See generally, Hopkins *et al.* 2018:1-6; Winkelman 2022:105-115; Hontelez *et al.* 2012:1-12; Staff Reporter, Mail & Guardian. "We can't accept the new HIV, TB plan' - Treatment Action Campaign", <https://mg.co.za/article/2017-04-04-00-we-cant-accept-the-new-hiv-tb-plan/> (accessed on 10 October 2023).

⁶³⁵ Ramaphosa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023). See also, Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

⁶³⁶ *P H obo S H v MEC for Health for the Province of KwaZulu-Natal*.

hospital. She was denied treatment on the basis that this hospital could not take on another dialysis patient due to their resources not being capable. Similar to the circumstances in *Soobramoney v Minister of Health, KwaZulu-Natal*,⁶³⁷ it was argued that this denial of treatment was justifiable because the government did not have the resources to treat the applicant. Although similar circumstances exist between these two cases, including the government's justification, the judgment, in this case, differs from that given in *Soobramoney v Minister of Health, KwaZulu-Natal*.⁶³⁸

In *P H obo S H v MEC for Health for the Province of KwaZulu-Natal*,⁶³⁹ the High Court of Durban rejected the argument that the government's obligation was satisfied because they claimed they did not have the available resources. The High Court of Durban explained that the government's obligation to provide access to healthcare could not be fulfilled by simply stating that resources were not available. The High Court of Durban emphasised the government's obligation to take reasonable measures within its available resources to realise this right for everyone progressively. Addressing the government's obligation to take reasonable steps to ensure the fulfilment of this right, the High Court of Durban ordered the government to take all reasonable steps to ensure that the applicant received the necessary treatment, including exploring alternative options such as partnering with private healthcare providers.⁶⁴⁰

This case shows three significant points. First, the right to access healthcare is not fulfilled for everyone - this is seen by the fact that plaintiffs are still approaching the courts to seek relief when their right has not been fulfilled. Secondly, the courts do not always accept that limiting the government's available resources justifies the denial of access to healthcare. The High Court of Durban emphasised that this justification does not dissolve the government's obligation to realise progressively. Lastly, the High Court of Durban ordering that the government take specific steps to rectify this situation shows that the Court was not satisfied that the government had met its

⁶³⁷ *Soobramoney v Minister of Health, KwaZulu-Natal*.

⁶³⁸ *Soobramoney v Minister of Health, KwaZulu-Natal*.

⁶³⁹ *P H obo S H v MEC for Health for the Province of KwaZulu-Natal*.

⁶⁴⁰ *P H obo S H v MEC for Health for the Province of KwaZulu-Natal*.

obligation to fulfil this right, and the Court was not satisfied with simply reminding the government of its obligations.

The right to access healthcare is not fulfilled for everyone, as seen in the above case law. Litigation, social mobilisation, and the courts making a proper assessment of whether resources are, in fact, available can all be used to ensure that this right is more progressively realised and thus fulfilled for everyone. The courts can play an essential role in ensuring and obligating progressive realisation in the sense that when a case is brought showing that the right is not being fulfilled, the court can use its powers to obligate the government to take specific steps to ensure not only the correction of an identified violation but also the effective progressive realisation of the specific right.

The Life Esidimeni tragedy, also known as the Life Esidimeni Arbitration, refers to a series of events in South Africa between 2015 and 2017 relating to treating more than 1,700 mentally ill public healthcare patients in Gauteng.⁶⁴¹ The South African Human Rights Commission reported on the Life Esidimeni tragedy, finding that the South African government violated the right to access healthcare for these mentally ill patients. This violation of their right happened when these patients were moved from Life Esidimeni psychiatric facilities to non-governmental organisations to save money. The violation of their right resulted from their right not being respected, protected or fulfilled.⁶⁴² Judge Dikgang Moseneke, who concluded the arbitration hearing of this mass transfer of patients that resulted in the death of at least 144 patients, highlighted

⁶⁴¹ See generally, Section27 "Life Esidimeni", <https://section27.org.za/life-esidimeni/> (accessed on 21 June 2023); Nicolson "Newsflash: Life Esidimeni families awarded R1.2-million compensation each", <https://www.dailymaverick.co.za/article/2018-03-19-newsflash-life-esidimeni-families-awarded-r1-2-million-compensation-each/> (accessed on 21 June 2023); Human Rights Watch "World Report: South Africa 2019", <https://www.hrw.org/world-report/2019/country-chapters/south-africa> (accessed on 2 May 2023).

⁶⁴² Makgoba 2016. See also, Wessels & Naidoo 2019:138-172; Section27 "Life Esidimeni", <https://section27.org.za/life-esidimeni/> (accessed on 21 June 2023); Khoza "Moseneke gives government 3 months to pay more than R1m each to Life Esidimeni families", <https://www.news24.com/news24/moseneke-gives-government-3-months-to-pay-more-than-r1m-each-to-life-esidimeni-families-20180319> (accessed on 21 June 2023); Nicolson "Newsflash: Life Esidimeni families awarded R1.2-million compensation each", <https://www.dailymaverick.co.za/article/2018-03-19-newsflash-life-esidimeni-families-awarded-r1-2-million-compensation-each/> (accessed on 21 June 2023); Human Rights Watch "World Report: South Africa 2019", <https://www.hrw.org/world-report/2019/country-chapters/south-africa> (accessed on 2 May 2023).

poor accountability by government authorities when these patients were transferred to non-governmental centres without valid licenses.⁶⁴³ Judge Moseneke ordered the government to compensate the families of the Life Esidimeni tragedy and to provide support services to these families.⁶⁴⁴

First, their right was not respected because the government interfered with the enjoyment of their right, which happened at the government facilities before the government decided to move them. Secondly, their right was not protected because of the involvement of a third party, namely the facilities where these patients were moved. This third-party involvement resulted in their right being interfered with. The government's duty to protect a right includes that the government must prohibit third parties from interfering with the enjoyment of a right. Lastly, their right was not fulfilled because, at these new facilities, these patients did not receive the necessary care they received before moving. Not receiving the care, they needed resulted in the non-fulfilment of this right.

At a meeting of the National Assembly, Clarke,⁶⁴⁵ a member of the South African Parliament, raised concerns about the condition of public healthcare and public healthcare facilities in South Africa. Commenting on the state of public healthcare facilities in South Africa and the corruption in this sector, Clarke⁶⁴⁶ acknowledged the challenges surrounding the implementation of this right. Clarke⁶⁴⁷ pointed out unmaintained and crumbling infrastructure, long queues, and understaffed public

⁶⁴³ Makgoba 2016.

⁶⁴⁴ See generally, Makgoba 2016; Wessels & Naidoo 2019:138-172; Section27 "Life Esidimeni", <https://section27.org.za/life-esidimeni/> (accessed on 21 June 2023); Khoza "Moseneke gives government 3 months to pay more than R1m each to Life Esidimeni families", <https://www.news24.com/news24/moseneke-gives-government-3-months-to-pay-more-than-r1m-each-to-life-esidimeni-families-20180319> (accessed on 21 June 2023); Nicolson "Newsflash: Life Esidimeni families awarded R1.2-million compensation each", <https://www.dailymaverick.co.za/article/2018-03-19-newsflash-life-esidimeni-families-awarded-r1-2-million-compensation-each/> (accessed on 21 June 2023).

⁶⁴⁵ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 19 June 2023).

⁶⁴⁶ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 19 June 2023).

⁶⁴⁷ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 19 June 2023).

hospitals and clinics. Clarke⁶⁴⁸ argued, "[m]any public health institutions do not have the necessary equipment, not enough beds, no medicine and sometimes no food because expertise plays second fiddle to cadre deployment." Clarke⁶⁴⁹ emphasises the corruption in this sector by arguing that "[t]he public health sector has suffered immensely under mismanagement, corruption and incompetence, and while this has been detrimental to the public at large, it has been hugely beneficial to the pockets of corrupt cadres and their politically connected comrades." Corruption in the Department of Health, as examined in Section 3.5, is acknowledged by current role players in the South African Parliament. Consider the discussion in Section 3.5 of Parliament member Van Staden.⁶⁵⁰

In 2023, the World Population Review did a study titled "Best Healthcare in the World 2023".⁶⁵¹ This study ranked the South African public healthcare sector 87th in the world, behind the likes of Vietnam, the Philippines, Sri Lanka, and all eight countries included in the CPI table in Section 3.3 except for India, scoring 101st and Zimbabwe, scoring 143rd. Interestingly, from the data set in the table in Section 3.3, New Zealand scored as the least corrupt territory and got a public healthcare score of seventh. In this data set, Zimbabwe was the most corrupt territory. By looking at Zimbabwe's score, there seems to be a possible correlation between a perceived high level of public sector corruption and a poor ranking of public healthcare services.⁶⁵²

Section 3.5 of this study mentions that the National Health Insurance Bill was passed in South Africa in 2023. The second Presidential Health Summit in May of 2023 was

⁶⁴⁸ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 19 June 2023).

⁶⁴⁹ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 19 June 2023).

⁶⁵⁰ Parliament of the Republic of South Africa "National Assembly debates corruption in public healthcare system", <https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 19 June 2023).

⁶⁵¹ World Population Review "Best healthcare in the world 2023", <https://worldpopulationreview.com/country-rankings/best-healthcare-in-the-world> (accessed on 10 July 2023).

⁶⁵² World Population Review "Best healthcare in the world 2023", <https://worldpopulationreview.com/country-rankings/best-healthcare-in-the-world> (accessed on 10 July 2023).

also mentioned. Note that at this Presidential Health Summit, Minister of Health Minister Phaahla⁶⁵³ addressed shortcomings in the South African public healthcare sector, mentioning, for example, the need for more antiretroviral medication to be made available and discussing the high rate of the South African population living with HIV/AIDS. Minister Phaahla⁶⁵⁴ pointed out that more people need treatment than what is currently provided.

Minister Phaahla addressed the National Assembly when the National Health Insurance Bill was passed, as seen in Section 3.5, where it was noted that Minister Phaahla paid attention to corruption in the healthcare sector of South Africa in this address to the National Assembly. He also mentioned problems in the existing South African public healthcare sector. In this address, Minister Phaahla said that South Africa has not been successful in the avoidance of race-based differentiation of quality and access to healthcare in South Africa:⁶⁵⁵

As inequality has been growing in our country even cutting across race, access to quality health services has been a casualty with those who have private medical insurance consuming 51% of the national spending while constituting only 16 per cent of the population, while 84% depend on 49% resources from the fiscus and services provided by Public Health System only.

This statement by Minister Phaahla⁶⁵⁶ reaffirms the demand for public healthcare in South Africa and the financial constraints the public healthcare sector faces. At the

⁶⁵³ Ramaphosa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023). See also, Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

⁶⁵⁴ Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

⁶⁵⁵ Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023); Parliament of the Republic of South Africa "Press Release: The National Assembly passes the National Health Insurance Bill and the Land Court Bill", <https://www.parliament.gov.za/press-releases/press-release-national-assembly-passes-national-health-insurance-bill-and-land-court-bill> (accessed on 10 June 2023). See generally, Maphumulo & Bhengu 2019:1-9 discussing the challenges of quality improvement of healthcare in post-apartheid South Africa.

⁶⁵⁶ Parliament of the Republic of South Africa "Press Release: The National Assembly passes the National Health Insurance Bill and the Land Court Bill", <https://www.parliament.gov.za/press->

second Presidential health summit, as discussed in Section 3.5, President Cyril Ramaphosa addressed the inequality in access to healthcare in South Africa. He said that access to healthcare is still affected by where a person lives, and geographical differences adversely affect access to public healthcare in South Africa.⁶⁵⁷ He also remarked on the ratio of people living in South Africa who depend on public healthcare versus those who depend on private healthcare. President Cyril Ramaphosa's remarks concerning this imbalance in the healthcare sector can be summarised as follows:⁶⁵⁸

The current health system needs to be more balanced 18% of South Africans use the private-sector, which has an estimated 79% of the doctors, while the public sector has only 21%. Access to private health is also divided by race; at least 73% of the medical scheme members are white, and only 10% are Black. He said this is odd in a country where 81% of the population is Black and only 7.8% is white.

Heywood⁶⁵⁹ discussed the 2023 Presidential Health Summit, describing this Summit as "summitting while the healthcare system burns." Inequalities and instances where the public healthcare sector was not fulfilling the right to access healthcare in 2023 while the Presidential Health Summit took place need to be acknowledged. According to Heywood,⁶⁶⁰ in 2023, in South Africa, the public healthcare sector was busy breaking and basic public healthcare services had collapsed in several provinces.

releases/press-release-national-assembly-passes-national-health-insurance-bill-and-land-court-bill (accessed on 10 June 2023).

⁶⁵⁷ Ramaphosa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023). See also, Alliance for Science "South Africa seeks to improve healthcare sector as burden of disease continues to rise", <https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

⁶⁵⁸ Ramaphosa "President Cyril Ramaphosa: 2nd Presidential Health Summit", <https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023).

⁶⁵⁹ Heywood "Second Presidential Health Summit – summitting while the health system burns", <https://www.dailymaverick.co.za/article/2023-05-02-presidential-health-summit-summitting-while-the-health-system-burns/> (accessed on 11 July 2023).

⁶⁶⁰ Heywood "Second Presidential Health Summit – summitting while the health system burns", <https://www.dailymaverick.co.za/article/2023-05-02-presidential-health-summit-summitting-while-the-health-system-burns/> (accessed on 11 July 2023).

Heywood⁶⁶¹ notes an instance of this collapse in the Eastern Cape, where there is a waiting list of 5,000 people for wheelchairs. Heywood⁶⁶² also points out that the number of public healthcare workers is shrinking.

Explaining how the public healthcare sector is only getting worse, Heywood⁶⁶³ points out that at the Chris Hani Baragwanath Academic Hospital, the biggest public hospital in South Africa, they do not have enough food to feed their patients. Heywood⁶⁶⁴ also discusses the exposed corruption of the former South African Minister of Health, Zweli Mkhize.⁶⁶⁵ Mkhize was implicated in corruption scandals during the Covid-19 pandemic, implicating him that he was forced to exit his position as Minister of Health.⁶⁶⁶ Heywood⁶⁶⁷ correctly notes that the Covid-19 pandemic exposed the enormity of corruption within government in the South African public healthcare sector.

As discussed above and as correctly argued by Maphumulo and Bhengu,⁶⁶⁸ "[t]here is overwhelming evidence that the quality of health care in South Africa has been compromised by various challenges that impact negatively on healthcare quality." Healthcare sectors are not static entities. They are evolving and ever-changing.

⁶⁶¹ Heywood "Second Presidential Health Summit – summitting while the health system burns", <https://www.dailymaverick.co.za/article/2023-05-02-presidential-health-summit-summitting-while-the-health-system-burns/> (accessed on 11 July 2023).

⁶⁶² Heywood "Second Presidential Health Summit – summitting while the health system burns", <https://www.dailymaverick.co.za/article/2023-05-02-presidential-health-summit-summitting-while-the-health-system-burns/> (accessed on 11 July 2023).

⁶⁶³ Heywood "Second Presidential Health Summit – summitting while the health system burns", <https://www.dailymaverick.co.za/article/2023-05-02-presidential-health-summit-summitting-while-the-health-system-burns/> (accessed on 11 July 2023).

⁶⁶⁴ Heywood "Second Presidential Health Summit – summitting while the health system burns", <https://www.dailymaverick.co.za/article/2023-05-02-presidential-health-summit-summitting-while-the-health-system-burns/> (accessed on 11 July 2023).

⁶⁶⁵ Zweli Mkhize resigned in August 2021 after being implicated in the irregular procurement of a Covid-19-related communication service tender, which resulted in the alleged misappropriation of R150 million. See Section 3.5 of this study and Amnesty International "South Africa 2021", <https://www.amnesty.org/en/location/africa/southern-africa/south-africa/report-south-africa/> (accessed on 22 June 2022).

⁶⁶⁶ Amnesty International "South Africa 2021", <https://www.amnesty.org/en/location/africa/southern-africa/south-africa/report-south-africa/> (accessed on 22 June 2022).

⁶⁶⁷ Heywood "Second Presidential Health Summit – summitting while the health system burns", <https://www.dailymaverick.co.za/article/2023-05-02-presidential-health-summit-summitting-while-the-health-system-burns/> (accessed on 11 July 2023). See also, How "Ramaphosa proclaims 'health revolution' at second presidential health summit", <https://www.spotlightnsp.co.za/2023/05/08/ramaphosa-proclaims-health-revolution-at-second-presidential-health-summit/> (accessed on 11 July 2023).

⁶⁶⁸ Maphumulo & Bhengu 2019:Background & 1-9.

Accepted problems in the public healthcare sector of overcrowding, unavailable resources, maladministration, poor financial management, and corruption, amongst others, have been around for years. More proactive intervention is necessary. There is a need for more steps to be taken by the South African government towards the fulfilment and progressive realisation of this right.⁶⁶⁹ Considering the obligation to realise rights to the maximum of a government's available resources, it is argued that more resources will be available when there is more effective general and financial management in the Department of Health, including when there are more productive investigations into and prevention of corruption in this department. Suppose problems like poor financial management, maladministration, and corruption were not prominent role players in this sector. In that case, the government will have more resources available, meaning, for example, that more infrastructure could be built, the staff-to-patient ratio could be improved and so on, all resulting in the government being more equipped to respect, protect, promote, and fulfil the right to access healthcare for everyone.

4.6 SECTION 29(1)(A): EVERYONE HAS THE RIGHT TO A BASIC EDUCATION

Section 29 of the *Constitution* provides that everyone has the right to a basic education, which the government, through reasonable measures, must make progressively available and accessible.⁶⁷⁰ Internationally, the right to education is contained in Article 26 of the UDHR⁶⁷¹ and Article 13 of the ICESCR.⁶⁷² Regionally, this right is contained in Article 17 of the African Charter on Human and Peoples'

⁶⁶⁹ Douwes *et al.* emphasises the need for government to actively do more to enable the progressive realisation of this right. See, Douwes *et al.* 2018:185-196. Examining the effects of corruption and its impact on the fulfilment of the right to healthcare, see generally, Mantzaris 2017:15-30; Naher *et al.* 2020:1-16; Dhai 2023:76-76; Van den Heever "How do you stop a hospital heist? Appoint a plunder-proof board", <https://www.dailymaverick.co.za/article/2022-08-17-how-do-you-stop-a-hospital-heist-appoint-a-plunder-proof-board/> (accessed on 19 June 2023).

⁶⁷⁰ Legislation was created to provide the parameters for this right to be respected, protected, promoted and fulfilled. South Africa's legislation resulting from this right is the *South African Schools Act 84/1996*.

⁶⁷¹ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

⁶⁷² UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

Rights.⁶⁷³ In South Africa, the national department responsible for enabling the fulfilment of this right is the Department of Basic Education.⁶⁷⁴

The right to basic education is an unqualified socio-economic right, and the South African courts have said that this right is immediately realisable.⁶⁷⁵ However, it is uncertain whether this right has been realised for everyone. According to Human Rights Watch, the government of South Africa is not fulfilling its obligations to respect, protect, promote and fulfil the right to education for all children in South Africa.⁶⁷⁶ The South African public school sector is characterised by (a) overcrowded classrooms, (b) dilapidated school buildings, (c) schools that do not have access to running water, sanitation services, or electricity, (d) schools that do not have desks or chairs, (e) schools that do not have textbooks or learning materials and (f) schools that are understaffed, among other shortcomings.⁶⁷⁷ These shortcomings collectively result in relatively poor educational outcomes.⁶⁷⁸ These shortcomings often stem from

⁶⁷³ African Charter on Human and Peoples' Rights 1986 Article 17.

⁶⁷⁴ The mandate of this national department is to monitor the standards of the provision, delivery, and performance of education throughout South Africa, with the objective of assessing compliance with the provisions of the *Constitution* and with national educational policy. This mandate is derived from the *National Education Policy Act 27/1996*, the *South African Schools Act* and the *Employment of Educators Act 76/1998*.

⁶⁷⁵ The South African Constitutional Court has confirmed that the right to a basic education is an unqualified right and is immediately realisable. For a discussion of the meaning of an unqualified right see, *Centre for Child Law & Others v Minister of Basic Education & Others* 2013 (3) SA 183 (ECG). For a discussion of the meaning of an immediately realisable right see, *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. & Others* 2011 (8) BCLR 761 (CC).

⁶⁷⁶ Human Rights Watch "World Report 2019", <https://www.hrw.org/world-report/2019> (accessed on 13 March 2022). See also, Khumalo & Hodgson 2017:104-127; Human Rights Watch "South Africa should prioritize implementing inclusive education for children with disabilities", <https://www.hrw.org/news/2017/09/22/south-africa-should-prioritize-implementing-inclusive-education-children> (accessed on 18 August 2022).

⁶⁷⁷ See generally, Corruption Watch "Sound the Alarm: Corruption in the Education Sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023); Amnesty International "South Africa: Submission on the amendments to the regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure", <https://amnesty.org.za/research/submission-to-department-of-basic-education-5-july-2022/> (accessed on 2 May 2023); *Centre for Child Law v Government of the Eastern Cape Province, Eastern Cape High Court, Bisho*, case no 504/10; Basopu 2010:3-86; Baxter *et al.* 2018:1-17.

⁶⁷⁸ See generally, *Centre for Child Law v Government of the Eastern Cape Province, Eastern Cape High Court, Bisho*; *Mazdodzo v Minister of Basic Education* 2014 (2) All SA 339 (ECM); Skelton 2013; Amnesty International "South Africa: Broken and unequal education perpetuating poverty and inequality", <https://www.amnesty.org/en/latest/news/2020/02/south-africa-broken-and-unequal-education-perpetuating-poverty-and-inequality/> (accessed on 21 February 2023); Van der Berg 2008:145-154; Spaul 2013(a):436-447; Spaul 2013(b):1-65.

corruption within government in the South African public school sector, as was seen in Section 3.6.⁶⁷⁹ These problems impede the right to a basic education being respected, protected, promoted and fulfilled. Amnesty International points out failures in the South African public school sector.⁶⁸⁰

The right to quality education includes having a school where learners are safe to learn and have the adequate infrastructure and facilities to do so, but our research has found that this is not the reality for many learners in the country.

However, note that not all shortcomings or failures within either the Department of Health or the Department of Education stem solely from corruption as discussed in this study. The deplorable condition of the public school sector is contributing to the high unemployment rate in South Africa. Stats SA⁶⁸¹ correctly argues that "despite extremely high and rising unemployment, skilled labour can be difficult to find in most skilled and professional segments largely due to the poor state of the public education system." In 2017, more than 75 per cent of nine-year-olds in South African public schools could not read properly. In the same year, less than 60 per cent of learners went to high school. Of those, less than 50 per cent stayed until grade 12 and passed their matriculation.⁶⁸²

⁶⁷⁹ See generally, Meier 2004:1-12; Basopu 2010:3-86; Baxter *et al.* 2018:1-17; Mlachila & Moeletsi 2019:8-29; Amnesty International "South Africa: Broken and unequal education perpetuating poverty and inequality", <https://www.amnesty.org/en/latest/news/2020/02/south-africa-broken-and-unequal-education-perpetuating-poverty-and-inequality/> (accessed on 21 February 2023); BusinessTech "The shocking state of education in South Africa", <https://businesstech.co.za/news/business-opinion/676069/the-shocking-state-of-education-in-south-africa/> (accessed on 20 June 2023); Corruption Watch "Annual Report 2019", https://www.corruptionwatch.org.za/wp-content/uploads/2020/03/CRW0320_7171_AnnualReport-2019.pdf (accessed on 21 June 2022); Corruption Watch "Annual Report 2020", <https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021); Corruption Watch "Sound the alarm: Corruption in the education sector", https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023).

⁶⁸⁰ Amnesty International "South Africa: Broken and unequal education perpetuating poverty and inequality", <https://www.amnesty.org/en/latest/news/2020/02/south-africa-broken-and-unequal-education-perpetuating-poverty-and-inequality/> (accessed on 21 February 2023).

⁶⁸¹ Stats SA 2018. See generally, Van der Berg 2008:145-154; Spaul(b) 2013:1-65.

⁶⁸² Amnesty International "South Africa: Submission on the amendments to the regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure", <https://amnesty.org.za/research/submission-to-department-of-basic-education-5-july-2022/> (accessed on 2 May 2023). See generally, Spaul(b) 2013(b):1-65; Spaul(a) 2013(a):436-447.

Statistics from the Department of Education in 2018 show that out of 23 471 public schools, (a) 20 071 have no laboratory, (b) 18 019 have no library, and (c) 16 897 have no internet.⁶⁸³ It is difficult to believe that without resources like a library or access to the internet, the right to a basic education is fulfilled or progressively realised. Resource constraints that exist within South Africa as acknowledged in the *Constitution* must be kept in mind. A detailed discussion - on resource constraints that do exist separately from corruption although arguably influenced by the existence of corruption - cannot be divulged into in this study. For the purposes of this study note that, for example, (a) as seen above 20 071 public schools have no laboratory, could be a reflection of resource constraints as opposed to being the result of corruption.

According to the South African government's statistics for 2021, the state of public schools could be summarised as follows: (a) 79.6 per cent had no internet access, (b) 69.59 per cent had no library, (c) 80.07 per cent of schools had no laboratory, and (d) 35.12 per cent had no sports facilities. This lack of infrastructure shows insufficient resource allocation for realising this right. The data provided by the Department of Basic Education on pit toilets is conflicting and indicates a lack of transparency, a poor monitoring system, or both. However, in 2021, according to the government's statistics, South Africa had 5,167 schools with pit toilets.⁶⁸⁴

The acknowledgement of public schools with pit toilets contradicts the South African government's commitment to eradicate dependency on them in identified schools.⁶⁸⁵ This commitment to eradicate them was based on pit toilets violating the right to life,

⁶⁸³ Department of Basic Education 2019; Amnesty International "South Africa: Broken and unequal education perpetuating poverty and inequality", <https://www.amnesty.org/en/latest/news/2020/02/south-africa-broken-and-unequal-education-perpetuating-poverty-and-inequality/> (accessed on 21 February 2023). Considering that resources available at a school whether it be a public school or private school have an immediate impact on the education provided, see generally, Phurutse 2005:10-15; Van der Berg 2008:145-154; Spaul 2013(a):436-447.

⁶⁸⁴ Amnesty International "South Africa: Submission on the amendments to the regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure", <https://amnesty.org.za/research/submission-to-department-of-basic-education-5-july-2022/> (accessed on 2 May 2023).

⁶⁸⁵ Amnesty International "South Africa: Submission on the amendments to the regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure", <https://amnesty.org.za/research/submission-to-department-of-basic-education-5-july-2022/> (accessed on 2 May 2023).

health, and dignity.⁶⁸⁶ It can be argued that realising these rights is key in ensuring the fulfilment of the right to basic education. The Department of Basic Education's 2021/22 annual report showed that 2,982 schools still used pit toilets.⁶⁸⁷ The Department missed several deadlines to eradicate these pit toilets. The government promised to have all these pit toilets eradicated by 2023.⁶⁸⁸ However, in June 2022, proposed amendments to regulations relating to the Minimum Uniform Norms and Standards for Public School Infrastructure were introduced. The draft legislation removed all deadlines, allowing the Department to evade accountability and putting learners' health and safety at risk.⁶⁸⁹ Pit toilets might not affect the right to a basic education directly. However, this infrastructure risks children's dignity and lives at public schools. Furthermore, this infrastructure shows an evident lack of resources to realise this right.

⁶⁸⁶ South African Human Rights Commission "3 297 SA schools still have pit toilets, risking the lives of pupils", <https://www.sahrc.org.za/index.php/sahrc-media/news/item/2853-3-297-sa-schools-still-have-pit-toilets-risking-the-lives-of-pupils-sahrc> (accessed on 17 July 2023); Draga 2017:237-245; Odeku 2022:97-109; Sondlo "Pit toilets in schools violate human rights", <https://mg.co.za/thoughtleader/opinion/2023-04-25-pit-toilets-in-schools-violate-human-rights/> (accessed on 17 July 2023).

⁶⁸⁷ Department of Basic Education 2022. Retired South African Constitutional Court Judge van der Westhuizen commented on pit toilets in South African public schools and how they adversely affect the right to a basic education. Van der Westhuizen also notes the non-fulfilment of other socio-economic rights in South Africa. Van der Westhuizen pointed out that "almost thirty years into South Africa's democracy, millions of people are still poor and without their basic needs being met. South Africa remains the most unequal country in the world. It is almost cynical to tell the mother of a toddler who died in a pit latrine that our world famous *Constitution* protects everyone's rights." See, Centre for Human Rights University of Pretoria "Justice Van der Westhuizen says that continued non-compliance with constitutional obligation by SA Human Rights Commission and government endangers our democracy", <https://www.chr.up.ac.za/latest-news/3405-justice-van-der-westhuizen-says-that-continued-non-compliance-with-constitutional-obligation-by-sa-human-rights-commission-and-government-endangers-our-democracy> (accessed on 10 July 2023). See also, Draga 2017:237-245; Odeku 2022:97-109; South African Human Rights Commission "3 297 SA schools still have pit toilets, risking the lives of pupils", <https://www.sahrc.org.za/index.php/sahrc-media/news/item/2853-3-297-sa-schools-still-have-pit-toilets-risking-the-lives-of-pupils-sahrc> (accessed on 17 July 2023).

⁶⁸⁸ Amnesty International "South Africa: Submission on the amendments to the regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure", <https://amnesty.org.za/research/submission-to-department-of-basic-education-5-july-2022/> (accessed on 2 May 2023).

⁶⁸⁹ Amnesty International "South Africa: Submission on the amendments to the regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure", <https://amnesty.org.za/research/submission-to-department-of-basic-education-5-july-2022/> (accessed on 2 May 2023).

There are reported incidents of children having lost their lives at public schools in South Africa due to drowning in pit toilets.⁶⁹⁰

This study suggests that if corruption within the Department of Education, including all forms of budgetary negligence like fruitless and wasteful expenditure, irregular expenditure and the like, as identified in Section 3.6, were addressed, this Department would have more money to invest in infrastructure including the eradication of all pit toilets in public schools and this would better enable the government of South Africa to respect, protect, promote and fulfil the right to basic education. In 2022, the public education sector continued to be characterised by a lack of essential resources, decaying and dangerous infrastructure, overcrowded classrooms and more.⁶⁹¹

Amnesty International describes the South African public school sector as broken and unequal, claiming that this sector's failures further perpetuate poverty and inequality in South Africa.⁶⁹² Amnesty International argues that for South Africa to comply with international human rights obligations and its constitutional mandate concerning the respect, protection, promotion and fulfilment of the right to basic education, significant change is needed urgently.⁶⁹³

According to the Department of Basic Education, to fulfil and progressively realise the right to a basic education, schools must be maintained in a condition that makes teaching and learning possible, indicating that this right is not fulfilled or progressively

⁶⁹⁰ *Komape & Others v Minister of Basic Education* (1416 / 2015) [2018] Z ALMPPHC 18 (23 April 2018). See also, *Draga* 2017:237-245; *Odeku* 2022:97-109; South African Human Rights Commission "3 297 SA schools still have pit toilets, risking the lives of pupils", <https://www.sahrc.org.za/index.php/sahrc-media/news/item/2853-3-297-sa-schools-still-have-pit-toilets-risking-the-lives-of-pupils-sahrc> (accessed on 17 July 2023); Sondlo "Pit toilets in schools violate human rights", <https://mg.co.za/thoughtleader/opinion/2023-04-25-pit-toilets-in-schools-violate-human-rights/> (accessed on 17 July 2023).

⁶⁹¹ Department of Basic Education 2022. See also, Amnesty International "South Africa: Submission on the amendments to the regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure", <https://amnesty.org.za/research/submission-to-department-of-basic-education-5-july-2022/> (accessed on 2 May 2023).

⁶⁹² Amnesty International "South Africa: Broken and unequal education perpetuating poverty and inequality", <https://www.amnesty.org/en/latest/news/2020/02/south-africa-broken-and-unequal-education-perpetuating-poverty-and-inequality/> (accessed on 21 February 2023).

⁶⁹³ Amnesty International "South Africa: Broken and unequal education perpetuating poverty and inequality", <https://www.amnesty.org/en/latest/news/2020/02/south-africa-broken-and-unequal-education-perpetuating-poverty-and-inequality/> (accessed on 21 February 2023).

realised when public schools are not maintained in such a way.⁶⁹⁴ The following South African court cases address the condition of public schools, including the lack of resources at these schools. These cases show that these schools are not always maintained in a way that makes learning possible.

The right to basic education was not fulfilled due to a lack of essential resources in the *Centre for Child Law v Government of the Eastern Cape Province* case.⁶⁹⁵ This is one of the first noteworthy cases that focused on the infrastructure of public schools in South Africa. This case addressed the lack of essential resources at seven Eastern Cape public schools, which resources were necessary for the right to a basic education to be fulfilled. In this case, the judgment makes adequate infrastructure part of the right to a basic education in South Africa. The Eastern Cape High Court emphasised the government's obligation to provide public school infrastructure.⁶⁹⁶ The Eastern Cape High Court ruled that this right had been violated in this case. Furthermore, the court emphasised that there is an obligation on the government to provide resources, which shows that the court was not satisfied that this obligation was met.⁶⁹⁷

In the case of *Mazdodzo v Minister of Basic Education*⁶⁹⁸ the right to basic education was not fulfilled due to a lack of resources. This case also focused on the lack of infrastructure in public schools and how this resulted in the non-fulfilment of the right to a basic education. This case concerned schools with no furniture, including no desks for children to sit at and how this adversely impacted the fulfilment of this right.

⁶⁹⁴ GN 515 Government Gazette 2010:33283.

⁶⁹⁵ *Centre for Child Law v Government of the Eastern Cape Province, Eastern Cape Bisho.*

⁶⁹⁶ *Centre for Child Law v Government of the Eastern Cape Province, Eastern Cape Bisho.*

⁶⁹⁷ In this case, seven schools in the Eastern Cape had battled for almost a decade to get any attention from the provincial Department of Education about their severe infrastructure problems. These schools faced the following problems: there was no running water or sanitation services; the school buildings were dilapidated mud buildings; in some cases, roofs were missing; school classes were being held in neighbourhood dwellings; these schools did not have furniture for children to use while being taught, and when there was furniture, there were inadequate seats and desks for the number of learners attending school. This judgment provides a road map for improving school infrastructure in South Africa's under-resourced public schools See, Skelton 2013.

⁶⁹⁸ *Mazdodzo v Minister of Basic Education.*

The Eastern Cape High Court held that there is an obligation on the government to provide desks and chairs to learners in schools.⁶⁹⁹

The right to basic education was not fulfilled when children were not provided with learning materials in the *Minister of Basic Education v Basic Education for All* case.⁷⁰⁰ In this case, the South African Appeal Court held that every learner is entitled to a textbook in every subject.⁷⁰¹ The fulfilment of the right to basic education is also hampered and is not progressively realised when public schools are understaffed.⁷⁰² The case of *Centre for Child Law & Others v Minister of Basic Education & Others*⁷⁰³ addressed how a staff shortage in public schools adversely affects the school's ability to fulfil this right.

These cases show that there are severe issues in the implementation of the right to a basic education. These cases also show a significant shortage of resources in the South African public school sector. This evidences that the right to a basic education is not fulfilled for everyone in South Africa. As mentioned regarding the right to healthcare above in Section 4.5, a lack of resources allocated towards a right can be seen as the government failing to fulfil a right. When the government falls short in resource allocation, it undermines its commitment to human rights.⁷⁰⁴ Falling short in resource allocation toward a right can potentially violate the right or deprive individuals of their rights. The government of South Africa has fallen short in resource allocation towards public schools. Note the view held by some of the public of South Africa on the non-fulfilment of this right expressed in a South African newspaper publication:⁷⁰⁵

Everyone has the right to basic education, according to section 29 (1) of the South African *Constitution*. The responsibilities of the state are clearly defined under this section. Having the right to education means that every child in the country despite their race and background is

⁶⁹⁹ *Mazdodzo v Minister of Basic Education*:para.7

⁷⁰⁰ *Minister of Basic Education v Basic Education for All* 2016 (4) SA 63 (SCA).

⁷⁰¹ *Minister of Basic Education v Basic Education for All*:paras. 50-53. See also, Skelton 2013. See also, Van der Berg 2008:145-154.

⁷⁰² *Centre for Child Law & Others v Minister of Basic Education & Others*.

⁷⁰³ *Centre for Child Law & Others v Minister of Basic Education & Others*.

⁷⁰⁴ Chenwi 2013:744; CESCRR 2007:1-4.

⁷⁰⁵ Sondlo "Pit toilets in schools violate human rights", <https://mg.co.za/thoughtleader/opinion/2023-04-25-pit-toilets-in-schools-violate-human-rights/> (accessed on 17 July 2023).

entitled to receive quality education. But over the years, there have been numerous occasions that showed the government has failed to protect, promote and fulfil this basic right.

From the above, it can be summarised that the Department of Basic Education needs to improve its ability to fulfil the right to basic education. Moreover, the government of South Africa needs to realise the outcry of the differently-abled children in their evident struggle to fulfil their right to a basic education. The fulfilment of this right for differently-abled children remains a challenge for the Department of Basic Education.⁷⁰⁶ In South Africa, over half a million differently-abled children remain out of school because they do not have a school they can attend.⁷⁰⁷ In South Africa, this right is not respected, protected, promoted or fulfilled for all differently-abled children.⁷⁰⁸ The non-fulfilment of this right for differently-abled children has been documented and heavily criticised. Commenting on the fulfilment of this right, Human Rights Watch⁷⁰⁹ states that "[t]he government did not fulfil the right to education for many of South Africa's children and young adults with disabilities."

Not all differently-abled children in South Africa have equal access to a basic education. These children are not protected from exclusion and discrimination in public schools.⁷¹⁰ Numerous publications from Human Rights Watch have exposed that differently-abled children in South Africa are not included, accommodated or protected

⁷⁰⁶ Human Rights Watch "South Africa: Crisis for children with disabilities", <https://www.hrw.org/news/2016/03/14/south-africa-crisis-children-disabilities> (accessed on 18 August 2022).

⁷⁰⁷ Human Rights Watch "South Africa should prioritize implementing inclusive education for children with disabilities", <https://www.hrw.org/news/2017/09/22/south-africa-should-prioritize-implementing-inclusive-education-children> (accessed on 18 August 2022). See generally, Khumalo & Hodgson 2017:104-127.

⁷⁰⁸ Human Rights Watch "South Africa: Little progress for youth with disabilities", <https://www.hrw.org/news/2016/08/19/south-africa-little-progress-youth-disabilities> (accessed on 18 August 2022).

⁷⁰⁹ Human Rights Watch "World Report 2019", <https://www.hrw.org/world-report/2019> (accessed on 13 March 2022).

⁷¹⁰ The South African Minister of Basic Education, Angie Motshekga, said to parliament that no child should be left behind concerning including all children in the right to a basic education. However, Human Rights Watch documents that 600 000 differently-abled children in South Africa were being left behind because there was not enough inclusion and protection in the public school system. See, Human Rights Watch "South Africa: Crisis for children with disabilities", <https://www.hrw.org/news/2016/03/14/south-africa-crisis-children-disabilities> (accessed on 18 August 2022). See also, Khumalo & Hodgson 2017:104-127.

within the public school sector.⁷¹¹ These publications document the specific barriers that differently-abled children face in fulfilling this right and evidence the non-fulfilment of this right.⁷¹² Human Rights Watch⁷¹³ argues that there have been minuscule results in ensuring the respect, protection, promotion and fulfilment of this right for all differently-abled children in South African public schools. Although the South African government has made many promises concerning the issue of inclusion and access to education for differently-abled children, not enough has been done to turn these promises into action.⁷¹⁴ A South African public interest law centre called Section27

⁷¹¹ Human Rights Watch "South Africa should prioritize implementing inclusive education for children with disabilities", <https://www.hrw.org/news/2017/09/22/south-africa-should-prioritize-implementing-inclusive-education-children> (accessed on 18 August 2022).

⁷¹² See generally, Human Rights Watch "500 000 kids did not go school today", <https://www.hrw.org/news/2015/08/19/500-000-kids-did-not-go-school-today> (accessed on 18 August 2022); Human Rights Watch "South Africa: Education barriers for children with disabilities", <https://www.hrw.org/news/2015/08/18/south-africa-education-barriers-children-disabilities> (accessed on 18 August 2022); Martínez "Complicit in exclusion: South Africa's failure to guarantee inclusive education for children with disabilities", <https://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children> (accessed on 22 August 2022); Martínez "Obligations to children with disabilities must be honoured", <https://www.hrw.org/news/2015/09/07/obligations-children-disabilities-must-be-honored> (accessed on 18 August 2022); Martínez "Dispatches: Are the 'Doors for learning' open to all in South Africa?", <https://www.hrw.org/news/2016/01/15/dispatches-are-doors-learning-open-all-south-africa> (accessed on 18 August 2022); Human Rights Watch "South Africa: Crisis for children with disabilities", <https://www.hrw.org/news/2016/03/14/south-africa-crisis-children-disabilities> (accessed on 18 August 2022); Human Rights Watch "South Africa should prioritize implementing inclusive education for children with disabilities", <https://www.hrw.org/news/2017/09/22/south-africa-should-prioritize-implementing-inclusive-education-children> (accessed on 18 August 2022); Martínez "Children with disabilities in South Africa cannot wait", <https://www.hrw.org/news/2017/12/04/children-disabilities-south-africa-cannot-wait> (accessed on 18 August 2022); Human Rights Watch "Submission to the Committee on the Rights of Persons with Disabilities concerning South Africa", <https://www.hrw.org/news/2018/02/01/submission-committee-rights-persons-disabilities-concerning-south-africa> (accessed on 18 August 2022); Martínez "South Africa's children with disabilities need the president's attention", <https://www.hrw.org/news/2019/04/25/south-africas-children-disabilities-need-presidents-attention> (accessed on 18 August 2022).

⁷¹³ Human Rights Watch "South Africa: Little progress for youth with disabilities", <https://www.hrw.org/news/2016/08/19/south-africa-little-progress-youth-disabilities> (accessed on 18 August 2022). See also, See, Human Rights Watch "South Africa: Crisis for Children with Disabilities", <https://www.hrw.org/news/2016/03/14/south-africa-crisis-children-disabilities> (accessed on 18 August 2022).

⁷¹⁴ In 2019 Human Rights Watch called out the South African government, claiming that they have promised inclusive education for all differently-abled children but have failed to deliver on this promise. In this 2019 publication, Human Rights Watch argues, "South Africa has not delivered on its promises to guarantee inclusive education for children with disabilities and to ensure that they have adequate skills for employment, Human Rights Watch said today. President Cyril Ramaphosa should place children and young people with disabilities at the heart of the new administration's priorities." Human Rights Watch states unequivocally that there is not effective inclusion of differently-abled children in the public education system in South Africa and even mentions how

researched this issue.⁷¹⁵ The results demonstrated widespread and severe violations of the rights of differently-abled children in accessing education. This research included the ongoing discrimination that differently-abled children faced regarding accessing education and schools and the lack of concrete action to address these issues.⁷¹⁶

South Africa needs a global reminder that it has claimed to have achieved universal basic education.⁷¹⁷ However, differently-abled children experience systemic barriers and discrimination in the South African public school sector.⁷¹⁸ One of these children's main barriers is the inability to be accepted into a mainstream public school. These

previous government administrations in South Africa have also gotten this wrong. Focused on the current exclusion, Human Rights Watch claims there are "serious deficiencies in the government's 2001 White Paper 6 on Special Needs Education, which promises to guarantee inclusive education by 2021 and aims to ensure that most children with disabilities are fully supported to learn in mainstream schools, alongside learners without disabilities." See, Human Rights Watch "South Africa: Children with disabilities shortchanged", <https://www.hrw.org/news/2019/05/24/south-africa-children-disabilities-shortchanged> (accessed on 18 August 2022). Discussing promises to include differently-abled children in public education that the South African government has, according to Human Rights Watch, not fulfilled see generally, Human Rights Watch "South Africa: Little progress for youth with disabilities", <https://www.hrw.org/news/2016/08/19/south-africa-little-progress-youth-disabilities> (accessed on 18 August 2022). See also, Martínez "Obligations to children with disabilities must be honoured", <https://www.hrw.org/news/2015/09/07/obligations-children-disabilities-must-be-honored> (accessed on 18 August 2022).

⁷¹⁵ Khumalo & Hodgson 2017:104-127.

⁷¹⁶ Khumalo & Hodgson 2017:104-127; According to Human Rights Watch, the South African government did not meet their obligations for the right to a basic education. See, Human Rights Watch "South Africa: Little progress for youth with disabilities", <https://www.hrw.org/news/2016/08/19/south-africa-little-progress-youth-disabilities> (accessed on 18 August 2022). See also, Martínez "Obligations to Children with Disabilities Must Be Honored", <https://www.hrw.org/news/2015/09/07/obligations-children-disabilities-must-be-honored> (accessed on 18 August 2022).

⁷¹⁷ Although the South African government claims it has achieved the United Nations Millennium Development Goal of enrolling all children in primary schools by 2015, according to Human Rights Watch in reality many differently-abled children are not in school across South Africa." See, Human Rights Watch "South Africa: Education barriers for children with disabilities", <https://www.hrw.org/news/2015/08/18/south-africa-education-barriers-children-disabilities> (accessed on 18 August 2022). Human Right Watch has also published an article claiming South Africa needs a global reminder about its education obligations, see Martínez "South Africa needs a global reminder about education obligations", <https://www.hrw.org/news/2017/05/09/south-africa-needs-global-reminder-about-education-obligations> (accessed on 18 August 2022).

⁷¹⁸ Khumalo & Hodgson 2017:104-127; Human Rights Watch "South Africa: Little progress for youth with disabilities", <https://www.hrw.org/news/2016/08/19/south-africa-little-progress-youth-disabilities> (accessed on 18 August 2022). See also, Martínez "Obligations to Children with Disabilities Must Be Honored", <https://www.hrw.org/news/2015/09/07/obligations-children-disabilities-must-be-honored> (accessed on 18 August 2022).

children are rejected because these schools have not developed the ability to be inclusive towards differently-abled children.

Another barrier that these children face is financial. This barrier results in their right not being protected or fulfilled. Public schools for abled-bodied children from low-income families in South Africa are primarily free. These schools are on a so-called no-fee schools list.⁷¹⁹ However, public schools across South Africa designated to cater to the needs of differently-abled children from low-income families are not on this no-fee list. Differently-abled children who attend government special needs schools must pay school fees. Many of these children are asked to pay for their class assistants as a condition for admission.⁷²⁰ Both these types of public schools cater to the needs of low-income families. Therefore, both types of schools should be free of charge.⁷²¹ Other barriers these children face in accessing education include very long referrals and waiting lists to special needs schools, rejection from special needs schools during the admissions process without a legitimate reason, a lack of reasonable accommodation close to the school, and transportation issues.⁷²²

There is a clear need for a change in approach to bring about the respect, protection, promotion and fulfilment of the right to basic education for all differently-abled children.

⁷¹⁹ Human Rights Watch "South Africa: Children with disabilities shortchanged", <https://www.hrw.org/news/2019/05/24/south-africa-children-disabilities-shortchanged> (accessed on 18 August 2022). See also, Phurutse "Factors affecting teaching and learning in South African public schools. South Africa report presented to the Education Labour Relations Council", <https://www.purpletod.co.za/docs/Factors%20affecting%20LT%20in%20SA.pdf> (accessed on 4 October 2023):13-14.

⁷²⁰ Phurutse "Factors affecting teaching and learning in South African public schools. South Africa report presented to the Education Labour Relations Council", <https://www.purpletod.co.za/docs/Factors%20affecting%20LT%20in%20SA.pdf> (accessed on 4 October 2023):13-14.

⁷²¹ Human Rights Watch "World Report: South Africa 2018", <https://www.hrw.org/world-report/2018/country-chapters/south-africa> (accessed on 2 May 2023). See also, Martínez "Children with disabilities in South Africa cannot wait", <https://www.hrw.org/news/2017/12/04/children-disabilities-south-africa-cannot-wait> (accessed on 18 August 2022); Human Rights Watch "South Africa: Children with disabilities shortchanged", <https://www.hrw.org/news/2019/05/24/south-africa-children-disabilities-shortchanged> (accessed on 18 August 2022).

⁷²² Martínez "Complicit in exclusion: South Africa's failure to guarantee inclusive education for children with disabilities", <https://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children> (accessed on 22 August 2022). See also, Martínez "South Africa needs a global reminder about education obligations", <https://www.hrw.org/news/2017/05/09/south-africa-needs-global-reminder-about-education-obligations> (accessed on 18 August 2022).

The right of these differently-abled children to access a basic education has not been protected and fulfilled for them all.⁷²³ The government has not met its obligations to protect, fulfil, or progressively realise this right. The government's duty to protect a right is a proactive obligation that requires the creation of legislation and policies that promote and protect the right.⁷²⁴ The government has not ensured the protection of this right or the progressive realisation thereof by, for example, timeously and effectively introducing a policy that creates the parameters within which these barriers to fulfilment can be rectified. The South African government has still not implemented key aspects of the 2001 national policy⁷²⁵ to provide inclusive education for all differently-abled children. It has yet to adopt legislation that guarantees the right of differently-abled children to inclusive education.⁷²⁶ These children's rights have further not been protected because the government has not done enough to ensure that third parties, like public and private schools, do not reject these children without sufficient reason. These children are sometimes rejected in the admissions process without the school proactively trying to see whether they could accommodate the needs of these children.⁷²⁷

This right has not been fulfilled for all differently-abled children because many do not have access to a basic education. Many of these children do not have schools that accept them, and there are not enough public schools that cater to their needs. This right has not been fulfilled due to the lack of adequate resources at public schools, resources which are necessary to facilitate and accommodate the unique needs of

⁷²³ Martínez "Complicit in exclusion: South Africa's failure to guarantee inclusive education for children with disabilities", <https://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children> (accessed on 22 August 2022).

⁷²⁴ Carnelley 2016:229-249.

⁷²⁵ Department of Education, 2001.

⁷²⁶ Human Rights Watch "World Report: South Africa 2018", <https://www.hrw.org/world-report/2018/country-chapters/south-africa> (accessed on 2 May 2023). See also, Human Rights Watch "World Report: South Africa 2019", <https://www.hrw.org/world-report/2019/country-chapters/south-africa> (accessed on 21 October 2023).

⁷²⁷ It is recommended that all schools must start to consider and accommodate the needs of differently-abled children rather than reject and refer these children to schools designated explicitly for differently-abled children. Schools designed to cater to differently-abled children are most often at capacity. This results in these children being rejected from mainstream public schools and also being away from these special needs schools. See, Martínez "Dispatches: are the "Doors for Learning" open to all in South Africa?", <https://www.hrw.org/news/2016/01/15/dispatches-are-doors-learning-open-all-south-africa> (accessed on 18 August 2022).

these children.⁷²⁸ Accepting that the government has not met its obligation to protect, fulfil and progressively realise this right for all, it is strongly recommended that the parliament of South Africa should act urgently to mandate inclusive education in legislation and policies to enable this right to basic education to be fulfilled to all differently-abled children of South Africa.⁷²⁹

Above the respect, protection, promotion, and fulfilment of the socio-economic rights in Sections 27 and 29 of the *Constitution* have been discussed. This discussion has emphasised non-fulfilment and barriers to fulfilling these rights. More needs to be done by the government of South Africa about their obligations to respect, protect, promote, and fulfil socio-economic rights for everyone. Before concluding this chapter, note that considering all socio-economic rights in South Africa retired South African Constitutional Court judge Van der Westhuizen⁷³⁰ correctly argued in 2023 that these rights are not being respected, protected, promoted, and fulfilled for everyone in South Africa. He claims that roughly thirty years into South Africa's democracy, millions of people are still poor and living without their basic needs being met. According to him, South Africa remains one of the most unequal countries in the world.⁷³¹

⁷²⁸ There were 500,000 differently-abled children in South Africa that did not have a school that could include and protect them as learners with disabilities. See, Human Rights Watch "500 000 kids did not go school today", <https://www.hrw.org/news/2015/08/19/500-000-kids-did-not-go-school-today> (accessed on 18 August 2022). See also, Human Rights Watch "South Africa: Education barriers for children with disabilities", <https://www.hrw.org/news/2015/08/18/south-africa-education-barriers-children-disabilities> (accessed on 18 August 2022)..

⁷²⁹ Human Rights Watch "South Africa: Crisis for children with disabilities", <https://www.hrw.org/news/2016/03/14/south-africa-crisis-children-disabilities> (accessed on 18 August 2022).

⁷³⁰ Centre for Human Rights University of Pretoria "Justice Van der Westhuizen says that continued non-compliance with constitutional obligation by SA Human Rights Commission and government endangers our democracy", <https://www.chr.up.ac.za/latest-news/3405-justice-van-der-westhuizen-says-that-continued-non-compliance-with-constitutional-obligation-by-sa-human-rights-commission-and-government-endangers-our-democracy> (accessed on 10 July 2023).

⁷³¹ Centre for Human Rights University of Pretoria "Justice Van der Westhuizen says that continued non-compliance with constitutional obligation by SA Human Rights Commission and government endangers our democracy", <https://www.chr.up.ac.za/latest-news/3405-justice-van-der-westhuizen-says-that-continued-non-compliance-with-constitutional-obligation-by-sa-human-rights-commission-and-government-endangers-our-democracy> (accessed on 10 July 2023).

4.7 CONCLUSION

To ensure the adequate respect, protection, promotion and fulfilment of human rights, governments must allocate adequate resources and effectively manage the work of government. This includes an obligation on the government to prioritise the necessary investments to address societal needs comprehensively. Technically, lacking resources means the obligation to fulfil a right has not been met. In this chapter, it has been seen that the South African government faces consistent challenges in the Department of Health and the Department of Basic Education resulting from resource constraints, amongst other problems. Under the government's obligation to fulfil human rights, the government is obligated to ensure that resources are available to realise a right and that the work of the government enables the realisation of a right. It is accepted that when a government allocates inadequate resources or ineffective work towards a specific right, it can be argued that it has failed to meet its obligation to fulfil a right. An inadequate resource supply or the bad management of resources leads to a systemic inability to provide the adequate infrastructure, human rights-enabling services, or support necessary to ensure the realisation of human rights. In both national departments discussed in this chapter, a systematic inability to fulfil the rights in Sections 27 and 29 of the *Constitution* for everyone has been seen.

The government of South Africa has not respected, protected, promoted, and fulfilled the rights in Sections 27 and 29 of the *Constitution* for everyone. The shortcomings in the Department of Health and the challenges surrounding the implementation of the right to access healthcare have shown that this right is not fulfilled for everyone. These shortcomings and their longstanding existence show that the government has not met its obligation to fulfil this right. This obligation has not been met in part because the government has not ensured that the collective work of government is such that it facilitates the realisation of this right.

The government has also not protected or fulfilled the right to a basic education for everyone. As correctly acknowledged by Amnesty International and Human Rights Watch, the public school sector in South Africa is broken and unequal. The case law shows that public schools do not have the necessary infrastructure, learning materials, furniture, and staff, among other things, necessary to fulfil this right. Implementing both

rights is flawed, and the national departments responsible for fulfilling these rights are riddled with impediments.

Article 2 of the ICESCR,⁷³² as discussed in Section 4.3.1, imposes two primary obligations on governments, namely (a) to use the maximum of their available resources and (b) to achieve the full realisation of these rights progressively. The government of South Africa has failed to meet its obligation to use the maximum of its available resources due to issues like mismanagement, maladministration, corruption, and a lack of accountability, amongst others, within the national departments responsible for realising these rights as outlined in detail in Chapter 3. As a result, this obligation remains unfulfilled. The government has also fallen short in fulfilling its obligation to realise these rights progressively fully. The progressive achievement of these rights has been hampered by the government's actions and what the government has omitted to do. The actions that have hampered progressive realisation include, for example, the mismanagement of national departments, government policies that do not allow for the inclusion and full realisation of these rights for everyone, and the government not providing infrastructure to cater to all needs. The government is not ensuring a timely and effective policy to cater for the needs of differently-abled children in public education.

This chapter shows that socio-economic rights are not respected, protected, promoted and fulfilled in all instances for everyone in South Africa.⁷³³ In the next chapter, the three-fold relationship which is the focus of this study between (a) corruption, specifically governmental corruption, as addressed in Chapter 3; (b) human rights, specifically socio-economic rights, as addressed in this chapter; and (c) social justice is explained.

⁷³² UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

⁷³³ See generally, Dhai & Mohammed 2018(a):8-10; Heywood 2009:14-36; *Treatment Action Campaign & Others v Minister of Health & Others* (No 1); *Centre for Child Law v Government of the Eastern Cape Province, Eastern Cape Bisho*; *Minister of Basic Education v Basic Education for All* 2016 (4) SA 63 (SCA); *Komape & Others v Minister of Basic Education* (1416 / 2015) [2018] Z ALMPPHC 18 (23 April 2018); *Centre for Child Law & Others v Minister of Basic Education & Others*; *Minister of Health & Others v Treatment Action Campaign & Others* (No 2); Liebenberg 2006:2-27. See also, Liebenberg 2001:232-257; Khumalo & Hodgson 2017:104-127; Carnelley 2016:229-249.

CHAPTER 5: THE RELATIONSHIP BETWEEN CORRUPTION, HUMAN RIGHTS AND SOCIAL JUSTICE

5.1 INTRODUCTION

As this study approaches its conclusion, it is imperative to bear in mind the established findings thus far. It has been established that no clear-cut definitions precisely delineate the meanings of the three core concepts investigated in this study. The existence of corruption within government in South Africa has been evidenced. Chapter 4 acknowledged the lack of respect, protection, promotion, and fulfilment of socio-economic rights, specifically the right to basic education and the right to healthcare, in South Africa. Insufficient resources emerged as a significant factor contributing to the instances of non-fulfilment outlined in Chapter 4. This chapter will elucidate the intricate interplay among corruption, human rights, and social justice, revealing a three-fold relationship.

The interlinking connections between these concepts need to be assessed to understand the threefold relationship between governmental corruption, human rights specifically socio-economic rights and achieving social justice. First, this chapter will show how corruption within government affects human rights fulfilment. Then, this chapter will examine the link between human rights fulfilment and the realisation of social justice. By showing these links, this chapter evidences that all three of these core concepts are affected by one another.

In essence, these three concepts are interconnected in the following manner: heightened levels of corruption within government impede the government's capacity to ensure the fulfilment of human rights, and when human rights remain unfulfilled, the possibility of achieving social justice diminishes. Consequently, reducing corruption in government is essential to increase the availability of resources for human rights-enabling services. Ultimately, fulfilling more human rights is a pragmatic pathway towards achieving social justice. This is not true only for South Africa but for all societies worldwide.

This summary of the three-fold relationship shows that the idea behind this relationship is not complex. However, evidencing the interconnectedness of each concept is more

complex. The interconnectedness of each concept needs to be understood in its parts to bring together the overall understanding of this relationship. Bear in mind that this chapter shows this study's suggestion of the three-fold relationship, and the next chapter discusses social justice as this study's third and final core concept.

To understand whether there is a connection between corruption, human rights specifically socio-economic rights and social justice, it needs to be understood that human rights and social justice are connected. This chapter focuses on the last core concept of this study, namely, social justice and how social justice connects to human rights and fits into the three-fold relationship. Answering the last research question, Is the realisation of social justice achievable if human rights are not respected, protected, promoted and fulfilled for all people of South Africa? The relationship between human rights and social justice is examined to establish whether human rights fulfilment is necessary to achieve social justice. Understanding what is necessary to achieve social justice aids in explaining how human rights and social justice are connected in this three-fold relationship. This study suggests that to find a balanced answer regarding what is necessary to achieve social justice in today's world, this concept needs to be addressed from a current and a historical viewpoint. It is suggested that social justice and its existence in the modern world cannot only be based on what has been written about this concept in the pre-modern world.

For academic accuracy and modernity, Section 5.3 below discusses views on social justice from the past, including the writings of authors like Rawls⁷³⁴ and Sen.⁷³⁵ Alongside current views of social justice provided by human rights organisations and online social justice activists movements.⁷³⁶ This is done because of this study's viewpoint that to solve the problems of the modern world, reliance cannot only be made on the beliefs of a previously developed version of the world. Past academic

⁷³⁴ See generally, Rawls 1958:164-194; Rawls 1971; Rawls 2001.

⁷³⁵ Sen 2000:59-85.

⁷³⁶ See generally, Kent State Online "The five principles of social justice", <https://onlinedegrees.kent.edu/political-science/master-of-public-administration/community/five-principles-of-social-justice> (accessed on 10 February 2022); Corporate Finance Institute "Social justice", <https://corporatefinanceinstitute.com/resources/knowledge/other/social-justice/> (accessed on 3 June 2022).

work needs to be recognised for its weight, and modern contributions need to be recognised to the degree of their up-to-date assessments of this concept.

5.2 THE LINK BETWEEN CORRUPTION AND HUMAN RIGHTS

As set out in Section 2.2, the connection between corruption and human rights is that grand-scale public sector corruption (governmental corruption) poses challenges to the enjoyment and fulfilment of human rights and can be a violation of human rights obligations *per se*.⁷³⁷ Literature supports the view that corruption within government (whichever form it takes) affects the government's ability to fulfil human rights.⁷³⁸ Global, regional, and national recognition of this connection between corruption and human rights exists. First, this global, regional, and national recognition of this connection will be discussed, followed by the views of academics on this connection. Internationally, this link between corruption within government and human rights is seen in the UN Convention against Corruption.⁷³⁹ The foreword of this Convention sets out the connection between these two concepts accurately, stating:⁷⁴⁰

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 other threats to human security to flourish. This evil phenomenon is found in all countries but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice.

For this study, note from this foreword the following main points that the Convention⁷⁴¹ acknowledges: (a) corruption leads to violations of human rights, (b) corruption hurts

⁷³⁷ See generally, Mantzaris 2017:15-30.

⁷³⁸ See generally, Tanzi 1998:8-594; Mauro 1998:263-279; Camerer 2001:7-60; Malherbe 2001:109-126; Chetwynd *et al.* 2003:3-15; Mbonu 2003:3-11; Bacio-Terracino 2010:243-246; Baillat 2013:8; Basopu 2010:34-86; Olaniyan 2014:2-14; Rose-Ackerman 2016:1-215; Mantzaris 2017:15-30.

⁷³⁹ UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422.

⁷⁴⁰ UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422:Foreword.

⁷⁴¹ UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422:Foreword.

people experiencing poverty disproportionately, (c) corruption diverts funds intended for development, thereby undermining a government's ability to provide basic services, and (d) corruption feeds inequality and injustice. Concerning point (d), which states that corruption fosters inequality and injustice, bear in mind that one of the aims of social justice is to reduce inequalities and injustices.⁷⁴²

The UN Office on Drugs and Crimes⁷⁴³ has outlined how corruption impacts specific human rights directly and indirectly, listing various rights like the right to a fair trial, the right to political participation, the right to an adequate standard of living, the right to education, the right to healthcare and the right to food just to name a few.⁷⁴⁴ The right to access human rights-enabling services like the right to healthcare or education shows direct human rights-related consequences stemming from corruption. It is argued that "[c]orruption associated with public contracts can violate the right to health by threatening the quality of the construction of health facilities or the supply of health goods."⁷⁴⁵

In 2010, the International Council on Human Rights Policy released a report co-written by Transparency International⁷⁴⁶ that recognises this connection. It is stated that "corruption reinforces exclusion and discrimination and tends to magnify and exacerbate pre-existing human rights problems." These are only a few examples of the international recognition of the connection between these two concepts.

Regionally, the link between corruption within government and human rights is also recognised in the African Union Convention on Preventing and Combatting

⁷⁴² Barry 2005:7. Referring specifically to (a) above "corruption leads to violations of human rights" see generally, Mantzaris 2017:15-30.

⁷⁴³ United Nations Office on Drugs and Crime "Impact of corruption on specific human rights", <https://www.unodc.org/e4j/en/anti-corruption/module-7/key-issues/impact-of-corruption-on-specific-human-rights.html> (accessed on 3 July 2023).

⁷⁴⁴ United Nations Office on Drugs and Crime "Impact of corruption on specific human rights", <https://www.unodc.org/e4j/en/anti-corruption/module-7/key-issues/impact-of-corruption-on-specific-human-rights.html> (accessed on 3 July 2023).

⁷⁴⁵ "Corruption can also violate several aspects of the right to health, such as the 'management of financial resources', the 'distribution of medical supplies', and the 'relationship of health workers with patients.'" See, United Nations Office on Drugs and Crime "Impact of corruption on specific human rights", <https://www.unodc.org/e4j/en/anti-corruption/module-7/key-issues/impact-of-corruption-on-specific-human-rights.html> (accessed on 3 July 2023).

⁷⁴⁶ International Council on Human Rights Policy & Transparency International 2010. See also, Baillat 2013:9.

Corruption.⁷⁴⁷ The African Union Convention states in Article 2⁷⁴⁸ that the objective of the Convention is to "[p]romote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights" and to [e]stablish the necessary conditions to foster transparency and accountability in the management of public affairs." It is acknowledged in the African Convention on Corruption that the Convention's mission is to remove obstacles that affect the enjoyment of rights. Therefore, this legal instrument states that corruption is an obstacle to the enjoyment of human rights.⁷⁴⁹

The Preamble of the African Union Convention⁷⁵⁰ states, "corruption undermines accountability and transparency in the management of public affairs as well as socio-economic development on the continent." Moreover, the Preamble to the Southern African Development Community Protocol against Corruption⁷⁵¹ states that corruption has "adverse and destabilising effects throughout the world on the culture, economic, social and political foundations of society."

Nationally, this link is seen in the PRECCA⁷⁵² in the Preamble of this Act, which states that the *Constitution* places a duty on the government to respect, protect, promote and fulfil all the rights enshrined in the Bill of Rights. Concerning the consequences of corruption, this Act states that:⁷⁵³

Corruption and related corrupt activities undermine the said rights, endanger the stability and security of societies, undermine the institutions and values of democracy and ethical values and morality, jeopardise sustainable development, the rule of law and the credibility of governments, and provide a breeding ground for organised crime.

Note from this Act that it is again acknowledged that corruption undermines human rights. The South African Constitutional Court emphasised the recognition of this connection between corruption within government and its adverse impact on human

⁷⁴⁷ African Union, African Union Convention on Preventing and Combating Corruption, 11 July 2003.

⁷⁴⁸ African Union, African Union Convention on Preventing and Combating Corruption, 11 July 2003:arts. 2(4), (5). See also, Baillat 2013:8.

⁷⁴⁹ African Union, African Union Convention on Preventing and Combating Corruption, 11 July 2003.

⁷⁵⁰ *Glenister v President of the Republic of South Africa & Others*:par. 169.

⁷⁵¹ *Glenister v President of the Republic of South Africa & Others*:par. 169.

⁷⁵² Prevention and Combating of Corrupt Activities Act 2004.

⁷⁵³ Prevention and Combating of Corrupt Activities Act 2004.

rights fulfilment in the case of *Glenister v President of the Republic of South Africa & Others*. In this judgement, the Constitutional Court stated that corruption fuels maladministration and public fraudulence and impedes the capacity of the government to fulfil its obligations to respect, protect, promote, and fulfil all the rights entrenched in the Bill of Rights.⁷⁵⁴ Corruption within government violates the core human rights principles of accountability, non-discrimination, transparency, accountability, and meaningful participation by individuals in the community. Furthermore, corruption hinders sustainable economic, political, and social development.⁷⁵⁵

In *S v Shaik & Others*,⁷⁵⁶ the Constitutional Court expressed that governmental corruption is inconsistent with the fundamental values of the *Constitution*. This expression by the Constitutional Court was again seen in the *South African Association of Personal Injury Lawyers v Heath & Others* case.⁷⁵⁷ The following quotation from the judgment given in this case evidences the Constitutional Court's recognition of the immense problems caused by corruption and again shows a link between the consequences of corruption being a threat to human rights and the constitutional order of South Africa:⁷⁵⁸

Corruption and maladministration are inconsistent with the rule of law and the fundamental values of our *Constitution*. They undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms. They are the antithesis of the open, accountable, democratic government required by the *Constitution*. If allowed to go unchecked and unpunished, they will pose a serious threat to our democratic state.

The South African government acknowledged in 2020 that corruption within government has become endemic in South Africa.⁷⁵⁹ The South African government admitted that this corruption negatively affects public service delivery, impedes human and socio-economic development, undermines democracy, reduces job creation, and

⁷⁵⁴ *Glenister v President of the Republic of South Africa & Others*:par. 166.

⁷⁵⁵ Baillat 2013:3. See also, Budhram & Geldenhuys 2018:26.

⁷⁵⁶ *S v Shaik & Others* 2007 (1) SA 240 (SCA).

⁷⁵⁷ *South African Association of Personal Injury Lawyers v Heath & Others* 2001 (1) SA 883 (CC).

⁷⁵⁸ *South African Association of Personal Injury Lawyers v Heath & Others*:par. 4.

⁷⁵⁹ South African Government "National Anti-Corruption Strategy 2020-2030", https://www.gov.za/sites/default/files/gcis_document/202105/national-anti-corruption-strategy-2020-2030.pdf (accessed on 3 August 2022).

weakens public trust in government and investor confidence.⁷⁶⁰ These admissions by the South African government demonstrate the detrimental effect on the delivery of public services and acknowledge the hindrances on both human and socio-economic development.⁷⁶¹ This admission by the South African government that public service delivery has been negatively affected by corruption reaffirms the adverse effects of corruption on human rights fulfilment. A big part of human rights fulfilment, specifically socio-economic rights fulfilment, is dependent on the reliability and availability of public service provision; thus, admitting that public service delivery is negatively impacted indirectly admits to the human rights implications thereof and reaffirms the human harm as explained by Olaniyan in Section 2.2 and below.⁷⁶²

In 2021, South African Finance Minister Enoch Godongwana warned in the Medium-Term Budget Policy Statement that rampant corruption was a persistent issue draining public finances.⁷⁶³ This statement by Minister Godongwana answers two questions that help understand the study's overall findings thus far. First, is there corruption within national departments in South Africa? Yes, corruption within government in national departments and state-owned enterprises is dangerously high in South Africa. This was seen throughout Chapter 3, including in the CPI table in Section 3.3. Note here also that corruption within government including within specific government departments has existed in South Africa for a considerable time, as seen in Sections 3.3, 3.5, 3.6, 3.7 and 3.8.

Secondly, does corruption within government affect the fulfilment of socio-economic rights in South Africa? Yes, corruption within government being a drain on public finances, as attested to by Minister Godongwana, has resulted in resource constraints due to public financing being diverted into unspecified challenges. As identified in Sections 4.5 and 4.6, various instances of non-fulfilment of socio-economic rights in

⁷⁶⁰ South African Government "National Anti-Corruption Strategy 2020-2030", https://www.gov.za/sites/default/files/gcis_document/202105/national-anti-corruption-strategy-2020-2030.pdf (accessed on 3 August 2022).

⁷⁶¹ South African Government "National Anti-Corruption Strategy 2020-2030", https://www.gov.za/sites/default/files/gcis_document/202105/national-anti-corruption-strategy-2020-2030.pdf (accessed on 3 August 2022).

⁷⁶² Olaniyan 2014:1-399.

⁷⁶³ Grobler & Joubert 2004:90-102.

South Africa are related to the lack of government resources. This lack of resources exists partly due to resources being drained by corruption. This evidences the impact of corruption within government on human rights fulfilment because when resources are not available, human rights are not fulfilled for everyone.

The discussion now moves to the academic discourse on the connection between corruption and human rights. This discourse revolves around varying consequences of governmental corruption. Bear in mind here the consequences of corruption within government as mentioned in Section 2.2, the most important of which for this study is that corruption within government drains public resources, which resources are necessary to create human rights-enabling services.⁷⁶⁴ Various academics, including Olaniyan, examine the connections between corruption and the fulfilment of human rights.⁷⁶⁵ According to Olaniyan,⁷⁶⁶ the connection between corruption and human rights is one of the most fundamental questions in international law.

Olaniyan⁷⁶⁷ highlights the extensive harm caused by corruption within government to individuals, communities, and government institutions. Olaniyan⁷⁶⁸ correctly argues that corruption within government violates various human rights, such as the right to life, fair trial, health, education, and equitable work conditions.⁷⁶⁹ Olaniyan⁷⁷⁰ writes in-depth on the *human harm* caused by corruption, acknowledging that corruption is not a victimless crime. Olaniyan⁷⁷¹ mentions specifically the rights guaranteed in the African Charter on Human and People's Rights and that corruption within government on the African continent is affecting the enjoyment and realisation of these rights.

⁷⁶⁴ See generally, Tanzi 1998:8-594; Mauro 1998:263-279; Camerer 2001:7-60; Malherbe 2001:109-126; Chetwynd *et al.* 2003:3-15; Mbonu 2003:3-11; Basopu 2010:34-86; Olaniyan 2014:1-399; Rose-Ackerman 2016:1-215.

⁷⁶⁵ Olaniyan 2014:5. Linking corruption and human rights see generally, Bacio-Terracino 2010:243-246.

⁷⁶⁶ Olaniyan 2014:5.

⁷⁶⁷ Olaniyan 2014:5-262.

⁷⁶⁸ Olaniyan 2014:202-262.

⁷⁶⁹ As seen in Section 2.3 and 4.3.1-4.3.3 of this study these rights are enshrined in the *Constitution*, the UDHR, the ICESCR and the African Charter on Human and People's Rights. See Section 2.3 above "Socio-economic rights are fundamental human rights which all human beings have and cannot live without as recognised in the *Constitution*, the UDHR, the ICESCR and the African Charter on Human and Peoples' Rights."

⁷⁷⁰ Olaniyan 2014:202-262.

⁷⁷¹ Olaniyan 2014:4.

He argues that corruption poses significant challenges to realising all human rights and advocates for combating corruption to protect and advance human rights. According to Olaniyan,⁷⁷² theoretically, corruption has implications for a government's human rights obligations in at least three ways, namely (a) corruption is a violation of the obligation to respect, protect, promote, and fulfil human rights, (b) corruption is a human rights violation insofar as it increases poverty and impedes socio-economic development, and (c) corruption can lead to a multitude of human rights violations. Accepting Olaniyan's⁷⁷³ argument that corruption causes human harm and negatively affects human rights in various ways, remember that one of the social justices aims is respect, protection, promotion and fulfilment of human rights.

Rose-Ackerman⁷⁷⁴ and other academics concur with Olaniyan⁷⁷⁵ that corruption generally contributes to human rights violations.⁷⁷⁶ Rose-Ackerman⁷⁷⁷ further claims that corruption obstructs political and economic development, emphasising that it undermines developmental and distributional goals, negatively affecting the fulfilment of human rights. Corruption within government can give rise to numerous human rights violations, as it undermines the government's ability to fulfil its human rights obligations and commitments by diverting critical resources.⁷⁷⁸ Corruption depletes resources from the government and civil society, which resources are essential for ensuring economic prosperity, equality, and improved quality of life.

⁷⁷² Olaniyan 2014:12-13.

⁷⁷³ Olaniyan 2014:12-13.

⁷⁷⁴ Rose-Ackerman 2016:1-215.

⁷⁷⁵ Olaniyan 2014:12-13.

⁷⁷⁶ Academic literature, international human rights commissions, South African case law and publications from international organisations among other sources support the view that corruption, in whichever form it takes, affects the government's ability to fulfil human rights. See generally, Tanzi 1998:8-594; Mauro 1998:263-279; Camerer 2001:7-60; Malherbe 2001:109-126; Chetwynd *et al.* 2003:3-15; Mbonu 2003:3-11; Basopu 2010:34-86; Nguemegne 2011:6-200; Olaniyan 2014:4-6; Rose-Ackerman 2016:1-215; Raoul Wallenberg Institute 2018:1-20; Kenya National Commission on Human Rights (n.d.):5; *South African Association of Personal Injury Lawyers v Heath & Others*; *S v Shaik & Others*; Centre for Applied Legal Studies "Civil society responds to Zondo Commission report", <https://www.wits.ac.za/news/sources/cals-news/2022/civil-society-responds-to-zondo-commissionreport.html> (accessed on 8 February 2022); The U4 Anti-Corruption Resource Centre "Corruption, human rights and the human rights-based approach", <https://www.u4.no/topics/human-rights/basics> (accessed on 4 May 2022).

⁷⁷⁷ Rose-Ackerman 2016:1-215.

⁷⁷⁸ See for example the belief held by Olaniyan that corruption within government leads to human rights violations. Olaniyan 2014:6.

This depletion leads to reduced investment in public services. The quality of public infrastructure and service provision declines due to corruption, rendering individuals reliant on these services vulnerable. Mauro⁷⁷⁹ and Shordt *et al.*⁷⁸⁰ support this view, arguing that corruption diminishes the quality of public services and impedes the government's ability to provide basic services. Corruption in government systematically deprives individuals experiencing poverty, as they rely heavily on public service provision due to their socio-economic status. Basopu⁷⁸¹ notes that corruption within government is not restricted to social status, political affiliation, race, or social standing. It is a societal disease that affects everyone. This form of corruption has varying consequences, including affecting a country's socio-economic climate and could cause a country's economic downfall.

Governmental corruption, if unchecked, can destroy a democratic society. This corruption breeds discrimination and poverty due to it creating unfair advantages for a particular person or group of persons at the cost of the overall group.⁷⁸² Overall, the consensus among academics is that corruption and its detrimental effects on human rights are remarkable and require action in the cause of advancing and safeguarding human rights. The fight against corruption is inherently a fight for human rights. Based on the above, it is accepted that there is a connection between corruption within government and the respect, protection, promotion, and fulfilment of human rights.⁷⁸³

⁷⁷⁹ Mauro 1998:263-279.

⁷⁸⁰ Shordt *et al.* 2006:4.

⁷⁸¹ Basopu 2010:34-86.

⁷⁸² See generally, International Council on Human Rights Policy & Transparency International 2010; Basopu 2010:34-86; Baillat 2013:9; Transparency International "Addressing corruption as a driver of democratic decline: Positions towards summit for democracy 2021", <https://www.transparency.org/en/publications/summit-for-democracy-2021-addressing-corruption-democratic-decline> (accessed on 20 July 2023); UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422:Foreword; *S v Shaik & Others*; *South African Association of Personal Injury Lawyers v Heath & Others*.

⁷⁸³ Academic literature, international human rights commissions, South African case law and publications from international organisations among other sources support the view that corruption, in whichever form it takes, affects the government's ability to fulfil human rights. See generally, Tanzi 1998:8-594; Mauro 1998:263-279; Camerer 2001:7-60; Malherbe 2001:109-126; Chetwynd *et al.* 2003:3-15; Mbonu 2003:3-11; Nguemegne 2011:6-200; Olaniyan 2014:4-6; Rose-Ackerman 2016:1-215; Raoul Wallenberg Institute 2018:1-20; Kenya National Commission on Human Rights (n.d.):5; *South African Association of Personal Injury Lawyers v Heath & Others*; *S v Shaik & Others*; Centre for Applied Legal Studies "Civil society responds to Zondo Commission report", <https://www.wits.ac.za/news/sources/cals-news/2022/civil-society-responds-to-zondo->

5.3 THE LINK BETWEEN HUMAN RIGHTS AND SOCIAL JUSTICE

As was seen above with the international, regional, and national legislative and academic support for the fact that corruption within government hampers human rights fulfilment, the connection between human rights and social justice also has international, regional, and national legislative and academic support. This recognition of the interconnected relationship between human rights and social justice has strengthened over the years.⁷⁸⁴ Below, international, regional, and national legislative instruments and contributions from authors, including modern publications on social justice and the works of pre-modern authors, are summarised to show the widely accepted link between these two concepts. Note that this study suggests that social justice and its existence in the modern world cannot only be based on what has been written on this concept in the pre-modern world.

The following international legislative connections between human rights and social justice are relied upon. In the International Bill of Human Rights,⁷⁸⁵ the aim of achieving social justice and collective mentions of human rights and social justice are seen numerous times.⁷⁸⁶ In the International Bill of Human Rights,⁷⁸⁷ the mention of human

commissionreport.html (accessed on 8 February 2022); The U4 Anti-Corruption Resource Centre "Corruption, human rights and the human rights-based approach", <https://www.u4.no/topics/human-rights/basics> (accessed on 4 May 2022).

⁷⁸⁴ See generally, Miller 2001:2-18, 30-40, 63-78, 79-81, 86-107, Barry 2005:3-100; Lundy 2011:Preface, 5-7, 29-34, 41-44; Ife 2012:4-51, 89-134, 151-228; Lombard & Twikirize 2014:313-325;

⁷⁸⁵ UN General Assembly, International Bill of Human Rights, 10 December 1948, A/RES/217(III)A-E. See also, OHCHR "International Human Rights Law", <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (accessed on 27 March 2023); UN General Assembly, International Bill of Human Rights, 10 December 1948, A/RES/217(III)A-E; OHCHR "What are human rights?" <https://www.ohchr.org/en/what-are-human-rights> (accessed on 16 March 2023). (accessed on 7 July 2023); Roberts 2015:Preface.

⁷⁸⁶ Examples include, UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3; UN General Assembly, International Covenant on Civil and Political Rights, 16 December, United Nations, Treaty Series, vol. 999, p. 171; Vienna Declaration and Programme of Action 1993; Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief Proclaimed by General Assembly resolution 36/55 of 25 November 1981; United Nations. (2006); UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106; UN General Assembly, Declaration on Social Progress and Development, 11 December 1969, A/RES/2542(XXIV); UN General Assembly, International Bill of Human Rights, 10 December 1948, A/RES/217(III)A-E.

⁷⁸⁷ UN General Assembly, International Bill of Human Rights, 10 December 1948, A/RES/217(III)A-E. See generally, OHCHR "International Human Rights Law", <https://www.ohchr.org/en/instruments->

rights and social justice is often expressed as "[r]eaffirming its faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter."

Human rights are the foundation of justice. This is seen in the Preamble of the UDHR,⁷⁸⁸ which states that the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Furthermore, it is stated in the Preamble⁷⁸⁹ that "the peoples of the UN have in the Charter reaffirmed their faith in fundamental human rights ... determined to promote social progress and better standards of life in larger freedom." This mention of human rights and social progress could be read to be just social progress based on the first mention of justice in the Preamble, as shown above, and Article 2 of the Declaration on Social Progress and Development,⁷⁹⁰ which states, "[s]ocial progress and development shall be founded on respect for the dignity and value of the human person and shall ensure the promotion of human rights and social justice", read together with Article 6 of this Declaration⁷⁹¹ that states that social progress requires conformity with human rights, fundamental freedoms, and the principles of justice.

In the Preamble of the ICESCR,⁷⁹² it is also stated that human rights are the foundation of justice in the world. According to the UN,⁷⁹³ social justice cannot exist without respect for human rights, "social development and social justice cannot be attained in

and-mechanisms/international-human-rights-law__(accessed on 27 March 2023); Roberts 2015:Preface.

⁷⁸⁸ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III):Preamble.

⁷⁸⁹ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III):Preamble.

⁷⁹⁰ UN General Assembly, Declaration on Social Progress and Development, 11 December 1969, A/RES/2542(XXIV):art. 2.

⁷⁹¹ "Social progress and development require the participation of all members of society in productive and socially useful labour and the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the." See, UN General Assembly, Declaration on Social Progress and Development, 11 December 1969, A/RES/2542(XXIV):art. 6.

⁷⁹² UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3:Preamble.

⁷⁹³ United Nations "2023 Theme: Overcoming barriers and unleashing opportunities for social justice", <https://www.un.org/development/desa/dspd/international-days/world-day-of-social-justice.html> (accessed on 21 October 2023).

the absence of peace and security, or in the absence of respect for all human rights and fundamental freedoms." In the 2016 UN Human Rights Handbook for Parliamentarians,⁷⁹⁴ the UN states, "[a]s an ideal, democracy aims essentially to preserve and promote the dignity and fundamental rights of the individual, to achieve social justice, foster the economic and social development of the community."

Regionally, this link between human rights and social justice is also acknowledged. The Preamble of the African Charter of Human and Peoples' Rights⁷⁹⁵ mentions justice as an aim of this *human rights* (my emphasis) Charter, "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples." The Preamble of this Charter acknowledges the UDHR,⁷⁹⁶ which Declaration connects human rights and social justice, stating that human rights are the foundation of justice. Therefore, the African Charter regionally reinforces the international acknowledgement of the link between these two concepts.

On a national platform, this study bases this connection on legislation, the government of South Africa and South African authors. In South Africa, the *Constitution* advocates for human rights and social justice. Chapter 1 of the *Constitution* states, "[t]he Republic of South Africa is one, sovereign, democratic state founded on the following values: Human dignity, the achievement of equality, and the advancement of human rights and freedoms." One of the aims of the *Constitution* is social justice. As set out in the Preamble, the *Constitution* aims to "[h]eal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights." The *Constitution* mandates the achievement of substantive equality and social justice through the provisions of Sections 9 and 26-29.

In a publication about social justice, the South African Government⁷⁹⁷ connects human rights and achieving social justice, "'a society for all' must be based on social justice and respect for all human rights and fundamental freedoms." Acknowledging the

⁷⁹⁴ United Nations 2016:27.

⁷⁹⁵ African Charter of Human and Peoples' Rights:Preamble.

⁷⁹⁶ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

⁷⁹⁷ Republic of South Africa "World Day of Social Justice", <https://www.gov.za/WorldDayofSocialJustice2023> (accessed on 21 October 2023).

constitutional aim to achieve social justice, Liebenberg⁷⁹⁸ correctly emphasises that "the people adopt the *Constitution* so as to 'establish a society based on democratic values, social justice and human rights.'" LexisNexis,⁷⁹⁹ a South African legal publishing group, acknowledges the connection between human rights fulfilment and achieving social justice. LexisNexis⁸⁰⁰ suggests that social justice is the manifestation of human rights in the everyday lives of people at every level of society. Accordingly, social justice includes the fair distribution of all opportunities, benefits, and burdens in society. Therefore, the *Constitution*, the Government of South Africa and a South African publishing group connect human rights respect, protection, promotion, and fulfilment to achieving social justice in South Africa.

Closely connected to the view of Van der Walt⁸⁰¹ and Woolard⁸⁰² outlined below, Liebenberg⁸⁰³ examines and advocates for how judicial interpretation and enforcement of socio-economic rights can be responsive to redressing the conditions of systemic inequalities and poverty characterising South Africa. The redress of inequalities and poverty is an aim of social justice. Thus, if Liebenberg's⁸⁰⁴ view is accepted, the enforcement of socio-economic rights will achieve social justice's aim and thereby enhance its realisation. Van der Walt⁸⁰⁵ advocates for the connection between the realisation of human rights and achieving social justice in South Africa. Van der Walt⁸⁰⁶ argues for the realisation of the human right contained in Section 26 of the *Constitution* (the right to access to housing) and how the realisation of this right could advance the achievement of social justice in South Africa.⁸⁰⁷ Van der Walt⁸⁰⁸ agrees with Woolard,⁸⁰⁹ who also argued the importance of ensuring secure property

⁷⁹⁸ Liebenberg 2010:Foreword.

⁷⁹⁹ LexisNexis "Social justice hub", <https://www.lexisnexis.co.za/lexis-digest/resources/covid-19-resource-centre/practice-areas/social-justice-hub> (accessed on 28 January 2022).

⁸⁰⁰ LexisNexis "Social justice hub", <https://www.lexisnexis.co.za/lexis-digest/resources/covid-19-resource-centre/practice-areas/social-justice-hub> (accessed on 28 January 2022).

⁸⁰¹ Van der Walt 2008:325-346.

⁸⁰² Woolard 2002:1-15.

⁸⁰³ Liebenberg 2010:5-93.

⁸⁰⁴ Liebenberg 2010:5-93.

⁸⁰⁵ Van der Walt 2008:325-346.

⁸⁰⁶ Van der Walt 2008:325-346.

⁸⁰⁷ Van der Walt 2008:325-346.

⁸⁰⁸ Van der Walt 2008:325-346.

⁸⁰⁹ Woolard 2002:1-15.

rights to promote economic development and reduce inequality. They concur that fulfilling this human right can reduce inequality and achieve social justice. Therefore, Liebenberg,⁸¹⁰ Van der Walt⁸¹¹ and Woolard⁸¹² all concur to some degree that the fulfilment of specific human rights enables the achievement of social justice.

This study agrees with Liebenberg,⁸¹³ Van der Walt⁸¹⁴ and Woolard⁸¹⁵ as a baseline but moves the claim further to suggest that fulfilling all human rights will enable the achievement of social justice in South Africa. For example, the fulfilment of socio-economic rights like the right to access healthcare and the right to basic education will reduce inequalities (fulfilling an aim of social justice) and improve the lives of everyone (fulfilling another aim of social justice), particularly those trapped in poverty and bring about social justice. Taking steps to rectify past injustices is crucial for achieving social justice. The fulfilment of human rights can aid in addressing inequalities by equalising access to basic services, thereby increasing access to opportunities. It is now accepted that internationally, regionally, nationally and from the contributions of academics' human rights and social justice are connected. The definitions of social justice provided in Section 2.4 need to be acknowledged alongside international contributions to this connection to further evidence this connection. As mentioned above, the South African publishing group LexisNexis defines social justice used in this study. Social justice is:⁸¹⁶

The manifestation of human rights in the everyday lives of people at every level of society. Social justice includes the fair and just distribution of all opportunities, benefits, privileges and burdens in a society. Social justice is only possible through the equal enjoyment of all rights and freedoms, regardless of human diversity.

Thus, from the meaning of social justice relied on in this study, human rights realisation, including respect, protection, promotion and fulfilment for everyone, is

⁸¹⁰ Liebenberg 2010:5-93.

⁸¹¹ Van der Walt 2008:325-346.

⁸¹² Woolard 2002:1-15.

⁸¹³ Liebenberg 2010:5-93.

⁸¹⁴ Van der Walt 2008:325-346.

⁸¹⁵ Woolard 2002:1-15.

⁸¹⁶ LexisNexis "Social justice hub", <https://www.lexisnexis.co.za/lexis-digest/resources/covid-19-resource-centre/practice-areas/social-justice-hub> (accessed on 28 January 2022).

essential to social justice. The definition of social justice provided by the Oxford Dictionary maintains that social justice exists in a society in which the rights of individuals are recognised and protected.⁸¹⁷ Emphasis is placed on the fact that the commonly accepted Oxford Dictionary defines social justice as a concept that includes recognising and protecting human rights. Again, a link between these two concepts is reaffirmed.

Section 2.4 noted Mapp's⁸¹⁸ argument that social justice is a vague concept. Mapp⁸¹⁹ proposes that the UDHR can guide the implementation of this vague concept. Claiming that the UDHR should guide the entirety of the concept of social justice shows that, in Mapp's⁸²⁰ view, these concepts are connected fundamentally and not superficially. This study agrees with the suggestion made by Mapp⁸²¹ that the UDHR can guide social justice because human rights are the building blocks of a just society. To understand whether human rights and social justice are connected in terms of existing literature, the next Section sets out what is believed to be necessary to achieve social justice to show that although not everyone agrees on what exactly is necessary to achieve social justice, it is commonly accepted that human rights fulfilment is indeed necessary to enable the realisation of social justice.⁸²²

5.3.1 What does the achievement of social justice depend on?

In literature, the realisation of social justice is sometimes explained in terms of fundamental elements or principles that must exist within a community for that

⁸¹⁷ Social justice means "[t]he objective of creating a fair and equal society in which each individual matters, their rights are recognised and protected, and decisions are made in ways that are fair and honest." See, Oxford Reference "Social Justice", <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100515279#:~:text=Quick%20Reference,Subjects%3A%20Social%20sciences> (accessed on 31 January 2022).

⁸¹⁸ Mapp 2014:23-24.

⁸¹⁹ Mapp 2014:23-24.

⁸²⁰ Mapp 2014:23-24.

⁸²¹ Mapp 2014:23-24.

⁸²² See generally, Ife et al. 2022:6-34; Ife 2012:4-51, 89-134, 151-228; Lombard & Twikirize 2014:313-325; Mapp 2014:23-24; Miller 2001:30-40.

community to experience social justice.⁸²³ When social justice is realised in terms of these fundamental elements or principles, all do not agree upon these elements.⁸²⁴ Along with the elements necessary to achieve social justice not being agreed upon by all, the role that human rights fulfilment plays in achieving social justice is also not agreed upon by all.⁸²⁵

Accepting that there is disagreement on what exactly social justice is and what is necessary to realise it, the Human Rights Careers Organisation⁸²⁶ agrees that an exact answer to what social justice is has not been solidified in literature as "[p]hilosophers, politicians, and everyday people have wrestled with this question for as long as society has existed." The term social justice first applied only to economic resources.⁸²⁷ However, social justice has become aligned with human rights over

⁸²³ See generally, Rawls 1958:164-194; Miller 2001:2-18, 30-40, 63-78, 79-81, 86-107, 302-323; Corporate Finance Institute "Social justice", <https://corporatefinanceinstitute.com/resources/knowledge/other/social-justice/> (accessed on 3 June 2022); Human Rights Careers "Four principles of social justice", <https://www.humanrightscareers.com/issues/four-principles-of-social-justice/> (accessed on 23 March 2022).

⁸²⁴ See generally, Rawls 2001:42-43; Miller 2001: 2-18, 30-40, 63-78; Amnesty International Netherlands "Can human rights bring social justice? Twelve Essays" https://www.amnesty.nl/content/uploads/2015/10/can_human_rights_bring_social_justice.pdf (accessed on 25 April 2022). Check Up Organisation "Fact Sheet: Social justice and health", https://www.checkup.org.au/icms_docs/182820_15_FACTSHEET_Social_Justice_and_Health.pdf (accessed on 30 May 2022);

⁸²⁵ Woolard 2002:1-15; Van der Walt 2008:325-346; Liebenberg 2010:5-93; Lundy 2011:41-44; Amnesty International Netherlands "Can human rights bring social justice? Twelve Essays" https://www.amnesty.nl/content/uploads/2015/10/can_human_rights_bring_social_justice.pdf (accessed on 25 April 2022).

Mapp 2014:23-24; Kothia "Part two: What is the link between social justice and human rights?", <https://eachother.org.uk/part-two-what-is-the-link-between-social-justice-and-human-rights/> (accessed on 25 July 2023).

⁸²⁶ Human Rights Careers "Four principles of social justice", <https://www.humanrightscareers.com/issues/four-principles-of-social-justice/> (accessed on 23 March 2022).

⁸²⁷ Human Rights Careers "What does social justice mean?", <https://www.humanrightscareers.com/issues/what-does-social-justice-mean/> (accessed on 28 January 2022).

time.⁸²⁸ The Human Rights Careers Organisation⁸²⁹ advocates for this connection between human rights fulfilment and achieving social justice. This Organisation defines social justice as fairness manifested in society. Social justice includes employment, education, healthcare, housing, and more equality.⁸³⁰ According to this Organisation, social justice is achieved by respecting and protecting human rights and ensuring equal opportunities.⁸³¹

The Human Rights Careers Organisation⁸³² explains the realisation of social justice in terms of fundamental elements that must exist within a community. This organisation names four fundamental elements necessary for the achievement of social justice, namely: (a) access, (b) human rights, (c) equity and (d) participation.⁸³³ Check Up,⁸³⁴ an Australian-based organisation list the same four fundamental elements. White,⁸³⁵ in agreement with this view, acknowledges the paramount role of human rights

⁸²⁸ Barry 2005:6; Corporate Finance Institute "Social justice", <https://corporatefinanceinstitute.com/resources/knowledge/other/social-justice/> (accessed on 3 June 2022); Pachamama Alliance "What is social justice?", <https://www.pachamama.org/social-justice/what-is-social-justice> (accessed on 11 May 2022).; Human Rights Careers "What does social justice mean?", <https://www.humanrightscareers.com/issues/what-does-social-justice-mean/> (accessed on 28 January 2022).

⁸²⁹ Human Rights Careers "What does social justice mean?", <https://www.humanrightscareers.com/issues/what-does-social-justice-mean/> (accessed on 28 January 2022).

⁸³⁰ Human Rights Careers "What does social justice mean?", <https://www.humanrightscareers.com/issues/what-does-social-justice-mean/> (accessed on 28 January 2022).

⁸³¹ Human Rights Careers "What does social justice mean?", <https://www.humanrightscareers.com/issues/what-does-social-justice-mean/> (accessed on 28 January 2022).

⁸³² Human Rights Careers "What does social justice mean?", <https://www.humanrightscareers.com/issues/what-does-social-justice-mean/> (accessed on 28 January 2022).

⁸³³ Human Rights Careers "Four principles of social justice", <https://www.humanrightscareers.com/issues/four-principles-of-social-justice/> (accessed on 23 March 2022).

⁸³⁴ Check Up Organisation "Fact sheet: Social justice and health", https://www.checkup.org.au/icms_docs/182820_15_FACTSHEET_Social_Justice_and_Health.pdf (accessed on 30 May 2022).

⁸³⁵ White "What social justice means: Definition and examples", <https://grounded.world/2021/08/19/what-social-justice-means/> (accessed on 30 May 2022).

fulfilment in achieving social justice. According to Mapp,⁸³⁶ Ife,⁸³⁷ and White,⁸³⁸ the fulfilment of human rights is essential in achieving social justice.

Kent State University⁸³⁹ lists five elements necessary for the achievement of social justice: (a) access, (b) human rights, (c) equity, (d) participation and (e) diversity. The CFI⁸⁴⁰ names the same five fundamental elements. The CFI⁸⁴¹ points out that social justice has evolved to emphasise fulfilling human rights. The CFI claims that "social justice has shifted towards a stronger emphasis on human rights and improving the lives of disadvantaged and marginalised groups that have historically faced discrimination in society." The fulfilment of human rights is listed as one of the fundamental elements to achieving social justice by all the above organisations.⁸⁴²

In the publication "Can human rights bring social justice?" by Amnesty International Netherlands, twelve essays discussing the possible connection of human rights fulfilment enabling the achievement of social justice are published.⁸⁴³ Some authors in this collection of essays advocate that human rights fulfilment will bring about social justice. In contrast, other authors write against this idea, maintaining that human rights fulfilment is only one of the necessary elements to be realised to create social justice.⁸⁴⁴ In this publication, the point is made that some writers who write about the

⁸³⁶ Mapp 2014:23-24.

⁸³⁷ Ife 2022:24-25.

⁸³⁸ White "What social justice means: Definition and examples", <https://grounded.world/2021/08/19/what-social-justice-means/> (accessed on 30 May 2022)..

⁸³⁹ Kent State Online "The five principles of social justice", <https://onlinedegrees.kent.edu/political-science/master-of-public-administration/community/five-principles-of-social-justice> (accessed on 10 February 2022).

⁸⁴⁰ Corporate Finance Institute "Social justice", <https://corporatefinanceinstitute.com/resources/knowledge/other/social-justice/> (accessed on 3 June 2022).

⁸⁴¹ Corporate Finance Institute "Social justice", <https://corporatefinanceinstitute.com/resources/knowledge/other/social-justice/> (accessed on 3 June 2022).

⁸⁴² Human Rights Careers "Four principles of social justice", <https://www.humanrightscareers.com/issues/four-principles-of-social-justice/> (accessed on 23 March 2022).

⁸⁴³ Amnesty International Netherlands "Can human rights bring social justice? Twelve Essays" https://www.amnesty.nl/content/uploads/2015/10/can_human_rights_bring_social_justice.pdf (accessed on 25 April 2022).

⁸⁴⁴ Amnesty International Netherlands "Can human rights bring social justice? Twelve Essays" https://www.amnesty.nl/content/uploads/2015/10/can_human_rights_bring_social_justice.pdf (accessed on 25 April 2022).

connection between human rights and social justice believe that fulfilling human rights is only one element among various necessary elements for achieving social justice.⁸⁴⁵ This perception correlates to the above explanation of when social justice is achieved in terms of fundamental elements because human rights fulfilment is only one fundamental element listed amongst others. As discussed below, this study suggests that although human rights could arguably be seen as only one of the elements necessary for achieving social justice, it is essential.

All the work mentioned above is based on modern ideas related to social justice. The work discussed below looks at social justice from a more historical and philosophical viewpoint. It includes work from when this concept was written but was perhaps not even called social justice as is known today.

Sen's⁸⁴⁶ approach to social justice is based on the capabilities approach. According to Sen,⁸⁴⁷ capabilities refer to the various opportunities and freedoms individuals need to live fulfilling lives. These capabilities can include access to education, healthcare, political participation, employment, and more. Sen⁸⁴⁸ argues that social justice should focus on enhancing people's freedoms and capabilities. If this idea⁸⁴⁹ is worked on, consider that human rights enhance everyone's capabilities and freedoms. Consider then that fulfilling human rights enhances access to capabilities and freedoms, creating Sen's⁸⁵⁰ version of social justice.

Sen⁸⁵¹ suggests that social justice requires creating conditions that allow individuals to lead lives they have reason to value. Building on Sen's⁸⁵² idea of conditions created by social justice, it is suggested that the fulfilment of human rights creates conditions that allow individuals to lead lives they value and lives that are valuable to those

⁸⁴⁵ Human Rights Careers "Four principles of social justice", <https://www.humanrightscareers.com/issues/four-principles-of-social-justice/> (accessed on 23 March 2022).

⁸⁴⁶ Sen 2000:59-85.

⁸⁴⁷ Sen 2000:59-85.

⁸⁴⁸ Sen 2000:59-85.

⁸⁴⁹ Sen 2000:59-85.

⁸⁵⁰ Sen 2000:59-85. See also, Atkinson & Bourguignon 2014:76-81, 940-967; Hibbert 2017:1-16.

⁸⁵¹ Sen 2000:59-85.

⁸⁵² Sen 2000:59-85.

around them. Sen's⁸⁵³ idea of social justice emphasises the importance of expanding people's capabilities, including everyone's access healthcare, education and more and removing barriers that limit their freedom. Everyone's capabilities, including their access to healthcare, education and more, are expanded when their human rights are respected, protected, promoted, and fulfilled. Thus, as mentioned above, if it is accepted that human rights fulfilment brings about this expansion in human capacities that Sen⁸⁵⁴ describes as the aim of social justice, then the fulfilment of human rights will achieve Sen's⁸⁵⁵ version of social justice. In agreeance with Sen's⁸⁵⁶ view of social justice, Young⁸⁵⁷ suggests that social justice is equal opportunity for everyone to develop and exercise their capabilities.⁸⁵⁸

Two important points are noted based on Young's⁸⁵⁹ view of social justice. First, Young's⁸⁶⁰ view of social justice is that the existence of it should enhance everyone's capabilities. Note that this view of Young⁸⁶¹ agrees with Sen.⁸⁶² Secondly, Young⁸⁶³ claims that democratic government institutions have unique and essential virtues for promoting social justice. Note that Barry⁸⁶⁴ agrees with Young.⁸⁶⁵ Barry⁸⁶⁶ argues that government institutions play a vital role in creating social justice. Based on the views of Young⁸⁶⁷ and Barry⁸⁶⁸ that government institutions play a central role in enhancing these capabilities and creating social justice, it is suggested that human rights-enabling services provided by government institutions that enhance the fulfilment of everyone's human rights will bring about an enhancement in everyone exercising their capabilities and will enhance the achievement of social justice.

⁸⁵³ Sen 2000:59-85.

⁸⁵⁴ Young 2000:181.

⁸⁵⁵ Sen 2000:59-85. See also, Atkinson & Bourguignon 2014:76-81, 940-967; Hibbert 2017:1-16.

⁸⁵⁶ Young 2000:181.

⁸⁵⁷ Young 2000:181.

⁸⁵⁸ Young 2000:181.

⁸⁵⁹ Young 2000:181-183.

⁸⁶⁰ Young 2000:181.

⁸⁶¹ Young 2000:181.

⁸⁶² Young 2000:181.

⁸⁶³ Young 2000:181-183.

⁸⁶⁴ Barry 2005:3-100.

⁸⁶⁵ Young 2000:181-183.

⁸⁶⁶ Barry 2005:3-100.

⁸⁶⁷ Young 2000:181.

⁸⁶⁸ Barry 2005:3-100.

As discussed in Section 2.4, Rawls⁸⁶⁹ provided the concept of justice as fairness. Although it was not called social justice, this concept describes the achievement of social justice as it is known today. Justice as fairness requires two principles for social justice. The first is the principle of equal basic liberties, which guarantees equal freedoms and rights for everyone.⁸⁷⁰ The second principle recognises inequalities within society, allowing inequalities if they work to benefit the least advantaged.⁸⁷¹

The first principle guarantees everyone equal freedoms and rights. Hence, according to Rawls,⁸⁷² human rights are recognised as part of the first principle of justice, regarding the second principle that inequalities should exist to the advantage of the most disadvantaged. This study suggests that human rights fulfilment allows what is unequal about South African society to be equalised to the best advantage of the most disadvantaged people. Thus, when human rights are fulfilled in South Africa and people who cannot afford healthcare or education are provided with fair, constant and reasonable quality access, even the most disadvantaged members of society become advantaged.

Rawls⁸⁷³ theory of justice emphasises the importance of equal opportunities, fairness, and reducing social and economic disparities as fundamental elements of social justice. When human rights are fulfilled for everyone, opportunities become more equal. For example, if everyone has a basic education, everyone's chances of opportunity are, for the most part, considerably more equalised. When human rights are respected, protected, promoted, and fulfilled, fair access to basic services exists. Thus, fairness, as necessary, according to Rawls,⁸⁷⁴ is advanced. Lastly, Rawls⁸⁷⁵

⁸⁶⁹ Rawls 1958:164-194; Rawls 2001; Constitutional Rights Foundation "Justice as Fairness: John Rawls and his theory of justice", <https://www.crf-usa.org/bill-of-rights-in-action/bria-23-3-c-justice-as-fairness-john-rawls-and-his-theory-of-justice> (accessed on 30 May 2022).

⁸⁷⁰ Rawls 2001:42-43; Constitutional Rights Foundation "Justice as Fairness: John Rawls and his theory of justice", <https://www.crf-usa.org/bill-of-rights-in-action/bria-23-3-c-justice-as-fairness-john-rawls-and-his-theory-of-justice> (accessed on 30 May 2022).

⁸⁷¹ Rawls 2001.

⁸⁷² Rawls 2001.

⁸⁷³ See generally, Rawls 1958:164-194 Rawls 2001:42-43. Constitutional Rights Foundation "Justice as Fairness: John Rawls and his theory of justice", <https://www.crf-usa.org/bill-of-rights-in-action/bria-23-3-c-justice-as-fairness-john-rawls-and-his-theory-of-justice> (accessed on 30 May 2022).

⁸⁷⁴ See generally, Rawls 1958:164-194; Rawls 1971; Rawls 2001; Craig *et al.* 2008:4-6.

⁸⁷⁵ See generally, Rawls 1958:164-194; Rawls 1971; Rawls 2001; Hibbert 2017:1-16.

notes the reduction of social and economic disparities. When human rights are fulfilled, social and economic disparities are compensated for, and these disparities are redressed over time. Based on the assertion made above that government institutions play a central role in social justice, in 1971, Rawls⁸⁷⁶ argued that justice meant how the major social institutions distributed duties and fundamental freedoms and determined the division of the advantages of society among its members. Thus, in agreement with Barry⁸⁷⁷ and Young,⁸⁷⁸ Rawls⁸⁷⁹ also emphasises the vital role that social institutions (government institutions) play in realising social justice.

Nussbaum's⁸⁸⁰ approach to social justice is closely related to Sen's⁸⁸¹ capabilities approach. Nussbaum⁸⁸² sets out a framework for understanding social justice based on enabling people to achieve valuable functioning and capabilities in society. In this framework, Nussbaum⁸⁸³ outlines ten essential capabilities for people to live a dignified life. These capabilities include (a) education, (b) bodily health, (c) emotional well-being, (d) political participation and more. According to Nussbaum,⁸⁸⁴ social justice is about creating conditions that enable individuals to develop and exercise these capabilities.

This study suggests that valuable functioning and participation in society are enabled through respecting, protecting, promoting, and fulfilling human rights. Everyone's capabilities to partake in and enjoy life are enhanced when their human rights are fulfilled. Thus, according to Nussbaum's⁸⁸⁵ framework for social justice, human rights fulfilment achieves the same aims as her understanding of social justice. Nussbaum⁸⁸⁶ also emphasises the importance of providing equal opportunities and removing social, economic, and political barriers that prevent individuals from realising these

⁸⁷⁶ Rawls 1971:6.

⁸⁷⁷ Barry 2005:3-100.

⁸⁷⁸ Young 2000:181-183.

⁸⁷⁹ Rawls 1971:6. See also, Craig *et al.* 2008:4-6.

⁸⁸⁰ Nussbaum 2011:143-184.

⁸⁸¹ Sen 2000:59-85.

⁸⁸² Nussbaum 2011:143-184.

⁸⁸³ Nussbaum 2011:143-184.

⁸⁸⁴ Nussbaum 2011:143-184.

⁸⁸⁵ Nussbaum 2011:143-184.

⁸⁸⁶ Nussbaum 2011:143-184.

capabilities. As noted above, the fulfilment of human rights provides fairness and equal opportunities, and it aids in removing social, economic and other inequalities within society.

The view of social justice provided by Nussbaum⁸⁸⁷ concurs with the view of social justice provided by Sen⁸⁸⁸ and Young,⁸⁸⁹ namely that social justice aims to enhance the capabilities and participation of everyone. Human rights fulfilment is essential in enhancing everyone's capabilities and social participation. Nussbaum's⁸⁹⁰ emphasis that social justice should provide equal opportunities and remove social and economic barriers can also be achieved by human rights respect, protection, promotion, and fulfilment because when human rights are respected, protected, promoted and fulfilled, everyone has more equalised access to opportunities including basic services and income creating opportunities like access to education and thereby social and economic inequalities although not eliminated are redressed.

According to Miller,⁸⁹¹ there are four principles for social justice: (a) equal citizenship, (b) equality of opportunity, (c) the social minimum and (d) fair distribution. The first principle means that every citizen is entitled to equal civil, political and social rights.⁸⁹² The second principle states that a person's life chances, including access to education and job opportunities, should depend only on their motivation and aptitudes, not on irrelevant features such as race or gender.⁸⁹³ The third principle suggests that everyone must have access to resources that adequately meet their essential needs and allow them to live a secure and dignified life.⁸⁹⁴ Lastly, the fourth principle states that only resources not part of equal citizenship or the social minimum may be distributed unequally. All other resources must be distributed equally.⁸⁹⁵

⁸⁸⁷ Nussbaum 2011:143-184.

⁸⁸⁸ Sen 2000:59-85. See also, Atkinson & Bourguignon 2014:76-81 & 940-967; Hibbert 2017:1-16.

⁸⁸⁹ Young 2000:181.

⁸⁹⁰ Nussbaum 2011:143-184.

⁸⁹¹ Taylor-Gooby 2005:2. See also, Miller 2001:2-18, 30-40, 63-78, 79-81, 86-107, 231-237, 247-258, 302-323.

⁸⁹² Taylor-Gooby 2005:2. See also, Miller 2001:30-40.

⁸⁹³ Taylor-Gooby 2005:2. See also, Miller 2001:231-237, 302-323.

⁸⁹⁴ Taylor-Gooby 2005:2. See also, Miller 2001:79-81.

⁸⁹⁵ Miller 2001:2-18, 63-78, 86-107.

Miller's⁸⁹⁶ first principle of social justice is that everyone has equal human rights. Thus, according to Miller,⁸⁹⁷ human rights are interconnected with social justice. This study suggests that the second principle, which says that opportunities should be accessible equally, can be achieved through human rights fulfilment. When human rights are fulfilled, opportunities are more equally distributed. For example, when the right to education is fulfilled for everyone, the opportunity to get a job is equalised more than if the right to an education is only fulfilled for some. The third principle states that everyone must access resources that adequately meet their needs; human rights fulfilment can also be used to achieve this.⁸⁹⁸ When human rights are fulfilled, access to resources like healthcare, education, water, or shelter is accessible for everyone, and therefore, everyone has equal access to resources that meet their needs. The fourth principle that relates to the equal distribution of resources is met when human rights are fulfilled because when human rights are fulfilled, the resources of the governments are distributed equally amongst everyone.⁸⁹⁹

5.4 THE FIVE SUGGESTED KEY CONNECTIONS BETWEEN HUMAN RIGHTS AND SOCIAL JUSTICE

This study writes in agreement with Mapp,⁹⁰⁰ the Human Rights Careers Organisation,⁹⁰¹ Miller,⁹⁰² Sen,⁹⁰³ Rawls⁹⁰⁴ and Nussbaum⁹⁰⁵ that human rights and social justice are connected, and that human rights respect, protection, promotion and fulfilment are necessary to achieve social justice and therefore in contrast when human rights are not fulfilled the chances of achieving social justice diminish. Thus,

⁸⁹⁶ Miller 2001:30-40.

⁸⁹⁷ Miller 2001:231-237, 302-323.

⁸⁹⁸ Miller 2001:79-81, 247-258.

⁸⁹⁹ Miller 2001:2-18, 63-78, 86-107.

⁹⁰⁰ Mapp 2014:23-24.

⁹⁰¹ Human Rights Careers "What does social justice mean?", <https://www.humanrightscareers.com/issues/what-does-social-justice-mean/> (accessed on 28 January 2022).

⁹⁰² Miller 2001:2-18, 30-40, 63-78, 79-81, 86-107, 231-237, 247-258, 302-323. See also, Taylor-Gooby 2005:2.

⁹⁰³ Sen 2000:59-85.

⁹⁰⁴ Rawls 1958:164-194; Rawls 1971; Rawls 2001.

⁹⁰⁵ Nussbaum 2011:143-184.

when corruption within government hampers the fulfilment of human rights, achieving social justice is also hampered.

Accepting both the purpose of human rights and the aims of social justice - the summary below is used to set out this study's suggestion of how these two concepts are connected. As the backdrop to this summary, note that human rights protect a person's dignity and create a shelter for everyone's life experience. Social justice refers to the fair and equitable distribution of resources, benefits, burdens, and opportunities within a society. Social justice is concerned with addressing systemic inequalities. Ensuring everyone has access to basic services, such as housing, healthcare, education, and employment, is essential to social justice and is an aim of human rights. Thus, the objectives of human rights are similar to the aims of social justice.

The connection between human rights and social justice can be explained in various ways since these concepts are interconnected in more than one way.⁹⁰⁶ The following five main instances of interconnectedness and possible inseparability between these two concepts are suggested by this study. First, both concepts strive for a society where everyone can live a life of dignity.⁹⁰⁷ Secondly, human rights principles are social justice's moral and legal foundation. Human rights emphasise the dignity and equal worth of everyone and serve as a framework for addressing social inequalities and discrimination. Addressing social inequalities and discrimination is one of the aims of social justice.⁹⁰⁸

⁹⁰⁶ See generally, Liebenberg 2010:5-93; Lundy 2011:Preface, 5-7, 29-34, 41-44; Ife 2012:4-51, 89-134, 151-228; Are human rights the rights of social justice?. <https://www.cpsa-acsp.ca/papers-2013/Hibbert.pdf> (accessed on 21 October); Lombard & Twikirize 2014:313-325; Goodhart 2016:77-93, 145-163; Duarte 2017:34-44; Hibbert 2017:1-16; Human Rights Careers "What does social justice mean?", <https://www.humanrightscareers.com/issues/what-does-social-justice-mean/> (accessed on 28 January 2022); Turnbull "Social justice and human rights", <https://www.bihar.org.uk/blog/social-justice-and-human-rights> (accessed on 25 April 2022).

⁹⁰⁷ See generally, Rawls 1958:164-194; Rawls 1971; Rawls 2001:42-43; Sen 2000:59-85; Miller 2001:2-18, 30-40, 63-78, 79-81, 86-107, 231-237, 247-258, 302-323; Brand & Heyns 2005:2-188; Barry 2005:3-100; Taylor-Gooby 2005:2; Sen 2008:331-342; Liebenberg 2010:5-93; Nussbaum 2011:143-184; Mapp 2014:1-25; Hibbert 2017:1-16.

⁹⁰⁸ See generally, Universal Declaration of Human Rights:arts. 7, 21.2, 21.3, 26; Rawls 1958:164-194; Rawls 1971; Rawls 2001:42-43; Sen 2000:59-85; Brand & Heyns 2005:2-188; Barry 2005:3-100; Sen 2008:331-342; Liebenberg 2010:5-93; Nussbaum 2011:143-184; Hibbert 2017:1-16.

Thirdly, human rights and social justice share overlapping goals and objectives. Human rights and social justice share the following common goals: (a) eradicating poverty, (b) preventing discrimination, and (c) creating equal access to material goods and services, such as healthcare, education, and other essential services.⁹⁰⁹ Fourthly, human rights instruments are often closely connected to social justice aims. Human rights treaties, international conventions, covenants, and agreements on human rights provide a legal framework for social justice initiatives. These documents outline the obligations of governments to respect, protect, and fulfil human rights and often include the ideal of promoting social justice through policies and programs.⁹¹⁰

Lastly, those who advocate for human rights, respect, protection, promotion, and fulfilment usually advocate for social justice and vice versa. Academics, organisations and activists working towards social justice and writing on social justice frequently use human rights frameworks to promote the achievement of social justice.⁹¹¹

⁹⁰⁹ See generally, Miller 2001:2-18, 30-40, 63-78, 79-81, 86-107, 231-237, 247-258, 302-323; Lundy 2011:Preface, 5-7, 29-34, 41-44; Ife 2012:4-51, 89-134; Are human rights the rights of social justice?. <https://www.cpsa-acsp.ca/papers-2013/Hibbert.pdf> (accessed on 21 October); Lombard & Twikirize 2014:313-325; Mapp 2014:1-25; Hibbert 2017:1-16; Mollenkamp "Social justice meaning and main principles explained", <https://www.investopedia.com/terms/s/social-justice.asp> (accessed on 19 July 2023).

⁹¹⁰ See generally, UN General Assembly, International Bill of Human Rights, 10 December 1948, A/RES/217(III)A-E:arts. 65, 150, 231, 233, 252, 356, 365, 435, 436, 442; *The Constitution*:Preamble; Griffin 2009:186; Mapp 2014:1-25; Are human rights the rights of social justice?. <https://www.cpsa-acsp.ca/papers-2013/Hibbert.pdf> (accessed on 21 October). "Domestic and international human rights documents and discourses are characterized by conceptual and normative links between the aims of human rights and social justice the foundational document of the modern human rights movement, the Universal Declaration of Human Rights is characterized by a 'whole scale inclusion of justice among human rights...(and) includes not only procedural justice, but also distributive justice and fairness.'" See, Hibbert 2017:1.

⁹¹¹ See generally, Liebenberg 2010:5-93; Lundy 2011:Preface, 5-7, 29-34, 41-44; Ife 2012:4-51, 89-134, 151-228; Lombard & Twikirize 2014:313-325; Goodhart 2016:77-93,145-163; Duarte 2017:34-44; Human Rights Careers "What does social justice mean?", <https://www.humanrightscareers.com/issues/what-does-social-justice-mean/> (accessed on 28 January 2022); Human Rights Careers "Four principles of social justice", <https://www.humanrightscareers.com/issues/four-principles-of-social-justice/> (accessed on 23 March 2022); LexisNexis "Social justice hub", <https://www.lexisnexis.co.za/lexis-digest/resources/covid-19-resource-centre/practice-areas/social-justice-hub> (accessed on 28 January 2022)..

5.5 THE THREE-FOLD RELATIONSHIP

Academics, authors, organisations, and international, regional, and national legislative instruments have connected both (a) human rights fulfilment and corruption within government and (b) human rights and social justice. Thus, the relationship between these three concepts has been established. It has also been established that corruption within government impacts human rights respect, protection, promotion, and fulfilment and that this impact on human rights affects the achievement of social justice. The fight against corruption is a fight for human rights. This is attested to by the Centre for Applied Legal Studies at the University of Witwatersrand⁹¹² in South Africa, "the fight against state capture and corruption is inherently a fight for human rights." Corruption within government has consequences like reduced public service delivery. Reduced public service delivery goes against human rights fulfilment and hampers social justice's aims, including equal access to basic services and opportunities. Corruption within government reduces respect, protection, promotion, and fulfilment of human rights.⁹¹³ This decreases the fulfilment of human rights, which is essential to achieving social justice.⁹¹⁴ Corruption within government also increases inequality and poverty. Increased inequalities and poverty contradict the existence of social justice.

Based on the above, this study acknowledges that (a) governmental corruption, (b) human rights respect, protection, promotion and fulfilment, and (c) the achievement of

⁹¹² Centre for Applied Legal Studies "Civil society responds to Zondo Commission report", <https://www.wits.ac.za/news/sources/cals-news/2022/civil-society-responds-to-zondo-commission-report.html> (accessed on 8 February 2022).

⁹¹³ See generally, Tanzi 1998:8-594; Mauro 1998:263-279; Camerer 2001:7-60; Malherbe 2001:109-126; Chetwynd *et al.* 2003:3-15; Mbonu 2003:3-11; Nguemegne 2011:6-200; Olaniyan 2014:4-6; Rose-Ackerman 2016:1-215.

⁹¹⁴ See generally, Chapter 5 of this study; Rawls 1958:164-194; Rawls 1971:6; Rawls 2001:42-43; Sen 2000:59-85; Miller 2001:2-18, 30-40, 63-78, 79-81, 86-107, 231-237, 247-258, 302-323; Craig *et al.* 2008:4-6; Nussbaum 2011:143-184; Hibbert 2017:1-16; White "What social justice means: Definition and examples", <https://grounded.world/2021/08/19/what-social-justice-means/> (accessed on 30 May 2022).; Human Rights Careers "Four principles of social justice", <https://www.humanrightscareers.com/issues/four-principles-of-social-justice/> (accessed on 23 March 2022); Corporate Finance Institute "Social Justice", <https://corporatefinanceinstitute.com/resources/knowledge/other/social-justice/> (accessed on 3 June 2022); Kent State Online "The five principles of social justice", <https://onlinedegrees.kent.edu/political-science/master-of-public-administration/community/five-principles-of-social-justice> (accessed on 10 February 2022).

social justice is integrally connected. This connection between these concepts and how they affect each other shows a three-fold relationship. This study suggests that this three-fold relationship can be explained by referring to the principles of a symbiotic relationship.⁹¹⁵ A symbiotic relationship is a close, prolonged association between two or more biological species.⁹¹⁶ This relationship can be mutual, meaning different species benefit from it, or it can be parasitic, meaning that one species benefits at the cost of another.⁹¹⁷ The three core concepts in this study are not biological species, they are terms. Words that denote specific meanings relating to specific conceptual subjects. However, the three-fold relationship between these core concepts displays properties similar to a parasitic symbiotic relationship. There is a close, prolonged association between these three concepts, displaying symbiosis, a connected relationship.

Furthermore, in a parasitic symbiotic relationship, one party *benefits* while the other is *harmed*.⁹¹⁸ As has been established, corruption results in less human rights fulfilment. This, in turn, results in the achievement of social justice being hampered, which shows the parasitic nature of this relationship. As corruption increases, this concept's corresponding assurances and growth escalates - hence, one concept *benefits*. The growth of this concept leads to a decline in the fulfilment of human rights and diminishes the presence of social justice - hence, the *benefit* of one concept results in the *harm* of another. In this case, the *harm* of both other concepts is evident.⁹¹⁹

⁹¹⁵ Discussing symbiotic relationship see, Uribe *et al.* 2018:2-14.

⁹¹⁶ See, generally, Uribe *et al.* 2018:2-14; Waters *et al.* 2021:1-5; Hecht 2018:2-9.

⁹¹⁷ See Hecht 2018:2-9. See generally, Uribe *et al.* 2018:2-14; Waters *et al.* 2021:1-5.

⁹¹⁸ See, generally, Uribe *et al.* 2018:2-14; Waters *et al.* 2021:1-5; Hecht 2018:2-9.

⁹¹⁹ Discussing the symbiotic nature between institutions of states and their effects on societies see generally, Von Jacobi 2018:853-876.

5.6 HUMAN RIGHTS RESPECT, PROTECTION, PROMOTION, AND FULFILMENT ARE NECESSARY TO ACHIEVE SOCIAL JUSTICE

This study suggests that human rights fulfilment and social justice are interconnected and mutually reinforcing concepts. According to White,⁹²⁰ the fulfilment of human rights and the achievement of social justice are connected. White⁹²¹ claims that "human rights may be the most famous principle of social justice." White⁹²² further suggests, "[h]uman rights and social justice are a co-dependent pair. Thus, one simply cannot exist without the other." This study agrees with White⁹²³ that human rights are possibly the most famous principle of social justice and that human rights and social justice are a co-dependant pair.⁹²⁴ When either human rights fulfilment or social justice is truly achieved, the other is achieved simultaneously. In agreement with White,⁹²⁵ Goodhart⁹²⁶ affirms the relationship between human rights and social justice as set out in Section 5.3.⁹²⁷ According to Goodhart,⁹²⁸ human rights frameworks can be used to address structural injustices and advance social justice.

This study suggests that achieving social justice anywhere in the world, including South Africa, is integrally connected to respecting, protecting, promoting and fulfilling

⁹²⁰ White "What social justice means: Definition and examples", <https://grounded.world/2021/08/19/what-social-justice-means/> (accessed on 30 May 2022). For academic authors discussing that social justice is centred around human rights, respect, protection, promotion and fulfilment, equality and the redress of past injustices, see generally, Miller 2001:2-18, 30-40, 63-78, 231-237, Lombard & Twikirize 2014:313-325; Mapp 2014:23-24; Lundy 2011:5-7, 29-34; Barry 2005:4-38; Ife 2012:4-51, 89-134, 151-228; Ife 2022:24-25.

⁹²¹ White "What social justice means: Definition and examples", <https://grounded.world/2021/08/19/what-social-justice-means/> (accessed on 30 May 2022).

⁹²² White "What social justice means: Definition and examples", <https://grounded.world/2021/08/19/what-social-justice-means/> (accessed on 30 May 2022). See generally, Miller 2001:2-18, Mapp 2014:23-24; Barry 2005:4-38.

⁹²³ White "What social justice means: Definition and examples", <https://grounded.world/2021/08/19/what-social-justice-means/> (accessed on 30 May 2022).

⁹²⁴ See generally, the definition of social justice used by this study set out in Sections 2.4 & 4.5; Rawls 1971:6; Van der Walt 2008:325-346; Are human rights the rights of social justice?. <https://www.cpsa-acsp.ca/papers-2013/Hibbert.pdf> (accessed on 21 October); Goodhart 2016:77-93, 145-163.

⁹²⁵ White "What social justice means: Definition and examples", <https://grounded.world/2021/08/19/what-social-justice-means/> (accessed on 30 May 2022).

⁹²⁶ Goodhart 2016:77-93, 145-163.

⁹²⁷ Discussing the role of human rights fulfilment in achieving social justice see Sections 5.3 and 5.3.1 of this study.

⁹²⁸ Goodhart 2016:77-93, 145-163. See also, Mapp 2014:23-24; Kothia "Part two: What is the link between social justice and human rights?", <https://eachother.org.uk/part-two-what-is-the-link-between-social-justice-and-human-rights/> (accessed on 25 July 2023).

human rights. This suggestion strongly relies on the UDHR⁹²⁹ and the *Constitution*. As seen in Section 5.3 above, the Preamble of the UDHR states that human rights are the foundation of justice in the world. The Preamble of the *Constitution* states that the *Constitution* aims to "heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights." Based on these legal instruments and their overarching aims to improve the world as we experience it by prioritising both social justice and human rights, this study suggests that human rights and social justice are co-dependents. When human rights, including socio-economic rights, are fulfilled for everyone, everyone in South Africa will have a more just life experience, and social justice will emerge.

5.7 CONCLUSION

A just society respects, protects, promotes, and fulfils human rights for everyone. One of the main ways social justice can be achieved in any society, including South Africa, is by fulfilling human rights. Social justice fosters equal human rights, distributive justice, and a structure of equal opportunity. The distribution of resources, how people are treated, and access to services and opportunities play essential roles in the aims of both human rights and social justice. This chapter has discussed the elements that make up social justice and has suggested that although human rights are only one element of social justice, this element of social justice is essential. This study concludes that social justice emerges when everyone's human rights are respected, protected, promoted and fulfilled. It is put forward that either (a) human rights or (b) social justice cannot truly exist and be experienced by all without the other - and that when one fully exists, the other will exist alongside it. Chapter 7 concludes this study by outlining its main findings.

Various schools accept and examine the relationships between corruption within government and its impacts on human rights. Academics who examine the relationship between human rights fulfilment and social justice have also been discussed. This

⁹²⁹ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

study, specifically this chapter, has combined the writings on the relationship between (a) corruption within government and human rights fulfilment and (b) the relationship between human rights fulfilment and achieving social justice. Thereby evidencing and explaining the three-fold relationship between corruption, human rights and social justice.

CHAPTER 6

6.1 INTRODUCTION

To evidence this study's suggested three-fold relationship between (a) corruption, (b) human rights, and (c) social justice, this work has addressed the definitions of each of these concepts, and each concept has been discussed in the context of South Africa. This study has combined academic writings on the relationship between (a) corruption within government and human rights fulfilment and (b) the relationship between human rights fulfilment and the achievement of social justice and contributed its suggestion of the degree of relation between all three concepts.

6.2 SUMMARY OF FINDINGS

The three core concepts in this study are defined differently by various authors, as set out in Sections 2.2 to 2.4. The definitions in Chapter 2 of this study establish provisional links between the three core concepts. These provisional links are reinforced throughout this study, coming to a head in Chapter 5.

Focused on the first core concept, namely corruption within government, Chapter 3 sets out a fair viewpoint of corruption within government in South Africa. This viewpoint is substantiated by using current and previously exposed instances of corruption. Indicators of corruption are also noted. There is corruption within government in South Africa. Corruption within government and indicators of it in the Department of Health is seen in Section 3.5. Corruption within government and indicators of it in the Department of Education is seen in Section 3.6.

As seen in Section 3.7, large-scale public sector corruption encourages state capture. State capture is when a company unduly influences laws, government institutions or government policy. State capture was evidenced in South Africa. This state capture involved various state-owned enterprises in South Africa, including Eskom, SSA, Transnet, and Bosasa. Various political role players were implicated in this investigation, including the former President of South Africa.

Socio-economic rights, namely those contained in Sections 27 and 29 of the *Constitution*, are sometimes not respected, protected, promoted and fulfilled for everyone in South Africa, as seen in Sections 4.5 and 4.6, respectively. A significant contributing factor to this, at times, non-fulfilment is a lack of resources, including instances of government resources being drained via corrupt activities within the Departments responsible for fulfilling these rights. These corrupt activities, including proven instances of corruption, have been discussed in Chapter 3. See Section 3.3 discussing perceptions on public sector corruption in South Africa. See Section 3.4 explaining specific reports on incidents of corruption within government in South Africa from 2018 to 2022. See Section 3.5 for instances of government resources being drained via corrupt activities within the Department of Health. See Section 3.6 for instances of government resources being drained via corrupt activities within the Department of Education.

Sections 5.2 to 5.4 establish the three-fold relationship between corruption, human rights and social justice. This study claims that corruption within government impacts human rights respect, protection, promotion and fulfilment, and this impact on human rights affects the achievement of social justice. The fight against corruption is a fight for human rights. Chapter 5 sets out this study's suggestion of how these concepts relate. Acknowledging that not all agree on the degree of relationship between these concepts or that there is a three-fold relationship between them, Chapter 5 acknowledged that not everyone agrees on the role that human rights fulfilment plays in achieving social justice. There is a three-fold relationship between corruption, (a) corruption, (b) human rights and (c) social justice. As stated in Section 5.5. it is emphasised that this study defines this relationship as a parasitic symbiotic relationship. In Section 5.5, it has also been made clear that the realisation of social justice anywhere in the world, including South Africa, depends on fulfilling human rights. As noted in Section 5.5. above, this study concludes that social justice emerges when everyone's human rights are respected, protected, promoted and fulfilled. It is put forward that either (a) human rights or (b) social justice cannot truly exist and be experienced by all without the other - and that when one fully exists, the other will exist alongside it.

6.3 CONCLUDING REMARKS

This consolidated academic viewpoint of the three-fold relationship between (a) corruption, (b) human rights, and (c) social justice can be used to understand better why combating corruption within government is urgent in South Africa. This consolidated viewpoint can also be used to understand what hampers the real-life social justice experience within communities across South Africa. This study's viewpoint of this three-fold relationship was created to improve (a) attitudes and investigations towards corruption within government and (b) attitudes and efforts towards correctly spending governmental funding within government departments to enable human rights. If (a) and (b) are implemented, the life experience of everyone across South Africa can potentially improve, and thereby, the realisation of social justice in South Africa is propelled.

BIBLIOGRAPHY

ACCRAM A

2020. *Number of corruption cases in SA increases to 1,995: Corruption Watch*.
<https://www.sabcnews.com/sabcnews/number-of-corruption-cases-in-sa-increases-to-1-995-corruption-watch/> (accessed on 4 March 2021).

ABEYRATNE, R.,

2014. Socioeconomic rights in the Indian constitution: toward a broader conception of legitimacy. *Brook. J. Int'l L.*, 39.

ADEBIYI, B.O., ROMAN, N.V., CHINYAKATA, R & BALOGUN, T.V

2021. The negative impacts of COVID-19 containment measures on South African families-overview and recommendations. *The Open Public Health Journal* 14(1):233-236.

AFRICA PORTAL ORGANISATION

2020. *Africa Portal Media Report*.

<https://media.africaportal.org/documents/Momo65.pdf> (accessed on 27 October 2020).

AFRICAN UNION

2003. *African Union Convention on Preventing and Combating Corruption*.
[https://au.int/sites/default/files/treaties/36382-treaty-0028 -
_african_union_convention_on_preventing_and_combating_corruption_e.pdf](https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf)
(accessed on 20 October 2023).

AHMED D & BULMER E

2017. *Social and Economic Rights* 2nd ed. Stockholm: International IDEA.

ALLIANCE FOR SCIENCE

2023. *South Africa seeks to improve Healthcare Sector as Burden of disease continues to rise.*

<https://allianceforscience.org/blog/2023/07/south-africa-seeks-to-improve-healthcare-sector-as-burden-of-disease-continues-to-rise/> (accessed on 11 July 2023).

AMERICAN ACADEMY OF ARTS AND SCIENCE

2020. *Robert I. Rotberg.*

<https://www.amacad.org/person/robert-i-rotberg> (accessed on 13 June 2022).

AMNESTY INTERNATIONAL

2008 *Amnesty International Report 2008 - South Africa.*

<https://www.refworld.org/docid/483e27b1c.html> (accessed 15 May 2023).

2014. *South Africa: Struggle for maternal health: Barriers to antenatal care in South Africa.*

<https://www.amnesty.org/en/documents/afr53/006/2014/en/> (accessed 24 August 2023).

2018. *Amnesty International Report 2017/18 - South Africa.*

<https://www.refworld.org/docid/5a993868a.html> (accessed 24 August 2023).

2020(a). *South Africa: Broken and unequal education perpetuating poverty and inequality.*

<https://www.amnesty.org/en/latest/news/2020/02/south-africa-broken-and-unequal-education-perpetuating-poverty-and-inequality/> (accessed on 21 February 2023).

2020(b). *South Africa: Government must turn on the tap now and always.*
<https://amnesty.org.za/south-africa-government-must-turn-on-the-tap-now-and-always/> (accessed on 21 February 2023).

2020(c). *Turn on the tap.*

<https://amnesty.org.za/action/turn-on-the-tap/> (accessed on 21 February 2023).

2021. *South Africa 2021.*

<https://www.amnesty.org/en/location/africa/southernafrica/south-africa/report-south-africa/> (accessed on 22 June 2022).

2022. *Who We Are.*

<https://www.amnesty.org/en/who-we-are/> (accessed on 23 June 2022).

2022a. *Submission to Department of Basic Education – 5 July 2022.*

<https://amnesty.org.za/research/submission-to-department-of-basic-education-5-july-2022/> (accessed on 2 May 2023).

2022(b). *South Africa: Submission on the amendments to the regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure.*

<https://amnesty.org.za/research/submission-to-department-of-basic-education-5-july-2022/> (accessed on 2 May 2023).

2023. *SONA 2023: President Cyril Ramaphosa has failed the nation on the delivery of basic human rights.*

<https://amnesty.org.za/sona-2023-president-cyril-ramaphosa-has-failed-the-nation-on-the-delivery-of-basic-human-rights/> (accessed on 21 February 2023).

AMNESTY INTERNATIONAL NETHERLANDS

2015. *Can human rights bring social justice? Twelve Essays.*

https://www.amnesty.nl/content/uploads/2015/10/can_human_rights_bring_social_justice.pdf (accessed on 25 April 2022).

ARENDSE L

2020. Slowly but surely: The substantive approach to the right to basic education of the South African courts post-Juma Masjid. *African Human Rights Law Journal* 20(1):285-314.

ATKINSON AB & BOURGUIGNON F (eds)

2014. *Handbook of income distribution*. Amsterdam: Elsevier.

AUDITOR GENERAL SOUTH AFRICA

2022. *Consolidated General Report on National and Provincial Audit Outcomes 2021/22*. RP351/2022. Pretoria: AGSA.

AUSTRALIAN HUMAN RIGHTS COMMISSION

(n.d). *An introduction to human rights*.

<https://humanrights.gov.au/our-work/education/introduction-human-rights>

(accessed on 27 May 2022).

BACIO-TERRACINO J

2010. Linking corruption and human rights. *Proceedings of the ASIL Annual Meeting* 104:243-246.

BAILLAT A

2013. *Corruption and the human right to water and sanitation. Human right-based approach to tackling corruption in the water sector*. Geneva: WaterLex.

BALFOUR C

2006. Emergency medicine - a new era in South African medicines. *South African Medical Journal* 96(1):47-48.

BANERJEE MM

2005. Social work, Rawlsian social justice, and social development. *Social Development Issues* 27(1):7-14.

BANKSTON CL

2010. Social justice: Cultural origins of a perspective and a theory. *The Independent Review* 15(2):165-178.

BARRY B

2005. *Why social justice matters*. Cambridge: Polity.

BASOPU PM

2010. Assessing challenges of corruption in the Eastern Cape Department of Education. Unpublished PhD dissertation. Alice: University of Fort Hare.

BASSON Y

2020. The compliance of the South African social security system with the international covenant on economic, social and cultural rights. *Obiter* 41(4):850-870.

BAUER C

2005. The disease called corruption. *Journal for Contemporary History* 30(2):51-68.

BAXTER J, EHREN M & PATTERSON A

2018. *Distrust: Context, Culture and Corruption: the case of Governance of South African Education*.

https://www.researchgate.net/profile/Jacqueline-Baxter/publication/325298398_Distrust_Context_Culture_and_Corruption_the_case_of_Governance_of_South_African_Education/links/5b044a694585154_aeb07ef70/Distrust-Context-Culture-and-Corruption-the-case-of-Governance-of-South-African-Education.pdf (accessed on 1 October 2023):1-17.

BBC NEWS

2020. *Coronavirus in South Africa: Misuse of Covid-19 funds 'frightening'*. BBC News World Africa.

<https://www.bbc.com/news/world-africa-54000930> (accessed on 15 September 2020).

BERACOCHEA E, WEINSTEIN C & EVANS D (eds)

2010. *Rights-Based Approaches to Public Health*. New York: Springer, 19-30.

BERNSTEIN D & SHAW N

2014. South Africa. In MF Mendelsohn (ed) 2013:227-242.

BERNSTEIN H

1994. Food security in a democratic South Africa. *Transformation* 24:3-25.

BHARGAVA V

2005. *The cancer of corruption*. World Bank global issues seminar series (vol. 26). The World Bank Washington, DC.

BHENGU C

2020. *From education to rooting out corruption - 6 quotes from Cyril Ramaphosa's address*.

<https://www.timeslive.co.za/politics/2020-07-24-from-education-to-rooting-out-corruption-6-quotes-from-cyril-ramaphosas-address/> (accessed on 31 January 2022).

BIDEN J

2014. *Remarks by vice President Joe Biden to Romanian civil society groups and students*.

<https://obamawhitehouse.archives.gov/the-press-office/2014/05/21/remarks-vice-president-joe-biden-romanian-civil-society-groups-and-stude> (accessed on 10 March 2022).

BRAND D & HEYNS C

2005. *Socio-economic Rights in South Africa*. University Law Press.

BRAND D

2005. Introduction to socio-economic rights in the South African Constitution. In D Brand and C Heyns (eds.) 2005:1-56.

BRANDEIS UNIVERSITY

2022. *Our social justice definitions.*

<https://www.brandeis.edu/diversity/resources/definitions.html> (accessed on 10 June 2022).

BRITANNICA

2022. *General relativity and teaching career of Albert Einstein.*

<https://www.britannica.com/biography/Albert-Einstein/General-relativity-and-teaching-career> (accessed on 25 May 2022).

BROWDE A

2021. *Spotlight on... Human Rights.*

<https://us19.campaign-archive.com/?u=3d0405ee19ff35fc98a890993&id=65c0cf2c37> (accessed on 20 February 2023).

BRYNARD DJ

2013. Justifying administrative action for reasonableness. *Administratio Publica* 21(1):69-83.

BUDHRAM T & GELDENHUYS N

2018. Combating corruption in South Africa: Assessing the performance of investigating and prosecuting agencies. *Acta Criminologica: African Journal of Criminology & Victimology* 31(2):23-46.

BUDIANTO A

2020. Legal research methodology reposition in research on social science. *International Journal of Criminology and Sociology* 9(1):1339-1346.

BURKE TP

2010. The origins of social justice: Taparelli d'Azeglio. *Modern Age* 52(2):97-106.

BUSINESS TECH

2017. *Corruption costs SA GDP at least R27 billion annually, and 76 000 jobs.*
<https://businesstech.co.za/news/government/196116/corruption-costs-sa-gdpat-least-r27-billion-annually-and-76-000-jobs/> (accessed on 22 June 2022).

2020. *Ramaphosa has written a letter to ANC members about corruption: here is what it says.*

<https://businesstech.co.za/news/government/427902/ramaphosa-has-written-a-letter-to-anc-members-about-corruption-here-is-what-it-says/> (accessed on 30 May 2021).

2021. *How much money the poorest in South Africa are living on each month.*
<https://businesstech.co.za/news/finance/519958/how-much-money-the-poorest-in-south-africa-are-living-on-each-month/> (accessed on 13 May 2022).

2023. *The shocking state of education in South Africa.*

<https://businesstech.co.za/news/business-opinion/676069/the-shocking-state-of-education-in-south-africa/> (accessed on 20 June 2023).

BUTHELEZI L

2021. *S.A. lost R1.5 trillion to corruption in five years and continues to bleed.*

<https://www.news24.com/fin24/Economy/South-Africa/sa-lost-r15-trillion-to-corruption-in-five-years-and-continues-to-bleed-report-20210623> (accessed on 22 June 2022).

BUTHELEZI M & VALE P (eds)

2023. *State Capture in South Africa: How and why it happened*. Johannesburg: Wits University Press.

CAIDEN, G.E.,

2007. *Corruption and governance. Combating corruption, encouraging ethics: A practical guide to management ethics*.

CAMBRIDGE DICTIONARY ONLINE

2022. *Corruption*.

<https://dictionary.cambridge.org/dictionary/english/corruption> (accessed on 30 May 2022).

2022. *Human Rights*.

<https://dictionary.cambridge.org/dictionary/english/human-rights> (accessed on 30 May 2022).

CAMERER L

2001. *Corruption in South Africa: Results of an Expert Panel Survey*. [s.l.]: Institute for Security Studies South Africa.

CARNELLEY M

2016. The State's duty to protect human rights. *South African Journal on Human Rights* 32(2):229-249.

CENTER FOR ECONOMIC AND SOCIAL JUSTICE

2023. *Defining Economic Justice and Social Justice*.

<https://www.cesj.org/learn/definitions/defining-economic-justice-and-social-justice/> (accessed 1 October 2023).

CENTRAL CONNECTICUT STATE UNIVERSITY

2021. *John Lewis Institute for Social Justice*.

<https://www.ccsu.edu/johnlewisinstitute/terminology.html> (accessed on 25 May 2022).

CENTRE FOR APPLIED LEGAL STUDIES

2022. *Civil society responds to Zondo Commission report*.

<https://www.wits.ac.za/news/sources/cals-news/2022/civil-society-responds-to-zondo-commission-report.html> (accessed on 8 February 2022).

CENTRE FOR DEVELOPMENT AND ENTERPRISE

2023(a). The silent crisis: Time to fix South Africa's schools.

<https://www.cde.org.za/the-silent-crisis-time-to-fix-south-africas-schools-2/> (22 August 2023).

2023(b). The silent crisis: The forgotten story of state capture in education.

<https://www.cde.org.za/wp-content/uploads/2023/03/The-Silent-Crisis-The-forgotten-story-of-state-capture-in-education.pdf> (accessed on 22 August 2023).

CENTRE FOR HUMAN RIGHTS UNIVERSITY OF PRETORIA

2023. *Justice Van der Westhuizen says that continued non-compliance with constitutional obligation by SA Human Rights Commission and government endangers our democracy.*

<https://www.chr.up.ac.za/latest-news/3405-justice-van-der-westhuizen-says-that-continued-non-compliance-with-constitutional-obligation-by-sa-human-rights-commission-and-government-endangers-our-democracy> (accessed on 10 July 2023).

CHABALALA J

2022 *Sex for grades and jobs for families - Sadtu 'outraged' at Corruption Watch findings on education sector.*

<https://www.news24.com/news24/southafrica/news/sex-for-grades-and-jobs-for-families-sadtoutraged-at-corruption-watch-findings-on-education-sector-20220827> (accessed on 20 June 2023).

CHAPMAN JW

1975. Rawls's theory of justice. *American Political Science Review* 69(2):588-593.

CHAPONDA A, GOON DT & HOQUE ME

2017. Infant feeding practices among HIV-positive mothers at Tembisa hospital, South Africa. *African Journal of Primary Health Care and Family Medicine* 9(1):1-6.

CHAPPEL S & SMYTH N

2023. *Bernard Williams.*

<https://plato.stanford.edu/entries/williams-bernard/> (accessed on 9 October 2023).

CHECK UP ORGANISATION

2022. *Fact Sheet: Social justice and health*.

https://www.checkup.org.au/icms_docs/182820_15_FACTSHEET_Social_Justice_and_Health.pdf (accessed on 30 May 2022).

CHEN J

2020. *Corruption*.

<https://www.investopedia.com/terms/c/corruption.asp> (accessed on 15 March 2021).

CHENWI L

2013. Unpacking " progressive realisation", its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance. *De Jure* 46(3):742-769.

CHETWYND E, CHETWYND F & SPECTOR B

2003. *Corruption and poverty: a review of recent literature. Final Report*. Washington DC: Management Systems International.

CITIZEN ONLINE

2017. *R250bn lost to state capture in the last three years, says Gordhan*.

<https://www.citizen.co.za/news/south-africa/r250bn-lost-to-state-capture-in-the-last-three-years-says-gordhan/> (accessed on 19 June 2023).

2020. *People shoulder almost all of SA's tax burden*.

<https://www.citizen.co.za/news/south-africa/government/3m-people-shoulder-almost-all-of-sas-tax-burden/> (accessed on 23 November 2020).

CLAPHAM A

2015. *Human rights: A very short introduction*. Oxford University Press Oxford.

COLLINS INTERNATIONAL ONLINE DICTIONARY

2022(a). *Corruption*.

<https://www.collinsdictionary.com/dictionary/english/corruption> (accessed on 25 May 2022).

2022(b). *Human Rights*.

<https://www.collinsdictionary.com/dictionary/english/human-rights> (accessed on 25 May 2022).

2022(c). *Social Justice*.

<https://www.collinsdictionary.com/dictionary/english/social-justice> (accessed on 25 May 2022).

COMMITTEE OF INQUIRY INTO A COMPREHENSIVE SYSTEM OF SOCIAL SECURITY FOR SOUTH AFRICA

2002. *Report of the Committee of Inquiry into a Comprehensive system of Social Security for South Africa 2002 Transforming the Present-Protecting the Future Consolidated Report*.

https://sarpn.org/CountryPovertyPapers/SouthAfrica/march2002/report/Transforming_the_Present_pre.pdf (accessed on 24 November 2022).

CONNELLY LIBRARY

2021. *Qualitative and quantitative research: what is "empirical research"?*

<https://library.lasalle.edu/c.php?g=225780&p=3112085> (accessed on 21 February 2021).

CONSTITUTE PROJECT

2016. *Botswana's Constitution of 1966 with Amendments through 2016*.

https://www.constituteproject.org/constitution/Botswana_2016.pdf?lang=en

(accessed on 20 June 2022).

CONSTITUTIONAL RIGHTS FOUNDATION

2007. *Justice as Fairness: John Rawls and His Theory of Justice*.

<https://www.crf-usa.org/bill-of-rights-in-action/bria-23-3-c-justice-as-fairness-john-rawls-and-his-theory-of-justice>

(accessed on 30 May 2022).

COOVADIA H, JEWKES R, BARRON P, SANDERS D & MCINTYRE D

2009. The health and health system of South Africa: historical roots of current public health challenges. *The Lancet* 374(9692):817-834.

CORPORATE FINANCE INSTITUTE

2020. *Social Justice*.

<https://corporatefinanceinstitute.com/resources/knowledge/other/social-justice/>

(accessed on 3 June 2022).

CORRUPTIE ORGANISATION

n.d.. *What is Corruption*.

<http://www.corruptie.org/en/corruption/what-is-corruption/> (accessed on 25

May 2022).

CORRUPTION WATCH

2012(a). *About Corruption Watch.*

<https://www.corruptionwatch.org.za/about-us/who-we-are/about-corruption-watch/> (accessed on 14 June 2022).

2012(b). *Our definition of corruption.*

<https://www.corruptionwatch.org.za/learn-about-corruption/what-is-corruption/our-definition-of-corruption/> (accessed on 23 November 2020).

2012(c). *Glossary of Corruption-Related Terms.*

<https://www.corruptionwatch.org.za/glossary-of-corruption-related-terms/#E> (accessed on 2 June 2022).

2012(d). *What is corruption? We are all affected.*

<https://www.corruptionwatch.org.za/learn-about-corruption/what-is-corruption/we-are-all-affected/> (accessed on 24 November 2020).

2013. *Understanding tender corruption.*

<https://www.corruptionwatch.org.za/understanding-tender-corruption-part-one/> (accessed on 1 October 2023).

2014. *Corruption Watch Annual Report.*

<https://www.corruptionwatch.org.za/wp-content/uploads/2015/06/Corruption-Watch-Annual-Report-2014.pdf> (accessed on 27 October 2020).

2015(a). *Corruption and the law in South Africa: a quick referencing guide.*

<https://www.corruptionwatch.org.za/wp-content/uploads/2015/06/Corruption-Watch-Corruption-and-the-law-in-SA.pdf> (accessed on 31 May 2021).

2015(b). *Understanding Corruption in Tenders.*

<https://www.corruptionwatch.org.za/wp-content/uploads/2015/06/Corruption-Watch-Understanding-tender-corruption.pdf> (accessed on 2 June 2022).

2016(b). *State capture: What to do with the offender?.*

<https://www.corruptionwatch.org.za/state-capture-what-to-do-with-the-offenders/> (accessed on 22 August 2023).

2016a. *Annual Report 2016*.

<https://www.corruptionwatch.org.za/wp-content/uploads/2017/02/Corruption-Watch-Annual-Report-27-02-2017-Low-Res-Version.pdf> (accessed 3 August 2022).

2017. *Annual Report 2017*.

<https://www.corruptionwatch.org.za/wp-content/uploads/2018/04/Corruption-Watch-Annual-Report-04042018-FA-Single-Pages-CompressedV2-2.pdf> (accessed on 21 June 2022).

2018. *Annual Report 2018*.

<https://www.corruptionwatch.org.za/wp-content/uploads/2019/05/CW-Annual-Report-2018-Upholding-Democracy-Single-Pages-Agent-Orange-Design-10042019.pdf> (accessed on 21 June 2022).

2019. *Annual Report 2019*.

https://www.corruptionwatch.org.za/wp-content/uploads/2020/03/CRW0320_7171_AnnualReport-2019.pdf (accessed on 21 June 2022).

2020(a). *Analysis of corruption trends*.

https://www.corruptionwatch.org.za/wp-content/uploads/2020/09/7570J_CW_Report_A4_FINAL.pdf (accessed on 4 June 2021).

2020(b). *Annual report: average 11 whistle-blower reports a day*.

<https://www.corruptionwatch.org.za/cw-annual-report-average-11-whistle-blower-reports-a-day-in-2020/> (accessed on 30 March 2022).

2020(c). *Annual report 2020*.

<https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021).

2020(d). *In South Africa Covid-19 has exposed greed and spurred long-needed action against corruption.*

<https://www.transparency.org/en/blog/in-south-africa-covid-19-has-exposed-greed-and-spurred-long-needed-action-against-corruption> (accessed on 31 May 2021).

2021(a). *Annual Report 2020: From crisis to action.*

<https://www.corruptionwatch.org.za/wp-content/uploads/2021/05/Corruption-Watch-AR-2020-DBL-PG-20210324.pdf> (accessed on 30 May 2021).

2021(b). *SIU on the trail of government officials abusing Covid-19 procurement.*

<https://www.corruptionwatch.org.za/siu-on-the-trail-of-govt-officials-abusing-covid-19-procurement/> (accessed on 2 March 2021).

2022(a). *Executive Summary.*

<https://www.corruptionwatch.org.za/wp-content/uploads/2022/09/corruption-watch-ACT-2022-digital-combined-agent-orange-design-20220907.pdf> (accessed on 19 June 2023).

2022(b). *Sound the alarm: Corruption in the education sector.*

https://www.corruptionwatch.org.za/wp-content/uploads/2022/08/Sound-the-Alarm-Sectoral-Report-Education_Aug2022.pdf (accessed on 20 June 2023).

2022(c). *Zondo Recommendations: Public procurement is the space to watch.*

<https://www.corruptionwatch.org.za/public-procurement-is-the-space-to-watch/> (accessed on 7 July 2023).

2022(d). *Zondo Report: A summary of the first four parts, and who it implicated.*

<https://www.corruptionwatch.org.za/zondo-report-a-summary-of-the-first-four-parts-and-who-it-implicated/> (accessed on 20 October 2023).

2023(a). *Annual Reports.*

<https://www.corruptionwatch.org.za/reading-and-media-room/annual-reports-2/> (accessed on 19 June 2023).

2023(b). *Annual Report 2022.*

https://www.corruptionwatch.org.za/wp-content/uploads/2023/04/Corruption-Watch_Report_Final_4April.pdf (accessed on 19 June 2023).

2023(c). *Annual Reports*.

<https://www.corruptionwatch.org.za/reading-and-media-room/annual-reports-2/> (accessed on 19 June 2023).

CORTEN O

1999. The notion of “reasonable” in international law: legal discourse, reason and contradictions. *International & Comparative Law Quarterly* 48(3):613-625.

COUNCIL OF EUROPE

2022. *What are Human Rights?*

<https://www.coe.int/en/web/portal/what-are-human-rights> (accessed on 30 May 2022).

CRAIG G, BURCHARDT T & GORDON D (eds.)

2008. *Social justice and public policy: Seeking fairness in diverse societies*. Policy Press.

CROWLEY GR

2017. *The corruption cure: how citizens and leaders can combat graft*.

Book review. <https://www.independent.org/publications/tir/article.asp?id=1274> (accessed on 31 January 2022).

CURRIE I & DE WAAL J

2013. *The Bill of Rights Handbook*. 6th ed. Cape Town: Juta.

DAVIS R

2022. *The List: The people and businesses the State Capture Commission recommend for prosecution by the NPA.*

<https://www.dailymaverick.co.za/article/2022-01-05-the-list-the-people-and-businesses-the-state-capture-commission-recommends-for-prosecution-by-the-npa/> (accessed on 8 February 2022).

DAWSON H

2014. *A framework for monitoring and evaluating the progressive realisation of socio-economic rights in South Africa.* Johannesburg: Studies in Poverty and Inequality Institute.

DE MAN A

2022. Reconsidering corruption as a violation of the rights to equality and non-discrimination based on poverty in South Africa. *Journal for Juridical Sciences* 47(1):52-76.

DELGADO M & STAPLES L

2008. *Youth-led community organizing. Theory and action.* New York: Oxford University Press.

DEMOCRATIC ALLIANCE

2023. *Track the consequences of Zondo's State Capture reports.*

<https://www.da.org.za/statecaptureconsequences> (accessed on 19 June 2023).

DEMOCRATIC ALLIANCE GAUTENG

2022. *Tembisa Hospital endangers sick patients by discharging them early due to bed shortage.*

<https://dagauteng.org.za/2022/11/tembisa-hospital-endangers-sick-patients-by-discharging-them-early-due-to-bed-shortage> (accessed on 18 July 2023).

DENEL

2023. *Welcome to Denel SOC Ltd.*

<http://www.denel.co.za/> (accessed on 20 October 2023)

DEPARTMENT OF BASIC EDUCATION

2012. *Annual Report 2011/12.* Pretoria: DBE.

2013 *Annual Report 2012/13.* Pretoria: DBE.

2014. *Annual Report 2013/14.* Pretoria: DBE.

2015. *Annual Report 2014/15.* Pretoria: DBE.

2017. *Annual Report 2016/17.* Pretoria: DBE.

2018. *Annual Report 2017/18.* Pretoria: DBE.

2019. *Annual Report 2018/19.* Pretoria: DBE.

2020. *Annual Report 2019/20.* Pretoria: DBE.

2021. *Annual Report 2020/21.* Pretoria: DBE.

2022. *Annual Report 2021/2022.* Pretoria: DBE.

DEPARTMENT OF EDUCATION

2001. *Education White Paper 6: Special needs education: Building an inclusive education and training system.* Pretoria: DoE.

2007. *Annual Report 2006/07.* Pretoria: DoE.

2008. *Annual Report 2007/08*. Pretoria: DoE.

2016. *Annual Report 2015/16*. Pretoria: DoE.

DEPARTMENT OF INCLUSION & MULTICULTURAL ENGAGEMENT, LEWIS AND CLARK COLLEGE

2014. *The ABC's of social justice. A glossary of working language for socially conscious conversation*.

<https://college.lclark.edu/live/files/18474-abcs-of-social-justice> (accessed on 25 May 2022).

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

n.d. *General Measures of Implementation Chapter 3*.

<https://www.justice.gov.za/policy/african%20charter/afr-charter03.html> (accessed on 22 September 2023).

DEPARTMENT OF WATER AND SANITATION

2018. *Department of Water and Sanitation on its 2017/18 Annual Report, with AGSA & Treasury input; with the Minister*.

<https://pmg.org.za/committee-meeting/27162/> (accessed on 8 November 2022).

2020. *2018-19 Annual Report briefing with AGSA and Minister*.

<https://pmg.org.za/committee-meeting/30195/> (accessed on 8 November 2022).

2021. *2019/20 Audit findings, performance & outcomes: AGSA, DPME & DWS input, with Deputy Minister*.

<https://pmg.org.za/committee-meeting/32663/> (accessed on 8 November 2022).

2022(a). *2020/21 Audit & SIU investigation, with Minister.*

<https://pmg.org.za/committee-meeting/35559/> (accessed on 8 November 2022).

2022(b). *Quarter 1 2022/23 Performance; with Ministry.*

<https://pmg.org.za/committee-meeting/35595/> (accessed on 8 November 2022).

DEPARTMENT OF WOMEN, CHILDREN & PEOPLE WITH DIABILITIES & UNICEF

2011. *South Africa's Children: A Review of Equality and Child Rights.*

https://www.gov.za/sites/default/files/gcis_document/201409/safresourcesfactschildrens0.pdf (accessed on 23 June 2022).

DHAI A & MAHOMED S

2018a. Healthcare in crisis: A shameful disrespect of the Constitution. *South African Journal of Bioethics and Law* 11(1):8-10.

2018b. The National Education, Health and Allied Workers' Union (NEHAWU) strikes: South Africa's healthcare battlefield. *South African Medical Journal* 108(8):632-633.

DHAI A

2023. How is South Africa going to implement NHI when corruption is so rampant?. *South African Journal of Bioethics and Law* 15(3):76-76.

DIACONIS S

1989. Political risk insurance: OPIC's use of fiduciary agent to facilitate resolution of subrogation claims. *International Lawyer* 23(1):271-279.

DICTIONARY.COM

2022(a). *Corruption*.

<https://www.dictionary.com/browse/corruption> (accessed on 3 June 2022).

2022(b). *Social justice*.

<https://www.dictionary.com/browse/social-justice> (accessed on 31 January 2022).

DONNELLY J & WHELAN DJ

2020. *International human rights*. 6th ed. New York: Routledge.

DORMAELS A

2010. Corruption as a judgment label. *New Empirical Data, Theories and Analyses on Safety, Societal Problems and Citizens' Perceptions. Governance of Security Research Papers Series 3*:221-238.

DØSSING H, MOKEKI L & WEIDEMAN M

2011. *Mapping transparency, accountability and integrity in primary education in South Africa*. Transparency International.

https://www.un.org/en/ecosoc/newfunct/pdf/luxembourg_tisda_south_africa_report_web.pdf (accessed on 20 June 2023).

DOUWES R, STUTTAFORD M, LONDON L

2018 Social solidarity, human rights and collective action: Considerations in the implementation of the National Health Insurance in South Africa. *Health and Human Rights* 20(2):185-196.

DRAGA L

2017. Infrastructure and equipment. In F Veriava (ed) 2017:237-245.

DUARTE F

2017. Reshaping political ideology in social work: A critical perspective. *Aotearoa New Zealand Social Work* 29(2):34-44.

ENCYCLOPEDIA BRITANNICA

2020. *A theory of justice*.

<https://www.britannica.com/topic/A-Theory-of-Justice> (accessed on 11 May 2022).

EQUALITY AND HUMAN RIGHTS COMMISSION

2022. *What are human rights?*

<https://www.equalityhumanrights.com/en/human-rights/what-are-human-rights> (accessed on 18 March 2022).

EVANS S

2020. *SA's healthcare system has only around 3 000 critical care hospital beds available ... and it is not enough.*

<https://www.news24.com/news24/SouthAfrica/News/sas-healthcare-system-has-only-around-3-000-critical-care-hospital-beds-available-and-it-is-not-enough-20200320> (accessed on 30 August 2021).

EYEWITNESS NEWS

2022. *Reading List: Everything you need to know about the final state capture report.*

<https://ewn.co.za/2022/06/23/everything-you-need-to-know-about-the-final-state-capture-report> (accessed on 19 June 2023).

FARRALES MJ

2005. *What is corruption?: A history of corruption studies and the great definitions debate.*

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962 (accessed on 12 May 2022).

FAZEKAS M & TÓTH IJ

2016. From corruption to state capture: A new analytical framework with empirical applications from Hungary. *Political Research Quarterly* 69(2):320-334.

FINDLEY L & OGBU L

2011. *South Africa: from township to town.*

<https://placesjournal.org/article/south-africa-from-township-to-town/> (accessed on 10 May 2022).

FINKEL I

2013. *The Cyrus cylinder: the King of Persia's proclamation from ancient Babylon.* London: IB Tauris.

FOMBAD CM & STEYTLER N (eds)

2020. *Corruption and constitutionalism in Africa. Revisiting control measures and strategies.* Oxford: Oxford University Press.

FONN S, RAY S & BLAAUW D

2011. Innovation to improve health care provision and health systems in sub-Saharan Africa – Promoting agency in mid-level workers and district managers. *Global Public Health* 6:657–668.

FOSTER C

2021. UNIVERSAL DECLARATION OF HUMAN RIGHTS, PART. Routledge Handbook of Global Health Rights.

FRANCIS R

2005. Water justice in South Africa: natural resources policy at the intersection of human rights, economics and political power. *Georgetown International Environmental Law Review* 18(1):149-196.

FRANSMAN T & YU D

2019. Multidimensional poverty in South Africa in 2001-16. *Development Southern Africa* 36(1):50-79.

FREEMAN MC

2018. Global lessons for deinstitutionalisation from the ill-fated transfer of mental health-care users in Gauteng, South Africa. *The Lancet Psychiatry* 5(9):765-768.

FREEMAN S

2007. *Rawls*. London: Routledge.

GARDINER JA & LYMAN TR

1978. *Decisions for sale: Corruption and reform in land-use and building regulation*. New York: Praeger.

GERBER J

2022. 'A dismal failure!' - Zondo Commission slams Ace, Zwane's R1bn Free State housing debacle.

<https://www.news24.com/news24/southafrica/news/a-dismal-failure-zondo-commission-slams-ace-zwanes-r1bn-free-state-housing-debacle-20220429>

(accessed on 16 October 2023).

GYIMAH-BOADI E

2002. Confronting corruption in Ghana and Africa. *Ghana Center for Democratic Development* 4(2):1-6.

GLOBAL EXCHANGE

2022. *Social Justice*.

<https://globalexchange.org/tag/social-justice/> (accessed on 25 May 2022).

GLOBAL FINANCIAL INTEGRITY

2022. *Illicit Financial Flows*.

<https://gfintegrity.org/issue/illicit-financial-flows/> (accessed on 2 June 2022).

GLOBAL SUSTAINABLE INVESTMENT ALLIANCE

2019. *Global sustainable investment review 2018*.

<https://www.gsi-alliance.org/> (accessed on 1 October 2023).

GOODHART M (ed)

2016. *Human rights: politics and practice*. Oxford: Oxford University Press.

GOVENDER J

2016. Social justice in South Africa. *Civitas-Revista de Ciências Sociais* 16:237-258.

GOVERNMENT COMMUNICATIONS

2018. Highlights of the State of the Nation Address.

https://www.gov.za/sites/default/files/gcis_documents/SoNA2018Highlights_0.pdf (accessed 24 August 2023).

GOVERNMENT OF CANADA

2020. *About human rights*.

<https://www.canada.ca/en/canadian-heritage/services/about-human-rights.html> (accessed on 27 May 2022).

GRIFFEY B

2011. The 'reasonableness' test: Assessing violations of state obligations under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. *Human Rights Law Review* 11(2):275-327.

GRIFFIN J

2009. *On human rights*. Oxford: Oxford University Press.

GROBLER E & JOUBERT SJ

2004. Corruption in the public sector: the elusive crime. *Acta Criminologica: African Journal of Criminology & Victimology* 17(1):90-102.

GROUNDLED WORLD

2021. *What social justice means: Definition and examples.*

<https://grounded.world/what-social-justice-means/> (accessed on 30 May 2022).

HAAS WP

1962. Inspection of Public Records. *University of Kansas Law Review* 11(1)157-164.

HABERMAS J

2008. The constitutionalization of international law and the legitimation problems of a constitution for world society. *Constellations* 15(4):444-455.

HALL R

2011. Revisiting unresolved questions: land, food and agriculture. *Transformation: Critical Perspectives on Southern Africa* 75(1):81-94.

HARVEY R, BUCHANAN-CLARKE S & MALULEKE L

2022. *The state must ensure SA's food security.*

<https://mg.co.za/top-six/2022-09-23-the-state-must-ensure-sas-food-security/>
(accessed on 20 February 2023).

HASSAN R

1970. *The sociology of corruption. The nature, function, causes and prevention of corruption.* By Syed Hussein Alatas. Donald Moore Press Ltd, Singapore 1968. Foreword by Harold D. Lasswell. Pp. 87. References. *Journal of Southeast Asian Studies* 1(2):142-143.

HEALTH SYSTEMS TRUST

2017. *South Africa Health Review 2017.*

<https://www.hst.org.za/publications/Pages/HST-South-African-Health-Review-2017.aspx> (accessed on 9 October 2023).

2018. *South Africa Health Review 2018.*

<https://www.hst.org.za/publications/Pages/SAHR2018.aspx> (accessed on 9 October 2023).

2019. *South Africa Health Review 2019.*

<https://www.hst.org.za/publications/Pages/SAHR2019.aspx> (accessed on 9 October 2023).

HEARD A

1997. *Human rights: Chimeras in sheep's clothing?*

<https://www.sfu.ca/~aheard/intro.html> (accessed on 4 October 2023).

HECHT LB, THOMPSON PC & ROSENTHAL BM

2018. Comparative demography elucidates the longevity of parasitic and symbiotic relationships. *Proceedings of the Royal Society B*, 285(1888):2-9.

HELLMAN JS, JONES, G, KAUFMANN D & SCHANKERMAN M

2000. Seize the State, Seize the Day: An Empirical Analysis of State Capture and Corruption in Transition Economies. *World Bank Policy Research Working Paper*, 2444:1-41.

HEYNS C & BRAND D

1998. Introduction to socio-economic rights in the South African Constitution. *Law, Democracy & Development* 2(2):153-167.

HEYWOOD M

2009. South Africa's treatment action campaign: combining law and social mobilization to realize the right to health. *Journal of Human Rights Practice* 1(1):14-36.

2014. The broken thread: Primary health care, social justice and the dignity of the health worker. *Public Positions Theme Event: Briefing Paper* 1 September 2014.

2020. *Scandal of the year: Covid-19 corruption*.

<https://www.dailymaverick.co.za/article/2020-12-27-scandal-of-the-year-covid-19-corruption/> (accessed on 31 May 2021).

2023. *Second Presidential Health Summit – summitting while the health system burns*.

<https://www.dailymaverick.co.za/article/2023-05-02-presidential-health-summit-summitting-while-the-health-system-burns/> (accessed on 11 July 2023).

HEYWOOD P

2017. *Why we need to kill the 'Corruption is Cancer' Analogy*. Corruption in Fragile States Series, CDA Perspectives Blog.

HIBBERT N

2013. *Are human rights the rights of social justice?*.

<https://www.cpsa-acsp.ca/papers-2013/Hibbert.pdf> (accessed on 21 October).

2017. Human rights and social justice. *Laws* 6(2): 1-16.

HO F

2023. *Ramaphosa proclaims 'health revolution' at second presidential health summit.*

<https://www.spotlightnsp.co.za/2023/05/08/ramaphosa-proclaims-health-revolution-at-second-presidential-health-summit/> (accessed on 11 July 2023).

HOLMES L

2015. *Corruption: A very short introduction*. Oxford: Oxford University Press.

HONTELEZ JA, NEWELL ML, BLAND RM, MUNNELLY K, LESSELLS RJ & BÄRNIGHAUSEN T

2012. Human resources needs for universal access to antiretroviral therapy in South Africa: a time and motion study. *Human Resources for Health* 10(1):1-12.

HOPKINS KL, DOHERTY, T & GRAY GE

2018. Will the current National Strategic Plan enable South Africa to end AIDS, tuberculosis and sexually transmitted infections by 2022?. *Southern African Journal of HIV Medicine* 19(1):1-6.

HUMAN RIGHTS CAREERS

n.d. *Four principles of social justice.*

<https://www.humanrightscareers.com/issues/four-principles-of-social-justice/>
(accessed on 23 March 2022).

n.d. *What does social justice mean?*

<https://www.humanrightscareers.com/issues/what-does-social-justice-mean/>
(accessed on 28 January 2022).

HUMAN RIGHTS COMMISSION OF MALAYSIA

2016. *Annual Report 2015*. Kuala Lumpur: Human Rights Commission of Malaysia.

HUMAN RIGHTS WATCH

2011. *Stop making excuses: Accountability for maternal health care in South Africa*.

<https://www.hrw.org/report/2011/08/08/stop-making-excuses/accountability-maternal-health-care-south-africa> (accessed on 24 August 2023).

2014. *What are human rights?*

<https://www.hrw.org/news/2014/09/15/what-are-human-rights> (accessed on 27 May 2022).

2015(a). *500 000 kids did not go school today*.

<https://www.hrw.org/news/2015/08/19/500-000-kids-did-not-go-school-today>
(accessed on 18 August 2022).

2015(b). *South Africa: Education barriers for children with disabilities*.

<https://www.hrw.org/news/2015/08/18/south-africa-education-barriers-children-disabilities> (accessed on 18 August 2022).

2016(a). *South Africa: Crisis for children with disabilities*.

<https://www.hrw.org/news/2016/03/14/south-africa-crisis-children-disabilities>
(accessed on 18 August 2022).

2016(b). *South Africa: Little progress for youth with disabilities.*

<https://www.hrw.org/news/2016/08/19/south-africa-little-progress-youth-disabilities> (accessed on 18 August 2022).

2017(a). *South Africa should prioritize implementing inclusive education for children with disabilities.*

<https://www.hrw.org/news/2017/09/22/south-africa-should-prioritize-implementing-inclusive-education-children> (accessed on 18 August 2022).

2017(b). *World Report 2017: South Africa: Events of 2016.*

<https://www.hrw.org/world-report/2017/country-chapters/south-africa> (accessed on 11 May 2023).

2018(a). *Submission to the Committee on the Rights of Persons with Disabilities concerning South Africa.*

<https://www.hrw.org/news/2018/02/01/submission-committee-rights-persons-disabilities-concerning-south-africa> (accessed on 18 August 2022).

2018(b). *World Report 2018: South Africa: Events of 2017.*

<https://www.hrw.org/world-report/2018/country-chapters/south-africa> (accessed on 11 May 2023).

2019(a). *South Africa: Children with disabilities shortchanged.*

<https://www.hrw.org/news/2019/05/24/south-africa-children-disabilities-shortchanged> (accessed on 18 August 2022).

2019(b). *World Report 2019.*

<https://www.hrw.org/world-report/2019> (accessed on 13 March 2022).

2019(c). *World Report 2019: South Africa.*

<https://www.hrw.org/world-report/2019/country-chapters/south-africa> (accessed on 21 October 2023).

2020. *Africa: Covid-19 exposes healthcare shortfalls.*

<https://www.hrw.org/news/2020/06/08/africa-covid-19-exposes-healthcare-shortfalls> (accessed on 30 August 2021).

2023(a). *South Africa: Older people lack basic care, support.*

<https://www.hrw.org/news/2023/06/27/south-africa-older-people-lack-basic-care-support> (accessed on 24 August 2023).

2023(b) *About Us.* <https://www.hrw.org/about/about-us> (accessed on 23 June 2023).

IFE J

2012. *Human rights and social work: Towards rights-based practice.* 3rd edition. Cambridge: Cambridge University Press.

IFE J, SOLDATIĆ K & BRISKMAN L

2022. *Human rights and social work.* Cambridge: Cambridge University Press.

IGAMBA J

2022. *Water Crisis in South Africa.*

<https://www.greenpeace.org/africa/en/blogs/51757/water-crisis-in-south-africa/> (accessed on 21 February 2023).

IMRAY G

2021. *Hope that South Africa's COVID-19 corruption inspires action.*

<https://apnews.com/article/government-contracts-cape-town-coronavirus-pandemic-africa-south-africa-c59e9fa1906b5622d38947e327fb6b6d> (accessed on 31 May 2021).

INSTITUTE FOR SECURITY STUDIES

2011. *South Africa's mixed messages on procurement corruption.*

<https://issafrica.org/iss-today/south-africas-mixed-messages-on-procurement-corruption> (accessed on 20 October 2023).

INTERCOLLEGIATE STUDIES INSTITUTE

2014. *The origins of social justice: Taparelli d'Azeglio*.

<https://isi.org/intercollegiate-review/the-origins-of-social-justice-taparelli-dazeglio/> (accessed on 3 June 2022).

INTERNATIONAL COMMISSION OF JURISTS

2018. *5.3 Reasonableness*.

<https://www.icj.org/chapter-5-standards-and-techniques-of-review-in-domestic-adjudication-of-esc-rights-2/5-3-reasonableness/> (accessed on 18 July 2023).

INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY & TRANSPARENCY INTERNATIONAL

2010. *Integrating human rights in the anti-corruption agenda: Challenges, possibilities and opportunities*. Geneva: ICHRP.

INVESTEC

2020. *Is SA's healthcare system prepared for Covid-19?*

https://www.investec.com/en_za/focus/beyond-wealth/is-south-africas-healthcare-system-prepared-for-covid-19.html (accessed on 30 August 2021).

INVESTOPEDIA

2020. *Corruption*.

<https://www.investopedia.com/terms/c/corruption.asp> (accessed on 15 March 2021).

MOLLENKAMP D

2022. *Social justice*.

<https://www.investopedia.com/terms/s/social-justice.asp> (accessed on 28 January 2022).

JENSEN A

2018. Kant's Theory of Justice.

<https://cla.umn.edu/philosophy/news-events/story/kants-theory-justice> (accessed on 12 July 2023).

JUDICIAL COMMISSION OF ENQUIRY

2022(a). *Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector including organs of state. Part VI, Vol. 3 The public funds diverted to the Gupta enterprise through state capture, The dissipation of state capture-derived funds through local and international money laundry networks, The acquisition of the optimum coal mine.*

<https://www.thepresidency.gov.za/content/part-6-judicial-commission-inquiry-state-capture-report> (accessed on 5 October 2023).

2022(b). *Commission of Inquiry into State Capture. Final Reports.*

<https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

2022(c). *Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Part III.*

https://www.statecapture.org.za/site/files/announcements/676/OCR_version_-_State_Capture_Commission_Report_Part_III_Vol_I_-_Bosasa.pdf (accessed on 2 November 2022).

2022(d). *Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Report, Part IV*".

https://www.statecapture.org.za/site/files/announcements/680/OCR_version_-_State_Capture_Commission_Report_Part_IV_Vol_I_-_NT,EOH,COJ,Alexkor.pdf (accessed on 5 October 2023).

2022(e). *Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Report, Part I*.

https://www.statecapture.org.za/site/files/announcements/673/OCR_version_-_State_Capture_Commission_Report_Part_1_Vol_I.pdf (accessed on 16 May 2022).

2022(f). *Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Report 4 Part IV*.

https://www.statecapture.org.za/site/files/announcements/683/OCR_version_-_State_Capture_Commission_Report_Part_IV_Vol_IV_-_Eskom.pdf (accessed on 16 May 2022).

2022(g). *Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector including organs of state Report: Part VI, Vol. 4: Summary of Recommendations*.

<https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

2022(h). *Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector including organs of state. Part 1, Vol. 1*.

<https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

2022(i). *Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector including organs of state. Part 1.*

<https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

2022(j). *Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector including organs of state. Part II.*

<https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

2022(k). *Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector including organs of state Part V Volume 1.*

<https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

2022(l). *Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector including organs of state Part V Volume 2.*

<https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

2022(m). *Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector including organs of state. Part IV.*

<https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

2022(n). *Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector including organs of state Part VI Volume 1.*

<https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

2022(o). *Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector including organs of state Part VI Volume 2.*

<https://www.thepresidency.gov.za/report-type/judicial-commission-inquiry-state-capture-report?page=1> (accessed on 5 October 2023).

2022(p). *Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Part VI Volume 3.*

https://www.gov.za/sites/default/files/gcis_document/202206/electronic-state-capture-commission-report-part-vi-vol-iii.pdf (accessed on 7 July 2023).

2022(q). *Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Part VI Volume 4.*

https://www.statecapture.org.za/site/files/announcements/683/OCR_version_-_State_Capture_Commission_Report_Part_IV_Vol_IV_-_Eskom.pdf

(accessed on 20 October 2023).

KÄLIN W & KÜNZLI J

2009 *The law of international human rights protection.* Oxford, Oxford University Press.

KANT I

1949. *The Philosophy of Immanuel Kant.* New York: Modern Library.

1996. *The metaphysics of morals.* L Denis (ed), trans. MJ Gregor. Cambridge: Cambridge University Press.

KENT STATE ONLINE

2020. *The five principles of social justice.*

<https://onlinedegrees.kent.edu/political-science/master-of-public-administration/community/five-principles-of-social-justice> (accessed on 10 February 2022).

KENTON K

2021. *Corruption Perceptions Index (CPI)*.

<https://www.investopedia.com/terms/c/corruption-perception-index.asp>

(accessed on 25 February 2021).

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

n.d. *Unjust enrichment. The making of land grabbing millionaires*. Vol. 2. Nairobi: Kenya National Commission on Human Rights & Kenya Land Alliance.

KHOZA A

2018. *Moseneke gives government 3 months to pay more than R1m each to Life Esidimeni families*.

<https://www.news24.com/news24/moseneke-gives-government-3-months-to-pay-more-than-r1m-each-to-life-esidimeni-families-20180319> (accessed on 21

June 2023).

KHUMALO S & HODGSON TF

2017. The right to basic education for children with disabilities. In F Veriava (ed) 2017:104-127.

KLAAREN J

2020. Social grant payments and regulatory responses to corruption in South Africa. In CM Fombad & N Steytler (eds) 2020:90-109.

KOTA Z & HINGSTON D

2021. *South Africa's corruption busters: short-changed on funding and political commitment.*

<https://theconversation.com/south-africas-corruption-busters-short-changed-on-funding-and-political-commitment-173072> (accessed on 5 May 2022).

KOTHIA K

2021. Part two: What is the link between social justice and human rights? *Each Other.*

<https://eachother.org.uk/part-two-what-is-the-link-between-social-justice-and-human-rights/> (accessed on 25 July 2023).

KOZUH M, HENKELMAN WFM, JONES CE, WOODS C (eds.)

2014. *Extraction & control: Studies in honour of Matthew W. Stolper.* Chicago: The Oriental Institute of the University of Chicago.

KRAYNAK RP

2018. The origins of "social justice" in the natural law philosophy of Antonio Rosmini. *The Review of Politics* 80(1):3-29.

KRUEGER AO

1974. The political economy of the rent-seeking society. *The American Economic Review* 64(3):291-303.

KURZEMNIECE A

2018. *Bribery and corruption: is it cultural phenomena?*

<https://www.linkedin.com/pulse/bribery-corruption-cultural-phenomena-aija-kurzemnice-mica> (accessed on 28 February 2023).

KUWONU F

2019. Africa's freedom struggles and the Universal Declaration of Human Rights: 70 years since its adoption, the declaration has inspired liberation movements. *Africa Renewal* 32(3):24-25.

KWAZULU-NATAL PROVINCE TREASURY

2021. *KwaZulu-Natal Provincial Treasury SCM circular no. 7 of 2020/2021: Departure from publication of bids and bid awards in the government tender bulleting: Departments and public entities*. Pietermaritzburg: KZN Treasury.

LANDMAN T & CARVALHO E

2009. *Measuring human rights*. Abingdon: Routledge.

LANDMAN T

2018. Democracy and human rights: Concepts, measures, and relationships. *Politics and Governance* 6(1):48-59.

LAW INSIDER ONLINE

n.d. *Corruption*.

<https://www.lawinsider.com/search?q=corruption> (accessed on 25 May 2022).

n.d. *Human Rights*.

<https://www.lawinsider.com/search?q=human+rights> (accessed on 25 May 2022).

LEA S

2017. *Five ways human rights help the fight for social justice.*

<https://eachother.org.uk/5-ways-human-rights-help-social-justice/> (accessed on 23 March 2022).

LEDGER T

2017. *An empty plate: Why we are losing the battle for our food system, why it matters, and how we can win it back.* Johannesburg: Jacana Media.

LEKUBU BK

2013. Issues of corruption in South Africa's municipalities. *South African Association of Public Administration and Management. Challenges of Local Government in South Africa. SAAPAM Limpopo Chapter. Journal of Public Administration, Conference Proceedings,*

LEXISNEXIS

2022. *Social justice hub.*

<https://www.lexisnexis.co.za/lexis-digest/resources/covid-19-resource-centre/practice-areas/social-justice-hub> (accessed on 28 January 2022).

LIEBENBERG S

1995. The international covenant on economic, social and cultural rights and its implications for South Africa. *South African Journal on Human Rights* 11(3):359-378.

2000. *Human development and human rights. South African country study. Human Development Report 2000 Background Paper.*

https://hdr.undp.org/sites/default/files/sandra_liebenberg.pdf (accessed on 16 March 2022).

2001. The right to social assistance: the implications of Grootboom for policy reform in South Africa. *South African Journal on Human Rights* 17(2):232-257.

2003. The interpretation of socio-economic rights. In S Woolman (2003):1-66

2006. Needs, rights and transformation: adjudicating social rights. *Stellenbosch Law Review* 17(1):5-36.

2010. *Socio-economic rights: adjudication under a transformative constitution*. Claremont: Juta.

LOMBARD A & TWIKIRIZE JM

2014. Promoting social and economic equality: Social workers' contribution to social justice and social development in South Africa and Uganda. *International Social Work* 57(4):313-325.

LONDON L

2007. 'Issues of equity are also issues of rights': Lessons from experiences in Southern Africa. *BMC Public Health* 7:1-10.

LUNDY C

2011. *Social work, social justice & human rights: A structural approach to practice*. 2nd edition. North York, Ont.: University of Toronto Press.

MABAYA N

2018. *S.A.'s Constitution embodies the Universal Declaration of Human Rights*.

<https://www.news24.com/News24/sas-constitution-embodies-the-universal-declaration-of-human-rights-20181210> (accessed on 3 June 2022).

MACROTRENDS

2023. *South Africa unemployment rate 1991-2023*.

<https://www.macrotrends.net/countries/ZAF/south-africa/unemployment-rate>

(accessed on 14 February 2023).

MAFFETTONE S

2010. *Rawls: An introduction*. Cambridge: Polity.

MAGENNIS RH & VAN ZYL J

2009. *Making health insurance work for the low-income market in South Africa. Cost drives and strategies. Discussion document*. s.l.: FinMark Trust & Cenfri.

MAKGOBA MW

2016. *The Report into the 'Circumstances surrounding the deaths of mentally ill patients: Gauteng Province' No Guns:94 + Silent Deaths and Still Counting*. Pretoria: Health Ombud: Republic of South Africa.

MALHERBE K

2001. Stretching solidarity too far: the impact of fraud and corruption on social security in South Africa. *Law, Democracy & Development* 5(1):109-126.

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.

MAPHUMULO WT & BHENGU BR

2019. Challenges of quality improvement in the healthcare of South Africa post-apartheid: A critical review. *Curationis* 42(1):1-9.

MAPP SC

2014. *Human rights and social justice in a global perspective: An introduction to international social work*. Oxford: Oxford University Press.

MARTÍNEZ E

2015(a). *Complicit in exclusion: South Africa's failure to guarantee inclusive education for children with disabilities*.

<https://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children> (accessed on 22 August 2022).

2015(b). *Obligations to children with disabilities must be honoured*.

<https://www.hrw.org/news/2015/09/07/obligations-children-disabilities-must-be-honored> (accessed on 18 August 2022).

2016. *Dispatches: Are the "doors for learning" open to all in South Africa?*

<https://www.hrw.org/news/2016/01/15/dispatches-are-doors-learning-open-all-south-africa> (accessed on 18 August 2022).

2017(a). *Children with disabilities in South Africa cannot wait*.

<https://www.hrw.org/news/2017/12/04/children-disabilities-south-africa-cannot-wait> (accessed on 18 August 2022).

2017(b). *South Africa needs a global reminder about education obligations*.

<https://www.hrw.org/news/2017/05/09/south-africa-needs-global-reminder-about-education-obligations> (accessed on 18 August 2022).

2019. *South Africa's children with disabilities need the president's attention*.

<https://www.hrw.org/news/2019/04/25/south-africas-children-disabilities-need-presidents-attention> (accessed on 18 August 2022).

MASEKO TW

2021. The feasibility of the victims of corruption's claim for constitutional damages against corrupt public officials in South Africa. *De Jure* 54(1):127-140.

MASUKU T & KELBRICK J

2018. SA's top economic undergrads examine the costs of corruption.

<https://www.news24.com/citypress/voices/sas-top-economic-undergrads-examine-the-costs-of-corruption-20180220> (accessed on 5 May 2022).

MASUKU T

2018. *S.A.'s top economic undergrads examine the costs of corruption.*

<https://www.news24.com/citypress/voices/sas-top-economic-undergrads-examine-the-costs-of-corruption-20180220> (accessed on 5 May 2022).

MASWENENG K

2018. *Patient dies during strike in Klerksdorp hospital.*

<https://www.timeslive.co.za/news/south-africa/2018-04-25-patient-dies-during-strike-in-klerksdorp-hospital/> (accessed on 30 August 2021).

MAURO P

1998. Corruption and the composition of government expenditure. *Journal of Public Economics* 69(2):263-279.

MBONU C

2003. *Economic, social and cultural rights: Corruption and its impacts 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/CN4/Sub.2/2003/18 (2003).

MBOWENI SH & RISENGA PR

2022. The Impact of The COVID-19 Pandemic on the Management of Chronic Disease in South Africa: A Systematic Review. *The Open Public Health Journal* 15(1):1-11.

MCCORMICK P

2003. Whose justice? An examination of nine models of justice. *Social Thought* 22(2/3):7-25.

MEIER B

2004. *Corruption in the education sector: An introduction*. Unpublished paper. Berlin: Transparency International.

MEIER BM, GABLE L, GETGEN JE & LONDON L

2010. Rights-based approaches to public health systems. In: E Beracochea, C Weinstein & D Evans (eds). 2010:19-30.

MELGAR N, ROSSI M & SMITH TW

2010. The perception of corruption. *International Journal of Public Opinion Research* 22(1):120-131.

MENDELSON MF (ed)

2014. *The anti-bribery and anti-corruption review*. 3rd edition. London: Law Business Research.

MERRIAM-WEBSTER INTERNATIONAL ONLINE DICTIONARY

2022(a). *Corruption*.

<https://www.merriam-webster.com/dictionary/corruption> (accessed on 25 May 2022).

2022(b). *Human Rights*.

<https://www.merriam-webster.com/dictionary/human%20rights> (accessed on 25 May 2022).

2022(c). *Social Justice*.

<https://www.merriam-webster.com/dictionary/social%20justice> (accessed on 25 May 2022).

MEYER ED

2010. Access to health care in South Africa: An ethical and human rights obligation. Unpublished PhD dissertation. Johannesburg: University of the Witwatersrand.

MILLER D

2001. *Principles of social justice*. Cambridge: Harvard university Press.

MISTREE D & DIBLEY A

2018. Corruption and the Paradox of Transparency. *Working Paper Series 03-2018*. Stanford Law School, Rule of Law Program.

MKABELA QN

2014. Ubuntu as an axiological framework for human rights education. *Indilinga African Journal of Indigenous Knowledge Systems* 13(2):283-291.

MKANCU S

2023. *Inefficiency costs lives: The case of the Eastern Cape Department of Education.*

<https://www.corruptionwatch.org.za/inefficiency-costs-lives-the-case-of-the-ec-department-of-education/> (accessed on 22 August 2023).

MLABA K

2020. *3 Things that have increased food insecurity in South Africa this year.*

<https://www.globalcitizen.org/en/content/issues-increase-food-insecurity-south-africa-covid/> (accessed on 5 October 2023).

MLACHILA MM & MOELETSI T

2019. *Struggling to make the grade: A review of the causes and consequences of the weak outcomes of South Africa's education system.* Washinton: International Monetary Fund.

MLAMBO VH & MASUKU MM

2020. Governance, corruption and COVID-19: The final nail in the coffin for South Africa's dwindling public finances. *Journal of Public Administration* 55(3-1):549-565.

MNDZEBELE SL

2014. Prevalence and causes of early childhood caries in children less than 6 years old at Tembisa Hospital, South Africa: dental public health. *African Journal for Physical Health Education, Recreation and Dance* 20(sup-1):396-408.

MOHLABI DR, VAN ASWEGEN EJ & MOKOENA JD

2010. Barriers to the successful implementation of school health services in the Mpumalanga and Gauteng provinces. *South African Family Practice* 52(3):249-254.

MORRIS SD

2011. Forms of corruption. CESifo DICE report, 9(2):10-14.

MOYN S

2012. *The last utopia: human rights in history*. Cambridge: Har Clapham and University Press.

MPEDI LG

2008. *Pertinent social security issues in South Africa*. Socio-Economic Rights Project. Cape Town: Community Law Centre, University of the Western Cape.

MUBANGIZI JC

2004. *The protection of human rights in South Africa: A legal and Practical guide*. Claremont: Juta.

MUDAU J & MADZIVHANDILA T

2002. COVID-19 in South Africa: corruption in the running of the state affairs. *African Journal in Education and Transformation* 2(1):14-20.

MULLER M

2020. *Money down the drain: Corruption in South Africa's water sector.* Johannesburg: Corruption Watch and the Water Integrity Network.

MWENDA KK

2011. *Public international law and the regulation of diplomatic immunity in the fight against corruption.* Pretoria: Pretoria University Law Press.

NAHER N, HOQUE R, HASSAN MS, BALABANOVA D, ADAMS AM & AHMED SM

2020. The influence of corruption and governance in the delivery of frontline health care services in the public sector: A scoping review of current and future prospects in low and middle-income countries of south and south-east Asia. *BMC Public Health* 20:1-16.

NAIDOO N

2022. *The Zondo Commission report: Damning evidence — and recommendations whose time has come.*

<https://www.dailymaverick.co.za/article/2022-01-19-the-zondo-commission-report-damning-evidence-and-recommendations-whose-time-has-come/>

(accessed on 16 February 2022).

NAMPEWO Z, MIKE JH & WOLFF J

2022. Respecting, protecting and fulfilling the human right to health. *International Journal for Equity in Health* 21(1):1-13.

NEWS 24

2018. *Health minister outlines plan of action.*

<https://www.news24.com/News24/health-minister-outlines-plan-of-action-20180609> (accessed on 30 August 2021).

NEWS24 INVESTIGATIONS

2022 *Silenced | No investigation, no protection: Inside department head's big lie to Babita Deokaran.*

<https://www.news24.com/news24/investigations/silenced-no-investigation-no-protection-inside-department-heads-big-lie-to-babita-deokaran-20220801>

(accessed on 18 July 2023).

NGUEMEGNE JP

2011. *Corruption and human development in Africa*. Bloomington, IN: Xlibris Corporation.

NICOLSON G

2018. *Newsflash: Life Esidimeni families awarded R1.2-million compensation each.*

<https://www.dailymaverick.co.za/article/2018-03-19-newsflash-life-esidimeni-families-awarded-r1-2-million-compensation-each/> (accessed on 21 June 2023).

NKRUMAH B

2019. Opening Pandora's box: A legal analysis of the right to food in South Africa. *De Jure* 52(1):47-64.

NOVAK M

2000. Defining social justice. *First Things* 108(Dec):11-12.

2009. Social justice: Not what you think it is. *The Heritage Foundation*.

<https://www.heritage.org/poverty-and-inequality/report/social-justice-not-what-you-think-it> (accessed on 7 October 2023).

NUGMANOVA M, MIKKOLA H, ROZANOV A & KOMLEVA V (eds)

2020. *Education, human rights and peace in sustainable development*. London: IntechOpen.

NUSSBAUM MC

1997. Capabilities and human rights. *Fordham Law Review* 66(2):273-300.

2011. *Creating capabilities: The human development approach*. Cambridge: Harvard University Press.

NYATHI M

2023. Re-Asserting the Doctrinal Legal Research Methodology in the South African Academy: Navigating the Maze. *South African Law Journal*, 140(2):365-386.

ODEKU OK

2022. Critical analysis of school pit toilet system as an impediment to the right to access quality education in South Africa. *African Journal of Public Affairs* 13(1):97-109.

ODHIAMBO A

2011. "Stop making excuses": Accountability for maternal health care in South Africa. Human Rights Watch.

<https://www.hrw.org/report/2011/08/08/stop-making-excuses/accountability-maternal-health-care-south-africa> (accessed on 6 October 2023).

OLANIYAN K

2014. *Corruption and Human Rights Law in Africa*. Oxford: Hart.

ONLINE MSW PROGRAMMES

2022. *Introduction to social justice in social work*.

<https://www.onlinemswprograms.com/social-work/what-is-social-justice/>

(accessed on 10 February 2022).

ORNSTEIN AC

2017. Social justice: History, purpose and meaning. *Society* 54(6):541-548.

OXFORD LEARNER'S DICTIONARIES

2022(a). *Corruption*.

https://www.oxfordlearnersdictionaries.com/definition/american_english/corruption#:~:text=corruption,noun,promised%20to%20fight%20police%20corruption

[n](https://www.oxfordlearnersdictionaries.com/definition/american_english/corruption#:~:text=corruption,noun,promised%20to%20fight%20police%20corruption) (accessed on 31 January 2022).

2022(b). *Human rights*.

<https://www.oxfordlearnersdictionaries.com/definition/english/human-right>

(accessed on 31 January 2022).

2022(c). *Kickback*.

<https://www.oxfordlearnersdictionaries.com/definition/english/kickback>

(accessed on 31 January 2022).

OXFORD REFERENCE

2022(a). *Social justice*.

<https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100515279#:~:text=The%20objective%20of%20creating%20a,that%20are%20fair%20and%20honest> (accessed on 31 January 2022).

2022(b). *Geneva Convention*.

<https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095847757> (accessed on 11 November 2022).

PACHAMAMA ALLIANCE

2021. *What is social justice?*

<https://www.pachamama.org/social-justice/what-is-social-justice> (accessed on 11 May 2022).

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

n.d.. *Human Rights*.

https://www.parliament.gov.za/storage/app/media/EducationPubs/human_rights_email_eng.pdf (accessed on 3 June 2022).

2022. *Human Rights Day*.

<https://www.parliament.gov.za/project-event-details/2> (accessed on 27 May 2022).

2023(a). *National Assembly Debates Corruption in Public Healthcare System*.

<https://www.parliament.gov.za/news/national-assembly-debates-corruption-public-healthcare-system> (accessed on 2 February 2023).

2023(b). *Press Release: The National Assembly passes the National Health Insurance Bill and the Land Court Bill*.

<https://www.parliament.gov.za/press-releases/press-release-national-assembly-passes-national-health-insurance-bill-and-land-court-bill> (accessed on 10 June 2023).

PATHSHALA

n.d. *Research Methodology*.

http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/09_research_methodology/04_socio-legal_research/et/8151_et_et.pdf (accessed on 12 May 2022).

PHAAHLA J

2023. Minister Joe Phaahla: Debate on National Health Insurance Bill.

<https://www.gov.za/speeches/minister-joe-phaahla-national-health-insurance%C2%A0bill-13-jun-2023-0000> (accessed on 10 July 2023).

PHURUTSE MC

2005. *Factors affecting teaching and learning in South African public schools. South Africa report presented to the Education Labour Relations Council.*

<https://www.purpletod.co.za/docs/Factors%20affecting%20LT%20in%20SA.pdf> (accessed on 4 October 2023).

PILLAY K

2003. Tracking South Africa's progress on health care rights: are we any closer to achieving the goal. *Law, Democracy & Development* 7(1):55-81.

PILLAY P, CHITUNHU K & CHIVANDIRE L

2023. State capture in South Africa: Going back to basics. *African Journal of Public Affairs* 14(1):152-173.

PONGWENI T

2023. *Hawks raid properties of top ANC figure in R1bn Tembisa Hospital tender corruption probe.*

<https://www.dailymaverick.co.za/article/2023-03-29-hawks-raid-properties-of-top-anc-figure-in-r1bn-tembisa-hospital-tender-corruption-probe/> (accessed on 18 July 2023).

PRASAD M, DA SILVA MBM & NICKOW A

2019. Approaches to corruption: a synthesis of the scholarship. *Studies in Comparative International Development* 54:96-132.

PUBLIC AFFAIRS RESEARCH INSTITUTE

2022. The Zondo Commission: A bite-sized summary.

<https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf> (accessed on 19 June 2023).

QUINOT G & LIEBENBERG S

2011. Narrowing the band: Reasonableness review in administrative justice and socio-economic rights jurisprudence in South Africa. *Stellenbosch Law Review* 22(3):639-663.

RAMALEKANA N

2017. Promoting human rights: Strategies and challenges in South Africa. *South African Journal on Human Rights* 33(2):199-215.

RAMAPHOSA C

2019. President Cyril Ramaphosa on Health Sector Anti-Corruption Forum.

<https://www.gov.za/speeches/president-cyril-ramaphosa-health-sector-anti-corruption-forum-2-oct-2019-0000> (accessed on 2 February 2023).

2023. President Cyril Ramaphosa: 2nd Presidential Health Summit.

<https://www.gov.za/speeches/president-cyril-ramaphosa-2nd-presidential-health-summit-5-may-2023-0000> (accessed on 10 July 2023).

RAMCHARAN BG

2015. *Contemporary human rights ideas: Rethinking theory and practice*. London: Routledge.

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*. Danida: Raoul Wallenberg Institute Lund.

RAWLS J

1958. Justice as fairness. *The Philosophical Review* 67(2):164-194.

1971. *A theory of justice*. Cambridge (Mass.).

1973. *A theory of justice*. Oxford: Oxford University Press.

1999. *A theory of justice* (rev. edition). Oxford: Oxford University Press.

2001. *Justice as fairness: A restatement*. Cambridge: Harvard University Press.

RENSBURG R

2021. *Healthcare in South Africa: How inequity is contributing to inefficiency?*

<https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753> (accessed on 30 August 2021).

REPUBLIC OF SOUTH AFRICA

2023. *World Day of Social Justice*.

<https://www.gov.za/WorldDayofSocialJustice2023> (accessed on 21 October 2023).

RHEEDER R

2021. Corruption in the public health sector in South Africa: A global bioethical perspective. *South African Journal of Bioethics and Law* 14(3):84-88.

RICHARDS-SCHUSTER K, ESPITIA N & RODEMS R

2019. Exploring values and actions: Definitions of social justice and the civic engagement of undergraduate students. *Journal of Social Work Values and Ethics* 16(1):27-38.

RISPEL L

2016. Analysing the progress and fault lines of health sector transformation in South Africa. *South African Health Review* 2016(1):17-23.

RISPEL LC, DE JAGER P & FONN S

2016. Exploring corruption in the South African health sector. *Health Policy and Planning* 31(2):239–249.

RISPEL LC, MARSHALL C, MATIWANE B & TENZA IS

2021. Innovations, contestations and fragilities of the health system response to COVID-19 in the Gauteng Province of South Africa. *Plos One* 16(12):e.0261339.

ROBERTS CN

2015. *The contentious history of the international bill of human rights*. Cambridge: Cambridge University Press.

ROHLF M

2020. *Immanuel Kant*.

<https://plato.stanford.edu/entries/kant/> (accessed on 12 July 2023).

ROSA S

2011. Transformative constitutionalism in a democratic developmental state. *Stellenbosch Law Review*,22(3):452-565.

ROSE-ACKERMAN S

1978. *Corruption: A study in political economy*. New York: Academic Press.

2016. *Corruption and government: Causes, consequences and reform* 2nd edition. Cambridge: Cambridge University Press.

ROTBURG RI

2009. *Corruption, global security and world order*. Cambridge: World Peace Foundation.

RUGGIE J

2011. Report of the special representative of the secretary-general on the issue of human rights and transnational corporations and other business enterprises: Guiding principles on business and human rights: implementing the United Nations 'protect, respect and remedy' framework. *Netherlands Quarterly of Human Rights* 29(2):224-253.

SANDBROOK R

1982. *The politics of basic needs: Urban aspects of assaulting poverty in Africa*. London: Heinemann.

SANDER R

2016. *Human Rights and the Cyrus Cylinder*. Artefact. The actual artwork site is located on a median strip bordered by a 6 Lane Avenue, LA, USA.

<http://www.farhang.org/freedom> (accessed on 9 October 2023).

SANDHOLTZ W & KOETZLE W

2000. Accounting for corruption: Economic structure, democracy, and trade. *International Studies Quarterly* 44(1):31-50.

SAUL B, KINLEY D & MOWBRAY J

2014. *The International Covenant on Economic, Social and Cultural Rights: commentary, cases, and materials*. Oxford: Oxford University Press.

SCHIRMER S & VISSER R

2023a. *The forgotten story of state capture in education*. Johannesburg: Centre for Development and Enterprise.

2023b. *The silent crisis: Time to fix South Africa's schools*. Johannesburg: Centre for Development and Enterprise.

SCHIRMER S

2023. *Letter: It is World Bank data putting SA among the poorest schools performers*.

<https://www.cde.org.za/it-is-world-bank-data-putting-sa-among-the-poorest-schools-performers/> (accessed on 22 August 2023).

SEBOLA MP, TSHEOLA JP & MAFUNISA MJ

2014. Editorial perspective: Corruption and democracy in post-colonial Africa. *South African Association of Public Administration and Management Conference Proceeding*, 29-31 October, Limpopo, South Africa.

SECTION 27

2023. *Life Esidimeni*.

<https://section27.org.za/life-esidimeni/> (accessed on 21 June 2023).

SELEKA N

2022. *Tembisa Hospital back in spotlight after video surfaces of shocking conditions in casualty ward*.

<https://www.news24.com/news24/southafrica/news/tembisa-hospital-back-in-spotlight-after-video-surfaces-of-shocking-conditions-in-casualty-ward-20221216> (accessed on 18 July 2023).

SEN A

2000. Development as freedom. *Development in Practice* 10(2):258-259.

2008. The idea of justice. *Journal Of Human Development* 9(3):331-342.

SHAH A & SCHACTER M

2004. Combating corruption: look before you leap. *Finance and Development* 41(4):40-43.

SHORDT K, STRAVATO L, DIETVORST C & O'LEARY D

2006. About corruption and transparency in the water and sanitation sector. *International Water and Sanitation Centre (IRC), Thematic Overview Paper* 16:1-39.

SILUBONDE TM, KNIGHT L, NORRIS SA, VAN HEERDEN A, GOLDSTEIN S & DRAPER CE

2023. Perceptions of the COVID-19 pandemic: a qualitative study with South African adults. *BMC Public Health* 23(1):1-15.

SINGH O

2022. *Corruption at Tembisa Hospital involves firms flagged by Babita Deokaran.*

<https://www.businesslive.co.za/bd/national/2022-12-13-corruption-at-tembisa-hospital-involves-firms-flagged-by-babita-deokaran/> (accessed on 18 July 2023).

SINGH R

2021. *Module IV: Socio-legal research.*

http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/09._research_methodology/04._socio-legal_research/et/8151_et_et.pdf (accessed on 21 February 2021).

SKELTON A

2013. The role of the courts in ensuring the right to a basic education in a democratic South Africa: a critical evaluation of recent education case law. *De Jure* 46(1):1-23.

SOBUWA Y

2020 *Almost 800 infants have died at Tembisa Hospital since 2020.*

<https://www.news24.com/news24/southafrica/news/almost-800-infants-have-died-at-tembisa-hospital-since-2020-20230607> (accessed on 18 July 2023).

2022. *Tembisa hospital weighed down by staff shortages, ageing infrastructure.*

<https://www.news24.com/citypress/news/tembisa-hospital-weighed-down-by-staff-shortages-ageing-infrastructure-20220421> (accessed on 18 July 2023).

SONDLO O

2023. *Pit toilets in schools violate human rights.*

<https://mg.co.za/thoughtleader/opinion/2023-04-25-pit-toilets-in-schools-violate-human-rights/> (accessed on 17 July 2023).

SOUTH AFRICAN GOVERNMENT

2021(a). *Special Investigating Unit on release of a Report of finalised investigations and outcomes of investigations into allegations on the PPE procurement by state institutions.* 5 February 2021.

<https://www.gov.za/speeches/special-investigating-unit-release-report-finalised-investigations-and-outcomes> (accessed on 31 May 2021).

2021. *National Anti-Corruption Strategy 2020-2030.*

https://www.gov.za/sites/default/files/gcis_document/202105/national-anti-corruption-strategy-2020-2030.pdf (accessed on 3 August 2022).

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

n.d. *Access to health care.* Johannesburg: SAHRC.

2018(a). *Rahima Moosa Hospital - "The hospital has violated the right of access to health" – says SAHRC.* <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1653-rahima-moosa-hospital-the-hospital-has-violated-the-right-of-access-to-health-says-sahrc> (accessed on 21 October 2023).

2018(b). *15 Basic human rights you should know.*

<https://www.sahrc.org.za/index.php/sahrc-media/news/item/1262-15-basic-human-rights-you-should-know> (accessed on 31 January 2022).

2018(c). *South Africa celebrates the 70th Anniversary of the Universal Declaration of Human Rights (UDHR).*

<https://www.sahrc.org.za/index.php/sahrc-media/news/item/1686-south-africa-celebrates-the-70th-anniversary-of-the-universal-declaration-of-human-rights> (accessed on 3 June 2022).

2019. *State of Human Rights in Gauteng 2018/19.* Johannesburg: SAHRC.

2021. *3,297 SA schools still have pit toilets, risking the lives of pupils.*

<https://www.sahrc.org.za/index.php/sahrc-media/news/item/2853-3-297-sa-schools-still-have-pit-toilets-risking-the-lives-of-pupils-sahrc> (accessed on 17 July 2023).

SPAULL N

2013a. Poverty & privilege: Primary school inequality in South Africa. *International Journal of Educational Development* 33(5):436-447.

2013b. South Africa's education crisis: The quality of education in South Africa 1994-2011. *Johannesburg: Centre for Development and Enterprise* 21(1):1-65.

STAFF REPORTER, MAIL & GUARDIAN

2017. "We can't accept the new HIV, TB plan" - Treatment Action Campaign.
<https://mg.co.za/article/2017-04-04-00-we-cant-accept-the-new-hiv-tb-plan/>
(accessed on 10 October 2023).

STATISTA

2023. *Unemployment rate in South Africa from Q1 2019 to Q3 2022, by age group.*

<https://www.statista.com/statistics/1129482/unemployment-rate-by-age-group-in-south-africa/> (accessed on 14 February 2023).

STATISTICS SOUTH AFRICA

2017. *Poverty Trends in South Africa. An examination of absolute poverty between 2006 and 2015.* Pretoria: Stats SA.

2018. *Overcoming poverty and inequality in South Africa: An assessment of drivers, constraints and opportunities.* Pretoria: Stats SA.

STEINBERG C

2006. Can reasonableness protect the poor? A review of South Africa's socio-economic rights jurisprudence. *South African Law Journal.* 123(2):264-284.

SULEIMAN N & OTHMAN Z

2017 Corruption typology: A review of literature. *Chinese Business Review* 16(2):102-108.

SUTTO M

2019. Human rights evolution. A brief history. *The CoESPU Magazine* 3:18-21.

SVENSSON J

2005. Eight questions about corruption. *Journal of Economic Perspectives* 19(3):19-42.

TALANE V

2022. Zondo names main players in Eskom capture.

<https://www.bizcommunity.com/Article/196/880/227453.html> (accessed on 22 August 2023).

TANZI V

1998. Corruption around the world: Causes, consequences, scope and cures. *Staff Papers* 45(4):559-594.

TAYLOR-GOOBY P

2005. Attitudes to social justice. *lppr*.

THE PRESIDENCY OF THE REPUBLIC OF SOUTH AFRICA

2019 Launch of Health Sector Anti-Corruption Forum.

<https://www.thepresidency.gov.za/press-statements/launch-health-sector-anti-corruption-forum> (accessed on 2 February 2023).

2022. *The Presidency receives Part Four of the State Capture Commission Report*.

<https://www.thepresidency.gov.za/press-statements/presidency-receives-part-four-state-capture-commission-report> (accessed on 2 June 2022).

THE U4 ANTI-CORRUPTION RESOURCE CENTRE

n.d. *Basic Guide to Anti-Corruption*.

<https://www.u4.no/topics/anti-corruption-basics/basics> (accessed on 30 May 2022).

2021. *Corruption, human rights and the human rights-based approach*.

<https://www.u4.no/topics/human-rights/basics> (accessed on 4 May 2022).

THE UNITED NATIONS OFFICE ON DRUGS AND CRIMES (UNODC)

n.d. *Module 7. Corruption and human rights*. Vienna: UNODC.

n.d. *Impact of corruption on specific human rights*.

<https://www.unodc.org/e4j/en/anti-corruption/module-7/key-issues/impact-of-corruption-on-specific-human-rights.html> (accessed on 3 July 2023).

THE UNIVERSITY OF LAW

2023. *Human Rights Law*.

<https://www.law.ac.uk/employability/legal-practice-areas/human-rights-law/>
(accessed on 9 October 2023).

THE WORLD BANK

1997. *Helping countries combat corruption: The role of The World Bank*.
Washington, D.C.: The World Bank.

THORNHILL C

2012. Improving local government transformation in South Africa. *Administratio Publica* 20(3):128 143.

TRANSNET

2023. About us.

<https://www.transnet.net/AboutUs/Pages/Overview.aspx> (accessed on 20 October 2023).

TRANSPARENCY INTERNATIONAL

2010. *Corruption Perception Index*.

<https://www.transparency.org/en/cpi/2010> (accessed on 31 October 2022).
2011. *Corruption Perception Index*.
<https://www.transparency.org/en/cpi/2011> (accessed on 31 October 2022).
2012 *Corruption Perception Index*.
<https://www.transparency.org/en/cpi/2012> (accessed on 31 October 2022).
2013 *Corruption Perception Index*.
<https://www.transparency.org/en/cpi/2013> (accessed on 31 October 2022).
2014 *Corruption Perception Index*.
<https://www.transparency.org/en/cpi/2014> (accessed on 31 October 2022).
2015 *Corruption Perception Index*.
<https://www.transparency.org/en/cpi/2015> (accessed on 31 October 2022).
2016. *Corruption Perception Index 2016*.
<https://www.transparency.org/en/cpi/2016> (accessed on 21 June 2022).
2017. *Corruption Perception Index 2017*.
<https://www.transparency.org/en/cpi/2017> (accessed on 21 June 2022).
2019. *Corruption Perception Index 2019*.
<https://www.transparency.org/en/cpi/2019> (accessed on 21 June 2022).
2020(a). *Corruption Perception Index 2020*.
<https://www.transparency.org/en/cpi/2020> (accessed on 21 June 2022).
2020(b). *Corruption Perceptions Index. New Zealand*.
<https://www.transparency.org/en/cpi/2020/index/nzl> (accessed on 25 February 2021).
2021(a). The ABCs of the CPI: How the Corruption Perceptions Index is calculated.
<https://www.transparency.org/en/news/how-cpi-scores-are-calculated>
(accessed on 1 August 2022).

2021(b). *Corruption Perception Index 2021*.

<https://www.transparency.org/en/cpi/2021> (accessed on 21 June 2022).

2022(a). *About Transparency International*.

<https://www.transparency.org/en/about> (accessed on 21 June 2022).

2022(b) *Corruption Perception Index*.

<https://www.transparency.org/en/cpi/2022> (accessed on 13 June 2023).

2022(c). *What We Do*.

<https://www.transparency.org/en/what-we-do> (accessed on 21 June 2022).

2022(d). *Who We Are*.

<https://www.transparency.org.uk/who-we-are> (accessed on 21 June 2022).

2023. What is corruption.

<https://www.transparency.org/en/what-is-corruption> (accessed on 21 September 2023).

TREATMENT ACTION CAMPAIGN

2018. State of Provincial Healthcare System. Spotlight on Gauteng.

<https://www.tac.org.za/wp-content/uploads/2018/06/tac-gauteng-state-of-health-report-may-2018.pdf> (accessed on 20 October 2023).

TURNBULL E

2020. *Social justice and human rights*.

<https://www.bih.org.uk/blog/social-justice-and-human-rights> (accessed on 25 April 2022).

UNITED NATIONS INTERNATIONAL CHILDREN'S EMERGENCY FUND (UNICEF)

2022. *What are human rights?*

<https://www.unicef.org/child-rights-convention/what-are-human-rights>

(accessed on 27 May 2022).

UNITED FOR HUMAN RIGHTS

2023. *The Background of Human Rights*.

<https://www.humanrights.com/course/lesson/background-of-human-rights/the-background-of-human-rights.html> (accessed on 9 October 2023).

UNITED NATIONS

n.d. *History of the declaration*.

<https://www.un.org/en/about-us/udhr/history-of-the-declaration> (accessed on 27 May 2022).

n.d. *Human Rights Day 10 December*.

<https://www.un.org/en/observances/human-rights-day> (accessed on 3 June 2022).

1945. *UN Charter*.

<https://www.un.org/en/about-us/un-charter> (7 July 2023).

1949. *Universal declaration of human rights*. New York: UN.

1994 *Professional training series No. 1. Human Rights and social work. A manual for schools of social work and the social work profession*. New York: United Nations.

2003. *United Nations Convention against Corruption*.

<https://www.unodc.org/unodc/en/treaties/CAC/> (accessed on 13 June 2022).

2016. *Human rights. Handbook for parliamentarians No 26*. Geneva: Inter-Parliamentary Union.

2017. *World Day of Social Justice 2017*.

<https://www.un.org/development/desa/dspd/international-days/world-day-of-social-justice/world-day-of-social-justice-2017.html> (accessed on 9 October 2023).

2022. *2022 World Day of Social Justice: Achieving social justice through formal employment.*

<https://www.un.org/development/desa/dspd/2022/02/wdsj/> (accessed on 30 May 2022).

2022. *What are human rights?*

<https://www.un.org/en/global-issues/human-rights> (accessed on 18 March 2022).

2023. *2023 Theme: Overcoming Barriers and Unleashing Opportunities for Social Justice.*

<https://www.un.org/development/desa/dspd/international-days/world-day-of-social-justice.html> (accessed on 21 October 2023).

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

2007. An evaluation of the obligation to take steps to the “maximum of available resources” under an Optional Protocol to the Covenant. Document No.: E/C, 12(2007).

<https://www2.ohchr.org/english/bodies/cescr/docs/statements/Obligationtotakesteps-2007.pdf> (accessed on 1 October 2023).

2018. *Committee on Economic, Social and Cultural Rights considers the report of South Africa*

<https://www.ohchr.org/en/press-releases/2018/10/committee-economic-social-and-cultural-rights-considers-report-south-africa> (accessed on 23 August 2023).

UNITED NATIONS DIVISION FOR SOCIAL POLICY

2006. *Social justice in an open world: The role of the United Nations*. New York: United Nations.

UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (OHCHR)

n.d. *Methodical approaches to human rights indicators*.

https://www.ohchr.org/sites/default/files/documents/issues/HRIndicators/AGuideMeasurementImplementationChapterIII_en.pdf (accessed on 17 July 2023).

1948. The International Bill of Human Rights.

<https://www.ohchr.org/sites/default/files/Documents/Publications/Compilation1.1en.pdf> (accessed on 2 October 2023)

1966. *International Convention on Economic, Social and Cultural Rights*.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (accessed on 18 November 2022).

2008. *Frequently asked questions on economic, social and cultural rights: Fact sheet no. 33*. Geneva: OHCHR.

2023(a). *About good governance: OHCHR and good governance*.

<https://www.ohchr.org/en/good-governance/about-good-governance> (accessed on 30 May 2023).

2023(b). *International Bill of Human Rights*

<https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights> (accessed on 7 July 2023).

2023(c). *International Human Rights Law*.

<https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (accessed on 27 March 2023).

2023(d). What are human rights?

<https://www.ohchr.org/en/what-are-human-rights> (accessed on 16 March 2023).

UNITED NATIONS HUMAN RIGHTS TREATY BODIES

2023. *UN Treaty Body database*.

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=162&Lang=EN (accessed on 23 August 2023).

UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC)

2003. *United Nations Convention against Corruption 2003*. Vienna: UNODC (accessed on 13 June 2022).

UNITED NATIONS POPULATION FUND (UNFPA)

2022. *Human rights principles*. <https://www.unfpa.org/resources/human-rights-principles> (accessed on 30 May 2022).

URIBE DR, ORTIZ-MARCOS I & URUBURU A

2018. What is going on with stakeholder theory in project management literature? A symbiotic relationship for sustainability. *Sustainability*, 10(4):2-14.

VAN DE RUIT C & WALLIS LA

2020. Clinical teams' experiences of crowding in public emergency centres in Cape Town, South Africa. *African Journal of Emergency Medicine* 10(2):52-57.

VAN DEN HEEVER A

2022. *How do you stop a hospital heist? Appoint a plunder-proof board.*
<https://www.dailymaverick.co.za/article/2022-08-17-how-do-you-stop-a-hospital-heist-appoint-a-plunder-proof-board/> (accessed on 19 June 2023).

VAN DER BERG S

2008. How effective are poor schools? Poverty and educational outcomes in South Africa. *Studies in Educational Evaluation* 34(3):145-154.

VAN DER SPEK RJ

2014. *Cyrus the Great, exiles, and foreign gods: a comparison of Assyrian and Persian policies on subject nations.* In M Kozuh et al. (eds.) 2014:233-264.

VAN DER WALT AJ

2008. Property, social justice and citizenship: Property law in post-apartheid South Africa. *Stellenbosch Law Review* 19(3):325-346.

VARGAS-HERNÁNDEZ JG

2009. The multiple faces of corruption: Typology, forms and levels. In A Stachowicz-Stanusch (2009):111-117.

VERIAVA F (ed)

2017. *Basic education rights handbook: Education rights in South Africa.* Braamfontein: Section27.

2018. *Bhisho court judgment makes infrastructure part of the right to basic education.*

<https://www.dailymaverick.co.za/article/2018-07-27-bhisho-court-judgment-makes-infrastructure-part-of-the-right-to-basic-education/> (accessed on 23 November 2022).

2013. *The 2012 Limpopo textbook crisis*.

<http://section27.org.za/wp-content/uploads/2013/10/The-2012-Limpopo-Textbook-Crisis1.pdf> (accessed on 20 June 2023).

VON JACOBI N

2018. Institutional interconnections: understanding symbiotic relationships. *Journal of Institutional Economics*, 14(5):853-876.

VRUSHI J & KUKUTSCHKA RMB

2021. *Why fighting corruption matters in times of Covid-19. Corruption Perceptions Index 2020: Research analysis*.

<https://www.transparency.org/en/news/cpi-2020-research-analysis-why-fighting-corruption-matters-in-times-of-covid-19> (accessed on 23 February 2021).

WALLIS LA & TWOMEY M

2007. Workload and casemix in Cape Town emergency departments. *South African Medical Journal* 97(12):1276-1280.

WATERS SL, SCHUMACHER LJ & EL HAJ AJ

2021. Regenerative medicine meets mathematical modelling: developing symbiotic relationships. *npj Regenerative Medicine*, 6(1):1-5.

WEINAR L

2021 *John Rawls*.

<https://plato.stanford.edu/entries/rawls/> (accessed on 18 April 2022).

WESSELS JS & NAIDOO T

2019. The management of a policy implementation project: The disastrous Gauteng Mental Health Marathon Project. *Africa Journal of Public Sector Development and Governance* 2(1):138-172.

WESTON BH

2022. Human rights. *Encyclopedia Britannica*.

<https://www.britannica.com/topic/human-rights> (accessed on 8 April 2022).

WHITE P

2021. *What social justice means: definition and examples*.

<https://grounded.world/what-social-justice-means/> (accessed on 30 May 2022).

WICKS B

2022. *SIU Recommends prosecution of two bigwigs in Tembisa hospital corruption scandal*.

<https://ewn.co.za/2022/12/13/siu-recommends-prosecution-of-two-bigwigs-in-tembisa-hospital-corruption-scandal> (accessed on 18 July 2023).

WIXKS J

2023. *Six months of nothing: Tembisa Hospital staff who helped R1 billion tender mafia still at work*.

<https://www.news24.com/news24/investigations/six-months-of-nothing-tembisa-hospital-staff-who-helped-r1-billion-tender-mafia-still-at-work-20230629> (accessed on 18 July 2023).

WILLIAMS A

2021. Corruption definitions and their implications for targeting natural resource corruption. *Targeting Natural Resource Corruption. Topic Brief* August:1-6

WINKELMAN S

2022. A human rights case study on access to pre-exposure prophylaxis for female sex workers in South Africa. *Health and Human Rights* 24(1):105-115.

WOODS AK

2010 A behavioural approach to human rights. *Harvard International Law Journal* 51(1):51-111.

WOOLARD I

2002. *An overview of property and inequality in South Africa*. Working paper prepared for DFID (SA).

https://www.researchgate.net/publication/252240690_An_overview_of_poverty_and_inequality_in_South_Africa (accessed on 10 October 2023).

WOOLMAN S

2003. *Constitutional law of South Africa*. 2nd edition. Kenwyn: Juta.

WORLD HEALTH ORGANIZATION (WHO)

2016. *Health workforce requirements for universal health coverage and the sustainable development goals*. (Human Resources for Health Observer, 17). Geneva: World Health Organization.

WORLD POPULATION REVIEW

2023. *Best healthcare in the world 2023*.

<https://worldpopulationreview.com/country-rankings/best-healthcare-in-the-world> (accessed on 10 July 2023).

YOUNG IM

2000. *Inclusion and democracy*. Oxford University Press, USA.

YOUNKINS E

2000. *Justice in a free society*.

<http://www.quebecoislibre.org/younkins27.htm> (accessed on 6 June 2022).

ZAJDA J, MAJHANOVICH S & RUST V

2006. Education and social justice: Issues of liberty and equality in the global culture. In J Zajda, S Majhanovich and V Rust (eds.):1-12.

ZAJDA J, MAJHANOVICH S & RUST V

2006. *Education and social justice*. Dordrecht: Springer.

LEGISLATION

Employment of Educators Act 76 of 1998

National Education Policy Act 27 of 1996

National Health Act 61/2003

Prevention and Combating of Corrupt Activities Act 12 of 2004

South African Schools Act 84 of 1996

The Constitution of the Republic of South Africa, 1996

Department of Basic Education. National Education Policy Act of 1996. The National Policy for an equitable provision of an enabling school physical teaching and learning environment. GN 515 Government Gazette 2010:33283.

Proclamation No.3 of 2018: "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State Part I" Government Gazette 2018(396)41772

INTERNATIONAL INSTRUMENTS

African Charter on Human and Peoples' Rights 1986.

Charter of the United Nations 1945.

Convention on the Rights of Persons with Disabilities 2007.

Declaration on Social Progress and Development Proclaimed by General Assembly resolution 2542 (XXIV) of 11 December 1969.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief Proclaimed by General Assembly resolution 36/55 of 25 November 1981.

International Covenant on Civil and Political Rights 1966.

International Covenant on Economic, Social and Cultural Rights 1966.

The United Nations Convention Against Corruption 2003.

United Nations Declaration on Social Progress and Development 1969.

United Nations International Covenant on Economic, Social and Cultural Rights 1966.

United Nations Universal Declaration of Human Rights 1948.

Vienna Declaration and Programme of Action 1993.

CASE LAW

Centre for Child Law & Others v Minister of Basic Education & Others (1749/2012) [2012] ZAECGHC 60; [2012] 4 All SA 35 (ECG); 2013 (3) SA 183 (ECG) (3 July 2012).

Centre for Child Law v Government of the Eastern Cape Province, Eastern Cape High Court, Bisho, case no 504/10

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

Governing Body of the Juma Masjid Primary School & Others v Essay N.O. & Others (CCT 29/10) [2011] ZACC 13; 2011 (8) BCLR 761 (CC) (11 April 2011).

Government of the Republic of South Africa & Others v Grootboom & Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000).

Khosa & Others v Minister of Defence & Military Defence & Military Veterans & Others (21512/2020) [2020] ZAGPPHC 147; 2020 (7) BCLR 816 (GP); [2020] 3 All SA 190 (GP); [2020] 8 BLLR 801 (GP); 2020 (5) SA 490 (GP); 2020 (2) SACR 461 (GP) (15 May 2020).

Komape & Others v Minister of Basic Education (1416 / 2015) [2018] Z ALMPPHC 18 (23 April 2018).

Mazdodzo v Minister of Basic Education 2014 (2) All SA 339 (ECM).

Minister of Basic Education v Basic Education for All 2016 (4) SA 63 (SCA).

Minister of Health & Others v Treatment Action Campaign & Others 2002 (5) SA 721 (CC).

Minister of Health and Others v Treatment Action Campaign and Others (No 2) 2002 (5) SA 721 (CC).

P H obo S H v MEC for Health for the Province of KwaZulu-Natal (11198/2016) [2020] ZAKZDHC 38; 2021 (1) SA 530 (KZD) (31 August 2020).

Qwelane v South African Human Rights Commission & Another (CCT 13/20) [2021] ZACC 22; 2021 (6) SA 579 (CC); 2022 (2) BCLR 129 (CC) (31 July 2021).

S v Shaik & Others 2007 (1) SA 240 (SCA).

Soobramoney v Minister of Health, KwaZulu-Natal (CCT32/97) [1997] ZACC 17; 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (27 November 1997).

South African Association of Personal Injury Lawyers v Heath & Others [2000] ZACC 22; 2001 (1) SA 883 (CC), 2001 (1) BCLR 77 (CC).

Treatment Action Campaign & Others v Minister of Health & Others (No 1) [2002] ZAWCHC 1; 2002 (5) SA 721 (C).