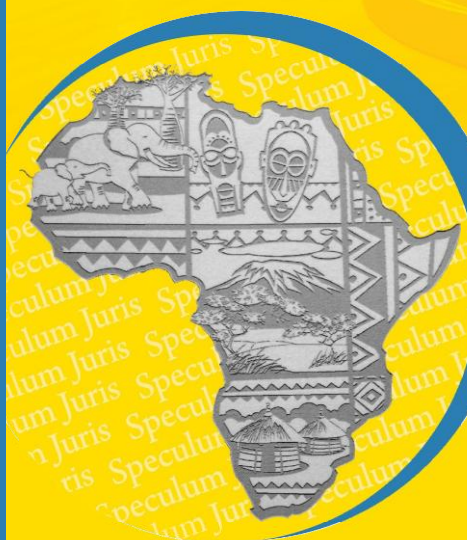




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Combating Corruption in South Africa through Legal Empowerment: A Human Rights-based Approach to Accountability and Access to Justice

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Abstract

The primary objective of this article is to explore the potential of human rights, as contained in South Africa’s Constitution to empower individuals to combat corruption. The Constitution of the Republic of South Africa, 1996, enshrines a broad spectrum of civil, political, economic, social, and cultural rights. Nonetheless, persistent challenges in accessing essential social services, such as education, healthcare, and housing continue to undermine the realisation of these rights. Corrupt practices, including bribery demands and mismanagement of public resources, disproportionately affect disadvantaged populations who rely on these services. Compounded by limited access to justice and inadequate awareness of rights and redress mechanisms, the disadvantaged face significant barriers to holding state actors accountable. This article explores the nexus between human rights and corruption, emphasising the potential of a human rights-based approach to empower marginalised individuals as

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agents of change. Through a doctrinal analysis of primary and secondary sources, the article explores the potential of legal empowerment as a bottom-up strategy to combat corruption. Unlike top-down institutional reforms, legal empowerment focuses on building the capacities and agency of rights-holders to demand fulfilment of their rights and to utilise legal and redress mechanisms effectively. Grounding empowerment in human rights is critical in overcoming historical discrimination and vulnerabilities. The article contributes to a sustainable anti-corruption discourse by proposing increased awareness-raising and capacity-building initiatives that link human rights and anti-corruption efforts, enabling the disadvantaged to challenge corrupt practices and improve their wellbeing.

Keywords: Human rights; legal empowerment; South Africa; corruption; human rights-based approach

1 INTRODUCTION

The Constitution of the Republic of South Africa, 1996 (the Constitution) provides for various civil, political, economic, social and cultural rights. Despite this, equal access to essential social services, such as education, healthcare, and housing remain an ongoing challenge. Historical disadvantage, poverty and unequal public resource distribution mean that poorer communities rely on overstretched public systems, while a smaller, better-resourced segment can access higher-quality services. Access to basic services is further hindered by corruption, including demands for bribes to obtain services and mismanagement of public resources. These jeopardise the enjoyment of rights that are reliant on access to basic services. As the disadvantaged¹ are more reliant on these services, they bear a disproportionate brunt of the costs of corruption. Moreover, despite formal recognition of their rights, poor and disadvantaged people are often excluded from justice due to a lack of financial resources and insufficient knowledge of rights and available redress mechanisms. In addition, the disadvantaged's reduced economic and political empowerment impedes their ability to hold state actors accountable for corruption.²

The relationship between human rights and corruption has received increased attention over the past three decades. It is recognised that corruption has a negative impact on human rights. Conversely, scholars and practitioners posit that human rights and related normative principles can be employed to strengthen the fight against corruption.³ Former United Nations High Commissioner for Human Rights, Navi Pillay, asserts that corruption fundamentally breaches the human rights principles of transparency, accountability, non-discrimination, and meaningful community participation; conversely, the rigorous enforcement of these principles constitutes the most effective anti-corruption strategy.⁴ The principles highlighted by Pillay are the core principles of a human rights-based approach to development. They are also inter-related with the principle of empowerment, which focuses on developing the agency and capabilities of individual rights-holders to demand the fulfilment of legally recognised human rights.⁵

1 This article employs the term "disadvantaged" to refer to all in society who are poor, vulnerable, marginalised, underprivileged and facing systemic discrimination.

2 Hossain *et al.* "Corruption, Accountability and Gender: Understanding the Connections" 2010 <https://www.undp.org/sites/g/files/zskgke326/files/publications/Corruption-accountability-and-gender.pdf> (accessed 13-10-2025) 5.

3 Mubangizi and Sewpersadh "A Human Rights-based Approach to Combating Public Procurement Corruption in Africa" 2017 *AJLS* 66; De Man "Strengthening the Fight against Corruption through the Principle of Accountability" 2020 *PELJ* 1; International Council of Human Rights Policy (ICHRP) and Transparency International *Integrating Human Rights in the Anti-corruption Agenda: Challenges, Possibilities and Opportunities* (2010).

4 United Nations "The Human Rights Case against Corruption" <https://www.ohchr.org/en/stories/2013/03/human-rights-case-against-corruption> (accessed 13-10-2025).

5 Scottish Human Rights Commission "Human Rights Based Approach" <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-based-approach/> (accessed 30-04-2026).

In this article, the empowerment of the disadvantaged, specifically legal empowerment, is examined as an essential and under-utilised means to combat corruption from the bottom up. The importance of society-based approaches in combating corruption has been well established.⁶ Relying solely on governments to address public-sector corruption poses significant limitations. A 2024 Corruption Watch⁷ report found that eighty-one per cent of respondents consider government anti-corruption efforts in essential service delivery inadequate.⁸ Parmar highlights a fundamental flaw in government-led anti-corruption approaches: the institutions accused of corruption are tasked with reform, yet those reaping its benefits are less inclined to eliminate it than its victims.⁹ Therefore, bottom-up approaches to combating corruption warrant consideration due to their inherent potential and advantages. However, Ackerman contends that to circumvent the bureaucratic and legalistic pitfalls characteristic of traditional anti-corruption methods,¹⁰ any society-based strategy must be firmly anchored in the human rights framework to effectively surmount barriers to empowerment that are rooted in historical discrimination and entrenched vulnerabilities.¹¹

This article will analyse the potential of a human rights-based empowerment approach to empower the disadvantaged to become their own agents of change, thereby enabling them to combat the corrupt practices they encounter in their everyday lives. Within the context of South Africa, this article will demonstrate that through a doctrinal analysis of primary and secondary sources, the various human rights provided for in the Constitution empower individuals and groups to act against corruption. This article contributes further to the discourse on sustainable anti-corruption measures in South Africa. As will be shown, this will require raising awareness of rights, more specifically the link between corruption and human rights, as well as redress mechanisms, and building the capacity of the disadvantaged to demand the fulfilment of their rights, in line with a human rights-based approach.

Section 2 conceptualises the human rights-based approach and empowerment, culminating in an analysis of their inter-connections. Section 3 develops legal empowerment as the study's theoretical framework, situating it within an international context before applying it to South Africa in the remainder of the article. Section 4 examines the nexus between corruption and human rights in South Africa, while Section 5 explores strategies for leveraging legal empowerment to combat corruption within South Africa.

2 CONCEPTUALISATION OF KEY CONCEPTS

2.1 Human Rights-based Approach: Definitions and Principles

During the 1990s, a human rights-based approach (HRBA) to development emerged from the discourse on the relationship between human rights and development as two separate but highly

6 See, for example, Baez Camargo "Harnessing the Power of Communities against Corruption" 2018 <https://www.u4.no/publications/harnessing-the-power-of-communities-against-corruption> 1 (accessed 13-10-2025); Mubangizi and Sewpersadh 2017 *AJLS* 87.

7 An anti-corruption watchdog and advocacy organisation in South Africa.

8 Corruption Watch "The Impact of Corruption: Insights from a Perspectives and Experiences Survey" 2024 https://www.corruptionwatch.org.za/wp-content/uploads/2024/05/Corruption-Watch-Report-Experiences-and-Perceptions_FINAL-1.pdf 4 (accessed 13-10-2025).

9 Parmar "Empowering Citizens to Fight Corruption" 2018 *Intl J of Research in All Subjects in Multi Languages* 102 102–103.

10 Examples of traditional approaches include criminal justice and good governance approaches.

11 Ackerman "Rethinking the International Anti-corruption Agenda: Civil Society, Human Rights and Democracy" 2014 *AUILR* 293 294.

interlinked fields.¹² Following the United Nations's recognition of the right to development in 1986 in the Declaration on the Right to Development and the substantial critique of the welfare model of development, rights-based language gradually became integrated into the operational frameworks and objectives of development agencies.¹³ The United Nations Office of the High Commissioner for Human Rights (OHCHR) identifies the shared objective of advancing "well-being and freedom, based on the dignity and equality of all people" through securing fundamental liberties and enabling opportunities.¹⁴ It defines an HRBA as a normative framework grounded in international human rights standards and operationalised to promote and protect human rights.¹⁵ Mokhiber further characterises an HRBA as the integration of international human rights norms, standards, and principles into policies and processes.¹⁶ Fundamentally, an HRBA rests on the premise that human rights confer legal entitlements, imposing binding obligations on states under international, regional, and domestic human rights law.¹⁷

Although an HRBA was formulated as an approach to human development, it has recently been advocated for as a means to combat corruption.¹⁸ Carmona and Donald contend that the primary goal of an HRBA is to reshape societal power structures by confronting oppression, undermining the marginalisation and subjugation of specific groups and individuals, and fostering personal agency, autonomy, and respect for the inherent dignity of all human beings.¹⁹ These are essential components in any society-based anti-corruption campaign.

The principle of empowerment (as one of the key principles of an HRBA) is the focus of this article. Specifically, it will be examined how human rights can empower individuals to contest corrupt practices that violate their recognised human rights. Before the principle of empowerment (as part of an HRBA) is discussed, the term empowerment is conceptualised in context.

2.2 Empowerment

The terms "empower" or "empowerment" are widely used throughout the social development sector. Despite this, a uniform definition of the term is lacking. Different meanings have also been attributed to the term "power" as a central component of empowerment.²⁰ Kabeer posits that power should be understood as the ability to make choices.²¹

12 Mitlin and Hickey "Introduction" in Hickey and Mitlin (eds) *Rights-based Approaches to Development: Exploring the Potential and Pitfalls* (2009) 6.

13 United Nations Declaration on the Right to Development (adopted on 04-12-1986).

14 OHCHR *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (2006) 7.

15 *Ibid* 15.

16 Mokhiber "Toward a Measure of Dignity: Indicators for Rights-based Development" 2001 *Statistical Journal of the United Nations Economic Commission for Europe* 155 158.

17 Darrow and Tomas "Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation" 2005 *HRQ* 471 498.

18 For a comprehensive discussion of this approach as an anti-corruption strategy see Mubangizi "A Human Rights Based Approach to Fighting Corruption in Uganda and South Africa: Shared Perspectives and Lessons" 2020 *LDD* 225 225–247; De Man 2020 *PELJ* 1–29.

19 Carmona and Donald "Beyond Legal Empowerment: Improving Access to Justice from the Human Rights Perspective" 2015 *IJHR* 245.

20 See Chaudhuri "Understanding 'Empowerment'" 2016 *JDPP* 121 122; Rowlands *Questioning Empowerment* (1997) 9–13.

21 Kabeer "The Conditions and Consequences of Choice: Reflections on the Measurement of Women's Empowerment" 1999 <https://www.files.ethz.ch/isn/28994/dp108.pdf> 2 (accessed 13-10-2025).

The ability to make choices and act on them, referred to as autonomy, was confirmed as part of the constitutional value of freedom that underscores the enjoyment of all other rights contained in South Africa's Constitution.²²

The Merriam-Webster dictionary defines empower as “to promote the self-actualization or influence of” (my emphasis).²³ In academic literature, the term has been attributed with more nuanced definitions. Ratna and Rifkin conceptualise empowerment as creating opportunities that enable the powerless to develop the skills, knowledge, and confidence to direct their own lives.²⁴ Kabeer frames empowerment as the process through which those previously denied the capacity to make choices acquire it, emphasising self-realisation rather than external bestowal.²⁵ This perspective underscores empowerment as the actualisation of inherent potential rather than a granted privilege. Similarly, Sen and Mukherjee assert that empowerment arises from unequal power relations and involves processes by which marginalised individuals gain agency, autonomy, and decision-making capabilities.²⁶

In line with these definitions, authors have identified three “dimensions” of empowerment: “agency,” “resources” and “achievements”.²⁷ Agency “refers to the processes through which choices are made and exercised.”²⁸ Resources refer to the “preconditions or medium via which agency is exercised,” including assets, skills, political opportunities and cultural norms.²⁹ Achievements refer to the outcome of exercising agency.³⁰ Resources and agency collectively form what Amartya Sen defines as capabilities, representing the potential individuals possess to lead the lives they desire and to realise valued modes of being and doing.³¹ While resources and agency refer to people's ability to achieve their desired goals, achievements measure whether this ability has been successfully realised.³²

Rowlands contends that empowerment extends beyond mere participation in decision-making; it must also encompass processes through which individuals come to perceive themselves as both capable and entitled to make decisions. In this context, achievement involves individuals recognising their capacity and legitimate right to act and influence decision-making processes.³³ This necessitates cultivating a sense of agency, grounded in the acknowledgement that every individual possesses inherent dignity, deserving of respect from others and entailing an intrinsic

22 *AB v Minister of Social Development* 2017 3 SA 570 (CC) paras 50–51. In this case, it was found that the Children's Act 38 of 2005 requirement for a genetic link between at least one commissioning parent and the child in surrogate motherhood agreements is constitutional.

23 Merriam-Webster “Empower” <https://www.merriam-webster.com/dictionary/empower> (accessed 13-10-2025).

24 Ratna and Rifkin “Equity, Empowerment and Choice: From Theory to Practice in Public Health” 2007 *Journal of Health Psychology* 517 519.

25 Kabeer “The Conditions and Consequences of Choice” 2.

26 Sen and Mukherjee “No Empowerment without Rights, No Rights without Politics: Gender-equality, MDGs and the Post-2015 Development Agenda” 2013 https://dawnfeminist.org/wp-content/uploads/2017/12/no_empowerment_without_rights_no_rights_without_politics_gender_equality_mdgs_and_the_post_2015_development_agenda.pdf 9 (accessed 13-10-2025).

27 *Ibid* 9; Kabeer “The Conditions and Consequences of Choice” 3–4.

28 Sen and Mukherjee “No Empowerment without Rights” 9.

29 *Ibid* 9.

30 *Ibid*.

31 See Sen “Well-being, Agency and Freedom: The Dewey Lectures 1984” 1985 *The Journal of Philosophy* 169. Capabilities and its relation to human development underscores Sen's capability approach, developed in works such as *Sen Development as Freedom* (1999) and *Commodities and Capabilities* (1999).

32 Sen and Mukherjee “No Empowerment without Rights” 9.

33 Rowlands *Questioning Empowerment* 14.

right to that respect.³⁴ In *MEC for Education: KwaZulu-Natal v Pillay*,³⁵ South Africa's Constitutional Court confirmed that dignity and the freedom to make choices are inseparably linked.

Worthen *et al.* argue that the type of power linked to empowerment (and, as such, empowerment itself) is self-generated and inter-relational. Accordingly, they propose the following definition:

[E]mpowerment is an iterative, relational process through which a person gains self-respect and grows to see herself as worthy of dignity and respect by others. A person increases her sense of agency – meaning she becomes aware of herself as one who is able and entitled to make decisions, increases her capacity to make those decisions, and *gains an ability to influence the circumstances of her life*. The change that happens during this process is not just intrapersonal, but social, producing a shift in power relations within a family, community, or other group (my emphasis).³⁶

In essence, these and other scholarly definitions view empowerment as a process that enables individuals to acquire the ability to make choices and challenge power relations by establishing a sense of dignity grounded in recognition of the right to be respected. This newfound sense of worth can be self-generated or result from relations or interactions. The notions of rights and dignity featured in the definitions discussed, are central to the essence of the human rights framework, which is grounded in the recognition that each person possesses inherent dignity that must be respected. From this perspective, empowerment stands in stark contrast to corrupt practices, as such acts are viewed as illegitimate expressions of power that exploit and exacerbate vulnerabilities.

2.3 Interlinkage Between Empowerment and a Human Rights-based Approach

Key interlinkages can be drawn between an HRBA and empowerment as distinct concepts. An HRBA integrates empowerment with legally recognised rights. Human rights, grounded in inherent human dignity and moral status, are universal and inalienable claims that individuals invoke to protect their personhood within the modern nation-state.³⁷ Ely-Yamin characterises the human rights framework as a transformative redistribution of power across society, enabling individuals to realise fully their dignity and humanity.³⁸ Fundamentally, human rights discourse functions as a “discourse of hope” for marginalised populations,³⁹ translating needs into enforceable legal entitlements and furnishing a robust arsenal of moral, political, and legal arguments.⁴⁰

De Vos *et al.* contend that an HRBA broadens the range of capabilities individuals seek to attain.⁴¹ Frediani defines capabilities as the freedoms individuals possess to pursue and attain the way of

34 *Ibid* 111–112.

35 *MEC for Education: Kwazulu-Natal v Pillay* 2007 2 SA 106 (CC) paras 63–64. The matter concerned an appeal from the High Court regarding a learner's entitlement to wear a nose stud at school. The Constitutional Court affirmed that educational institutions have a duty to recognise, affirm, and reasonably accommodate cultural and religious diversity.

36 Worthen *et al.* “‘I Stand Like a Woman’: Empowerment and Human Rights in the Context of Community-based Reintegration of Girl Mothers with Fighting Forces and Armed Groups” 2010 *JHRP* 49 52.

37 Cruft, Liao and Renzo “The Philosophical Foundations of Human Rights: An Overview” in Cruft, Liao and Renzo (eds) *Philosophical Foundations of Human Rights* (2015) 4.

38 Ely-Yamin “Empowering Visions: Toward a Dialectical Pedagogy of Human Rights” 1993 *HRQ* 640 683.

39 Ife *Human Rights and Social Work. Towards Rights-based Practice* rev ed (2008) 227.

40 Rees *et al.* “Empowerment and Human Rights in Addressing Violence and Improving Health in Australian Indigenous Communities” 2004 *Health and Human Rights* 94 109.

41 De Vos *et al.* “Health through People's Empowerment: A Rights-based Approach to Participation” 2009 *Health and Human Rights* 23 26.

life they have substantive reasons to value.⁴² However, various political, economic and social factors can influence these capacities, enhancing vulnerability and disempowerment. The focus of an HRBA is to empower individuals to transition from being beneficiaries of state resources with needs to be met, to rights-holders with legitimate entitlements that can be enforced through accountability measures.⁴³ Accordingly, empowerment, viewed from an HRBA lens, pertains to individuals' capacity to assert and effectively exercise their human rights.⁴⁴ Awareness of the rights an individual is entitled to provides the foundation for such claims. Human rights empower people to shape the decisions that impact their lives. Without human rights protections, people cannot participate meaningfully and use accountability and redress measures. The lack of economic and political leverage experienced by the disadvantaged, combined with low literacy levels, often results in limited awareness of rights and entitlements to public services, thereby restricting their ability to demand accountability from public officials.⁴⁵ However, the opposite is also true; enhanced awareness of rights enables rights-holders to address unjust expressions and distributions of power more effectively.⁴⁶ As such, empowerment and human rights are inter-related.

The human rights framework provides standards for measuring the functioning of government.⁴⁷ Through an HRBA, people become empowered to demand accountability, transparency and responsibility in public affairs.⁴⁸ People can become agents of change with the ability to influence the functioning of government.⁴⁹ This includes holding states accountable for their human rights obligations and ensuring due diligence in managing domestic resources. Under an HRBA, individuals are empowered to use local political, administrative, judicial or quasi-judicial mechanisms to hold states accountable for their human rights obligations.⁵⁰ Accountability measures that can be employed include legal enforcement via courts, reporting to international human rights treaty bodies, parliamentary oversight, pressure from independent media and non-governmental organisations, and national human rights monitoring bodies.⁵¹ From an HRBA perspective, empowerment efforts grounded in human rights (or what will be referred to as human rights-based empowerment) capacitate the disadvantaged to rely on legally recognised rights and duties to ensure their needs are fulfilled and challenge any practices that impede the realisation of their rights, in this instance, corrupt practices.

3 LEGAL EMPOWERMENT THEORY

Rights are regarded as legitimate claims against a duty-bearer with a corresponding legal obligation to ensure that the right-holder is secure in their right.⁵² Furthermore, to monitor

42 Frediani "Sen's Capability Approach as a Framework to the Practice of Development" 2010 *Development in Practice* 173 176.

43 Abramovich "The Rights-based Approach in Development Policies and Strategies" 2006 *CEPAL Review* 38.

44 Darrow and Tomas 2005 *HRQ* 514.

45 Hossain *et al.* "Corruption, Accountability and Gender" 7–8.

46 Domingo and O'Neil "The Politics of Legal Empowerment. Legal Mobilisation Strategies and Implications for Development" (2014) <https://odi.org/en/publications/the-politics-of-legal-empowerment-legal-mobilisation-strategies-and-implications-for-development/> 55 (accessed 13-10-2025).

47 Winston *The Philosophy of Human Rights* (1989) 6.

48 Mubangizi and Sewpersadh 2017 *AJLS* 66.

49 Frediani *Development in Practice* 182.

50 Darrow and Tomas 2005 *HRQ* 512.

51 McInerney-Lankford "International Development Actors and Human Rights" in Langford, Sumner and Ely-Yamin (eds) *The Millennium Development Goals and Human Rights: Past, Present and Future* (2013) 163–164.

52 Moser *et al.* "To Claim our Rights: Livelihood Security, Human Rights and Sustainable Development" 2001 <https://media.odi.org/documents/1816.pdf> 10 (accessed 14-10-2025).

and evaluate government performance and whether the state is fulfilling its human rights obligations, people must have a minimum understanding of their rights and entitlements. This can be achieved through empowerment initiatives that aim to raise awareness and build capacity. Golub views legal empowerment as a strategy for implementing an HRBA (a view also adopted in this article):

[M]uch activity toward this end is rights-based in nature: teaching them relevant laws; building their capacities to use those laws themselves; providing legal representation where necessary; drawing on such rights as freedom of speech, assembly, and association. But legal empowerment also often involves related development activities such as community organizing, group formation, livelihood development, and literacy training. Thus, legal empowerment uses various mechanisms, many rights-based but some not, as means toward the end of making human rights a reality for the poor.⁵³

The notion of legal empowerment provides an appropriate theoretical framework for this article and serves as a means to capacitate the disadvantaged in South Africa to combat corruption.

The notion of legal empowerment of the poor gained increased recognition around two decades ago.⁵⁴ Golub was one of the first authors to define the term as “the use of legal services and related development activities to increase disadvantaged populations’ control over their lives.”⁵⁵ In a 2020 publication, Golub further elaborated on his initial definition by asserting that “legal empowerment refers to the use of laws and rights specifically to increase relatively powerless populations’ control over their lives.”⁵⁶ In this expanded conceptualisation, *laws and rights* encompass a broad spectrum of normative instruments, including statutes, international human rights frameworks, entitlements conferred under domestic legislation, case law, regulations, and administrative rules. Crucially, Golub emphasises that legal empowerment initiatives must be explicitly directed towards benefiting those who are relatively powerless. This term denotes groups and individuals who commonly experience abuse, discrimination, marginalisation, persecution, repression, or other forms of disempowerment in relation to more privileged segments of society.⁵⁷ Furthermore, control over one’s life can include

elevating or protecting people’s income and assets, but it also can involve strengthening their physical security, their effective access to health, education, and other services, their input into family, community, and governmental decisionmaking (as by reforming laws or getting fair laws implemented), and their capacities and power to pursue these goals on their own.⁵⁸

The establishment of the Commission on Legal Empowerment of the Poor (CLEP)⁵⁹ in 2005 gave credence to the notion of legal empowerment.⁶⁰ In their 2008 report, *Making the Law Work for*

53 Golub “Beyond Rule of Law Orthodoxy. The Legal Empowerment Alternative” 2003 <https://carnegieendowment.org/research/2003/10/beyond-rule-of-law-orthodoxy-the-legal-empowerment-alternative?lang=en> 29 (accessed 13-10-2025).

54 Carmona and Donald 2015 *IJHR* 244.

55 Golub “Beyond Rule of Law Orthodoxy” 25.

56 Golub “Using Legal Empowerment to Curb Corruption and Advance Accountability” 2020 <https://www.cmi.no/publications/7179-using-legal-empowerment-to-curb-corruption-and-advance-accountability#:~:text=Legal%20empowerment%20can%20help%20curb,can%20bolster%20anti%2Dcorruption%20efforts> 3 (accessed 13-10-2025).

57 *Ibid* 3–4.

58 *Ibid*.

59 The Commission was an independent international entity, convened under the auspices of the United Nations Development Programme, and established in 2005 as the inaugural global initiative dedicated to examining the interconnections between social exclusion, poverty, and legal frameworks.

60 Banik “Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication” 2009 *HJRL* 117 119.

Everyone,⁶¹ Banik observes that the commission moved beyond a limited interpretation of legal empowerment, previously centred on the formalisation of property rights as foundational to the security and welfare of impoverished populations, towards a more expansive conceptualisation. This broader perspective frames empowerment as a global social contract encompassing a comprehensive “bundle of rights”.⁶² The commission’s approach to legal empowerment relies on four pillars: the rule of law and access to justice; property rights; labour rights; and business rights.⁶³ The commission defined legal empowerment as “the process through which the poor become protected and are enabled to use the law to advance their rights and their interests vis-à-vis the state and in the market. It involves the poor realizing their rights fully and reaping the opportunities that flow from them.”⁶⁴ Legal empowerment is both a process and a goal: it empowers the poor through knowledge of their rights to advance them towards their full realisation and to protect them against injustices.⁶⁵

The CLEP conditions empowerment on having an identity and a voice.⁶⁶ First, a person must be legally recognised to exist, and second, a voice that is informed by an awareness of their rights and the role that they can play in decision-making processes. Further elements to make a voice effective are education and a representative organisation of one’s choosing. Such organisations often demand rights fulfilment more effectively than individuals acting independently.⁶⁷ The Commission contends that for the poor to be truly legally empowered, they must possess effective, legally protected rights, including the right to vote, freedom of expression, and due process. Ensuring that these rights constitute a fundamental objective of democratic societies, presents a continual challenge to uphold them consistently and equitably.⁶⁸ The commission’s framework is grounded in human rights principles that emphasise the four key categories of rights, identified as integral to the realisation of legal empowerment. This concept is firmly rooted in the foundational norms of human rights as enshrined in the Universal Declaration of Human Rights⁶⁹ and subsequent global and regional international human rights instruments, commencing with Article 1, which affirms that “all human beings are born free and equal in dignity and rights.”⁷⁰

Following the publication of the CLEP’s report in 2008, the United Nations Secretary-General (UNSG) followed with its report in 2009, *Legal Empowerment of the Poor and Eradication of Poverty*. The UNSG defined legal empowerment as “the process of systemic change through which the poor are protected and can use the law to advance their rights and interests as citizens and economic actors. It is a means to an end but also an end in itself.”⁷¹ It is explicitly confirmed that legal empowerment finds its roots in an HRBA to development.

61 CLEP *Making the Law Work for Everyone* vol 1 (2008). The objective of the report was to underscore the significance of granting impoverished women and men access to justice by securing a specified set of rights (CLEP)

62 Banik 2009 *HJRL* 119.

63 CLEP 11.

64 *Ibid.*

65 CLEP 12.

66 *Ibid.*

67 *Ibid.*

68 *Ibid* vi.

69 United Nations Universal Declaration of Human Rights (10-12-1948).

70 CLEP 7.

71 UNSG “Legal Empowerment of the Poor and Eradication of Poverty” (2009) UN doc A/64/133 para 3.

It is noted in the report that legal empowerment aids development by promoting a participatory approach that enables the disadvantaged to have an identity and a voice. This, in turn, will strengthen democratic governance and accountability.⁷²

The notion of legal empowerment has been defined in various ways and has matured, expanding to include other people-centred governance and development approaches.⁷³ Gisselquist distinguishes between “narrow” and “broad” approaches. The author argues that the CLEP employed a narrower conception of the term compared to the broader approach adopted by Golub and in the UNSG report.⁷⁴ Waldorf observed that the UNSG’s definition transcended the CLEP’s market-oriented focus on property, labour, and business rights by incorporating rights to education, health, and housing, dimensions that are equally, if not more, critical to the empowerment of impoverished populations.⁷⁵ The recognition, protection and fulfilment of the full spectrum of human rights are required to ensure the effective empowerment of the disadvantaged.

Moreover, Waldorf argues that the UNSG report demonstrates that legal empowerment is a systemic process requiring a top-down (“the state’s protection of the poor”) and bottom-up approach (ie “the poor’s use of the law”).⁷⁶ Legal empowerment as a bottom-up approach focuses on the needs of the disadvantaged. It aims to empower people to change unjust systems (eg corrupt systems, where corruption is viewed as an unjust or illegitimate expression of power). Such approaches go beyond relying on courts to enforce rights and place the power in the hands of the disadvantaged through public legal education and mass mobilisation.⁷⁷

A legal empowerment framework emphasises that individuals’ capacity to utilise the law effectively to address their needs is more significant than the mere existence of legal provisions.⁷⁸ Golub concurs, highlighting that the critical factor is the “power” possessed by disadvantaged groups to invoke the law.⁷⁹ It is posited that “power” is conferred through the human rights framework, which is founded upon the principles of inherent human dignity and equality before the law. Sengupta similarly asserts that achieving substantive transformation requires defining legal empowerment as the recognition of fundamental human rights and ensuring the availability of opportunities to exercise them.⁸⁰ Human rights not only establish the foundational platform for empowerment, but their actual realisation is essential to the enabling of empowerment. For instance, the absence of access to basic education can significantly hinder empowerment initiatives. Consequently, this framework imposes distinct obligations on state actors, aligning with the UNSG’s comprehensive conception of legal empowerment, which encompasses both top-down and bottom-up approaches. The application of legal empowerment theory in the context of South Africa will be the focus of the subsequent sections, beginning with an overview of corruption in South Africa and its impact on human rights.

72 *Ibid* para 4.

73 See, for example, Waldorf “Introduction: Legal Empowerment in Transitions” 2015 *IJHR* 229 230–232.

74 Gisselquist “Legal Empowerment and Group-based Inequality” 2019 *JDS* 333 336.

75 Waldorf “Legal Empowerment and Horizontal Inequalities After Conflict” 2019 *JDS* 437 438. See UNSG para 5.

76 Waldorf 2019 *JDS* 438.

77 Feruglio “Do More Empowered Citizens Make More Accountable States? Power and Legitimacy in Legal Empowerment Initiatives in Kenya and South Africa” 2017 https://opendocs.ids.ac.uk/articles/online_resource/Do_more_empowered_citizens_make_more_accountable_states_Power_and_legitimacy_in_legal_empowerment_initiatives_in_Kenya_and_South_Africa/26453998 6 (accessed 13-10-2025).

78 *Ibid*.

79 Golub “Using Legal Empowerment” 5.

80 As cited in Banik 2009 *HJRL* 123.

4 COMBATING CORRUPTION IN SOUTH AFRICA: EMPOWERING CIVIL SOCIETY

4.1 Overview of Corruption in South Africa

Corruption in South Africa is a deeply entrenched phenomenon affecting both the public and private sectors, with origins dating back to colonial times and evolving through apartheid into the post-democratic era.⁸¹ A comprehensive overview of corruption in South Africa falls beyond the scope of this article. However, a few general observations will be made.

Despite the values enshrined in South Africa's Constitution, corruption scandals have continued to come to light. These include former president Jacob Zuma's renovations of his Nkandla homestead and allegations of state capture, as evidenced in the outcome reports of the Public Protector⁸² and the Zondo Commission;⁸³ the arms deal saga, the mismanagement of social assistance grants, the Estina dairy scheme, the Free State asbestos scandal, and others.⁸⁴ Corruption in South Africa is systemic, spanning all levels of government and extending into the private sector. Venter encapsulates the situation as follows:

It is trite that persons and entities constitutionally situated in positions of power have mustered parliamentary mechanisms, the judicial process, tactical 'deployment' of executive and administrative functionaries, policy formulation and implementation, the exercise of administrative and statutory discretion, and public procurement processes to effect financial enrichment and political benefits for persons and entities within and without the remit of the state.⁸⁵

Corruption Watch's 2021 report reveals pervasive municipal capture, abuse of authority, and manipulation of procurement and employment procedures, collectively undermining the delivery of fundamental rights and services to vulnerable populations.⁸⁶ Despite various reform initiatives, including the establishment of the Investigative Directorate against Corruption in 2024, South Africa's score on the 2025 Corruption Perceptions Index remains low at forty-one out of 100, indicative of entrenched systemic corruption.⁸⁷ In the same year, whistleblower Nhlanhla Mkhwanazi exposed collusion among senior police officials, politicians, and criminal syndicates to obstruct justice, providing further evidence of deep-rooted corruption. The ongoing Madlanga Commission has been tasked with investigating the infiltration of criminal networks and political actors into South African law enforcement agencies and the judiciary. These developments underscore the normalisation and institutionalisation of the corruption pandemic that plagues the country.

81 See Blackman and Dall *Rogues' Gallery: An Irreverent History of Corruption in South Africa from the VOC to the ANC* (2021) for a comprehensive overview of corruption in South Africa. See also Masoko "From Then to Now – The Heritage of Corruption" *Corruption Watch* 24 September 2022 <https://www.corruptionwatch.org.za/from-then-to-now-the-heritage-of-corruption/> (accessed 30-04-2026); Mlambo, Mubecua and Mlambo "Post-colonial Independence and Africa's Corruption Conundrum: A Succinct South African Critique Post-democratisation" 2023 *Insight on Africa* 184.

82 Public Protector South Africa *Secure in Comfort* (2013/14); *State of Capture* (2016/17).

83 Judicial Commission of Inquiry into Allegations of State Capture *Final Reports* Volumes 1–6, <https://www.statecapture.org.za/site/information/reports> (accessed 30-04-2026).

84 See also Venter "State Capture, Corruption, and Constitutionalism in South Africa" in Fombad and Steytler (eds) *Corruption and Constitutionalism in Africa: Revisiting Control Measures and Strategies* (2020) 78–84; Blackman and Dall *Rogues' Gallery* 286–288.

85 *Ibid* Venter 85.

86 Corruption Watch "South Africa Needs Clean Hands" (2021).

87 Transparency International "Corruption Perception Index 2025" <https://www.transparency.org/en/cpi/2025> (accessed 30-04-2026).

4 2 The Relationship Between Corruption and Human Rights

As corruption is essentially an abuse of power and human rights addresses the misuse of power by providing limits on the use of state power and establishing legal and ethical standards that hold public officials and institutions accountable, the connection between the two notions is apparent.⁸⁸ Not only is it recognised that corruption impedes the enjoyment of human rights, but that human rights principles, norms and standards (including the principles espoused under the HRBA discussed above) can be employed to combat corruption. When corrupt acts or omissions (including the state's failure to adequately prevent or investigate corruption) are framed as human rights violations, civil society and individuals are provided with a legal foundation to demand accountability.

4 2 1 Impact of Corruption on Human Rights

As previously noted, the South African Constitution recognises a broad spectrum of rights. Despite the constitutional entrenchment of these rights, petty and grand corruption⁸⁹ have been identified as restricting access to essential public services required to fulfil fundamental human rights and reducing the resources available to provide these services. Twenty-five years ago, the Constitutional Court confirmed that corruption can undermine the protection, respect and fulfilment of human rights in South Africa.⁹⁰ Yet, the corruption crisis and associated human rights violations persist. In the healthcare sector, for example, corruption is an everyday reality for those relying on public services in South Africa. Common corrupt practices include extortion in public healthcare facilities, fraudulent medico-legal claims, embezzlement, and mismanagement of funds and resources, resulting in substandard treatment, illegitimate tender practices and other similar abuses.⁹¹ These harmful practices perpetuate inequality and vulnerability, impacting the enjoyment of rights. In the foreword to the United Nations Convention against Corruption,⁹² it is acknowledged that corruption “leads to violations of human rights.” Moreover, as succinctly stated by the OHCHR,

[c]orrupt practices and abuse of power, office or privilege undermine the right of every person to participate in, contribute to and enjoy economic, social, cultural and political development. Corrupt practices also undermine the right to an adequate standard of living for every person and their family, including access to adequate food, clothing, and housing, as well as the continuous improvement of living conditions.⁹³

Corruption diverts resources required for basic service delivery, undermining states' duties to fulfil related economic and social rights obligations. The Constitutional Court of South Africa has affirmed that corruption fundamentally compromises the government's capacity to fulfil its obligations to combat poverty and to realise the social and economic rights enshrined in the Bill

88 ICHRP and Transparency International *Corruption and Human Rights: Making the Connection* (2009) viii.

89 Grand corruption is defined as “corruption of heads of state, ministers, and top governmental officials, and concerns large-scale transactions involving significant sums of money” (Rose “The Application of Human Rights Law to Private Sector Complicity in Governmental Corruption” 2011 *LJIL* 715 718). Petty corruption is viewed as “small acts, or rent-taking actions”, by civil servants, for example, a public servant demanding an informal payment to allow access to public services (Bracking “Political Development and Corruption: Why ‘Right Here, Right Now!’?” in Bracking (ed) *Corruption and Development. The Anti-Corruption Campaigns* (2007) 5).

90 See *South African Association of Personal Injury Lawyers v Heath* 2001 1 SA 883 para 4. The case involved a challenge to the constitutionality of s 3(1) of the Special Investigating Units and Special Tribunals Act 74 of 1996 and proclamation R24 of 1997 appointing a High Court judge as head of a Special Unit investigating corruption. The proclamation was declared invalid from the date of judgment.

91 Corruption Watch “Corruption in the Health Sector can take a Deadly Toll” 18 April 2004 <https://www.corruptionwatch.org.za/corruption-in-the-healthcare-sector-can-take-a-deadly-toll/> (accessed 13-10-2025).

92 United Nations Convention against Corruption (adopted 31-10-2003, entered into force 14-12-2005).

93 OHCHR *Good Governance Practices for the Protection of Human Rights* (2007) 65–66.

of Rights.⁹⁴ Financial mismanagement of public resources (with the Limpopo textbook crisis⁹⁵ as a prime example) and demands for bribes by public officials from vulnerable persons to access essential public services (including healthcare, housing and food aid programmes) jeopardise the enjoyment of socio-economic rights. This is particularly detrimental to the disadvantaged, who are more reliant on accessible public services to meet their basic needs. Corrupt practices can also impede civil and political rights, such as the right to a fair trial, by compromising the integrity of judges and prosecutors through bribery.⁹⁶

4 2 2 Human Rights-based Empowerment to Combat Corruption

The nexus between human rights, empowerment and corruption has been aptly summarised by Peters as follows:

The human rights approach can highlight the rights of persons affected by corruption, such as the rights to safe drinking water and free primary education, and show these persons how, for instance, the misappropriation of public funds in those areas interferes with their enjoyment of the goods to which they are entitled. In that way, affected persons would be empowered to denounce corruption to which they otherwise would be helplessly exposed.⁹⁷

Under a criminal justice approach, the focus is on the perpetrator and the crime committed. An HRBA, on the other hand, makes the victims of corruption (either individually or collectively) and the damage caused the focal points, thereby providing agency to the victims of corruption.⁹⁸ Although this article focuses on an HRBA to combat corruption, it does not argue that this approach should be implemented in isolation. Rather, it should serve as an additional component of South Africa's comprehensive corruption strategy, which includes criminal prosecutions and reforms of public institutions, as each approach has its strengths and weaknesses. Advocacy for a bottom-up approach to combating corruption rests on the premise that empowered citizens are, or ought to be, both the most motivated and best positioned to recognise corrupt actors and mechanisms, as well as to devise and implement the most effective solutions.⁹⁹

A human rights-based, empowered approach to corruption holds several benefits. When individuals are aware of their rights, they can demand that state actors fulfil their obligations related to human rights impacted by corruption. Moreover, a strong (capacitated) civil society increases public officials' risk of engaging in corrupt activities and promotes transparency and accountability.¹⁰⁰ Citizen participation and empowerment contribute to the redistribution of power

94 *Glenister v President of the Republic of South Africa* 2011 3 SA 347 (CC) para 57. The Constitutional Court adjudicated on the constitutional invalidity of certain provisions within the National Prosecuting Authority Amendment Act 56 of 2008 and the South African Police Service Amendment Act 57 of 2008, which established the Directorate for Priority Crime Investigation (DPCI) while dissolving the Directorate of Special Operations. It held that the impugned legislative provisions are constitutionally invalid insofar as they fail to guarantee a sufficient degree of independence for the DPCI.

95 See Veriava "The 2012 Limpopo Textbook Crisis" *Section27* September 2013 <https://section27.org.za/2013/10/section27-launches-the-2012-limpopo-textbook-crisis-case-study/> (accessed 26-09-2025); Munyai "Corruption through Bribery: A Norm in South Africa's Public Sector?" 2024 *JJS* 40.

96 See Mubangizi "Corruption and Human Rights" in Mubangizi (ed) *Corruption in South Africa: A Legal Perspective* (2024) 76–80 for an overview of how corruption can impact the enjoyment of these and other rights.

97 Peters "Corruption as a Violation of International Human Rights" 2018 *EJIL* 1251 1276.

98 See Moyo "Corruption as a Human Rights Violation" in Davis, Kjaerum and Lyons *Research Handbook on Human Rights and Poverty* (2021) 506.

99 Klein *et al.* "Enrolling the Local: Community-based Anti-Corruption Efforts and Institutional Capture" February 2021 <https://www.worldwildlife.org/pages/tnrc-topic-brief-enrolling-the-local-community-based-anti-corruption-efforts-and-institutional-capture> 3 (accessed 13-10-2025).

100 *Ibid.*

and resources.¹⁰¹ Successful civil society efforts to combat corruption can occur in the absence of strong institutional policies and state-sponsored reform initiatives.¹⁰² As the International Council on Human Rights Policy and Transparency International noted, “corruption reproduces itself when elites are able to perpetuate their privileges while disadvantaged groups have no *means* to defend their interests” (my emphasis).¹⁰³ The subsequent discussion will outline how the human rights framework provides the required *means* to empower the disadvantaged to challenge corrupt practices that threaten the enjoyment of human rights.

4 2 3 Human Rights in the South African Context that Enable Empowerment

Rights modelled after relevant treaties to which South Africa is a state party are contained in Chapter 2 of the Constitution, referred to as the Bill of Rights. Rights and their authoritative interpretations (including domestic case law) provide the normative basis for empowerment approaches.¹⁰⁴ The Constitutional Court of South Africa has played a transformative role in interpreting human rights and the corresponding obligations of state actors. This section will explore rights contained in the Constitution that, directly or indirectly, facilitate empowerment.

As previously noted, the disadvantaged in society are disproportionately affected by corrupt acts due to their reliance on public funds and social services. It has also been noted that women carry a heavier burden caused by the impact of corruption and are more likely to experience certain forms of corruption, for example, petty corruption and sexual extortion.¹⁰⁵ The right to equal protection and the benefit of the law, as well as provisions against non-discrimination, are outlined in Section 9 of the Constitution. In *South African Association of Personal Injury Lawyers v Heath*, the Constitutional Court held that corruption “undermine[s] the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms.”¹⁰⁶ Mubangizi and Sewpersadh similarly argued that the embezzlement and mismanagement of public funds, which impede the state’s ability to deliver public services, perpetuate inequality and discriminatory outcomes.¹⁰⁷ Corruption that impedes equal access to quality social services and the fair distribution of resources can be considered a violation of the rights to equality and non-discrimination.¹⁰⁸ For instance, where a parent must pay a bribe to secure a learner’s admission to a public school, the right to equality and non-discrimination can be relied on to demand equal access for all.

Section 10 provides that everyone possesses an inherent dignity that must be respected and protected.¹⁰⁹ In *S v Makwanyane*,¹¹⁰ it was held that as an “acknowledgement of the intrinsic worth of human beings,” the right to respect for one’s dignity is the foundation of all other rights. Referring to systemic corruption in Nigeria, Kure argues that corruption that impedes the

101 Ackerman 2014 *AUILR* 320–321.

102 Golub “Using Legal Empowerment” 21.

103 ICHRP and Transparency International *Integrating Human Rights* 2.

104 UNSG paras 13, 23.

105 Transparency International “Policy Brief 01/2024: Gender, Equality and Corruption: What are the linkages” <https://www.transparency.org/en/publications/policy-position-01-2014-gender-equality-and-corruption-what-are-the-linkage> (accessed 13-10-2025).

106 *South African Association of Personal Injury Lawyers v Heath* para 4.

107 Mubangizi and Sewpersadh 2017 *AJLS* 71.

108 See De Man “Reconsidering Corruption as a Violation of the Rights to Equality and Non-discrimination Based on Poverty in South Africa” 2020 *JJS* 52–76.

109 Human dignity is also recognised in s 1 as one of the founding values of the Republic of South Africa.

110 *S v Makwanyane* 1995 3 SA 391 para 328. The Constitutional Court found capital punishment to be unconstitutional.

meeting of basic human needs impacts the ability to live a dignified life.¹¹¹ The same argument can be applied to corruption in South Africa, especially if one perceives a link between the exorbitant sums lost to corruption and the fact that 55.5 per cent of South Africans live in poverty and that many have notably deficient living standards.¹¹² However, Section 10, as underscored by Section 7(2), of the Constitution not only creates obligations for states to act or refrain from acting in a particular manner. As a fundamental right, understanding that one has a right to be respected and treated in a particular manner, is an essential step in developing the necessary agency to demand the fulfilment of the full spectrum of rights to which a person is entitled.

One way empowerment is gained and expressed, is through meaningful participation in all dimensions of life (eg political, social and economic). Equal and effective¹¹³ participation is grounded in and enabled by several fundamental rights outlined in the South African Constitution. This includes freedom of expression, freedom of assembly, freedom of association and the right to access to information. Effective participation is key to claiming other rights.¹¹⁴

The right to freedom of expression includes the freedom of the press and media, as well as the freedom to receive and impart information.¹¹⁵ The free flow of information is crucial in exposing illicit conduct. Freedom of the press grants the population a voice, and together with whistleblower protections incorporated into domestic law, can be relied upon to report instances of corrupt conduct. However, adequate protections for whistleblowers are still lacking in South Africa, as evidenced by the assassinations of and personal attacks on Pamela Mabini, Marius van der Merwe, Athol Williams, Babita Deokaran, Jimmy Mohlala, Martha Ngoye, Cynthia Stimpel and others.¹¹⁶ Calitz argues that legislation should give effect to the constitutionally recognised right of freedom of expression in line with international treaty provisions.¹¹⁷

Accordingly, people are more willing to air their grievances collectively. Section 17 provides for the right to assembly. As noted by Currie and De Waal, “[p]ower in modern nation states invariably concentrates in and around large social formations.”¹¹⁸ The capacity to articulate concerns collectively makes democratic participation more tangible and mitigates feelings of helplessness and social isolation.¹¹⁹ It further aids accountability and transparency by providing an avenue for the communication of needs in the absence of direct access to relevant state officials.¹²⁰

111 Kure “Leadership, Corruption and the Dignity of Humans: Some Reflections from the Nigerian Context” 2020 *HTS Theological Studies* 1 4–5. This was also confirmed in *South African Association of Personal Injury Lawyers v Heath* para 4. See also *Glenister v President of the Republic of South Africa* paras 198 and 200.

112 World Bank “South Africa” Poverty and Equity Brief (2020) https://databankfiles.worldbank.org/public/ddpext_download/poverty/33EF03BB-9722-4AE2-ABC7-AA2972D68AFE/Global_POVEQ_ZAF.pdf (accessed 14-10-2025).

113 The wording “effective” is used as not all participatory processes enable genuine participation where all stakeholders, including the most vulnerable and marginalised, are able to participate on an equal footing. Under Article 2(3) of the Declaration on the Right to Development participation should be active, free and meaningful.

114 ICHRP and Transparency International *Integrating Human Rights* 5.

115 Section 16 of the Constitution.

116 Human Rights Watch “Activist and Whistleblower Killed in South Africa” <https://www.hrw.org/news/2025/03/11/activist-and-whistleblower-killed-south-africa> (accessed 14-10-2025).

117 Calitz “The Plight of South African Whistle-Blowers: Searching for Effective Protection” 2023 *Obiter* 828–857.

118 Currie and De Waal *The Bill of Rights Handbook* 5 ed (2005) 396.

119 *Ibid* 396–397.

120 *Ibid* 397.

Freedom of assembly provides a means for minority groups and those unable to vote (eg children and non-citizens) to express their voices. In *Mlungwana v S*, the Constitutional Court held that “[w]hatever their station in life, everyone is entitled to exercise the right in Section 17 to express their frustrations, aspirations, or demands.”¹²¹

The right to freedom of association allows individuals to join an association without fear of reprisal.¹²² Associations include “trade unions, agricultural collectives, faithbased organizations, professional associations,” and civil society organisations that fulfil monitoring roles such as Corruption Watch.¹²³ These rights provide a platform for individuals to discuss issues of common concern and enable mass mobilisation.

Section 32 provides for the right of access to information held by the state. The Promotion of Access to Information Act¹²⁴ was enacted to give effect to the constitutionally recognised right. The right to know is critical for good governance and for curbing corruption, given its secretive nature.¹²⁵ Kumar notes that the passage of freedom of information laws in India has empowered the public to demand accountability and transparency from the government.¹²⁶ Hossain *et al.* argue that “[e]stablishing an enforceable right to information has been shown to deepen democracy because it exposes corruption, strengthens transparency in political and administrative cultures, and shifts control over information from powerful state actors to citizens.”¹²⁷ Requests for information can pertain to, for example, public spending, procurement procedures and the employment of public officials.¹²⁸ Knowledge of relevant government policies and practices, including their impact, enhances individuals’ bargaining power and ability to participate meaningfully in domestic political processes. It further strengthens the oversight and monitoring functions of civil society and watchdog organisations.

The right to participate in public life is further constitutionally expressed in the political rights outlined in Section 19. These include the rights to form a political party, hold free, fair, and regular elections, participate in voting, and stand for office. Through the expression of political rights, abuse of state power, including corruption, can be challenged.¹²⁹

The Constitution further outlines several socio-economic rights that impose positive duties on the state, in line with Section 7(2), to ensure the realisation of the respective rights. These include the right to access adequate housing, healthcare services, sufficient food and water, and social security.¹³⁰ The state is obliged to “take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation” of these rights¹³¹ and to refrain

121 *Mlungwana v S* 2019 1 SACR 429 (CC) para 43. The Constitutional Court declared s 12(1)(a) of the Regulation of Gatherings Act 205 of 1993 unconstitutional, holding that criminalising a convener’s failure to give notice for gatherings exceeding 15 people unjustifiably limits the right to peaceful assembly.

122 Section 18 of the Constitution.

123 Steytler “Towards Understanding and Combating the Crime of Corruption in Africa” in Fombad and Steytler (eds) *Corruption and Constitutionalism in Africa: Revisiting Control Measures and Strategies* (2020) 495.

124 2 of 2000.

125 Currie and De Waal 692.

126 Kumar “Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India” 2003 *CJAL* 31 34.

127 Hossain *et al.* 28–29.

128 See Bacio-Terracino “Linking Corruption and Human Rights” 2010 *Proceedings of the Annual Meeting* (American Society of International Law) 243 244.

129 ICHRP and Transparency International *Corruption and Human Rights* 11.

130 Section 27(1)(c) of the Constitution.

131 *Ibid* ss 26(2) and 27(2).

from any conduct that impedes the enjoyment of these rights.¹³² This includes an obligation on the state to make effective use of public resources.¹³³ Section 29 provides that everyone has a right to basic education, which must be fulfilled. In contrast to rights outlined in Sections 26 and 27, this right is immediately realisable.¹³⁴

Constitutional protection of the rights listed above informs people of their entitlements in relation to public services and provides a platform for individuals to demand the fulfilment of state obligations. Corrupt acts or omissions that impede the fulfilment of duties can cause a direct or indirect violation of human rights. In such instances, individuals or collectives can rely on legal and constitutional remedies to rectify the violation. The same applies to other recognised rights that can also be affected by corrupt acts. These include the right to a fair trial,¹³⁵ the right to life,¹³⁶ environmental rights,¹³⁷ labour rights,¹³⁸ and property rights.¹³⁹

In terms of Section 33(1), “[e]veryone has the right to administrative action that is lawful, reasonable and procedurally fair.” The Promotion of Administrative Justice Act¹⁴⁰ gives effect to the rights contained in Section 33. Section 6(1) of the Act provides that “[a]ny person may institute proceedings in a court or a tribunal for the judicial review of any administrative action.” This remedy can be employed where it is believed that corruption was present in an administrative action, for instance, nepotism in the employment processes of public officials.

Section 34 provides for the right of access to courts. This is a fundamental right in securing the enjoyment of all other rights. As noted by Brickhill and Friedman, access to courts functions as a “leverage” right, enabling litigants to give effect to their substantive rights. Accordingly, depending on the nature of the underlying dispute, Section 34 operates as the constitutional mechanism through which individuals vindicate the specific rights at issue.¹⁴¹ Moreover, the state has an obligation to address any challenges that impede equal access to courts.

In addition, Chapter 9 of the Constitution establishes constitutional oversight bodies (such as the Public Protector and the South African Human Rights Commission) that provide means for individuals to report instances of corruption that impede rights and to obtain appropriate remedies. Unfortunately, the public’s limited awareness of how and when to access these institutions, inadequate funding and resources and political interference in key appointments have impeded their ability to provide adequate oversight of state organs.¹⁴²

132 For a comprehensive discussion of the content of the state’s obligation see *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 paras 34–46. The Constitutional Court found that the state had failed to make provision in terms of the s 26 obligation to deal with people in crisis and was ordered to devise and implement an appropriate housing programme.

133 Section 195(1)(b) of the Constitution.

134 See *Juma Musjid Primary School v Essay* 2011 8 BCLR 761 (CC) para 82. The Constitutional Court established that private actors have a constitutional duty to not interfere with the right to basic education.

135 Section 35(3) of the Constitution.

136 *Ibid* s 11.

137 *Ibid* s 24.

138 *Ibid* s 23.

139 *Ibid* s 25.

140 3 of 2000.

141 Brickhill and Friedman “Access to Courts” in Woolman and Bishop (eds) *Constitutional Law of South Africa* 2 ed (original service) 59–63.

142 See Konstant “Assessing the Performance of South Africa’s Constitution” https://constitutionnet.org/sites/default/files/chapter_6._chapter_9_institutions.pdf (accessed 14-10-2025).

The above provides an overview of how certain constitutional rights can enable individuals to confront corrupt practices. Each right, individually and in combination with others, provides specific means for empowering the disadvantaged.¹⁴³ Measures through which human rights-based empowerment can be enabled will be explored below.

5 LEGAL EMPOWERMENT AND HUMAN RIGHTS TO COMBAT CORRUPTION

Legal empowerment entails identifying and providing legal and institutional tools to the poor.¹⁴⁴ This aligns with Waldorf's contention that legal empowerment rests on an inherent normative assumption that law functions as an instrument of empowerment rather than disempowerment.¹⁴⁵ These tools can be provided through various methods and mechanisms. Referring to the work of the international non-governmental organisation Namati, Golub argued that legal empowerment is about building people's capacities to "know, use, and shape the law" to enhance their well-being.¹⁴⁶ Accordingly, once people are aware of their rights, they can use the law to enforce them, for example, through social accountability processes (which will be discussed below). It further empowers people to call for changes in laws, policies, regulations and governance systems that will enhance the fulfilment of their human rights. Some examples of how the different elements can be achieved will be discussed below.

5.1 To Know the Law

Knowing the law involves "building people's awareness that they have rights or helping them learn about relevant rights and laws that apply to specific circumstances."¹⁴⁷ As noted by the UNDP, "[w]ithout awareness of their rights, people cannot seek a remedy when these are violated."¹⁴⁸ It is generally acknowledged that the disadvantaged, due to various economic, social, and political factors, have the least knowledge of their rights and related remedies, which inhibits their sense of agency and ability to combat the corrupt practices they face. Awareness of the rights a person is entitled to fosters a sense of dignity and agency, prompting demands that these rights be respected, protected, and fulfilled. Moreover, individuals can identify practices that violate their rights, such as corruption, and seek an appropriate remedy.

Civil society organisations play an indispensable role in disseminating information on not only rights but also the public services the disadvantaged are entitled to regarding these rights in terms of quality and quantity, expected costs when making use of public services, possible acts of corruption, how such acts violate human rights, as well as where to report violations. Stories of successful reporting outcomes should also be shared to boost morale and overcome fears of reprisals.¹⁴⁹ It was, for example, found that informing women in India of their maternal health rights and how complaints are to be lodged, reduced instances of graft amongst healthcare personnel who charged women for free services they were entitled to.¹⁵⁰ Information on transparency, accountability requirements, and participatory opportunities should also be shared so that people know what questions can be asked and where.

143 It should, however, be kept in mind that most of the rights discussed above can be limited in certain instances and when specific conditions are met (see s 36 of the Constitution of the Republic of South Africa).

144 Banik 2009 *HJRL* 118.

145 Waldorf 2015 *IJHR* 230.

146 Golub "Using Legal Empowerment" 4-5.

147 *Ibid* 4.

148 Pilapitiya "The Impact of Corruption on the Human Rights Based Approach to Development" 2004 http://www.undp.org/oslocentre/docs05/Thusitha_final.pdf 20 (accessed 13-10-2025).

149 *Ibid*.

150 Golub "Using Legal Empowerment" 10.

Information can be distributed through various channels, such as workshops, toolkits, easily comprehensible booklets, and posters in relevant languages (including minority languages), as well as harnessing the expansive reach of social media and other media platforms. Training can also be provided to civil society and non-governmental actors working within communities without legal backgrounds, including the press, to help them distinguish between rights violations and impediments.¹⁵¹

Knowing the law helps to overcome feelings of powerlessness and is the first step in the process of legal empowerment. It provides individuals with the tools to build their agency. Such efforts must be accompanied by capacity-building initiatives that enable the disadvantaged to use the law effectively and appropriately. Feruglio contended that there are two interrelated objectives of legal empowerment: a) that the disadvantaged know and understand their rights, and b) that they are “able to effectively assert and enforce their rights.”¹⁵² The aim should be to strengthen “people’s and organisations’ political awareness, power analysis, critical consciousness, personal sense of worth and rights, analytical capacities and skills, and ability to participate in decision-making at all levels from family, to NGOs, to government.”¹⁵³ People should be capacitated to become their own agents of change. Capacity building can also include organising spaces for collective action where ideas, experiences, information and strategies can be shared.¹⁵⁴ Moreover, awareness-raising of rights is not limited to the rights contained in the Constitution, but also includes domestic anti-corruption legislation, such as the Prevention and Combating of Corrupt Activities Act,¹⁵⁵ as well as provisions of international and regional treaties to which the South African state is a party.

5.2 To Use the Law

Using the law involves “people, their representatives, or their allies using legal, administrative, informal justice, or accountability systems to put their rights into effect.”¹⁵⁶ In line with Section 34 of the Constitution, which provides for access to courts, the state is obligated to ensure that accessible and effective mechanisms of redress (judicial and quasi-judicial) are in place to address infringements on human rights. When corrupt acts violate human rights, victims can use judicial and other accountability mechanisms to hold state actors accountable. Litigation has the additional benefit of bringing issues to light, thereby elucidating systemic patterns of corruption that require further action.

As mentioned, the Constitutional Court of South Africa has recognised the link between corruption and human rights. However, a case that directly links a corrupt act or omission to the violation of an individual’s or a community’s rights has yet to be decided upon by the South

151 Baillat “Corruption and the Human Right to Water and Sanitation – Human Right-based Approach to Tackling Corruption in the Water Sector” 2013 https://www.waterlex.org/wp-content/uploads/2021/05/WIN-Waterlex_CorruptionAndHumanRightToWater_EN_2013.pdf 27 (accessed 14-10-2025).

152 Feruglio “Do More Empowered Citizens Make More Accountable States?” 6.

153 Veneklasen *et al.* “Rights-based Approaches and Beyond: Challenges of Linking Rights and Participation” 2004 <https://www.ids.ac.uk/download.php?file=files/Wp235.pdf> 15 (accessed 13-10-2025).

154 Feruglio “Do More Empowered Citizens Make More Accountable States?” 22.

155 12 of 2004.

156 Golub “Using Legal Empowerment” 4.

African judiciary.¹⁵⁷ Many individuals in South Africa may be aware that they possess certain rights. However, they might have limited knowledge of the specific content of rights, acts that constitute a violation of rights, and how to access remedies and redress measures in the event of a violation. Various civil society organisations in South Africa (eg Corruption Watch and Open Secrets) have advocated for combating corruption as a human rights issue.¹⁵⁸ This article aims to build on their work by positing that informing people of their rights is only the first step. The capacity of the disadvantaged must be built to enable them to identify violations and to use remedies and redress measures to their benefit.

The right of access to information is another example of how the law can be used to combat corruption. Specifically, this right can be relied upon to increase access to public service delivery and procurement information, enabling the identification of deviations. This will further aid monitoring and decision-making processes. Pande outlines how a Delhi-based citizens' group, Parivartan, employed right-to-information legislation to expose the diversion of government resources (specifically food grains meant for distribution to residents of slums and low-income and squatter settlements). Following these revelations, Parivartan successfully lobbied for the institutionalisation of public scrutiny of the records of the Public Distribution System, which, as will be discussed below, shaped the law.¹⁵⁹

5.3 To Shape the Law

Shaping the law entails “effecting changes in laws, regulations, ordinances, jurisprudence, informal justice systems, or other legal rules and systems that govern people’s conduct.”¹⁶⁰ It involves a transformative process enabled by rights such as freedom of assembly and expression, through which individuals and groups can articulate their needs, both independently and collectively, and advocate for necessary reforms in legal rules and practices. This can include calling for more effective oversight mechanisms to ensure quality service delivery and transparent public procurement, strengthening the mandate and functioning of anti-corruption bodies, enhancing preventive anti-corruption measures, and amending inadequate laws, such as South Africa’s whistleblower protection legislation, as noted above.

Combining the methods and mechanisms outlined above is crucial to success. Kapczynski and Berger note, for example, how broad-based mobilisation and advocacy, underscored by

157 There have been instances where the courts considered the impact of corruption on human rights; however, a direct violation of rights due to a corrupt act is yet to be found. See *Glenister v President of the Republic of South Africa; Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency* 2014 1 SA 604 (CC). The Constitutional Court held that the assessment of the fairness and lawfulness of procurement procedures must be done in terms of the Promotion of Administrative Justice Act 3 of 2000. Due regard is taken of the critiques and limitations raised in bringing a case that alleges a direct violation of a right due to corruption. This includes difficulties in establishing causation, as well as identifying the victims and the harm caused in instances of grand corruption. The same cannot be said, however, of everyday acts of petty corruption that, for example, limit a person’s access to a public healthcare facility which is the instances in which legal empowerment is needed the most.

158 Erasmus “Human Rights Provision Fail When Corruption is Present” *Corruption Watch* 31 March 2026 <https://www.corruptionwatch.org.za/human-rights-provision-fails-when-corruption-is-present/> (accessed 30-04-2026); Open Secrets “Civil Society Working Group Submits Recommendations to Zondo Commission” <https://www.opensecrets.org.za/the-struggle-against-corruption-is-a-struggle-for-human-rights/> (accessed 30-04-2026).

159 See Pande “The Right to Information and Societal Accountability: The Case of the Delhi PDS Campaign” 2009 *IDS Bulletin* 47–55.

160 Golub “Using Legal Empowerment” 4.

awareness-raising and capacity-building initiatives, can enhance public interest litigation.¹⁶¹ However, each situation must be evaluated on its own merits to determine the best combination of methods for that situation.

Social accountability is particularly relevant in the fight against corruption and encompasses all three elements of legal empowerment (*knowing, using and shaping* the law) noted above. Baez Camargo viewed social accountability as “those formal or informal mechanisms through which citizens engage to bring state officials or service providers to account.”¹⁶² Through social accountability mechanisms, citizens are provided with information and access to relevant institutional mechanisms to condemn corruption and demand accountability.¹⁶³ Social accountability provides individuals with avenues to express their concerns and demands, thereby increasing transparency in public-sector decision-making. This, in turn, enhances the quality of service delivery, as it is more responsive to the specific needs of the community it serves.¹⁶⁴

Maru defines social accountability as “strategies developed ... that employ information and participation to demand fairer, more effective public services.”¹⁶⁵ Suitable strategies include citizen charters (ie a document outlining the rights and entitlements of service users, expected standards of delivery, available remedies and expected costs), social audits, community scorecards, citizen report cards (where information is obtained from community members to assess the performance of public officials), and participatory budgeting (when community members engage in the formulation and monitoring of public service budgets).¹⁶⁶ The local context will determine which approach, or a combination thereof, will be the most appropriate.¹⁶⁷ By gaining critical information on rights, entitlements and the responsibilities of duty bearers, the poor are empowered to make their demands and concerns heard. Social accountability mechanisms increase and combine the voices of the disadvantaged to use them effectively in demanding change.¹⁶⁸ In this context, voice denotes a process of citizen engagement encompassing capacity building, active participation, and the dissemination of critical information.¹⁶⁹ Although some view social accountability and legal empowerment as distinct approaches, Feruglio noted that they are often combined to improve the situation of the disadvantaged.¹⁷⁰

The discussion above provides an overview of the specific means and mechanisms for achieving legal empowerment. Building on the three dimensions of empowerment outlined in Section 2.2—agency, resources, and achievement—human rights facilitate legal empowerment by amplifying marginalised voices (agency) and equipping individuals with essential instruments, including rights and redress mechanisms (resources), thereby fostering their capacity to effect change (achievement).

161 The authors referred specifically to the work of Treatment Action Campaign during the late 1990s and early 2000s. See Kapczynski and Berger “The Story of the TAC Case: The Potential and Limits of Socio-Economic Rights Litigation in South Africa” in Hurwitz and Satterthwaite (eds) *Human Rights Advocacy Stories* (2009) Ch 2.

162 Baez Camargo “Communities against Corruption” 1.

163 *Ibid.*

164 Eme and Ohiaegbu “The Challenges of Measuring Corruption and the Need for a Domestic Social Empowerment Approach” 2011 *Journal of Democratic Studies* 122 128.

165 Maru “Allies Unknown: Social Accountability and Legal Empowerment” in Golub (ed) *Legal Empowerment: Practitioners’ Perspective. Legal and Governance Reform: Lessons Learned* (2010) 82.

166 *Ibid* 84–86.

167 Baez Camargo “Communities against Corruption” 6–11.

168 Eme and Ohiaegbu 2011 *JDS* 128.

169 Baez Camargo “Communities against Corruption” 4.

170 Feruglio “Do More Empowered Citizens Make More Accountable States?” 8–9. See also Maru “Allies Unknown” 86; Waldorf 2019 *JDS* 439.

When people regard themselves as agents capable of changing unjust power relations and practices, they can rely on their legal entitlements and employ legal and social accountability measures to curb corrupt practices. By linking their demands to the full spectrum of human rights, the position from which the disadvantaged seek change is strengthened, enabling them to gain control over illegitimate practices that impact their lives.

A cautionary note is warranted: disadvantaged communities encompass individuals subjected to diverse forms of discrimination and vulnerabilities that hinder empowerment. Strategies effective in one context may fail in another; for instance, distributing informational booklets may benefit literate school learners but prove ineffective in low-literacy populations. It is imperative to critically assess the specific opportunities and obstacles confronting each group, including systemic barriers to equitable access to justice rooted in both historical and contemporary discriminatory practices.

Moreover, it would be unwise not to acknowledge that critiques have been raised against the efficacy of the human rights framework. However, a comprehensive discussion in this regard is beyond the scope of this article. It suffices here to say that, although it may not be the answer under all circumstances, especially in countries where the human rights of all are not fully protected and recognised, South African justice mechanisms have demonstrated a strong commitment to upholding the values of the Constitution. In a country facing various challenges, the Constitution has often proven to be a solid bulwark against unscrupulous and illegitimate expressions of power.

6 CONCLUSION

This article analysed the capacity of the human rights enshrined in South Africa's Constitution to empower individuals to combat corruption. Despite constitutional guarantees, corruption persists as a significant barrier to the disadvantaged in securing their basic needs and realising socio-economic rights. By examining the intersection of human rights and corruption through a doctrinal analysis, the study foregrounds an HRBA that empowers marginalised populations as agents of change via legal empowerment.

Human rights, embodying both moral and legal imperatives, establish a robust foundation for demanding public accountability and transparency, particularly when corruption is reframed as a violation of human rights. The South African Constitution offers a suite of rights enabling marginalised groups to assert greater control over their lives. The analysis demonstrated that an empowerment-centred HRBA constitutes a compelling yet underutilised framework for addressing corruption. Legal empowerment disrupts entrenched power asymmetries by equipping individuals and communities with the knowledge and tools to claim and shape their rights. Enhancing awareness of and access to accountability and redress mechanisms can recalibrate power relations and reduce opportunities for corruption.

Reconceptualising corruption as a human rights violation highlights its direct human impact and opens novel legal and normative avenues for redress. A bottom-up legal empowerment approach transforms citizens from passive beneficiaries of reform into proactive agents combating corruption. Realising this potential necessitates sustained efforts to raise awareness of rights through public legal education, including the impact of corruption on rights, to develop rights-holders' capacities to identify rights violations and demand redress, and to ensure equitable access to redress mechanisms. Ultimately, the goal is to enable the disempowered to become autonomous actors capable of exposing and challenging corruption in their daily lives.