

A Multidimensional Perspective on Corruption in Africa

A Multidimensional Perspective on Corruption in Africa:

*Wealth, Power, Religion
and Democracy*

Edited by

Sunday Bobai Agang, Pregala Pillay
and Chris Jones

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INTRODUCTORY WORDS OF WELCOME

PROFESSOR STAN DU PLESSIS

ACTING RECTOR OF THE STELLENBOSCH

UNIVERSITY AND PROFESSOR DION FOSTER,

ACTING DEAN OF THE FACULTY OF THEOLOGY,

STELLENBOSCH UNIVERSITY

Ladies and gentlemen, it is an honour to join you this morning at this important conference on Corruption: Wealth, Power, Religion and Democracy. It is a pleasure to welcome you to Stellenbosch University, and to the cradle of our university here in Dorp Street as we celebrate the centenary of our status as a public university in South Africa. I apologise on behalf of the Rector and Vice-Chancellor, Prof. Wim de Villiers that he could not be here himself, but he is abroad. He sends his best wishes and support for the conference.

As we know, the African Union (AU) Assembly declared 11 July 2018 as African Anti-Corruption Day, and 2018 as the African Anti-Corruption Year with the theme: “Winning the Fight against Corruption: A Sustainable Path to Africa’s Transformation”. One of the main reasons for this conference is to commemorate this inaugural anti-corruption year of the AU. The Chairperson of the African Union Commission, Moussa Faki Mahamat, said that this year should provide Africans a unique opportunity to reflect on and address specific challenges related to the fight against corruption on the continent, and that we must ensure that corruption is eradicated so that we can achieve a united, prosperous and peaceful Africa. In his striking words:

Corruption continues to hinder efforts aimed at promoting democratic governance, socioeconomic transformation and peace and security. It creates inequality in our societies and erodes the rule of law.... The scourge of corruption cuts across all our societies and countries. In order to tackle this scourge, we need to redouble our collective efforts aimed at

combating it. Collective action is even more urgent as corruption networks are getting increasingly sophisticated.¹

Before I say anything further about this conference, I wonder whether you would allow me a few words of reflection as an economist. The discipline of economics has wrestled with the central social question of how we can co-operate constructively in a society for the last 250 years. Leading perspectives about the scope for constructive collaboration were not optimistic at the beginning of the 18th century and many suspected that dictatorial governments were needed to keep at bay the tendency towards what Thomas Hobbes called the “The war of all against all. Everyone is the enemy of everyone else”. In the course of the 18th century different views emerged, especially amongst the social scientists who would later be called economists and amongst their close collaborators, the theologians. Our first and great master was Adam Smith, who was professor of Moral Philosophy at Glasgow University from the middle of the 18th century onwards. While he is enormously famous for his second book, the *Wealth of Nations*—which sort of kicked off my discipline—I want to share a passage from his first book, *The Theory of Moral Sentiments*, which seems appropriate when we want to discuss corruption. Smith wrote:

Man naturally desires not only to be loved, but to be lovely; or to be that thing which is the natural and proper object to love.... He dreads not only blame, but blameworthiness; or to be that thing which, though it should be blamed by nobody, is, however, the natural and proper object of blame. (1759: 119)

The 18th-century English usage can trip us a little here: lovely didn’t have the rather shallow connotation of modern usage, but meant that we would like to be seen by a neutral observer as lovable in a moral sense: with integrity, honesty and good principles. Smith’s moral philosophy was a great step ahead, as it helped us to build the theory of a modern society with all that is good and constructive in it; especially the ability of people in the public and private sectors to co-operate productively in what we call markets for their mutual benefit, and for the benefit of the greater society. The results have been astounding. Since Adam Smith, and for the first time in human history, the rise in productivity due to our mutual co-operation has been so great that not just the elites, but the average woman

¹ See speech from 9 December 2017:

<https://au.int/en/pressreleases/20171209/statement-chairperson-african-union-commission-moussa-faki-mahamat-occasion> (accessed 9 July 2018).

and man and child have benefited materially and have seen their standard of living rise above subsistence, and it has been achieved without needing exploitation. Admittedly, progress has not been without setbacks, and nor has it been even, though the evidence is not in doubt at the macro level.

But you are here to discuss a problem which strikes at the very heart of this optimistic vision and which has held back its realisation in too many societies on our continent and elsewhere. Smith said we strive not only to be loved, but to be lovely; to be morally attractive: to be honest and act with integrity. But corruption is the very opposite; it is an approach to mutual interaction where you do not care how Smith's objective observer would judge your actions, where you do not care if the observer would judge you dishonest and without integrity, where you do not care that you would be blameworthy. Given the widespread occurrence of corruption we must conclude that: (1) either Smith was wrong in the very assumptions of that moral philosophy which underpins the modern liberal world; or (2) that there are incentives in our societies which encourage people to act against their own moral intuition. Of course, when these actions become habits they no longer offend any moral inhibitions, such that we get that particularly horrible version of corruption, identified by Moeletsi Mbeki, where not even being caught brings any shame. I do not know which of these is right, though I shudder if it should be the former, and I look to your work to help us all understand the phenomenon of corruption better in all of its dimensions.

The idea of this conference was born a year ago (July 2017) when a Roundtable Discussion on Corruption and Impunity was held here at the Faculty of Theology at the request of former Major-General Ishola Williams and Prof. Mohammad Kuna. The Unit: Moral Leadership and the Faculty of Theology (SU) are hosting and organising this conference, in collaboration with PANAFSTRAG (Pan-African Strategic & Policy Research Group, a non-governmental continental think-tank and advocacy group), NetAct (Network for African Congregational Theology), and the Beyers Naudé Centre for Public Theology (SU). This conference has brought together continental anti-corruption policy-makers, scholars/researchers, and others who are interested in this topic, from diverse religious and spiritual traditions, who will interrogate how and to what extent various political, economic and social actors in Africa can engage in processes of economic, social and political transformation in order to eliminate poverty and inequity, through individual and institutional probity and integrity, as stakeholders separately and collectively.

Public commentators often criticize politicians, entrepreneurs, clerics and the state itself for the lack of public probity and accountability, exemplified by corruption and impunity. The reach of public transparency and probity can hardly be limited to public governance. Therefore, there is also the need to explore how religious and other sectors interact with politicians in Africa, and to interrogate, critique, practice and build mechanisms to uphold transparency, accountability and probity in the quest for equitable economic and socio-political transformation that will try to eliminate corruption and poverty on our continent. All sectors grapple with similar issues of leadership, good governance, probity and integrity as a reflection of their wider societies, irrespective of ecclesiastical, Islamic, or indigenous religious inclinations. The significance of leadership in public and religious sectors in order to achieve prosperity for the citizenry, peaceful coexistence, moral regeneration, human rights and accountability, are indispensable. Accountability requires appropriate rules and regulations, doctrines, codes of conduct, values and behaviour to make this viable transformation. We must also recognize how religious groups and missionary societies, as part of colonialism, had a crucial impact on global African cultures from the colonial period to the post-colonial era.

The conference will hopefully provide a platform from which further interaction—with African policy makers, public officials (policy and decision makers), the private sector, scholars/researchers (especially from religious/theological contexts), clerics of all faiths, practitioners, development experts, development economists, anti-corruption institutions and those working in related policy areas in global Africa – will take place. It is a space to explore historical and contemporary perspectives on how authority structures, institutionalised myths, beliefs, and rituals of authority can correctly be mobilized to influence citizens' behaviour and attitudes towards accountability, transparency and probity, which are the key to strengthening national integrity systems all over the continent.

We hope that the attendees of this conference will motivate African public, private, religious and civil society institutions, together with relevant stakeholders, to build a common mechanism and platform for probity and integrity to eliminate corruption, impunity and, hopefully, poverty (on our continent). I am especially glad that this conference is held at Stellenbosch University. Students from all over the world study at our university—this includes students from many different African countries. They want to see and experience something new and different. They will tell you that they love the vibrant different cultures at our university, but also in South Africa, and enjoy engagement with counterparts from South

Africa, but also from elsewhere in the world. We also have exchange programs for academics and students with various African universities. I hope you will find this a productive space for your conference.

Enjoy your stay in Stellenbosch. May the conference help and motivate you to tackle corruption decisively. If corruption is not combatted decisively but allowed to thrive, all efforts aimed at peace and unity will be in vain. May I express the hope that this will become a yearly conference in order to model to the world how we, as Africans, want good governance, and to encourage not only whistle-blowers and their protection, but also zero tolerance for corruption and impunity.

Professor Stan du Plessis

Dear colleagues,

It is a joy to welcome you to the Faculty of Theology, Stellenbosch University, for the Corruption: Wealth, Power, Religion, and Democracy conference. We are grateful to have a number of expert scholars and practitioners from this field participating in the program. The discussions, engagement, and reflection are certain to stimulate socially engaged scholarship for the sake of the common good.

As we meet, Cape Town remains in the midst of the most severe drought in nearly a century. The complexity of the Cape climate bears some resemblance to the complexities that many African nations face—the challenges of population and economic growth in relation to the management and stewardship of resources. Stellenbosch is not immune to this complexity: we share in the challenges of our continent. This city, and the University, are magnificent, and magnificently complex.

The theme of our conference this week focusses on corruption, with particular attention being given to the intersections of wealth, power, religion and democracy. I am not sure if you realize this, but Stellenbosch remains one of the most economically unequal cities in the world (Armstrong, Lekezwa & Siebrits 2008; Seery & Arendar 2014: 7, 25). South Africa has one of the highest GINI coefficients in the world (sometimes first, sometimes second to Brazil), and Stellenbosch houses the two richest individuals in this economically most unequal country in the world—Patrice Motsepe and Christo Wiese (these two individuals own as much as half of the rest of South Africa, 26.5 million persons, combined) (Anon 2015). This city (Stellenbosch) and this campus (Stellenbosch University), along with many others in South Africa, became locations where these levels of economic inequality, and the associated realities of poverty and suffering, led to violent resistance and social instability.

For almost two years (2015-2016) students participated in a protest movement named #FeesMustFall (Baloyi & Isaacs 2015; Nhemachena 2016: 411-416). Their anger was directed at the commodification of education, making it unaffordable for the majority of the population, while rampant state corruption, and unchecked greed in the private sector, meant that the rich and powerful have unequal access to resources such as education, healthcare, and even basic protection against harm. The consequence of this is that the wealthy can “opt out” of failing state services. They can afford private health care, private security, private education, private transportation etc. while state assets are plundered and the nation’s wealth is looted by corrupt politicians and business persons

(Bhorat, Buthelezi, Chipkin, Duma, Mondli, Peter, Qobo, Swilling & Friedenstein 2017; Chipkin 2016; Shai 2017: 62–75). Many communities in South Africa continue to face daily “service delivery” protests as our population grows impatient with the promises of politicians, and the lack of delivery on basic services. This phenomenon is directly linked to corruption and maladministration, but also to social and economic elitism (Bhorat *et al.* 2017; Kotzé & Garcia-Rivero 2017: 1–17). The consequence is that a very small percentage of the population are growing wealthier and wealthier, while the majority remain in poverty.

Miguel De La Torre’s work on Christian ethics and theological education, *Doing Ethics from the Margins* (2014) brought this home for me as I reflected on the beautiful city of Stellenbosch, and the beautiful University of Stellenbosch. He writes: “The classroom is appropriately named, for it is indeed a room of class—a room where students learn the class they belong to and the power and privilege that come with that class.” (ibid.: xi). When I look at my own classrooms, and the people who fill them, I can see the lines of economic inequality, and indeed social class, clearly drawn between those students who arrive in their own cars with laptop computers, and those students who have taken trains or public transport to get to class. There is a clear distinction between those who can afford to live on, or near, campus and the many who leave way before sunrise and arrive home late after the sun has set to study by candlelight. Earlier this year, I was confronted by a student who told me that she had to choose between eating on that day or coming to class—she could not afford both food and transportation. That speaks to me of a corrupt and broken economic and social system. Such a system is not serving the people, and as a Christian, I would venture that it does not honour God when some of us have too much, when others don’t even have enough to survive.

Of course, as with many other places around the world, it is those who live at the complex intersections of wealth, power, religion and democracy (not to mention issues such as race, gender and culture) whose lives are most acutely affected in such unnatural conditions. In a classist, patriarchal, society battling with scarcity, it is women and girls who are most vulnerable (Seery & Arendar 2014: 104). It is the persons who do not fit the norms and accepted values of a culture or society (whether social or sexual values) who are discriminated against and vulnerable to abuse, social exclusion and religious persecution. In order to address such issues, we need deep, rigorous and critical reflection that engages the micro-, the mezzo- and the macro-levels of the problem—everything from individual beliefs and values to the policies and structures that shape societies. For

that reason, we are extremely grateful for your presence here, and for the work that you will be doing this week. As I look at the program, I see great promise for a valuable contribution arising from this conference. Indeed, our faith has, and should have, public consequences—consequences of the best kind.

So, as we meet, I am filled with hope. You, and your presence, are a testimony to what is possible. I leave you with the words of the Brazilian Liberation theologian and educator Rubem Alves, as I wish you success and blessing for your work this week. Alves said: “Hope is hearing the melody of the future, and faith is to dance to it” (Alves 1974: 562).

So, may the dance begin!

Dion Foster (acting Dean, on behalf of Prof. Dr Reggie Nel)

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PREFACE

Over the centuries, corruption, underpinned by human pride, fear and avarice, has been undermining Africa's civilisation, development and transformation. This is nowhere better illustrated than in the African Union's Agenda 2063, with its motto, "The Africa We Want". Agenda 2063 demonstrates how Africa is a definite product of corruption, and therefore her people are yearning for a change.

Corruption is too dangerous to be ignored or harboured by any human society, for it is underpinned by human pride, the fear of freedom, human vulnerability, avarice and pride. As such, no civilisation, development or transformation can survive under corruption.

In his book, *How Africa Shaped the Christian Mind*, Thomas C. Oden (2007) tells how God has tremendously used Africa and Africans to bless the entire human world. For example, God used Africa's Christianity as the seedbed of Western Christianity, which eventually led to the discovery of human dignity and the development of a thinking civilisation that has led to the development and transformation of Western societies through the invention of technologies and sciences aimed at respecting, promoting and protecting human dignity.

In short, being the cradle of human origin and dispersals (Adamo et al. 1996: 4; Wells 2002: 4, 8, 24), Africa has in itself the seed of civilisation and all the natural and human resources for social, religious, political, scientific and economic development and transformation. Today, through dispersals, those potentials have been carried to the other six continents and are working.

Although Africa is still producing the best for the world, at home corruption is holding Africa and Africans under lock and key. That is why Africans are ardently yearning for a continent in which God-given resources and wealth are administered not to the detriment of the poor, but to the admiration and mutual benefit of both the rich and the poor. They want the use of Africa's natural and human resources to create wealth, and a proper administration of the wealth in which the ties of brotherhood and sisterhood may still bind together the rich and poor in a harmonious relationship. In so doing, every African that can work and earn a living can work and earn a livelihood as a dignified human being. That hope or aspiration is attainable because all humans have a God-given capacity to do tremendous good.

However, as in other global societies, corruption in Africa has overshadowed our human capacity to do good. Consequently, African leaders both at the private and public levels are doing tremendous evil to their fellow citizens and the continent. Therefore, this book, *A Multidimensional Perspective on Corruption in Africa: Wealth, Power, Religion and Democracy*, is primarily intended to help the African people and their leaders to grasp the fact that corruption is innate in us. It is a spiritual, moral and ethical problem which has become one of the greatest enemies of the human race. Invariably, in the African continent, corruption is multidimensional and multifaceted. This is why this book, written by champions of change in the continent, is multidimensional in its approach and its depth and treatment.

Given that corruption and impunity are deeply rooted in the African continent, this volume represents the combined efforts of Africa's best minds—scholars, anti-corruption practitioners and researchers, policy decision-makers and implementers, public and private sector officials, statisticians, legal luminaries, clerics, theologians, scientists, social and economic development experts, and gender equality practitioners.

The editors and contributors to this book are ardently aware that, as the cradle of the human race, Africa is endowed with vast God-given human and natural resources. Therefore, it is unacceptable to find that the African continent is home to social, political, religious and economic settings which are primarily characterised by greed, endemic corruption, massive poverty and massive unemployment, resulting in persistent violent conflicts and wars.

Violent conflicts, terrorism and wars often signal a lack of justice, love, morality, ethics and empathy. These ethical and moral ingredients are central to the survival of any human society. Thus, one of the critical discoveries or contributions that make this volume unique is that it helps the reader to realise that corruption and impunity eclipse and distort the truth. Corruption is a lie that is causing African leaders, and the led, to see an obsession with wealth and power as the thing that will help them overcome their vulnerability, weaknesses and nakedness. In other words, Africa's leaders, at all levels, tend to assume, and we believe them, that the stolen resources of their nations will clothe their human nakedness, vulnerabilities and weaknesses.

But we must be careful and awake. Africa's leaders—religious and non-religious—have become specialists in using corruption as the main scapegoat in order to keep their moral, ethical and physical shortcomings out of sight. They force us to believe this lie too, by striving to convince us that the reason Africa has remained underdeveloped since independence is

corruption. Corruption is a contributing factor. However, that is not the whole truth. Across the globe, no continent is immune to corruption, no society is corruption free. Wherever human beings exist, corruption also exists. However, other nations can thrive morally, ethically, socially, scientifically, economically and politically. That is, despite the existence and level of corruption and impunity in their societies, they are still able to grow and develop their civilisations, technologies, sciences and economies for the greater good of their citizens.

Another unique feature of the book is its concern with human happiness and the fulfilment of ethical obligations. Nevertheless, it does not see these as its ultimate goal, for the false pursuit of these goals have left our continent in ruins. Therefore, this volume places a premium on a life which seeks to emulate God's character, a life that makes Africans look "lovely" in private and in public. The divine characteristics which have a direct bearing on the ethical decision-making that Africa needs today are repeatedly emphasised in the Bible: God is holy; God is just; God is loving. Without these characteristics, the African continent will not have the hope of becoming one of the developed economies in the global village. Governance or a "business act is ethical if it reflects God's holy-just-loving character" (Hill 1997: 14-15).

The authors of this book recognise that all humans are living in a broken and decaying world. They accept the fact that no human being is immune to corruption. However, they also believe that corruption in Africa does not have the final say. We have in our nature the capacity not only to do good but also to do great good. However, we have the capacity of equally doing tremendous evil.

The existence of a good and an evil nature explains why some of us believe that corruption does not have the final say in Africa. It also illustrates why we believe that corruption cannot hinder development in Africa. Those leaders in Africa who believe that they can use corruption as a scapegoat to refuse to perform while in office must not be allowed to give that excuse.

Corruption is not only what we do, but also who we are. In other words, corruption is innate. Corruption is not something outside the human heart but inside it. However, the reason corruption can be overcome is that we are capable of doing good, not only evil. This truth means that corruption and impunity in Africa, as elsewhere, tell the story of our leaders' failure to embrace their vulnerability and face the reality of their weaknesses squarely.

This book hopes to help those who steal, capture, kill and destroy our God-given resources in the quest to protect their nakedness—their vulnerability—to overcome such fears.

A lack of compassion, love, and freedom from fear make it extremely difficult for Africa's leaders to remember the words of the father of modern free-market economy, Adam Smith. He writes: "Man desires not only to be loved but to be lovely" (Smith 1959: 119). To be lovely is to be humanised. As such, without ethical and moral compassion, love and respect for human dignity, our societies cannot eradicate dehumanisation, which underpins corruption. Without compassion, love and respect for human dignity—freedom from fearing vulnerability—Africa's leaders will find it extremely difficult to live, think, work and serve in a manner that proves to others that they are honourable, honest, people of integrity in public and in private.

The African Union's Agenda 2063, cited above, is superb and hope-raising. However, unless contemporary African leaders repent of their impurity, sexual immorality and eagerness for lustful pleasure, one is afraid that it may be a mirage, or that it will go down the drain like all the other superb public policy documents widespread throughout the continent. For many of today's African leaders are sneaky. They take advantage of the African people by trickery. To change from the Africa we now have to the Africa we want, we need African leaders at all levels—private and public—who will do everything with a mindset of building and strengthening the African continent and the African people. "Africa first" should be their motto and watchwords. This understanding will help them to overcome the temptation to serve their personal interests.

In embracing our human vulnerability, humans can put God and others first. By so doing, God's divine inspiration, insights and power will enable us to overcome the deadly power of corruption and make incredible strides in life. This is the only way our leaders can live, work and serve their people and countries as dignified human beings (lovely people and leaders) whose goals for coming into power or building enterprises and businesses is to do all they can for the greater good of the African people and continent.

Lastly, as we know, we find corruption along ethnic lines too, especially in Africa. According to Isaksson

Sub-Saharan Africa is home to some of the world's most corrupt and ethnically fragmented countries. Comparing across states, it has been suggested that politicised ethnic divisions impact corruption by reducing the popular will to oppose corrupt politicians.... Individual corruption experiences vary systematically along ethnic lines. Belonging to influential

ethnic groups is associated with a greater probability of having experienced corruption, seemingly suggesting more corruption among co-ethnics and supporting the idea that enforcement mechanisms within ethnic groups could act to strengthen corrupt contracts. (Isaksson 2012: n.p.)

In the end, corruption is everybody's business. What is of utmost importance is the role ethics play in society, what we do among others in universities, governmental departments and in the workplace to promote anti-corruption behaviour and actions, and develop leaders who are ethical, effective and empathetic (compassionate). That corruption robs the poor is evident. We will continually have to fight poverty, unemployment and inequality.

We hope that this book can serve as a reference point for better policies, monitoring law makers, and evaluation and action by governments. May the reading of this book enrich your personal values and philosophy of life. May it become clear that, as a collective, we are powerful enough to bring about positive change in human existence. And may we discover anew that the closer we get to God, the more we must consider the plight and needs of others. Service to humanity is a calling.

Sunday Bobai Agang (on behalf of the editors)

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PART I:

HUMAN RIGHTS AND THE CITIZEN'S ROLE

CHAPTER ONE

CORRUPTION IN THE FACE OF HUMAN RIGHTS

DANNY TITUS

Abstract

Corruption became the major force that distinguished the Jacob Zuma era. It left such a legacy that it places the new dawn of President Cyril Ramaphosa with very little breathing space. South Africa has been a country with so many contradictions: from racism to democracy, from prisoner to president. However, now it is a country of deep ironies: primarily, of how we could sink from Mandela to Zuma. It is largely due to the kleptocracy that has developed. Corruption was taking place in broad daylight; corruption took place in the face of human rights. This chapter highlights this corruption and argues for international human rights to be combined with a powerful anti-corruption movement. South Africa, as a participating state in the international human rights movement, as well as a signatory to the UN Anti-Corruption Convention, can only benefit from such a combined approach.

Keywords: Corruption; human rights; international human rights; economic, social and cultural human rights; peace; Mandela; Zuma; Ramaphosa; State Capture Report; betrayal of promises; Steinhoff Empire; Constitution.

1.1 Introduction

The topic of this conference is all-encompassing. Corruption is as old as the hills. It exists in all countries, irrespective of the economic or political system and level of development, in the public and private spheres. It is a transnational phenomenon requiring international cooperation, including in the recovery of stolen assets.

Kofi Annan (United Nations Convention Against Corruption 2004: iii) says:

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, distortions of markets, erodes the quality of life and allows organised crime, terrorism, and other threats to human security to flourish.

This evil phenomenon is found in all countries—big and small, rich and poor—but it is in the developing world that its effects are most destructive. Corruption hurts the poor most disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.

This is a perspective that is not heard enough in the current South African debate on corruption. Corruption is an “insidious plague” that corrodes society, impacting on democracy and the rule of law, hurting the poor, and leading to economic underperformance.

More specifically, on corruption and human rights, the former United Nations High Commissioner on Human Rights Judge Navi Pillay (2013: i) expressed herself as follows:

Let us be clear. Corruption kills. The money stolen through corruption every year is enough to feed the world's hungry 80 times over. Nearly 870 million people go to bed hungry every night, many of them children; corruption denies them their right to food, and, in some cases, their right to life.

Bribes and theft swell the total cost of projects to provide safe drinking water and sanitation around the world by as much as 40 per cent. Money siphoned from the public treasury could have been spent to meet development needs, to lift people out of poverty; to provide children with education; to bring to families essential medicine; and to stop the hundreds of preventable deaths and injuries during pregnancy and childbirth that occur every day.

It is almost as if she is speaking about South Africa today, where all the deep-rooted corruption mentioned in her statement at the UN can be observed. She continues in similar vein:

Corruption hits the poor first and hardest.... But the negative impact of corruption on the enjoyment of human rights goes far beyond economic,

social and cultural rights. Corruption in the administration of justice—which permits perpetrators to go unpunished so long as they pay bribes—creates a vicious cycle of crime. In human rights terms, it denies access to justice for victims, it exacerbates inequality, weakens governance and institutions, erodes public trust, fuels impunity and undermines the rule of law—in particular the right to a fair trial, the right to due process, and the victim's right to effective redress. (Ibid)

And yet, corruption abounds in South Africa, even in the light of its constitutional dispensation and even in the face of the policies to alleviate inequality, poverty and unemployment declared by various administrations in post-Apartheid South Africa.

In this article, an outline will be presented of the strong normative framework of human rights in South African society. However, it is within this framework that corruption has taken root and continues to thrive in South Africa. The current situation highlights how far South Africa has fallen since its triumph over Apartheid, how it has fallen from the ideals it embraced since Apartheid. It further indicates how, under former President Jacob Zuma, the state was failing, with bribes and nepotism deployed to secure contracts, ANC party members killing each other over lucrative government jobs, and criminals operating with impunity.

“What is unusual about South Africa is not that corruption thrives, but that it does so in plain sight,” says *The Economist* (9 Dec. 2017). But it is thanks to civic activism, the free press and a robust judiciary that the corruption is laid bare.

Today South Africa has a new State President, Matamela Cyril Ramaphosa, who is intent on turning the situation around. He has fired cabinet ministers, changed the boards of state-owned enterprises where corruption has been rampant, and started to change the face of law-enforcement agencies. However, this is not plain sailing, as many of those affected are fighting back politically and legally.

This chapter will consider how human rights can be of relevance in this fight against corruption.

1.2 From the Brink to Peace?

South Africa has been considered a prime example of a post-conflict country that drew back from the brink of bloodshed and war to form a democratic state with democratic institutions: a country at peace. That is certainly what happened in 1994. Or so it seemed. In his recent book *How to Steal a Country*, former British Ambassador to South Africa Robin

Renwick looks at the “vertiginously rapid descent of political leadership in South Africa from Mandela to Zuma, and its consequences” (2018: ix).

What is the meaning of “vertiginous”? Some general explanations are:

- a. Characterised by or suffering from vertigo or dizziness. b. Inclined to frequent and often pointless change.

1.3 From Mandela to Zuma

While this conference is not primarily about South Africa, this country has almost become a textbook case of how we can descend from the heights of Nelson Mandela to the depths of Jacob Zuma. South Africa is where we are meeting now, this is where President Ramaphosa is, this is where corruption is. Can we sink deeper or can we only go up from here? Vertiginous sounds quite appropriate to me.

Renwick asks:

Is there something in the nature of liberation movements that causes them, once power is achieved, to morph into kleptocracies, as in Angola, Zimbabwe and South Africa under Zuma? Or is it a function of leadership? How is it that international reputable companies such as KPMG, McKinsey, SAP and HSBC are so easily drawn into such a web of corruption? (2018: ix).

The international picture from the UN’s Navi Pillay quoted above reminds us that corruption exists in all countries, irrespective of the economic or political system, in the private as well as the public spheres. In South Africa we have had front-row seats, particularly during the past ten years, to observe the phenomenon of corruption paraded in broad daylight as democracy, human rights and liberation. It is useful to observe the widely praised Constitution of South Africa (1996: 1):

We the people of South Africa,

Recognise the injustices of our past;

Honour those who suffered for justice and freedom in our land;

Respect those who have worked to build and develop our country and,

Believe that South Africa belongs to all who live in it, united in our diversity.

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic, so as to:

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen in equally protected by law;

Improve the quality of life of all citizens and free the potential of each person; and

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

Yet the Constitution has become much maligned, and in some instances references have been made to tearing it up (Leon Wessels 2007: 198).

The *State of Capture Report* (2016/17) by the then Public Protector advisor Thuli Madonsela is a crucial reference point on the state of corruption in South Africa. This report investigated “the alleged improper and unethical conduct by the President and other state functionaries relating to alleged improper relationships” between President Zuma, his family and the Gupta family, examining the role they played in seeking to remove the finance minister and others in the South African Treasury who posed an obstacle to their alleged improper and corrupt commercial ambitions.

The preface of the report refers to an excerpt from a Constitutional Court case:

One of the crucial elements of our constitutional vision is to make a decisive break from the unchecked abuse of State power and resources that was virtually institutionalised during the Apartheid era.

To achieve this goal, we adopted accountability, the rule of law and the supremacy of the Constitution as values of our constitutional democracy.

For this reason, public office-bearers ignore their constitutional obligations at their peril. This is so because constitutionalism, accountability and the rule of law constitute the sharp and mighty sword that stands ready to chop the ugly head of impunity off its stiffened neck.

It is against this backdrop that the following remarks must be understood:

Certain values in the Constitution have been designated as foundational to our democracy. This in turn means that as pillar-stones of this democracy, they must be observed scrupulously.