

Scrutinize the United Nations Convention against Corruption (UNCAC): A Human Rights Critique on Defining Corruption and The Concrete Sanction

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Abstract

Corruption has been dramatically undermining human rights, and there are some legal problems in the anti-corruption law regime. This reality is not only unlawful but also naturally unfair. Therefore, using historical comparative analyses, the article aims to demonstrate two problematic issues remaining in the United Nations Convention against Corruption (UNCAC), which leave the threshold for human rights abuse and the smooth way to sustainable development, namely the absence of a precise definition of corruption and the absence of sanction provisions under the UNCAC. The article indicates the human rights undermining characteristic of corruption, the UNCAC's problems in coping with systematic corruption, which significantly violates human rights, and relevant scholarly doctrines supportive of the definability of corruption, especially the human-rights-based approach. The paper finally offers the standard definition of corruption under the Human-Rights Based Approach to cover systematic corruption that is sometimes lawful under domestic laws. Furthermore, this paper offers the systematic concrete sanction to make the Convention truly enforceable worldwide. In this regard, the roles of the International Criminal Court (ICC) should be taken into account to achieve a corruption-free society and sustainable development for humanity.

Keywords: Systematic corruption, UNCAC, human rights



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I. INTRODUCTION

Corruption is the malpractice believed to have been conducted since antiquity. Since the ancient Greeks (480-323 B.C.)¹, while the term corruption was not directly discussed, the great philosophers scrutinized public interests or common goods. The Republic, written by Plato, prioritizes happiness for the whole. Afterward, Aristotle made it more evident by pointing out the contrast between seeking the common interest and self-interest. He claimed that the correct forms of government are those governing to pursue the common interest, while those seeking private gains are deviant, regardless of how authoritarian many persons are.² Many stories occurred throughout human history, including the Li Cai's case (186 - 118 BCE, China)³ and many types of embezzlements indicated in Kautilya's treatise, Arthashastra (320 - 300 BCE, India).⁴

Li Cai (李蔡) was an official during the Chinese Han Dynasty era. He was appointed as the rank of marquis. The emperor granted Li Cai 3.3 acres of land for a burial site. Li Cai nevertheless managed to acquire more lands than he was granted and sold them for favorable prices. He eventually got arrested for his crime.⁵ Although no tangible historical evidence describes a specific corruption case in ancient India, the Arthashastra was widely referred to as revealing corruption problems when written. In the Chapter called "Detection of what is embezzled by government servants out of state revenue," the manual mentions 40 types of embezzlement conducted by government officials.⁶

Besides breaking public trust, throughout history, corruption has harmed human rights, which everyone deserves. Its impacts not only affect a particular government agency or bureaucratic system but undermine the quality of public services to some extent in both direct and indirect ways. Embezzling public funds shall affect public services as planned to be provided and may subsequently affect human rights. To illustrate this, embezzlement of public funds in the Ministry of Education or public schools shall harm people's right to education as declared in Article 13 of the

¹ History.com Editors, (2019), *Ancient Greece*, Retrieved May 22, 2021, from <https://www.history.com/topics/ancient-history/ancient-greece>

² Richard Mulgan, Aristotle on Legality and Corruption, In Manuhua Barcham, Barry Hindess and Peter Larmour. (Eds.), *Corruption: Expanding the Focus* (Canberra: ANU Press, 2012), 29-30.

³ Stella Y. Xu, Corruption during China's Golden Ages: Case Studies in the Han and Tang Dynasties, In Qiang Fang, Xiaobing Li (Eds.), *Corruption and Anticorruption in Modern China* (Maryland: Lexington Books, 2018), 236.

⁴ Kaushik Roy, *Hinduism and the Ethics of Warfare in South Asia: From Antiquity to the Present* (Cambridge: Cambridge University Press, 2012), 59.

⁵ Stella Y. Xu, Corruption during China's Golden Ages: Case Studies in the Han and Tang Dynasties, In Qiang Fang, Xiaobing Li (Eds.), *Corruption and Anticorruption in Modern China* (Maryland: Lexington Books, 2018), 236.

⁶ Arun Kr. Agrawal (2007), Corruption in Historical Perspective: A Case of India, *The Indian Journal of Political Science*, 68(2), 328. Retrieved May 22, 2021 from <http://www.jstor.org/stable/41856330>

International Covenant on Economic, Social, and Cultural Rights (ICESCR).⁷ Furthermore, the United Nations (U.N.) pointed out that "States are required as a matter of human rights law to directly provide public services or ensure their provision by a public body," some states also have expressed that they recognize such legal obligations.⁸

As explained, corruption is closely relevant to undermining public services and human rights, the United Nations Convention against Corruption (UNCAC), the primary international law coping with corruption, is silent on the precise definition of corruption to inclusively cover any action intentionally conducted by states or states' personnel to lessen public services and to violate human rights. Moreover, the UNCAC does not provide any concrete sanction to ensure that states shall be forced to comply with the Convention, which shall set world citizens free from evil practices and human rights abuse operated by states. This absence allows a state or its organs to decide if some particular actions should not have rebelled as corruption even though they violate human rights, e.g., *coup d'etat*, state capture, or demolishing of the Rule of Law as the fundamental principle to guarantee human rights.⁹ Hence, the purpose of this article is to contend that it is essential and imperative to define the term "corruption" in order to dispel ambiguity and gain clarity on what needs to be combated to attain justice, fairness, human rights, and sustainable development for all, as outlined in the U.N.'s 2030 Agenda.

II. CORRUPTION'S THREAT TO HUMAN RIGHTS

Corruption has long been recognized as a corrosive force that eats away at the foundations of societies, economies, and governance structures. Moreover, corruption become a significant issue that alters the direction of societies. Erosion of trust in the government is a part that often occurs due to corruption. Trust in the government is a vital element in seeing how the direction of society is formed, where issues of economic welfare are carried out in harmony with the fulfillment of socio-cultural aspects. Thus, trust in the government, which guarantees public service fulfillment, will hinder people's lives¹⁰. Losing trust in leaders and their institutions can lead to social unrest, protests, and even calls for systemic change.

⁷ United Nations Office of the High Commissioner for Human Rights, *International Covenant on Economic, Social and Cultural Rights*, Retrieved May 22, 2021 from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>

⁸ Sarah K. Jameson, *States' Human Rights Obligations Regarding Public Services*, Retrieved May 22, 2021 from <https://static1.squarespace.com/static/5a6e0958f6576ebde0e78c18/t/5fc6235e3f75b16643a5bd59/1606820703234/2020-10-19-Policy-Brief-States-HR-Oblig-PS-UN-NormFram.pdf>

⁹ Human Rights in ASEAN, *Thailand's Rule of Law & Human Rights*, Retrieved May 22, 2021 from <https://humanrightsinasean.info/members/thailand/thailands-rule-of-law-human-rights/>

¹⁰ Sergio Fernandez, Lianne P Malan, Natasja Holtzhausen & Michel M Tshiyoyo (2023) To what extent does corruption erode trust? Evidence of reputational spillovers from ten countries in the Southern African Development Community, *Asia Pacific Journal of Public Administration*, DOI: 10.1080/23276665.2023.2184403

The negative impacts of corruption are pervasive, leading to economic inequality, political instability, and compromised ethical standards. However, beneath the surface lies a complex dilemma that intertwines corruption with another crucial aspect of society: human rights. Corrupt social systems, especially those caused by government elites and politicians who tend to facilitate the needs of the corporate economy, often result in an unequal distribution of resources. What is done by the perpetrators of corruption, especially those who can determine the direction of public policy, economically presents economic reality for the fulfillment of benefits at the expense of many people. Corruption increases inequality, feelings of injustice, and frustration among marginalized and disadvantaged populations.

One example of a corrupt government that causes social inequality is the government that took place in Zimbabwe under the Robert Mugabe regime. Mugabe's government is known for its high levels of corruption and the use of power to enrich itself and those affiliated with it¹¹. Corruption is rampant in various sectors, including land distribution, mining, and the public sector. This corrupt practice leads to unequal access to economic resources and opportunities.

Social inequality in Zimbabwe is getting worse due to corruption. Instead of benefiting the whole community, state resources are used for personal interests and elite groups. As a result, most Zimbabweans experience economic hardship, income inequality, and a food crisis, while a small group benefit disproportionately. This corrupt government has also contributed to the decline in the quality of public services, such as education and health, resulting in disparities in access and quality of services between influential groups and the general public. Zimbabwe is an example illustrating how corruption in government can undermine a country's social and economic structure, create deep inequalities, and hinder sustainable development.

Another example of a corrupt government that caused social inequality in Southeast Asia is the Suharto regime in Indonesia. During the Suharto era (1967-1998), corruption was rampant at various levels of government and economic sectors. Groups close to the regime use their power to enrich themselves, often through practices of corruption and nepotism. Natural resources and economic opportunities that should benefit all Indonesians are often exploited for the benefit of certain groups. Corruption under the Soeharto government also impacted social and economic inequality. Most of the aspirational wealth and economic opportunities are in the hands of a handful of government-affiliated elites. At the same time, most Indonesian people are trapped in poverty and have limited access to proper education and health services.

The side effects of corruption are also felt in the education and health sectors. Public services that should be equally distributed to all people are often hampered by corruption, which results in a decrease in the quality of services and inequalities in access. Suharto's corrupt government has led to profound social and economic inequality

¹¹ Mpofu, M., Tshuma, L. A., & Msimanga, M. J. (2022). Mediating a regime in crisis: Corruption and succession in Zimbabwe's state media. *Media, Culture & Society*. <https://doi.org/10.1177/01634437221089011>

in Indonesia. Despite post-Soeharto reforms and efforts to combat corruption, symptoms of corruption from that era can still be felt in the country's social and economic structure.

Corruption has resulted in social and moral decay in both Indonesia and Zimbabwe. Public dissatisfaction with the government and a corrupt system has led to a decline in trust in institutions and social trust. Although the two countries have different social and political contexts, the similarity in the impacts and characteristics of corruption underscores the deep problems caused by rampant corruption. Corruption in both countries has undermined the judicial system's independence, allowing corruptors to avoid accountability or face less severe sentences. These bad governmental practices cause legal injustice and undermine people's belief in justice.

With these two cases, serious problems related to human rights are due to rampant corruption practices and authoritarian government. In Indonesia, the Soeharto regime is known for widespread human rights violations, including enforced disappearances, arbitrary detentions, torture, and the silencing of government critics. Corruption involving the government and regime elites also results in indirect human rights violations. Corruption hinders access to health, education, and essential infrastructure services, which are fundamental human rights. Then, it impacts the community's welfare and right to a decent life.

The Robert Mugabe regime was also involved in severe human rights violations in Zimbabwe. The regime's corruption and abuse of power have resulted in a disregard for the rights of the Zimbabwean people. The unfair distribution of land and corruption in the mining sector ignores people's rights to land and natural resources. In addition, political opposition and criticism of the government were often suppressed by violence and repression, violating the right to freedom of speech and assembly.

Corruption in both regimes also undermined basic human rights principles such as justice, equality, and participation. Corruption creates inequalities in providing access to economic opportunities and essential services, thus depriving people of their human rights to live a decent and equitable life. Using state power and funds for personal gain also violates the principles of ethics and integrity that underlie human rights. Corruption and human rights violations are interrelated and mutually reinforcing. The injustice that occurs due to corruption contributes to human rights violations, and human rights violations committed by corrupt regimes are often allowed to continue because the government system is authoritarian and lacks accountability.

At first glance, corruption might appear solely concerning financial mismanagement and legal transgressions. However, its repercussions often extend beyond economic realms, directly challenging fundamental human rights principles. When resources are siphoned off by corrupt individuals or entities, delivering essential services, including healthcare, education, and public infrastructure, is compromised. This reality adversely affects the vulnerable sections of society, infringing upon their right to a decent standard of living and access to necessities. Furthermore, corruption corrodes the rule of law and hinders citizens' right to a fair and impartial judicial system.

As a result, marginalized groups often find themselves disproportionately impacted, unable to seek redress for injustices.

Human rights, rooted in equality, dignity, and justice principles, provide a moral framework for assessing corruption's consequences. The Universal Declaration of Human Rights asserts the right to an adequate standard of living, access to education, and participation in government affairs. Corruption jeopardizes the fulfillment of these rights, perpetuating cycles of poverty and inequality. Moreover, corruption's insidious influence can escalate into outright human rights violations. Whistleblowers attempting to expose corruption are often subjected to threats, harassment, and violence, infringing upon their right to freedom of expression and protection from harm. In some cases, corrupt practices lead to environmental degradation, threatening the right to a healthy environment for present and future generations.

The intersection of corruption and human rights presents a profound ethical challenge. Governments, institutions, and individuals face dilemmas when addressing corruption's impact on human rights. Striking a balance between anti-corruption measures and safeguarding human rights requires delicate navigation. Anti-corruption efforts, while essential, can inadvertently infringe upon individual rights. Draconian measures might curtail civil liberties or undermine the presumption of innocence. Thus, policymakers must carefully design effective anti-corruption strategies while respecting the rule of law and human rights.

The connection between corruption and human rights is an intricate web of consequences and dilemmas. Recognizing the inextricable link between these two issues is imperative for effective policymaking. Efforts to combat corruption must consider the potential human rights implications and vice versa. Striking a balance between eradicating corruption and upholding human rights requires collaboration, transparency, and an unwavering commitment to justice and fairness. Only through a comprehensive approach can societies hope to untangle this complex web and foster a future where both corruption and human rights abuses are minimized.

III. UNCERTAINTY OF CORRUPTION DEFINITION: THE ABSENCE OF CONCRETE INTERNATIONAL SANCTIONS UNDER THE UNCAC

After one year of negotiation in 2002, on October 31, 2003, the United Nations Convention against Corruption (UNCAC), the only legally binding global anti-corruption instrument, was adopted by the U.N. General Assembly. Five central chapters are enumerated herein: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, technical assistance, and information exchange. This primary document still is not perfect to some extent. Corruption, the critical problematic issue that has pushed the international community to conclude the UNCAC, is nonetheless not interpreted by the UNCAC as to what it means. That is to state, the UNCAC does not precisely mention what the world is

agreeing together to go against corruption. This absence does emphasize that corruption falls within the political field, and the criminalized offenses ordinarily seen are just a part of what corruption truly is.¹²

The third Chapter, "Criminalization and Law Enforcement," illustrates 11 actions (Article 15 – 25) and requires State Parties to the Convention to criminalize the acts. The States Parties, therefore, have no obligation to establish other criminal offenses besides those mentioned. The acts that need to be suppressed are, for example, bribing, abuse of functions, and obstruction of justice. This law shows that the third Chapter does not directly mandate states to criminalize "corruption." At the very last of the Chapter, Article 34 provides that States Parties shall "take measures to address consequences of corruption." The text elaborates that States Parties may annul any corruption-related contract. This provision has nothing connected with Articles 15 to 25; as mentioned, Article 34 does not mandate States Parties to take the measures to address the consequences of the 11 offenses as such. While the gap is left open, the UNCAC is likely introducing that those 11 actions are considered corruption. However, as prescribed in this document, the question is whether corruption is only limited to those 11 actions.

Besides the third Chapter, the rests lie down various measures for dealing with "corruption." They strictly use the term "corruption" without further explaining it. The author picked some samples to indicate below. Chapter II of the UNCAC also set forth many preventive measures against corruption without further explanation of what corruption is. It can be concluded that corruption has not been legally recognized as a crime, while some forms of corruption are already criminalized.¹³ Anyhow, amongst the 11 actions, the "abuse of function" seems to cover what corruption is the most. The UNCAC and State Parties criminalize the action. It means "to perform or to fail to perform the duties recognized by law intentionally for undue advantages."¹⁴

The function of government officials is mandated by the domestic legislation of States Parties so that it can be diverse depending on the states' political regime, necessity, and legal system. This system leaves the door open for the governments, the representatives of states, to set any functions of government officials under national legislation, which is domestically lawful and cannot be regarded as corruption, also causing human rights violations. Then worth scrutinizing whether the act of legislation as such is corruption even though it is lawful under national laws. Then, to argue that the problems of definition absence exist, and corruption is, per se, a political and ethical issue that the current legal instruments cannot wholly reach toward the essential issues.

Chapter VII of the UNCAC, called Mechanisms for Implementation, establishes the Conference of the States Parties to the United Nations Convention against

¹² Robert C. Brooks (1909), *The Nature of Political Corruption*, *Political Science Quarterly*, 24(1), 1-2. Retrieved May 22, 2021 from <https://www.jstor.org/stable/2141078>

¹³ Lily Evelina Sitorus (2011), *State Capture: Is It A Crime? How The World Perceived It*, *Indonesia Law Review*, 2(1), 147. Retrieved May 22, 2021 from <https://www.jstor.org/stable/2141078>

¹⁴ United Nations Office on Drugs and Crime, *United Nations Convention against Corruption*, Retrieved May 22, 2021 from https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

Corruption, which, according to the Rules of the Procedure, takes place every two years¹⁵ to promote and review the UNCAC's implementation, as well as achieving cooperation among the Parties concerning the Convention's objectives. In order to achieve mutual goals, Article 63 provides the scope of cooperation covering information exchange, cooperating with international organizations, reviewing periodically the implementation of the Convention, and so on. Nevertheless, it is silent on the matter of non-compliance.¹⁶ This absence of concrete sanction makes the obligations under UNCAC soft, and it is almost impossible to impose responsibility to the States Parties that fail to comply with the measures established by Convention.¹⁷ Therefore, failure of compliance made by States Parties, especially with intention, which causes impacts on human rights, shall not be appropriately addressed by this Convention.

A. Definability of Corruptions: Theories and Debates

This section strongly argues that the term corruption is definable even though the mainstream anti-corruption convention does not do so. The Chapter also argues that corruption is not limited to criminalized actions but any action that includes the following elements; 1) Official position and recognized functions stemming from the position; 2) Breach of duties either by exercising or not exercising the recognized functions; 3) Having of specific intention either to favor someone that has no rights to be favored, to favor oneself, or to impair the righteous rights of the others.

The author views that such recognized functions and righteous rights are not only what is prescribed under domestic laws that can be arbitrarily enacted. The author examines various doctrines and empirical evidence supporting the argument: causations, state capture theory, and human rights-based approach. Then, it analyses the details justifying the author's arguments mentioned above. Lastly, the Chapter analyzes if the definition is legally recognized as a legal term based on Article 31 of the Vienna Convention of 1969 and enforceable as a source of law according to Article 38 of the International Court of Justice (ICJ) Statute.

Four core corruption-explaining theories illustrated by the United Nations Office on Drugs and Crime (UNODC), namely principal-agent theory, collective action theory, institutional theory, and game theory, describe the causes that constitute corruption differently. The theories do not directly give the meaning of corruption.

¹⁵ United Nations Office on Drugs and Crime, *Rules of Procedure For The Conference of The States Parties to The United Nations Convention Against Corruption*, Retrieved May 22, 2021 from https://www.unodc.org/documents/corruption/Publications/MainPublications/RulesOfProcedure/07-80230_Ebook.pdf

¹⁶ United Nations Office on Drugs and Crime, *United Nations Convention against Corruption*, Retrieved May 22, 2021 from https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

¹⁷ Anne Peters (2018), Corruption as a Violation of International Human Rights, *The European Journal of International Law*, 29(4), 1261. Retrieved May 22, 2021 from <https://academic.oup.com/ejil/article-pdf/29/4/1251/27783450/chy070.pdf>

Nevertheless, corruption results from conflict between the interests of corrupt public agents and the interests of government agencies or the public.¹⁸

The UNODC is the central organ of the United Nations dealing with corruption. However, the UNODC's functions have nothing to do with what corruption is. The office delivers various technical assistance, e.g., prevention, education, asset recovery, and integrity in the criminal justice system, as prescribed by the UNCAC, viewing corruption as fixed criminal offenses as declared within the UNCAC and by national legislation.¹⁹ Those actions are a part of corruption, after all.

State capture can be interpreted as a situation in which corrupt elites cluster around the state to collectively shape the rules of the legislative and institutional game and subvert (or even replace) legitimate channels of political influence in pursuance of their private benefits that harm public interests.²⁰ State capture allows a group of corrupt actors to sustain their political and economic power to capture governmental institutions in a wide range, including executive, legislative, and judicial.²¹ These hegemonic powers can make policies, laws, and regulations and decide whether a particular action should be a criminal offense or even the ability to enforce the law to favor their allies. The most prominent sample is the Jacob Zuma case in South Africa. This reality is the only official legal action conducted against state capture accusations.

Mr. Jacob Zuma is the former president of South Africa who was accused of corruption and state capture involving the wealth of the Gupta family in 2016 by a priest Father Stanislaus Mayebe, Leader of the Opposition in Parliament, and the opposition party Democratic Alliance. The complaints are related to the improper and unethical removal and appointment of ministers and directors of State Owned Entities (SOEs), which resulted in the improper and possibly corrupt award of state contracts and benefits to the Gupta businesses. Describing the details, the Gupta allegedly offered the post of Minister of Finance to Mr. Mcebisi Jonas, the Deputy Minister of Finance, in 2015.

¹⁸ Nico Groenendijk (1997), A Principal-Agent Model of Corruption, *Crime, Law & Social Change*, 27, 208. Retrieved May 22, 2021 from https://www.researchgate.net/publication/225852596_A_principal-agent_model_of_corruption; Jong-Sung You, Trust and Corruption, In Eric M. Uslaner (Ed.), *The Oxford Handbook of Social and Political Trust* (Oxford: Oxford University Press, 2018), 479.; Donatella della Porta and Alberto Vannucci, The Hidden Order of Corruption: An Institutional Approach: New Advances in Crime and Social Harm (New York: Routledge, 2016), 14.; United Nations Office on Drugs and Crime, *Theories That Explain Corruption*, Retrieved May 22, 2021 from <https://www.unodc.org/e4j/en/anti-corruption/module-4/key-issues/theories-that-explain-corruption.html>

¹⁹ United Nations Office on Drugs and Crime, *United Nations Convention against Corruption*, Retrieved May 22, 2021 from https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

²⁰ Joel S. Hellman, Geraint Jones, Daniel Kaufmann (2000), *Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition* (Policy Research Working Paper No. 2444), Washington, DC.: World Bank, 2-3, Retrieved May 22, 2021 from <https://openknowledge.worldbank.org/handle/10986/19784>; Mihály Fazekas and István János Tóth (2016), From Corruption to State Capture: A New Analytical Framework with Empirical Applications from Hungary, *Political Research Quarterly*, 69(2), 1. Retrieved May 22, 2021 from <https://journals.sagepub.com/doi/abs/10.1177/1065912916639137>; World Bank, *Anticorruption in Transition: A Contribution to the Policy Debate* (Washington, D.C: World Bank Publications, 2000), 3.

²¹ Saheedat Adetayo, The Ethics of State Capture: Dangote and the Nigerian State, In Nimi Wariboko and Toyin Falola (Eds.), *The Palgrave Handbook of African Social Ethics* (Bamenda: Springer Nature, 2020), 374.

Another complaint is associated with the fact that Gupta allegedly offered the Minister for Public Enterprises position to Ms. Vytjie Mentor. As a member of the African National Congress, in exchange for canceling the South African Airways (SAA) route to India²² to award the route to Jet Airline. Mr. Mcebisi Jonas and Ms. Vytjie Mentor denied the offers, so the offers afterward were shifted to the others.²³ After the complaints, Mr. Jacob Zuma was investigated by Public Protector Thuli Madonsela, which led to the investigation report called "State Capture of October 14, 2016,"²⁴ calling for the establishment of the Zondo Inquiry Commission to inquire into the case.²⁵ The inquiry is now pending.²⁶

The Zondo Commission, appointed explicitly by President Zuma to investigate himself according to the public prosecutor's instruction,²⁷ is authorized by the Proclamation No. 3 of 2018 to have investigative functions²⁸ that can be summarized as investigating into "an unlawful inducement for any gain influencing any members of the cabinet, the legislative branch, judiciary branch, boards of state-owned enterprises, or any state institution or organ of state to perform or not to perform their duties as prescribed by law or regulation." Most national legislations ordinarily criminalize the actions. Nevertheless, what is so controversial is that the state enforcement mechanism could fail in the state capture situation. To illustrate this, a coup d'état by the junta, a type of abuse of power, can also be exempt from punishment if it is successfully conducted. Since the research of the World Bank

²² Public Prosecutor of South Africa. (2016). *State of Capture - A Report of the Public Protector, 14 October 2016*, 5, Retrieved May 22, 2021 from <https://www.sahistory.org.za/sites/default/files/2019-05/329756252-state-of-capture-14-october-2016.pdf>

²³ Thabo Baloyi, (2018), *Vytjie Mentor to Appear Before Commission of Inquiry*, Retrieved May 22, 2021 from <https://www.politicalanalysis.co.za/vytjie-mentor-to-appear-before-commission-of-inquiry/>; Lere Amusan, *Fish Rots from the Head: Duality of Corrupt Behavior in South Africa (2009-18)*, In Mason C. Hoadley and Neelambar Hatti (Eds.), *Understanding Corruption: Traditional and Legal Rational Norms* (New York: Routledge, 2020), 68.; Ray Hartley, *Cyril Ramaphosa: The Path to Power in South Africa* (Oxford: Oxford University Press, 2018), 170

²⁴ Safura Abdool Karim, (2016), *State Capture Report Explained*, Retrieved May 22, 2021 from <https://www.groundup.org.za/article/simple-explanation-state-capture-report/>; Public Prosecutor of South Africa. (2016). *State of Capture - A Report of the Public Protector, 14 October 2016*, 4, Retrieved May 22, 2021 from <https://www.sahistory.org.za/sites/default/files/2019-05/329756252-state-of-capture-14-october-2016.pdf>

²⁵ Rhys Martin, (2021), *The Zondo Commission: Consequences for President Ramaphosa*, Retrieved May 22, 2021 from <https://globalriskinsights.com/2021/03/the-zondo-commission-consequences-for-president-ramaphosa/>; Public Prosecutor of South Africa. (2016). *State of Capture - A Report of the Public Protector, 14 October 2016*, 354, Retrieved May 22, 2021 from <https://www.sahistory.org.za/sites/default/files/2019-05/329756252-state-of-capture-14-october-2016.pdf>

²⁶ Baldwin Ndaba, (2021), *Justice Zondo Granted Three-Month Extension To Complete Commission's Work*, Retrieved May 22, 2021 from <https://www.iol.co.za/news/politics/justice-zondo-granted-three-month-extension-to-complete-commissions-work-0f3a4f72-4971-466f-8a9e-b63db0dd9c5f>

²⁷ Jan Gerber, (2018), *Zuma Appoints State Capture Commission, To Be Headed By Deputy Chief Justice*, Retrieved May 22, 2021 from <https://www.news24.com/news24/SouthAfrica/News/breaking-zuma-appoints-state-capture-commission-to-be-headed-by-deputy-chief-justice-20180109>; Desiree Erasmus, (2021), *Zondo Commission: Jacob Zuma's 'Public Defiance' Warrants An 'Appropriate' Sentence*, Retrieved May 22, 2021 from <https://www.dailymaverick.co.za/article/2021-03-15-zondo-commission-jacob-zumas-public-defiance-warranted-an-appropriate-sentence/>

²⁸ Commission of Inquiry into Allegations of State Capture, (2018), *Proclamation No. 3 of 2018*, Retrieved May 22, 2021 from https://www.statecapture.org.za/uploads/Terms_Of_Reference.pdf

reveals that state capture impairs socio-economic development and that it is related to the degree of civil liberties on investment project rates of return²⁹, the author views that the so-called human rights approach must be placed on the table in order to determine what should be considered as misconduct which leads to state capture and corruption.

IV. HUMAN RIGHTS-BASED APPROACH TO CORRUPTION ISSUES

Human rights started in 539 B.C. when Cyrus the Great came to power in Babylon, and the Persia Empire was established. The King issued the Cyrus Cylinder, the clay material expressing the Akkadian texts that can be translated as "*There shall be no enslaved people in my Kingdom. All are free to choose their religion. I will never let anyone oppress others. I implore Ahura Mazda to make me succeed.*" This work is nowadays regarded as the First Charter of Human Liberty, which made Cyrus the Great known as the "lawgiver."³⁰ This liberation thought then spread to India, Greece, and finally, Rome, where the natural law concept began.³¹

From the Cylinder to Rome, the idea was developed as "natural order," describing that human-conduct-governing-law is not artificially made by human authority but by God, nature, and reason; that is to stress natural law recognizes the right of the individual to be independent of any divine requirement over him or her.³² Besides, the doctrine covers the right of individuals to own and control the goods necessary to sustain his or her life.³³ The concept was evident in several notable historical texts from both the Middle Ages and the modern era, including significant documents like the Magna Carta of 1215, the Petition of Right of 1628, the Bill of Rights of 1689, the United States Declaration of Independence of 1776, and the French Declaration of the Rights of Man and the Citizen of 1789.³⁴

Due to the long existence of the concept and domestic incidents, international communities eventually adopted the International Bill of Human Rights as the universally agreed doctrine. The Bill comprises of Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (ICCPR) (1966), and

²⁹ Organisation for Economic Co-operation and Development and World Bank, *Integrating Human Rights into Development*, Second Edition: Donor Approaches, Experiences, and Challenges (Washington, DC.: OECD Publishing, 2013), 16.

³⁰ Dhanjoo N. Ghista, *Socio-economic Democracy and the World Government: Collective Capitalism, Depovertization, Human Rights, Template for Sustainable Peace* (London: World Scientific, 2004), 262.; Paul Gordon Lauren, *The Foundations of Justice and Human Rights in Early Legal Texts and Thought*, In Dinah Shelton (Ed.), *The Oxford Handbook of International Human Rights Law* (Oxford: Oxford University Press, 2013), 166-167.

³¹ Mamta Chandrashekhar, *Human Rights, Women and Violation* (New Delhi: Educreation Publishing, 2016), 13.

³² Friedrich Julius Stahl, *The Rise and Fall of Natural Law: Volume 1A of The Philosophy of Law: The History of Legal Philosophy* (Ruben Alvarado, Trans.) (the Netherlands: WordBridge Publishing, 2020), 120.

³³ Stephen J. Pope, *Tradition and Innovation in Natural Law: A Thomistic Interpretation*, In Lisa Sowle Cahill, Hille Haker, and Eloi Messi Metogo (Eds.), *Human Nature and Natural Law* (London: SCM Press, 2010), 20.

³⁴ Robinson Jose. K., *Human Rights Violations in Post-Independent India : Kerala Scenario* (North Carolina: Lulu Publication, 2019), 10-12.

International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966).³⁵ In order to uphold the human rights-based principle, this paper is making an effort to define the term corruption following the principles lying within the International Bill as it establishes concrete fundamental rights for the enjoyment of people worldwide. Zoe Pearson, a scholar from the Faculty of Law, Australian National University, categorizes the fundamental rights of humankind into five groups embracing the rights described in this tab.³⁶

Groups	The Rights to
1. Rights to affiliation	<ul style="list-style-type: none"> - Self-determination - Freedom of association - Freedom of cultural belief and practice - Freedom of religion
2. Rights to life, bodily health, and integrity	<ul style="list-style-type: none"> - Freedom from torture - Life, liberty, security of person - Adequate standard of living - Health and well-being
3. Rights to political participation	<ul style="list-style-type: none"> - Freedom of expression - Vote
4. Rights to non-discrimination and the rule of law	<ul style="list-style-type: none"> - Fair trial and recognition as an equal person before the law
5. Rights to social and economic development	<ul style="list-style-type: none"> - Just and favorable conditions for work - Education

The subject matter consists of three sub-topics that collectively form the central thesis that corruption encompasses governmental actions that infringe upon human rights: a. Governments are accountable for safeguarding and guaranteeing the acknowledgment of human rights as dictated by international laws; b. Corruption disrupts the enjoyment of human rights; c. Governments engage in corruption when they deliberately neglect their obligations for personal gains.

International human rights laws oblige state parties to protect people's fundamental rights. To be more specific, states' obligations are explicitly recognized by the Limburg Principles and the Maastricht Guidelines. Then, after the adoption of ICESCR in 1966, the rights newly recognized were not that well-known. Thus, in 1986, an international law group of experts gathered in Maastricht to consider the nature and scope of the obligations of States parties to the International Covenant on Economic,

³⁵ Australian Human Rights Commission. (2009). *Human Rights Explained: Fact sheet 5: The International Bill of Rights* [Fact sheet]. Retrieved May 22, 2021 from https://humanrights.gov.au/sites/default/files/content/education/hr_explained/download/FS5_International.pdf

³⁶ Zoe Pearson, An International Human Rights Approach to Corruption, In Peter Larmour and Nick Wolanin (Eds.), *Corruption and Anti-Corruption* (Canberra: ANU Press, 2013), 44-46.

Social, and Cultural Rights.³⁷ According to Paragraphs 16 – 20 of the Limburg Principles, states are not merely responsible for providing legislative measures to ensure people's rights. Legislative measures shall be taken when the existing legislations violate the ICESCR. States should provide all appropriate means, including administrative, judicial, economic, social, and educational measures and appropriate remedies to people. The Limburg reveals that ICESCR does not aim to incite people to exercise their freedom without any limitation. Paragraph 46 – 51 expresses that states may limit people's rights by national laws. Nevertheless, the limitation shall not be arbitrarily, unreasonably, or discriminatorily made and must be clear and accessible to everyone.³⁸

Around ten years after the Limburg Doctrine, international experts organized a workshop on the 10th anniversary of the Limburg Principles to ponder the violation approach based on the Limburg Principles³⁹. Eventually, the Maastricht Guidelines were negotiated in 1997 to indicate what can be considered a state violation of the ICESCR. Three years later, the text was reissued by the Committee on Economic, Social, and Cultural Rights (CESCR) as the U.N. document E/C.12/2000/13.⁴⁰ The document recognizes states' obligations to fulfill the requirements under the ICESCR.⁴¹

Professor Anne Peters deeply examines states' obligations regarding human rights. She divides the obligations into three groups, namely respect, protection, and fulfillment. Therefore, states can respect by refraining from rights infringements. To protect means to protect the rights from violations caused by third parties. Meanwhile, the fulfillment requires states to take positive actions, explained as a threefold sub-division by the U.N. Committee on Economic, Social, and Cultural Rights to facilitate, provide, and promote.⁴² Not merely in the ICESCR, this can also be interpreted as the model to say that states are responsible similarly to the fundamental rights enumerated in the Human Rights Declaration and the ICCPR.⁴³ These supportive materials express in the same direction that states are responsible and responsible for protecting people's human rights.

³⁷ Fons Coomans, (2016), *The Limburg Principles Turned 30*, Retrieved May 22, 2021, from [https://www.maastrichtuniversity.nl/blog/2016/12/limburg-principles-turned-30#:~:text=30%20years%20ago%2C%20the%20Limburg,and%20Cultural%20Rights%20\(ICESCR\)](https://www.maastrichtuniversity.nl/blog/2016/12/limburg-principles-turned-30#:~:text=30%20years%20ago%2C%20the%20Limburg,and%20Cultural%20Rights%20(ICESCR))

³⁸ United Nations, *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, Retrieved May 22, 2021, from https://digitallibrary.un.org/record/124945/files/E_CN.4_1987_17-EN.pdf

³⁹ Maria Socorro I. Diokno, *Human Rights Centered Development: Theory and Practice* (North Carolina: University of the Philippines Press, 2004), 13.

⁴⁰ Smita Narula, International Financial Institutions, Transnational Corporations and Duties of States, In Malcolm Langford, Wouter Vandenhoe, Martin Scheinin, and Willem van Genugten (Eds.), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social, and Cultural Rights in International Law* (New York: Cambridge University Press, 2013), 121.

⁴¹ United Nations, *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, Retrieved May 22, 2021, from <https://undocs.org/en/e/c.12/2000/13>

⁴² Anne Peters (2018), *Corruption as a Violation of International Human Rights*, *The European Journal of International Law*, 29(4), 1258. Retrieved May 22, 2021 from <https://academic.oup.com/ejil/article-pdf/29/4/1251/27783450/chy070.pdf>

⁴³ Zoe Pearson, *An International Human Rights Approach to Corruption*, In Peter Larmour and Nick Wolanin (Eds.), *Corruption and Anti-Corruption* (Canberra: ANU Press, 2013), 44-46.

Anne Peters illustrates empirical evidence that corruption negatively impedes human rights enjoyment as ordinarily perceived.⁴⁴ In order to contribute to the U.N.'s 2030 Agenda on sustainable development goals, the Human Rights Treaty Bodies identified mismanagement of resources and corruption as obstacles to allocating resources to promote equal rights.⁴⁵ To illustrate, corruption in public schools shall somehow impede the right to education. Similarly, corruption in public hospitals shall affect the right to attainable physical and mental health standards. Furthermore, a coup d'etat impairs fundamental political freedom.⁴⁶

Besides international documents, some domestic documents also express accordingly. In 2011, the Constitutional Court of South Africa ruled that "*it is incontestable that corruption undermines the rights in the Bill of Rights and imperils democracy.*"⁴⁷ One year later, the Supreme Court of India passed the judgment that "[c]orruption... undermines human rights, indirectly violating them' and that 'systematic corruption is a human rights' violation in itself."⁴⁸ Hence, it can be said that corruption *per se* is a human rights violation.⁴⁹

Given the fact that abuse of function itself is regarded as a form of corruption as declared in the UNCAC⁵⁰ and by Transparency International,⁵¹ abuse of functions to perform the duties to respect, to protect, and to fulfill human rights purposely for private gains of a specific person or group should be legally conceptualized as corruption. Scholars and official sources view corruption as a violation of human rights, but not many works touch upon the legal framework regarding the point. One prominent source should be referred to Professor Anne Peters's article as the work points out the hidden message within the UNCAC, implying that preventing human rights violations is invisibly attached under the term "corruption prevention" as stipulated in Chapter II. She suggests that the UNCAC mechanisms are relatively soft so that, in virtue of Article

⁴⁴ Zoe Pearson, An International Human Rights Approach to Corruption, In Peter Larmour and Nick Wolanin (Eds.), *Corruption and Anti-Corruption* (Canberra: ANU Press, 2013), 46.; Anne Peters (2018), Corruption as a Violation of International Human Rights, *The European Journal of International Law*, 29(4), 1252. Retrieved May 22, 2021 from <https://academic.oup.com/ejil/article-pdf/29/4/1251/27783450/chy070.pdf>

⁴⁵ United Nations, *Human Rights Treaty Bodies*, Retrieved May 22, 2021, from <https://sustainabledevelopment.un.org/index.php?menu=3170&nr=201&page=view&type=30022>

⁴⁶ United Nations, *International Covenant on Economic, Social and Cultural Rights*, Retrieved May 22, 2021, from <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

⁴⁷ Kolawole Olaniyan, *Corruption and Human Rights Law in Africa* (Oxford: Bloomsbury Publishing, 2014), 314.; Hugh Glenister v. President of the Republic of South Africa and Others, Paragraph 176-177, CCT 48/10, ZACC 6, 17 March 2011

⁴⁸ State of Maharashtra through CBI, Anti-Corruption Branch, Mumbai v. Balakrishna Dattatrya Kumbhar, Paragraph 14, Criminal Appeal No. 1648, Supreme Court of India 9 SCR 601, at 602, 15 October 2012

⁴⁹ Abdulhay Sayed, *Corruption in International Trade and Commercial Arbitration* (The Netherlands: Kluwer Law International, 2004), 18.

⁵⁰ United Nations Office on Drugs and Crime, *United Nations Convention against Corruption*, Retrieved May 22, 2021 from https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

⁵¹ Transparency International, *What is Corruption?*, Retrieved May 22, 2021, from <https://www.transparency.org/en/what-is-corruption>

31(3)(c)⁵² of the Vienna Convention on the Law of Treaties, it can be interpreted in conformity with human rights law.⁵³ Another expert, Kolawole Olaniyan, a legal advisor specializing in anti-corruption and human rights, directly argues that "corruption is indeed a violation of human rights" and points out the benefit of legal instruments expanding to combat corruption beyond traditional criminal laws.⁵⁴

Grounded on the scholarly ideas above, impairing human rights by states is unlawful even though it is sometimes legally justified under distorted domestic legislation shaped by hegemony groups. Therefore, the author affirms in support of these scholars that the idea of anti-corruption is closely involved with anti-human-rights-violation and that an appropriate concrete legal instrument at the global level should be developed to achieve zero corruption and bring about sustainable development.

V. THE LEGAL DEFINITION OF CORRUPTION UNDER CURRENT INTERNATIONAL LAW

After analyzing in long narrative paragraphs, this topic discusses the legal definition of corruption in the eyes of two international legal documents to see whether it is legally recognized. We shall start with Article 38 of the ICJ Statute and afterward examine Article 31 of the Vienna Convention on the Law of Treaties as raised by Professor Peters. Article 38 refers to four sources of laws: textual conventions, international custom, general law principles, judicial decisions, and the teachings of the most highly qualified publicists of various nations.⁵⁵ First, the UNCAC, the mainstream textual Convention, is silent on the definition of corruption. Besides, the term is not defined in other regional anti-corruption conventions, e.g., Inter-American Convention against Corruption⁵⁶ and E.U. Convention against Corruption Involving Public Officials.⁵⁷

Secondly, although some domestic judicial sources recognize corruption as a human rights violation, many states still do not explicitly accept this perception. We cannot find any national anti-corruption legislation that refers to corruption as a crime

⁵² United Nations Office on Drugs and Crime, *United Nations Convention against Corruption*, Retrieved May 22, 2021 from https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

⁵³ Anne Peters (2018), Corruption as a Violation of International Human Rights, *The European Journal of International Law*, 29(4), 1260. Retrieved May 22, 2021 from <https://academic.oup.com/ejil/article-pdf/29/4/1251/27783450/chy070.pdf>; Prosper Maguchu, *Transitional Justice and Socio-Economic Rights in Zimbabwe* (The Hague: T.M.C. Asser Press, 2019), 30.

⁵⁴ Kolawole Olaniyan, The Implications of Corruption for Social Rights, In Christina Binder, Jane A. Hofbauer, Flávia Piovesan, and Amaya Úbeda de Torres (Eds.), *Research Handbook on International Law and Social Rights* (Cheltenham Glos: Edward Elgar Publishing, 2020), 356.

⁵⁵ International Court of Justice, *Statute of the International Court of Justice*, Retrieved May 22, 2021 from <https://www.icj-cij.org/en/statute>

⁵⁶ Organization of American States, *Inter-American Convention against Corruption*, Retrieved May 22, 2021 from http://www.oas.org/en/sla/dil/inter_american_treaties_b-58_against_corruption.asp

⁵⁷ EUR-Lex, *Convention Against Corruption Involving Public Officials*, Retrieved May 22, 2021 from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A41997A0625%2801%29>

violating human rights. Therefore, international custom does not exist since state practice and *opinion juris* (State's belief in the practice as a legal obligation)⁵⁸ is absent.

Thirdly, although Professor Peters views that the state's obligation to human rights protects is the general law principle according to Article 31 of the 1969 Vienna Convention on Treaties, she justifies that this rule should apply as a corruption preventive mechanism to fill the gaps left within the UNCAC,⁵⁹ the author cannot find any other scholarly source arguing so. It seems like this idea has not been wildly perceived. The international communities generally accept the negative impacts of corruption on human rights in terms of fact but not legal doctrines. Lastly, like the general legal principle, the legal idea appears not to be recognized by many national judicial decisions and legislations.

Hence, the legal definition has not yet emerged in international law to be enforced in the ICJ. This conclusion is nevertheless made on the hypothesis that the meaning of corruption cannot be interpreted from the text. If it is interpretable, Paragraph 1 of the ICJ Statute shall apply, and the source of law can be drawn from the UNCAC itself. The author will sum up at the end of this fourth topic. The Article 31 of the 1969 Vienna Convention, the first paragraph, the interpretation of any term must be in good faith and ordinary meaning in the light of its object and purpose.⁶⁰ According to the dictionaries, there is no connection between human rights and corruption. Cambridge Dictionary defines corruption as "*illegal, bad, or dishonest behavior, especially by people in positions of power.*"⁶¹

More details are described in the Black's Law Dictionary as "*the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others, a fiduciary or official use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others...an impairment of integrity, virtue or moral principles; especially impairment of a public official's duty by bribery.*"⁶² According to the Black's Law, corruption is something contradicts to "the rights of others." However, it does not clarify what right it is. The rights adversely affected by corruption are not merely human rights but also those recognized by domestic laws. One might consider whether corruption can occur without harming someone's rights. The author views it as impossible to be so. Corruption either directly or indirectly affects the rights of people. Thus, in good faith, the author defines

⁵⁸ Patrick Dumberry, *The Formation and Identification of Rules of Customary International Law in International Investment Law* (Cambridge: Cambridge University Press, 2018), 297.

⁵⁹ Anne Peters (2018), *Corruption as a Violation of International Human Rights*, *The European Journal of International Law*, 29(4), 1260. Retrieved May 22, 2021 from <https://academic.oup.com/ejil/article-pdf/29/4/1251/27783450/chy070.pdf>

⁶⁰ United Nations Office of Legal Affairs, *Vienna Convention on the Law of Treaties 1969*, Retrieved May 22, 2021 from https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

⁶¹ Corruption. (n.d.). In *Cambridge Dictionary*. Retrieved May 22, 2021 from <https://dictionary.cambridge.org/dictionary/english/corruption>

⁶² Wycliffe Omwenga, (2014), *A Research Paper on Safeguarding Human Rights through Combating Corruption*, Retrieved May 22, 2021 from http://kenyalaw.org/kl/fileadmin/pdfdownloads/KUSOL_B_RESEARCH.docx#:~:text=Corruption%3A%20Black's%20Law%20Dictionary%20defines,contrary%20to%20the%20rights%20of

corruption similarly to the text of the Black Law. This thought is, however, less recognized in national legislation.

Paragraph 2 thereof requires the consideration of the treaty's preamble and annex. The preamble and the annex express that corruption threatens the stability and security of societies. It also undermines the institutions and values of democracy, ethical values, and justice, jeopardizing sustainable development and the rule of law. Moreover, the Convention's Forward explicitly recognizes that corruption does undermine human rights.⁶³ What can be seen is that corruption does undermine the International Bill of Human Rights protects those. So, the author concludes that corruption negatively affects human rights.

Paragraph 3 is focused by Professor Peters, as early mentioned. The subparagraph (c) introduces that interpretation must be done together with relevant rules of international law, which Professor Peters views as international human rights law imposing duties to states to protect, respect, and fulfills human rights.⁶⁴ Thus, corruption can be perceived as dishonest actions by states or fiduciaries to impair human rights.

VI. BUILDING THE INCLUSIVE SOCIETY: ENHANCING THE ENFORCEABILITY OF THE UNCAC

The author has long previously discussed problematic issues in the UNCAC that obstruct corruption eradication to protect human rights. Summarily, two remaining issues are 1) the absence of corruption definition and 2) the absence of effective sanction. In order to solve the problems as such, to depoliticize corruption, and make a universal standard to eradicate it, the following measures should be taken.

Interestingly, we have been fighting against corruption for almost a decade since the UNCAC adoption, but we do not talk to each other about what we are fighting. The UNCAC calls on state parties to operate corruption prevention measures but does not say what corruption is, leaving the area for state parties to exercise their discretion on what they want to prevent. Meanwhile, the Convention's Forward clearly expresses the undermining effects of corruption on human rights. Thus, the author believes that the UNCAC should take a significant step in defining corruption, allowing international communities to work coherently toward corruption prevention.

⁶³ United Nations Office on Drugs and Crime, *United Nations Convention against Corruption*, Retrieved May 22, 2021 from https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

⁶⁴ Anne Peters (2018), Corruption as a Violation of International Human Rights, *The European Journal of International Law*, 29(4), 1260. Retrieved May 22, 2021 from <https://academic.oup.com/ejil/article-pdf/29/4/1251/27783450/chy070.pdf>

Recalling what has been concluded in Chapter 3, the term corruption should be defined as:

"any breach of duties either by exercising or not exercising the recognized functions to protect, fulfill, and respect human rights, or to provide public services according to both binding international law and national legislation, committed by fiduciaries or states that have the duties thereof purposely to favor someone that has no rights to be favored, to favor one-self, or to impair righteous rights of the others."

The text shown above should be added to the UNCAC as the definition of corruption. This regulation shall make states parties solemnly realize that they are obligated not only to enforce their domestic laws but also to be bound by international obligations. Nevertheless, state parties may consult each other in the Conference on which human rights shall be adopted under the UNCAC. Moreover, the UNCAC should go more specific by mentioning the term "systematic corruption" as *"The acts of corruption knowingly conducted or sustained by the heads or highest authorities of states."*

The UNCAC, Chapter II, urges state parties to prevent corruption. It imposes many measures for state parties to adopt, e.g., codes of conduct, public procurement rules, and social participation. Article 5, as the first provision of the preventive measures, introduces state parties to develop and implement or maintain anti-corruption policies that promote social participation and reflect the rule of law principles, proper management of public affairs, integrity, transparency, and accountability.⁶⁵

The language expressed in Article 5 looks meaningful since it touches upon the legal mantra like the 'Rule of Law.' The term is abstract since it has not been described in any international treaty. The doctrine is generally perceived as the principle that *"the creation of laws, their enforcement, and the relationships among legal rules are themselves legally regulated so that no one—including the most highly placed official—is above the law."*⁶⁶ As the same as what was declared by the United Nations,⁶⁷ the doctrine falls within the scope of human rights as demonstrated in the Universal Human Rights Declaration, revealing that people are entitled to the right to equal and fair and public hearing (Article 10), the right to be equal in dignity and rights (Article 1), and specifically the right to be equal before the law and be entitled without any discrimination to equal protection of the law (Article 7).⁶⁸ It is evident that the UNCAC introduces states parties to protect, and not to undermine, the Rule of Law, a part of human rights. Besides, as previously discussed, states should be obligated to protect and not undermine human rights. This obligation

⁶⁵ United Nations Office on Drugs and Crime, *United Nations Convention against Corruption*, Retrieved May 22, 2021 from https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

⁶⁶ Naomi Choi, Rule of Law, In Mark Bevir, *Encyclopedia of Political Theory: A - E* (California: SAGE Publications, Inc., 2010), 1226.

⁶⁷ United Nations, *What is the Rule of Law*, Retrieved May 22, 2021 from <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>

⁶⁸ United Nations, *Universal Declaration of Human Rights*, Retrieved May 22, 2021 from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

is supposed to be stipulated within the Convention. Nevertheless, state parties may consult each other in the Conference on which human rights shall be adopted under the UNCAC.

There is no concrete sanction written in the UNCAC besides helping each other to achieve the Convention's goals. The Convention is somehow silent on what should be carried out if a state party intentionally ignores her obligations set forth therein. The author views that this insufficiency makes it unenforceable. It is true that corruption somehow falls within domestic matters. However, a practical international sanction method should be established if a state party's domestic mechanism fails. The violation will become concrete after establishing a standard definition of corruption in international law, and a state's action of sustaining systematic corruption must be copped. In this regard, the author views that corruption should be defined and labeled as a universal crime instead of criminalizing just some particular offenses by national legislation. There are two steps further to enforce this issue.

First, The UNCAC must recognize this. Corruption, especially the systematic type, should be a crime elsewhere. As such, the Rome Statute of the International Criminal Court (ICC) also should be amended to recognize systematic corruption as a universal crime since we find that corruption does undermine human rights and the four crimes (genocide, war crimes, crimes against humanity, and the crime of aggression) admissible under the ICC Statute are all human-rights-undermining, as well as well-being-undermining. Therefore, if the perpetrators of the four crimes should not receive impunity⁶⁹, why do the perpetrators of systematic corruption deserve it?

Second, Anti-corruption bodies established by domestic laws can deal with corruption committed by state officials. The problem is who is supposed to prosecute and bring lawsuits against the heads of states that committed systematic corruption that affects the human rights of people residing there. The author believes this function should be given to the International Criminal Court (ICC) and its prosecutors to prosecute and try the perpetrators. To this end, the author strongly believes that this mechanism shall truly achieve the zero-corruption and sustainable development goal of the United Nations for the sake of global citizens.

VII. CONCLUSION

Based on the analysis above, the author believes that the term corruption, as elaborated in the UNCAC, is not limited to only the 11 criminal offenses. It, together with Article 31 of the Vienna Convention, embraces all actions involving with abuse of power or function that undermines human rights or any rights of people recognized by laws. Thus, states must protect the human rights of people as well as prevent corruption in the broad sense. Moreover, this idea, in the author's eyes, can be used as the source of law stipulated in Article 38 of the ICJ.

⁶⁹ International Criminal Court, *Rome Statute of International Criminal Court*, Retrieved May 22, 2021 from <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

Although the UNCAC was negotiated to be a legally binding universal anti-corruption instrument,⁷⁰ it contends soft and non-concrete sanction. Chapter VII establishes the Conference of the States Parties to improve their capacity and cooperation to achieve the Convention's goals and promote and review its implementation. Article 63 enumerates more details on the Conference's functions. However, the functions fall within the scope of information exchanges, implementation reviews, and assistance.⁷¹ No provision expresses the consequence if one state fails to comply with the Convention's measures or the Conference's mandate. Therefore, it could be said that the UNCAC is unenforceable, especially in tackling political corruption and referring to any specific political system to express the critical role of parliaments in holding governments to account.⁷² The author sees this problem as an obstacle to anti-corruption efforts. Without establishing the proper resolutions, the world will not be able to combat corruption truly, but by pretending to fight against it. The next Chapter proposes ways to fill the gaps left open by the UNCAC to root out corruption and guarantee human rights of people systematically.

Corruption cases involve vast sums of money, and some societies argue that fair penalties should be imposed to punish acts that harm many people. However, the excessive severity of sentences can also trigger a debate about proportion and equity in the justice system. The principle of human rights emphasizes that punishment must not violate the principles of humanity. This perspective means the punishments must respect human dignity and not involve degrading or torturous treatment. In deciding punishments for corruptors, the government and the justice system must ensure that human rights are respected, punishment is proportionate, and that the principles of justice are upheld. A balanced and accountable approach to dealing with corruption violations can help meet the demand for justice and provide community lessons.

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⁷⁰ United Nations Office on Drugs and Crime, *United Nations Convention against Corruption*, Retrieved May 22, 2021 from <https://www.unodc.org/unodc/en/corruption/uncac.html>

⁷¹ United Nations Office on Drugs and Crime, *United Nations Convention against Corruption*, Retrieved May 22, 2021 from https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

⁷² U4 Anti-Corruption Resource Centre, (2017), *UNCAC in a Nutshell*, Retrieved May 22, 2021 from <https://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf>

REFERENCES

- Adetayo, S. (2020). The Ethics of State Capture: Dangote and the Nigerian State. In N. Wariboko and T. Falola (Eds.). *The Palgrave Handbook of African Social Ethics* (pp 371-388). Bamenda: Springer Nature.
- Agrawal, A. K. (2007). Corruption in Historical Perspective : A Case of India. *The Indian Journal of Political Science*, 68(2). pp. 325-336. Retrieved May 22, 2021 from <http://www.jstor.org/stable/4185633>
- Amusan, L. (2020). Fish Rots from the Head: Duality of Corrupt Behavior in South Africa (2009-18). In M. C. Hoadley and N. Hatti (Eds.). *Understanding Corruption: Traditional and Legal Rational Norms* (pp. 55-83) New York: Routledge.
- Australian Human Rights Commission. (2009). *Human Rights Explained: Fact sheet 5: The International Bill of Rights* [Fact sheet]. Retrieved May 22, 2021 from https://humanrights.gov.au/sites/default/files/content/education/hr_explained/download/FS5_International.pdf
- Baloyi, T. (2018). *Vytjie Mentor to Appear Before Commission of Inquiry*. Retrieved May 22, 2021. from <https://www.politicalanalysis.co.za/vytjie-mentor-to-appear-before-commission-of-inquiry/>
- Brooks, R. C. (1909). The Nature of Political Corruption. *Political Science Quarterly*, 24(1). pp. 1-22. Retrieved May 22, 2021 from <https://www.jstor.org/stable/2141078>
- Chandrashekar, M. (2016). *Human Rights, Women and Violation* (New Delhi: Educreation Publishing).
- Choi, N. (2010). Rule of Law. In M. Bevir (Ed.). *Encyclopedia of Political Theory: A - E* (pp. 1226-1229). California: SAGE Publications, Inc.
- Commission of Inquiry into Allegations of State Capture (2018). *Proclamation No. 3 of 2018*. Retrieved May 22, 2021 from https://www.statecapture.org.za/uploads/Terms_Of_Reference.pdf
- Coomans, F. (2016). *The Limburg Principles Turned 30.*, Retrieved May 22, 2021 from [https://www.maastrichtuniversity.nl/blog/2016/12/limburg-principles-turned-30#:~:text=30%20years%20ago%2C%20the%20Limburg,and%20Cultural%20Rights%20\(ICESCR\)](https://www.maastrichtuniversity.nl/blog/2016/12/limburg-principles-turned-30#:~:text=30%20years%20ago%2C%20the%20Limburg,and%20Cultural%20Rights%20(ICESCR))
- Corruption. (n.d.). In *Cambridge Dictionary*. Retrieved May 22, 2021 from <https://dictionary.cambridge.org/dictionary/english/corruption>
- Diokno, M. S. I. (2004), *Human Rights Centered Development: Theory and Practice* (North Carolina: University of the Philippines Press).
- Dumberry, P. (2018). *The Formation and Identification of Rules of Customary International Law in International Investment Law* (Cambridge: Cambridge University Press).
- Erasmus, D. (2021). *Zondo Commission: Jacob Zuma's 'Public Defiance' Warrants An 'Appropriate' Sentence*. Retrieved May 22, 2021 from

- <https://www.dailymaverick.co.za/article/2021-03-15-zondo-commission-jacob-zumas-public-defiance-warranted-an-appropriate-sentence/>
- EUR-Lex . *Convention Against Corruption Involving Public Officials*. Retrieved May 22, 2021 from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A41997A0625%2801%29>
- Fazekas, M. and Tóth, I. J. (2016). From Corruption to State Capture: A New Analytical Framework with Empirical Applications from Hungary. *Political Research Quarterly*, 69(2). pp. 320-334. Retrieved May 22, 2021 from <https://journals.sagepub.com/doi/abs/10.1177/1065912916639137>
- Fernandez, S., Malan, L. P., Holtzhausen, N., & Tshiyoyo, M. M. (2023). To what extent does corruption erode trust? Evidence of reputational spillovers from ten countries in the Southern African Development Community. *Asia Pacific Journal of Public Administration*, 1–25. <https://doi.org/10.1080/23276665.2023.2184403>
- Gerber, J. (2018). *Zuma Appoints State Capture Commission, To Be Headed By Deputy Chief Justice*. Retrieved May 22, 2021 from <https://www.news24.com/news24/SouthAfrica/News/breaking-zuma-appoints-state-capture-commission-to-be-headed-by-deputy-chief-justice-20180109>
- Ghista, D. N. (2004). *Socio-economic Democracy and the World Government: Collective Capitalism, Depovertization, Human Rights, Template for Sustainable Peace* (London: World Scientific).
- Groenendijk, N. (1997). A Principal-Agent Model of Corruption. *Crime, Law & Social Change*, 27. pp. 207–229. Retrieved May 22, 2021 from https://www.researchgate.net/publication/225852596_A_principal-agent_model_of_corruption
- Hartley, R. (2018). *Cyril Ramaphosa: The Path to Power in South Africa* (Oxford: Oxford University Press).
- Hellman, J. S., Jones G., and Kaufmann D. (2000). *Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition* (Policy Research Working Paper No. 2444). Washington, DC.: World Bank. Retrieved May 22, 2021 from <https://openknowledge.worldbank.org/handle/10986/19784>
- History.com Editors (2019). *Ancient Greece*. Retrieved May 22, 2021, from <https://www.history.com/topics/ancient-history/ancient-greece>
- Hugh Glenister v. President of the Republic of South Africa and Others*. Paragraph 176-177. CCT 48/10, ZACC 6. 17 March 2011
- Human Rights in ASEAN. *Thailand's Rule of Law & Human Rights*. Retrieved May 22, 2021 from <https://humanrightsinasean.info/members/thailand/thailands-rule-of-law-human-rights/>
- International Court of Justice. *Statute of the International Court of Justice*. Retrieved May 22, 2021 from <https://www.icj-cij.org/en/statute>

- International Criminal Court. *Rome Statute of International Criminal Court*. Retrieved May 22, 2021 from <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>
- Jameson, S. K. (2020). *States' Human Rights Obligations Regarding Public Services*. Retrieved May 22, 2021 from <https://static1.squarespace.com/static/5a6e0958f6576ebde0e78c18/t/5fc6235e3f75b16643a5bd59/1606820703234/2020-10-19-Policy-Brief-States-HR-Oblig-PS-UN-NormFram.pdf>
- Karim, S. A. (2016). *State Capture Report Explained*. Retrieved May 22, 2021 from <https://www.groundup.org.za/article/simple-explanation-state-capture-report/>
- Kelsen, H. (2017). *General Theory of Law and State* (New York: Routledge).
- Lauren, P. G. (2013). The Foundations of Justice and Human Rights in Early Legal Texts and Thought. In D. Shelton (Ed.), *The Oxford Handbook of International Human Rights Law* (pp 163-193). Oxford: Oxford University Press.
- Maguchu, P. (2019). *Transitional Justice and Socio-Economic Rights in Zimbabwe* (The Hague: T.M.C. Asser Press).
- Martin, R. (2021). *The Zondo Commission: Consequences for President Ramaphosa*. Retrieved May 22, 2021 from <https://globalriskinsights.com/2021/03/the-zondo-commission-consequences-for-president-ramaphosa/>
- Mpofu, M., Tshuma, L. A., & Msimanga, M. J. (2022). Mediating a regime in crisis: Corruption and succession in Zimbabwe's state media. *Media, Culture & Society*, 44(6), 1215–1231.
- Mulgan, R. (2012). Aristotle on Legality and Corruption, In M. Barcham, B. Hindess, & P. Larmour (Eds.), *Corruption: Expanding the Focus* (pp. 25-36). Canberra: ANU Press.
- Narula. S. (2013). International Financial Institutions, Transnational Corporations and Duties of States. In M. Langford, W. Vandenhoe, M. Scheinin, and W. V. Genugten (Eds.). *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social, and Cultural Rights in International Law* (pp. 114-150). New York: Cambridge University Press.
- Ndaba, B. (2021). *Justice Zondo Granted Three-Month Extension to Complete Commission's Work*., Retrieved May 22, 2021 from <https://www.iol.co.za/news/politics/justice-zondo-granted-three-month-extension-to-complete-commissions-work-0f3a4f72-4971-466f-8a9e-b63db0dd9c5f>
- Olaniyan, K. (2014). *Corruption and Human Rights Law in Africa* (Oxford: Bloomsbury Publishing).
- . (2020). The Implications of Corruption for Social Rights. In C. Binder, J. A. Hofbauer, F. Piovesan, and A. Ú. Torres (Eds.), *Research Handbook on International Law and Social Rights* (pp. 355-374). Cheltenham Glos: Edward Elgar Publishing.
- Omwenga, W. (2014). *A Research Paper on Safeguarding Human Rights through Combating Corruption*. Retrieved May 22, 2021 from http://kenyalaw.org/kl/fileadmin/pdfdownloads/KUSOL_B_RESEARCH.docx#:

- Corruption%3A%20Black's%20Law%20Dictionary%20defines,contrary%20to%20the%20rights%20of
- Organisation for Economic Cooperation and Development and World Bank (2013). *Integrating Human Rights into Development*, Second Edition: Donor Approaches, Experiences, and Challenges (Washington, DC.: OECD Publishing).
- Organization of American States. *Inter-American Convention against Corruption*. Retrieved May 22, 2021 from http://www.oas.org/en/sla/dil/inter_american_treaties_b-58_against_corruption.asp
- Pearson, Z. (2013). An International Human Rights Approach to Corruption. In P. Larmour and N. Wolanin (Eds.). *Corruption and Anti-corruption* (pp. 30-61). Canberra: ANU Press.
- Peters, A. (2018). Corruption as a Violation of International Human Rights. *The European Journal of International Law*, 29(4). pp 1251–1287. Retrieved May 22, 2021 from <https://academic.oup.com/ejil/article-pdf/29/4/1251/27783450/chy070.pdf>
- Pope, S. J. (2010). Tradition and Innovation in Natural Law: A Thomistic Interpretation. In L. S. Cahill, H. Haker, and E. M. Metogo (Eds.), *Human Nature and Natural Law* (pp. 17-25). London: SCM Press.
- Porta, D. D. and Vannucci, A. (2016). *The Hidden Order of Corruption: An Institutional Approach: New Advances in Crime and Social Harm* (New York: Routledge).
- Public Prosecutor of South Africa (2016). *State of Capture - A Report of the Public Protector*, October 14 2016. Retrieved May 22, 2021 from <https://www.sahistory.org.za/sites/default/files/2019-05/329756252-state-of-capture-14-october-2016.pdf>
- Robinson, J. K. (2019). *Human Rights Violations in Post-Independent India: Kerala Scenario* (North Carolina: Lulu Publication)
- Roy, K. (2012). *Hinduism and the Ethics of Warfare in South Asia: From Antiquity to the Present* (Cambridge: Cambridge University Press).
- Sayed, A. (2004). *Corruption in International Trade and Commercial Arbitration* (The Netherlands: Kluwer Law International).
- Sitorus, L. E. (2011). State Capture: Is It A Crime? How The World Perceived It. *Indonesia Law Review*, 2(1). pp 147-170. Retrieved May 22, 2021 from <https://www.jstor.org/stable/2141078>
- Stahl, F. J. (2020). Friedrich Julius, *The Rise and Fall of Natural Law: Volume 1A of The Philosophy of Law: The History of Legal Philosophy* (R. Alvarado, Trans.). (the Netherlands: WordBridge Publishing).
- State of Maharashtra through CBI, Anti-corruption Branch, Mumbai v. Balakrishna Dattatrya Kumbhar*. Paragraph 14. Criminal Appeal No. 1648. Supreme Court of India 9, SCR 601. at 602, October 15 2012
- Transparency International. *What is Corruption?*. Retrieved May 22, 2021, from <https://www.transparency.org/en/what-is-corruption>

- U4 Anticorruption Resource Centre, (2017). *UNCAC in a Nutshell*. Retrieved May 22, 2021 from <https://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf>
- United Nations Office of Legal Affairs. *Vienna Convention on the Law of Treaties 1969*. Retrieved May 22, 2021 from https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
- United Nations Office of the High Commissioner for Human Rights. *International Covenant on Economic, Social and Cultural Rights*. Retrieved May 22, 2021 from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
- United Nations Office on Drugs and Crime. *Rules of Procedure For The Conference of The States Parties to The United Nations Convention Against Corruption*. Retrieved May 22, 2021 from https://www.unodc.org/documents/corruption/Publications/MainPublications/RulesOfProcedure/07-80230_Ebooke.pdf
- . *Theories That Explain Corruption*, Retrieved May 22, 2021 from <https://www.unodc.org/e4j/en/anti-corruption/module-4/key-issues/theories-that-explain-corruption.html>
- . *United Nations Convention against Corruption*. Retrieved May 22, 2021 from https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf
- . *United Nations Convention against Corruption*, Retrieved May 22, 2021 from <https://www.unodc.org/unodc/en/corruption/uncac.html>
- United Nations. *Human Rights Treaty Bodies*. Retrieved May 22, 2021, from <https://sustainabledevelopment.un.org/index.php?menu=3170&nr=201&page-view&type=30022>
- . *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*. Retrieved May 22, 2021, from https://digitallibrary.un.org/record/124945/files/E_CN.4_1987_17-EN.pdf
- . *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*. Retrieved May 22, 2021, from <https://undocs.org/en/e/c.12/2000/13>
- . *Universal Declaration of Human Rights*. Retrieved May 22, 2021 from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- . *What is the Rule of Law*. Retrieved May 22, 2021 from <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>
- World Bank, *Anti-corruption in Transition: A Contribution to the Policy Debate* (Washington, D.C: World Bank Publications, 2000), 3.
- Xu, S. Y. (2018). *Corruption during China's Golden Ages: Case Studies in the Han and Tang Dynasties*. In Q. Fang and X. Li (Eds.). *Corruption and Anti-corruption in Modern China* (pp. 235-244). Maryland: Lexington Books.
- You, J. S. (2018). *Trust and Corruption*. In E. M. Uslander (Ed.). *The Oxford Handbook of Social and Political Trust* (pp. 473-496). Oxford: Oxford University Press.