



**University of Fort Hare**  
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**How corruption negatively affects the realisation of socio economic rights in Zimbabwe with reference to the right to education and the right to food**

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**A mini-dissertation submitted in partial fulfilment of the requirements for the degree of Master of Philosophy (in Human Rights), Faculty of Law, University of Fort Hare**

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## **Abstract**

This study demonstrates how corruption is perceived as being endemic not only in Zimbabwe but in the whole world. A society free from corruption supports good governance, transparency, accountability and development. Zimbabwe is ranked as the second most corrupt country in Southern Africa by Transparency International (TI). Chapter Three of the Constitution of Zimbabwe of 2013 protects socio economic rights, which enable people to access certain basic needs in order to lead a dignified life. These include the right to education, access to healthcare, food, safe and clean water, and the right to a healthy environment among others. The realisation and enjoyment of these rights has been impeded by corruption. This study demonstrates how corruption in both the public and private sphere affects the realisation of socio economic rights with particular reference to the right to education and the right to food.

The research is a desktop qualitative research mainly based on a review and analysis of existing literature both primary and secondary sources. The findings do demonstrate that corruption does negatively affect the right to education and the right to food. In the light of the findings the study then proffers recommendations on how the scourge of corruption can be curbed. The recommendations help to develop an accountability model for Zimbabwe. This model will assist in the achievement of transparency and development and ultimately combat corruption in Zimbabwe.

## **Key Words**

Corruption, socio economic rights, transparency, the right to food, the right to education, impediments, accountability, governance

## Declaration

I, **STEVEN MALOTA** (201013368) declare that this mini-dissertation is my own work, and that it has not been submitted for any degree or examination in any other university or institution. All the sources used, referred to or quoted in the text have been indicated and duly acknowledged by complete references.

Signed.....

Date.....

Supervisor: Professor N.S Rembe

Signature.....

Date.....

## **Dedication**

To my mum an epitome of love this is for you. I dedicate this study to my late father Jeavas Jubilous Malota whose presence in this world made my life richer and fuller. Will always love you my father. To all my siblings words fail me but just know that this is yours masters as well. Above all I dedicate this study to God, a God who is able to do exceedingly and abundantly above all. Take all the glory Papa.

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## **Abbreviations**

ACCZ	Anti-Corruption Commission of Zimbabwe
AFCH	African Charter on Human and Peoples' Rights
APNAC	African Parliamentarians Network Against Corruption
AU	African Union
BEAM	Basic Education Assistance Module
CEO	Chief Executive Officer
CIO	Central Intelligence Organisation
CPI	Corruption Perception Index
DRC	Democratic Republic of Congo
ESAP	Economic Structural Adjustment Programme
ESCR	Economic, Social, and Cultural Rights
ESSP	Enhanced Social Protection Programme
FDI	Foreign direct investment
FIU	Financial Intelligence Unit
GMB	Grain Marketing Board
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
LHC	Lancaster House Constitution
LSZ	Law Society of Zimbabwe
MP	Member of Parliament
PTUZ	Progressive Teachers Union of Zimbabwe
SADC	Southern Africa Development Community
SERAC	Social and Economic Rights Action

TI	Transparency International
TIZ	Transparency International Zimbabwe
UDHR	Universal Declaration on Human Rights
UNCAC	United Nations Convention Against Corruption
USA	United States of America
USD	United States Dollars
VID	Vehicle Inspection Department
WHO	World Health Organisation
ZACC	Zimbabwe Anti-Corruption Commission
ZIMRA	Zimbabwe Revenue Authority
ZIMSEC	Zimbabwe School Examinations Council
ZINWA	Zimbabwe National Water Authority
ZRP	Zimbabwe Republic Police

### **International and Regional Instruments**

African Charter on Human and Peoples' Rights (1981) OAU Doc CAB/LEG/67.

African Union Convention on Preventing and Combating Corruption 2003 AU A/02.

International Covenant on Civil and Political Rights (1996) UN Doc A/66316.

International Covenant on Economic, Social, Cultural Rights (1966) UN Doc A/6316.

Universal Declaration on Human Rights (1948) UN Doc A/810.

United Nations Charter (1945) UN Doc A/011.

United Nations Convention against Corruption (2003) UN Ad 58/4

### **National Legislation**

Lancaster House Constitution (1979).

The Constitution of the Republic of South Africa (1996).

The Constitution of the Republic of Zimbabwe Amendment No 20 (2013).

The Prevention of Corruption Act 14 of 2002.

The Anti-Corruption Commission Act 13 of 2004.

The Criminal Law Codification and Reform Act 14 of 2004.

The Criminal Procedure and Evidence Act 14 of 2004.

## Case Law

*Antony Shumba and Others v Officer in Charge, Norton Police Station Commissioner of Police, Minister of Home Affairs, City of Harare and Minister of Local Government, Public Works and Urban Development Magistrate Court Case No 376/05*

*Associated Newspapers of Zimbabwe v Minister for State Information and Publicity case ZCWSC 20/03*

*Attorney General of Zimbabwe v Johnsen SC 119 – 1998*

*Dareremusha Cooperative v The Minister of Local Government, Public Works and Urban Development and Others HC 2467/05*

*S v Choba SC 114 – 1992*

*S v Chombo HH 154 23 2008*

*S v Gono CA 23/67 19 HH - 2013*

*S v Magarajebhi SC 23/09 10 - 2002*

*S v Machosa CA 325/01 HH 9 2002*

*S v Mujuru 2015 (CC) 14 ZLR 34*

*S v Ngara 1987 ZLR 91 (SC)*

*S v Sinawa SC 195 – 1995*

*Social and Economic Rights Action Centre (SERAC) and another v Nigeria 2001 AHRLR 60*

*Zimnat Insurance Co Ltd v Chawanda 1991 Z SA 825 ZSC*

## Table of Contents

Abstract .....	i
Declaration .....	ii
Dedication.....	iii
Acknowledgements.....	iv
Abbreviations.....	v
International and Regional Instruments .....	vii
National Legislation .....	vii
Case Law.....	viii
Table of Contents .....	ix
CHAPTER ONE .....	1
INTRODUCTION AND BACKGROUD OF STUDY.....	1
1.1 An Overview of Corruption in the context of Zimbabwe .....	1
1.2 Research problem.....	6
1.3 Objectives of the study.....	6
1.4 Hypothesis .....	6
1.5 Significance of the study .....	6
1.6 Literature review .....	7
1.7 Research methodology .....	10
1.8 Delimitations of the study .....	10
1.9 Ethical Implications of the Study .....	10
1.10 Outline of Chapters .....	10
CHAPTER TWO.....	12
THE PROBLEMATIC NATURE OF DEFINING CORRUPTION .....	12
2.1 The meaning of Corruption .....	12
2.2 Theoretical Perspectives of Corruption .....	16
2.3 Forms and typologies of Corruption in Zimbabwe.....	20

2.4 Conclusion .....	28
CHAPTER THREE .....	29
SOCIO ECONOMIC RIGHTS IN ZIMBABWE .....	29
3.1 Socio Economic Rights Protected Under the Constitution of Zimbabwe .....	29
3.2 The nature of Obligations imposed by Socio Economic Rights .....	30
3.3 The Obligation to Respect.....	31
3.4 The Obligation to Protect .....	31
3.5 The Obligation to Fulfil .....	32
3.6 The Obligation to Promote .....	32
3.7 Socio Economic Rights Protected by the Constitution of 2013 with reference to the right to the right to education and the right to food.....	34
3.7.1 The nature and scope of the right to education .....	34
3.7.2 The nature and scope of the right to food .....	35
3.8 How Corruption negatively affects the right to education and the right to food in Zimbabwe.....	36
3.8.1 The right to education .....	36
3.8.2 The right to food.....	38
3.9 Conclusion .....	40
CHAPTER FOUR.....	41
MEASURES INSTITUTED TO FIGHT CORRUPTION.....	41
4.1 General measures, policies and legislation.....	41
4.2 The Courts .....	46
4.3 The role of the media .....	47
4.4 Conclusion .....	48
CHAPTER FIVE.....	49
CONCLUSION AND RECOMMENDATIONS .....	49
5.1 Important findings.....	49

5.2	Recommendations .....	50
5.3	Areas of further study.....	51
5.4	Conclusion .....	51
	Bibliography .....	52

## CHAPTER ONE

### INTRODUCTION AND BACKGROUND OF STUDY

#### 1.1 An Overview of Corruption in the context of Zimbabwe

Corruption is a plague that has a wide range of corrosive effects.<sup>1</sup> A society that is free from corruption supports good governance, transparency, accountability and development.<sup>2</sup> The phenomenon of corruption is as old as humankind and it persists in all societies in one form or another.<sup>3</sup> There are many definitions of corruption but for the purposes of this study, Chetwynd's comprehensive definition is preferred. Chetwynd defined corruption as the abuse of entrusted power for private gain.<sup>4</sup> He noted that corruption exists both in the public and also in the private sphere.<sup>5</sup> A substantial body of literature appears to argue that corruption acts as an impediment to the realisation of socio economic rights.<sup>6</sup> Drawing from this perspective, this study seeks to interrogate the above assertion by focusing on Zimbabwe, a country that has experienced a surge in the level of corruption and a rapidly declining economy.<sup>7</sup>

Money stolen from different government coffers every year is enough to feed the world's hungry eighty times over.<sup>8</sup> Nearly 870 million people, many of them children, go to bed hungry every night due to corruption.<sup>9</sup> Corruption violates the core human rights principles of transparency, accountability, non-discrimination and meaningful participation in every aspect of life in the community.<sup>10</sup> This phenomenon is perceived by political and economic commentators as being endemic not only in Zimbabwe but

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<sup>1</sup> United Nations Office on Drugs and Crime "Statement on the Adoption by the General Assembly of the United Nations Convention Against Corruption" New York 2003.

<sup>2</sup> *Ibid* 45.

<sup>3</sup> Rushton "Corruption and development :The international anti-corruption movement and anti-corruption in India" 2001

<sup>4</sup> Chetwynd "Corruption and Poverty: A review of recent literature January" 2003.

<sup>5</sup> *Ibid* 32-58.

<sup>6</sup> Corruption is one of the biggest obstacles to achieving the globally agreed targets to reduce poverty, hunger and other social ills by 2015 also known as the Millennium Development Goals (MDGs).

<sup>7</sup> Hope and Chikulo Corruption and Development in Africa 2010.

<sup>8</sup> Annual report on the office of the United Nations High Commissioner for Human Rights 2013.

<sup>9</sup> United Nations High Commissioner for Human Rights at a panel discussion on the negative impact of corruption on the enjoyment of human rights 27 March 2013.

<sup>10</sup> *Ibid* 23.

in the whole world.<sup>11</sup> Corruption accounts to the inadequate economic growth and the high socio economic inequalities.<sup>12</sup>

In a move that acknowledged corruption as a pervasive problem in Africa, the African Union (AU) adopted the African Union Convention on Preventing and Combating Corruption (AU Convention) in July 2003.<sup>13</sup> The adoption of the AU Convention is commendable in many respects. This is an indication that the continent is at last taking the issue of corruption seriously. The Convention seeks to promote and strengthen development in Africa by requiring states to prevent, as well as impose penalties for corruption and related offences.<sup>14</sup> President Khama of Botswana noted that despite the positive strides made by countries towards attaining democracy and human rights, corruption still remains one of the greatest challenges that Africa faces.<sup>15</sup> Corruption is, and continues to be, the dark patch that has tainted nation states on the African continent and the developing world.<sup>16</sup> On the African continent, about 414 million people live in extreme poverty, despite abundant natural resources, owing to corruption in some cases.<sup>17</sup>

A report by Transparency International (TI) of December 2014 ranked Zimbabwe 156<sup>th</sup> out of 175 most corrupt countries.<sup>18</sup> In Southern Africa, the TI ranked Zimbabwe as the second most corrupt country in the region after Angola.<sup>19</sup> The prevalence of corruption and fraudulent activities in Zimbabwe derails the efforts that are in place to achieve the goals set out in the Constitution of Zimbabwe (2013 Constitution).<sup>20</sup> The government has been urged to put in place measures that would ensure every cent is put to its intended use.

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<sup>11</sup> *Ibid* 41.

<sup>12</sup> *Ibid* 48.

<sup>13</sup> Text of the Convention is available at <<http://www.africaunion.org/home/welcome.htm>> (accessed on 04 October 2014).

<sup>14</sup> However corruption still remains a key challenge to the enjoyment of human rights especially socio economic rights in Africa.

<sup>15</sup> This was highlighted at a summit held in Botswana (Gaborone) when heads of states were discussing issues of governance 2013.

<sup>16</sup> *Ibid* 23.

<sup>17</sup> World Bank report "Corruption is public enemy number one" 2013.

<sup>18</sup> Transparency International is the global civil society organisation leading the fight against corruption. It compiles a global corruption index which show the level of corruption in each country every year.

<sup>19</sup> *Ibid* 34.

<sup>20</sup> See the Constitution of the Republic of Zimbabwe Amendment No 20 2013 (hereinafter referred to as the 2013 Constitution).

Following the discovery of the Marange diamonds fields and having produced 12.0 million carats in 2012, Zimbabwe is now the world's 6<sup>th</sup> largest producer of diamonds by volume of production.<sup>21</sup> If managed properly, such a national resource could cover some of the budgetary deficits and ultimately help drive the country's development.<sup>22</sup> There is no transparency in all this and thus money is lost through corruption, a situation which impedes the enjoyment of socio economic rights in particular the right to education and the right to food.<sup>23</sup> If Zimbabwe is to reap the full fruits of its labour, it is essential that the issue of transparency is prioritised. Until that happens one will always wonder where Zimbabwe's diamond money is going.

Ascertaining Zimbabwe's diamond revenues is already a herculean task. Very little is made public and the national budget statement only focuses on non-tax revenue in the form of dividends and royalties, it does not give details of other diamond income through tax.<sup>24</sup> All the money is lost to corruption instead of achieving the socio economic development of the state.<sup>25</sup> In 2012, despite having been assured of a minimum of 600 million dollars' worth of dividends which was aimed at the government, the finance minister reported that just 43 million dollars had been delivered.<sup>26</sup> Nearly three quarters of Zimbabwe's population live beneath the poverty line.<sup>27</sup> At the beginning of 2014, the Ministry of Public Service, Labour and Social Welfare reportedly revealed that the treasury had failed to allocate sufficient funds for vital food and education assistance.<sup>28</sup> According to the Ministry, more than 90 000 children were put at risk of missing school while an upwards of 1.5 million people's access to food was jeopardised.<sup>29</sup>

Corruption in Zimbabwe can be illustrated by the exorbitant salaries pocketed by executives in state owned enterprises and other public entities.<sup>30</sup> There are also allegations that implicate top government officials in corrupt allocation of tenders. Public institutions such as the Premier Service Medical Aid Society have hit the

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<sup>21</sup> Zimnisky "Diamonds Analytics" 2015.

<sup>22</sup> *Ibid* 34.

<sup>23</sup> *Ibid* 51.

<sup>24</sup> Global Witness 'Where is Zimbabwe's diamond money going?' <http://www.globalwitness> December 2014

<sup>25</sup> *Ibid* 50.

<sup>26</sup> *Ibid* 55.

<sup>27</sup> *Ibid* 64.

<sup>28</sup> *Ibid* 67.

<sup>29</sup> *Ibid* 71.

<sup>30</sup> Shangwa "The Zimbabwean Times" *Almaga* 2012.

headlines in the “salary gate” in which the Chief Executive Officer (CEO) was revealed to be earning more than USD 500, 00 per month.<sup>31</sup> This is despite the fact that as of December 2013, the society owed service providers USD 38 million in unpaid bills for medical services rendered to its members.<sup>32</sup> This resulted in some of the institution’s subscribers failing to get the medical services they needed at various health centres around the country, in direct violation of their right to health.

The acceleration of the economic and social hardships as a result of the Economic Structural Adjustment Programmes (ESAP) in the early 1990’s coupled with the increased greed led to a corruption trend.<sup>33</sup> Most political leaders and civil servants competed in accumulating riches through corrupt means and this led to an increase in socio economic hardships. Another important factor worth noting is the Democratic Republic of Congo (DRC) civil war in which Zimbabwe took part between 1997 and 2000, spending approximately Z\$25 million per month.<sup>34</sup> The main beneficiaries were a group of people associated with the army and senior government ministers rather than the national economy.<sup>35</sup> Diamonds and gold dealing were the sphere of influence for Zimbabwe’s participation in the war.<sup>36</sup>

The War Victims Compensation Fund was also introduced in the 1990’s where a number of government officials looted government funds in the name of having participated in the nationalist struggle.<sup>37</sup> Though the idea of compensating the country’s heroes and heroines was a noble one, the scheme was marred by controversies as corrupt elements in high offices invaded the good cause and fleeced the fund’s coffers thus other people who were supposed to benefit could not.<sup>38</sup> These were not the only two incidents at the helm of corruption bleeding in the country. There was also the Senior Civil Servants’ Housing Scheme. This saw non civil servants

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<sup>31</sup> Global Journal of Management and Business Research 2014.

<sup>32</sup> The salary scandal in the Zimbabwe parastatals sector showed another dark side of the nation 2014.

<sup>33</sup> Chikeya “Corruption in Zimbabwe” 2013.

<sup>34</sup> *Ibid* 20.

<sup>35</sup> *Ibid* 27.

<sup>36</sup> *Ibid* 31.

<sup>37</sup> Shana “The State of Corruption in Zimbabwe” A paper presented by Dr G Shana at a public opinion institute seminar 2006.

<sup>38</sup> *Ibid* 34.

benefiting from the loans that were availed by government to assist its own poor masses, hence the peoples' right to housing was impeded by corruption.<sup>39</sup>

Why do most political leaders in government become wealthy when they get into government?<sup>40</sup> What really makes the leaders so wealthy, when Zimbabwe is getting poorer by the day?<sup>41</sup> Why is the wealth gap between leaders and the public so big if leaders have not been squandering public resources for personal gain?<sup>42</sup> If revenue from diamonds profits a craft few, the result is that the government fails in its distributive function that should benefit the rest of society and lift its living standards.

Socio economic rights are a broad category of human rights guaranteed in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other legally binding international and regional human rights treaties.<sup>43</sup> Socio economic rights are rights that make people access certain basic needs in order to lead a dignified life.<sup>44</sup> The government, and in certain circumstances, individuals and private bodies, can be held accountable if they do not respect, protect and fulfil these rights.<sup>45</sup> Socio economic rights are especially relevant for vulnerable and disadvantaged groups in society. The Zimbabwean Constitution which officially came into force on 22 May 2013, protects socio economic rights under Chapter 3.<sup>46</sup> These include the right to education; access to healthcare; sufficient food and safe and clean water; right to a healthy environment among others. All rights are intertwined, hence they reinforce each other.<sup>47</sup> Corruption creates a vicious circle that undermines respect for law and the effective functioning of democratic institutions.<sup>48</sup> As a consequence, civil, political, socio economic and cultural rights of people are simultaneously violated.<sup>49</sup> A society free from corruption is essential for good governance, development and the realisation of socio economic rights.<sup>50</sup>

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<sup>39</sup> *Ibid* 56.

<sup>40</sup> Human Rights Watch "A call to Action: The Crisis in Zimbabwe" August 2007.

<sup>41</sup> *Ibid* 4.

<sup>42</sup> *Ibid*.

<sup>43</sup> Amnesty International, Economic, Social and Cultural Rights 2010.

<sup>44</sup> *Ibid* 20.

<sup>45</sup> *Social and Economic Rights Action Centre (SERAC) and another v Nigeria* AHRLR 60 2001.

<sup>46</sup> The Constitution of the Republic of Zimbabwe of 2013.

<sup>47</sup> *Ibid*.

<sup>48</sup> Currie and De Waal *The Bill of Rights a handbook* 2005

<sup>49</sup> *Ibid* 34.

<sup>50</sup> *Ibid* 56.

## **1.2 Research problem**

Corruption has been identified by political commentators as a major obstacle to the realisation of socio economic rights not only in Zimbabwe but on the continent at large.<sup>51</sup> Corruption is one of Zimbabwe's major developmental challenges alongside poverty, HIV/AIDS and governance.<sup>52</sup> Despite this realisation, corruption continues to be entrenched as Zimbabwe has failed to extricate it. The study seeks to demonstrate that Chapter 3 of the 2013 Constitution protects socio economic rights and whenever there is corruption these rights are impacted. The study will demonstrate how corruption can be curbed using various mechanisms.

## **1.3 Objectives of the study**

This thesis has three major objectives that speak to several sub issues, namely to:

- evaluate whether corruption impedes the realisation of socio economic rights with particular reference to the right to education and the right to food.
- examine strategies employed by anti-corruption agencies in combating corruption.
- provide recommendations for the fight against corruption.

## **1.4 Hypothesis**

The study emanates from the assumption that corruption is an obstacle to the realisation of socio economic rights in Zimbabwe.

## **1.5 Significance of the study**

Inspite of the debilitating effects that corruption has on the enjoyment of socio economic rights, Zimbabwe has failed to significantly address it though some fundamental measures have been taken. This study therefore represents an effort in understanding corruption as an obstacle to the realisation of socio economic rights in particular the right to education and the right to food in Zimbabwe. The study will then shed more light on corruption and whether it negatively affects the realisation of socio economic rights in Zimbabwe. The study will also come up with important findings from

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<sup>51</sup> Makumbe "Corruption in Zimbabwe" 2011.

<sup>52</sup> *Ibid* 24.

the research and some recommendations on how this graft syndrome can be tackled in Zimbabwe.

## 1.6 Literature review

Whereas scholars argue that corruption impedes the realisation of socio economic rights<sup>53</sup>, some scholars claim that corruption results in an efficient and sustainable economy.<sup>54</sup> Furthermore, the study will highlight what can be done to curb corruption.

A wealth of literature exists on corruption as an impediment to the realisation of socio economic rights. Olaniyan postulates that there is a framework for complementarity between promoting and protecting human rights and combating corruption.<sup>55</sup> The author makes three major points regarding the relationship between corruption and human rights law. First, corruption *per se* is a human rights violation, insofar as it interferes with the right of the people to dispose of their natural wealth and resources thereby it increases poverty and frustrates socio-economic development.<sup>56</sup> Second, corruption leads to a multitude of human rights violations including violating socio economic rights in agreement with the research. Third, the author argues that human rights mechanisms have the capacity to provide more effective remedies to victims of corruption than what criminal and civil legal mechanisms can offer.<sup>57</sup> However, it should be noted that the author was generalising about all the human rights that are impeded by corruption and the author did not focus specifically on socio economic rights.

Hope and Chikulo conducted a study on corruption in 2013 in the case of state enterprises in the Harare Metropolitan area. They contend that corruption is now systematic in nature and is impeding the realisation of Chapter 3 of the 2013 Constitution.<sup>58</sup> The two authors point out that corruption in state public enterprises is viewed as an acceptable phenomenon and therefore the situation has gone wrong in the governance of these institutions.<sup>59</sup> They argue that public officials are up to personal enrichment, they maximise their takings without due regard to the impact that

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<sup>53</sup> See note 44.

<sup>54</sup> *Ibid.*

<sup>55</sup> Olaniyan *African Human Rights Law Journal* 2001.

<sup>56</sup> *Ibid* 20.

<sup>57</sup> *Ibid* 22.

<sup>58</sup> Hope and Chikulo *Corruption and Development in Africa* 2010.

<sup>59</sup> *Ibid* 4.

corruption has on the citizens.<sup>60</sup> The authors further contend that as a result, socio economic needs of the populace will not be fulfilled.

Chibiya and Chiweshe noted that corruption as a problem undermines the realisation of socio economic rights as well as development in Zimbabwe.<sup>61</sup> In trying to curb this problem, the authors postulated the need to develop strategies which prevent those in authority from abusing their positions so that socio economic rights are realised in Zimbabwe.<sup>62</sup> Shana posits that corruption in any country in the world is a product of poor democratic rule coupled with governance issues. The author contends that whenever there is graft, socio economic rights suffer heavily.

Human Rights Watch (HRW) has published several articles on corruption in Zimbabwe.<sup>63</sup> The HRW depicts how corruption and human rights abuses are rife in the Marange diamond fields in Eastern Zimbabwe.<sup>64</sup> In 2007, HRW questioned the credibility of the Southern African Development Community (SADC) with regard to systematic corruption in Zimbabwe. Ironically, one of the aims of SADC is to ensure that corruption is curbed and development sustained.<sup>65</sup> The report implored SADC to take urgent action in order to curb corruption in the country.

On the other hand, economic commentators such as Nye, Huntington and Friedrich claim that corruption enhances efficiency of the development process.<sup>66</sup> They even argue that corruption facilitates economic growth and investment. This school of thought maintains that corruption speeds up the development machinery and does not necessarily impede socio economic rights.<sup>67</sup> The above scholars argue that corruption effectively lubricates the wheels of an otherwise rigid bureaucracy and as such there is no impediment of socio economic rights. However this is still open for further discussion.

Berger argues that corruption minimises bureaucratic red tape, eliminating bottlenecks and facilitates a more efficient, flexible and responsive system.<sup>68</sup> Frish argues that

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<sup>60</sup> *Ibid* 5.

<sup>61</sup> Chibiya and Chiweshe "Systemic corruption in public enterprises" *Corruption* 2008.

<sup>62</sup> *Ibid* 56.

<sup>63</sup> *Ibid* note 39.

<sup>64</sup> *Ibid* 54.

<sup>65</sup> *Ibid*.

<sup>66</sup> Nye "Systemic corruption" *Corruption Index* 2009.

<sup>67</sup> *Ibid*.

<sup>68</sup> Berger "Advantages of corruption" 2011.

corruption may be beneficial, but only to the privileged leaders and bureaucrats.<sup>69</sup> In the case of Zimbabwe during the economic and political crisis years from 2000 to 2009, corruption was functional; it kept the political and economic systems functioning.<sup>70</sup> Corruption managed to keep the bureaucrats at work when inflation was as high as 231 million per cent.<sup>71</sup> Despite the economic hardships, public officials went to work not because they wanted to work, but because they made extra cash from their positions.<sup>72</sup> Without corruption this would have meant the government would have collapsed as the economy crumbled. Corruption sustained a collapsing economy and supported the population that survived through corrupt means while it also allowed a government to survive.

Carrier claims that the whole gamut of socio economic rights that are found in Chapter 3 of the 2013 Constitution are affected by corruption.<sup>73</sup> Corruption impedes a state's ability to use its available resources to progressively achieve the full realisation of socio economic rights.<sup>74</sup> This is so because national resources are instead diverted into the pockets of public officials.<sup>75</sup> For example, if funds that are intended to be used to advance the right to education find themselves in the pockets of private individuals, this means that the realisation of this right will be impeded.<sup>76</sup> This is the same case with all the other rights protected in Chapter 3.

Transparency International Zimbabwe (TIZ) has numerous objectives specifically designed to fight corruption. It aims to help develop and broaden Zimbabwe's economic and social development by countering corruption in the public domain.<sup>77</sup> Since its formation in 1996, TIZ sought to formulate policies that discourage and penalise unethical conduct.<sup>78</sup> It works to strengthen public support and understanding of anti-corruption programmes by enhancing public transparency and accountability in both public and private sectors. However, the only challenge is that TIZ members are

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<sup>69</sup> Frish "Corruption in the whole spectrum" *Michigan International* 2013.

<sup>70</sup> *Ibid* 60.

<sup>71</sup> *Ibid* 61.

<sup>72</sup> *Ibid* 61.

<sup>73</sup> Carrier "Zimbabwean corruption" *Develaux Print* 2014.

<sup>74</sup> *Ibid* 45.

<sup>75</sup> *Ibid*.

<sup>76</sup> *Ibid*.

<sup>77</sup> Transparency International Zimbabwe 2014.

<sup>78</sup> *Ibid*.

chosen by the President and as such their independence is compromised. Other key sectors in fighting corruption include the police and the media.

The above review has highlighted that some scholars argue that corruption is an obstacle to the realisation of socio economic rights whilst others argue against it. Additionally, the review has given some hints on how the problem of corruption can be tackled in its entirety although challenges still remain in this regard.

### **1.7 Research methodology**

The research is a desktop qualitative research mainly based on a review and analysis of existing literature. Both primary and secondary sources are used. Primary sources will be in the form of constitutional provisions, international instruments and legislation. Secondary sources include textbooks, journal articles and newspaper articles.

### **1.8 Delimitations of the study**

This research examines how corruption is an obstacle to the realisation of socio economic rights in Zimbabwe. Although corruption potentially affects the enjoyment of the whole gamut of human rights, this study will only focus on how the realisation of socio economic rights is imperilled by corruption.

### **1.9 Ethical Implications of the Study**

This will be a desktop based research that will draw knowledge and analysis from literature, regional and international human rights instruments, case law as well as constitutional and legislative provisions. The researcher will nevertheless acknowledge all sources of information directly/indirectly referred to in this study. In this study, the researcher does not intend to carry out any interviews, questionnaires or collection of any information from the public.

### **1.10 Outline of Chapters**

The mini dissertation is divided into four chapters. Chapter one has highlighted the background of the study, the research problem and the significance of the study. It has also highlighted the literature review, methodology and delimitations of the study.

Chapter two attempts to provide comprehensive definitions of corruption and the theories of corruption with reference to Zimbabwe.

Chapter three examines the socio economic rights protected under the Zimbabwean Constitution with reference to the right to education and the right to food. It then seeks to demonstrate how such rights are impacted by corruption.

Chapter four examines the various measures instituted in the fight against corruption.

Chapter five draws conclusions and important findings of the study and makes recommendations on what can be done to combat corruption.

## CHAPTER TWO

### THE PROBLEMATIC NATURE OF DEFINING CORRUPTION

#### 2.1 The meaning of Corruption

Corruption has no single definition, it varies from region to region and remains largely contextual.<sup>79</sup> Despite the fact that many people recognise corruption when they see it, defining the concept does raise difficult theoretical and empirical questions.<sup>80</sup> This is because it is difficult to generalise the form that corruption assumes in differing circumstances.<sup>81</sup> Since the causes and effects of corruption are different depending on the context of the country, it is perhaps not surprising that it is difficult to formulate a single comprehensive definition that covers all the manifestations of corruption.<sup>82</sup>

Cuifen noted that most of these broad definitions focus on corruption in the public sector. This is despite the recognition that corruption is also present in the private sector.<sup>83</sup> It should be highlighted also that the author notes that corruption is the abuse of public office for private gain.<sup>84</sup> Valuable as this definition is, such a general definition does not adequately specify the actors, behaviour and what motivates the drive towards corruption. The author notes that corrupt behaviour refers to both economic acts such as (embezzlement, misappropriation of public funds and bribery). In the case of Zimbabwe, embezzlement is rife.<sup>85</sup> Even behaviour such as dereliction of duty and violations of social norms that is not motivated by private gain is sometimes regarded as corruption.<sup>86</sup>

The Zimbabwean Prevention of Corruption Act states that corrupt practices include any contravention of the sections of the Criminal law (Codification and Reform) Act or any misappropriation or loss of property caused by theft, fraud or other unlawful

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<sup>79</sup> Gould "Administrative Corruption: Incidence, Causes and Remedial Strategies" in A Farazmond (ed) Handbook of comparative development and public administration (1991) 467 quoted in Pearson.

<sup>80</sup> Johnston "The search for Definition: The vitality of politics and issue of corruption" (1996) 149 *International Social Science Journal* 321-322.

<sup>81</sup> *Ibid* 23.

<sup>82</sup> Van de Merwe *Combat Corruption collectively mobilising South African Civil Society on Corruption Governance and Ethics* 2001 7

<sup>83</sup> Cuifen "Structural Changes in Chinese Corruption" 2012.

<sup>84</sup> *Ibid* 12.

<sup>85</sup> *Ibid* 13.

<sup>86</sup> *Ibid* 14.

means.<sup>87</sup> The Act defines corrupt practices as practices of an agent who solicits or agrees to accept or attempts to obtain from any person a gift or consideration for the agent or any other person as an inducement.<sup>88</sup> The Act also states that any receipt in contravention of any law of the action of any person who has caused misappropriation or loss of property of the state, a statutory body or any other person is corruption.<sup>89</sup>

Harrison equates corruption to poverty in the sense that it attempts to describe something that exists in the real world and can make people's lives miserable.<sup>90</sup> The author further on illustrates that in defining corruption there is need to understand what corruption means to different people.<sup>91</sup> Who defines an act as corrupt or not and who is included or excluded from the discourses of corruption?<sup>92</sup> For years the general definition has been "abuse of public office for private gain"<sup>93</sup> but a series of scandals involving private sector firms such as Enron in the United States of America (USA), has prompted some rethinking of the "abuse of public office" definition.<sup>94</sup> TI now refers to "abuse of trusted authority for private gain" which gives a holistic definition to corruption even in the private sphere.<sup>95</sup>

Chibiya defines corruption as a dysfunctional psycho-emotional response to changing financial, social and material circumstances.<sup>96</sup> It is a psychological condition governed by a specific system of beliefs, values and emotions created by an individual's response to changing external, economic and social conditions.<sup>97</sup> He views corruption in public enterprises as a post independent phenomenon where most African states moved away from bureaucratic administration that emphasised good governance to one that focused on sovereignty of politics.<sup>98</sup> This is quite the case in the Zimbabwean situation as corruption is rife in the public enterprise.<sup>99</sup>

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<sup>87</sup> Zimbabwe Prevention of Corruption Act 34 of 1985 (Section 1).

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> Harrison "Development in progress" Vol 17 2007.

<sup>91</sup> This is so because of the different definitions of corruption and how different people have a different grasp of corruption.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> Enron was an American energy company based in Houston and due to corruption and embezzlement of funds led to its bankruptcy in 2001.

<sup>95</sup> Transparency International is a non-governmental organisation devoted to combat corruption.

<sup>96</sup> Chibiya and Chiweshe " Systemic corruption in public enterprises" 2008.

<sup>97</sup> *Ibid* 13.

<sup>98</sup> *Ibid* 15.

<sup>99</sup> Chakaya "Corruption in the Zimbabwean context" *The Situation* 2011

Corruption has no fixed disciplinary allegiance and analysts have ransacked the cupboards of anthropology, economics, law, organisation theory, philosophy, political science and sociology in their efforts to find ways of making the concept more robust and useful.<sup>100</sup> Others have abandoned the quest and merely pay lip service to the need to define corruption before embarking on empirical studies which make no connection with the definition offered at the beginning.<sup>101</sup>

If the various definitions on offer are to serve a useful role in this analysis, they have to be capacious yet discriminating.<sup>102</sup> If they are too narrowly drawn they will not be comprehensive. If they are broad, they may be seen as vague and imprecise.<sup>103</sup> The task of finding a suitable definition of corruption which can be used for purposes of comparative analysis has proved a herculean one. However, it should be noted that before it became subject to the rigours of modern social science, corruption was used primarily as a term of moral condemnation.<sup>104</sup> In moral terms, to corrupt means to pervert, degrade, ruin and debase.<sup>105</sup> In the moral realm any act identified as corrupt is to be abhorred and condemned.

To say that corruption is wrong is rather like saying that murder is wrong.<sup>106</sup> Both statements express what is, in effect, a conceptual truth or grammatical necessity. The legal meaning of corruption appeals to rules and laws.<sup>107</sup> It relates corruption to the violation of a rule, while legal adjudication relates acts to rules in ways intended to reveal the contravention of specific rules by particular acts.<sup>108</sup> The legal approach raises other problems; the law may be silent on conduct which is widely viewed by political actors, the media and the public to be corrupt. More seriously, it depends on the notion that legal frameworks are somehow neutral, objective and non-political.<sup>109</sup>

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<sup>100</sup> *Ibid* 13.

<sup>101</sup> William "Party finance and political Corruption" 2000.

<sup>102</sup> *Ibid* 14.

<sup>103</sup> *Ibid* 16.

<sup>104</sup> Hines "Anti-corruption" Vol 36 2011.

<sup>105</sup> *Ibid* 32.

<sup>106</sup> *Ibid* 52.

<sup>107</sup> *Ibid*.

<sup>108</sup> *Ibid*.

<sup>109</sup> *Ibid*.

Although Nye's formulation sounds neutral, it nevertheless stems from a desire to condemn corrupt conduct which furthers private interests.<sup>110</sup> Other analysts have been more explicit by simply asserting that corruption involves the subversion of the public interest or common good by private interests.<sup>111</sup> The association here is between a notion of a public, a citizenry which furthers private interests.<sup>112</sup> Thus the "public office" and the "public interest" definitions of corruption share the understanding that the common good is best served when officials adhere to the formal duties of public roles and do not lapse into conduct designed to secure "private gains".<sup>113</sup>

According to Leff, corruption is an extra legal institution used by individuals or groups to gain influence over the actions of the bureaucracy.<sup>114</sup> As such, the existence of corruption *per se* indicates only that. These groups participate in decision making processes to a greater extent than would otherwise be the case.<sup>115</sup> In effect Leff argues that corruption is part of the difference between formal political and bureaucratic procedures and the way they actually work.<sup>116</sup> It seems that all definitional roads lead back to the notion of public office, with its attendant problems of vagueness, cultural relativity and elasticity.<sup>117</sup>

Hope and Chikulo view corruption as the utilisation of official titles for personal gains, privately at the expense of the public and in violation of established rules and ethical considerations.<sup>118</sup> The abuse of duty involves direct and indirect application as well as direct and indirect participation in unethical activities by public officials regardless of rank.<sup>119</sup> It may be viewed as any conduct or behaviour in relation to persons entrusted with responsibility in public and private office which violates their duties as respected public officials; and is aimed at obtaining undue gratification of any kind for themselves

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<sup>110</sup> Nye "Corruption and Political development" *The American Political, Science Review* 1967 Nye went on to note that corruption is endemic in all governments yet it has received remarkably little attention from students of government. Not only is the study of corruption prone to moralism, it involves one of the aspects of government in which the interests of the politician and the political scientist are likely to conflict.

<sup>111</sup> *Ibid.*

<sup>112</sup> It is usually a few that benefit from corruption at the expense of the socio economic rights of people in the country.

<sup>113</sup> *Ibid.*

<sup>114</sup> Leff "Economic development through bureaucratic corruption" *Latin American Journal* 2012.

<sup>115</sup> *Ibid* 12.

<sup>116</sup> *Ibid* 13.

<sup>117</sup> *Ibid* 3.

<sup>118</sup> Hope and Chikulo "Corruption and development in Africa" 2010.

<sup>119</sup> *Ibid* 4.

or for others. Corruption is seen as partisanship that challenges statesmanship.<sup>120</sup> Several ministers in Zimbabwe have used their positions for gain through corrupt means.<sup>121</sup>

Dike defines corruption as the violation of established rules for self-gain and as an effort to secure wealth or power through illegitimate means at the expense of the public.<sup>122</sup> Samuel, on the other hand views corruption in a broader sense as the use of rewards to prevent the judgement of a person in a position of trust. This includes the bestowal of patronage by reason of prescriptive relationship rather than merit and the illegal appropriation of public resources for private use.<sup>123</sup>

The section above provides several definitions for corruption but for purposes of this study, three key definitions stand out and are going to be used in this regard. First, is the TI definition of corruption as the abuse of trusted authority for private gain.<sup>124</sup> Second, Dike's definition is also key. The author noted that corruption is a violation of established rules for self-gains.<sup>125</sup> Lastly, Chetwynd noted that corruption is the abuse of entrusted power for private gain.<sup>126</sup> The gain can be financial or status related.<sup>127</sup> Notable here from the definitions is the fact that corruption does not transpire only in the public sector but also in the private sector as supported by the Zimbabwean Prevention of Corruption Act.<sup>128</sup>

## 2.2 Theoretical Perspectives of Corruption

This section focuses on the theories that have been advanced on corruption. The theoretical perspectives of corruption elucidate the graft syndrome and how it negatively affects the realisation of socio economic rights.

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<sup>120</sup> *Ibid* 5.

<sup>121</sup> See note 149.

<sup>122</sup> Dike "Corruption in Nigeria" 2003.

<sup>123</sup> Samuel "Detecting memory corruption" 2013.

<sup>124</sup> *Ibid*.

<sup>125</sup> *Ibid*.

<sup>126</sup> Chetwynd "Corruption and Poverty" A review of recent literature 2003.

<sup>127</sup> The International Journal of Multidisciplinary Approach Studies (India) November/December 2014 note that corruption is a factor which effects the development and is present since ages. It is a global problem. The meaning of corruption in present scenario is important, how it is prevailing in our country and what are the legal provisions to check this problem. The corruption effects the development which is a matter of concern; there is also a comparison of corruption prevailing in our country and the other countries.

<sup>128</sup> Many of the elite groups in the society play a critical role in constructing the problem of corruption for public discourse.

Theoretical perspectives on corruption in South Africa<sup>129</sup> will assist in understanding how corruption comes about and the general nature of this phenomenon. Understanding different theoretical perspectives illuminates viewpoints on the nature and meaning of corruption. Socio economic conditions, the political institutional infrastructure and cultural heritage influence the way corruption is understood, defined and possibly addressed.<sup>130</sup>

Perspectives advanced include the: “good cause perspective”.<sup>131</sup> This theory focuses on a range of social scientific approaches to the study of corruption and how it impedes the realisation of socio economic rights.<sup>132</sup> It postulates that focusing on the perceptions of corruption reveals the social construction of reality, where people are deprived of some of their socio economic rights.<sup>133</sup> Graaf suggests a strategy that stems from the realisation that most researchers pay little attention to the victims of corruption except in a general and superficial way.<sup>134</sup> In the case of Zimbabwe the majority of the citizens Zimbabwe have suffered from corruption but little attention has been given to them. The tools at hand, according to this theory, are for developing new and deeper theories of corruption. If the range of questioning extends beyond why and how corruption happens then these theories can be enhanced.

A meta-analysis of corruption is provided and it postulates that there are many conflicting theoretical perspectives and frameworks used in defining what corruption is.<sup>135</sup> Moreover there is no overarching theoretical framework to explain corruption and present research findings on the phenomenon into a coherent whole.<sup>136</sup> This meta-analysis theory was demonstrated when thousands of Christians marched on streets in Zimbabwe protesting against corruption in 2013. Leaders of the country’s three largest Christian bodies signed a letter urging churches to rise up against corruption during a day of action coinciding with the global Anti-Corruption Day

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<sup>129</sup> South Africa Department of Public Service 2002:3 provided for the numerous theoretical perspectives on corruption.

<sup>130</sup> *Ibid* 15.

<sup>131</sup> De Graaf et al *The Good Cause; theoretical perspectives on corruption* 2010

<sup>132</sup> *Ibid* 34.

<sup>133</sup> *Ibid* 51.

<sup>134</sup> *Ibid* 3.

<sup>135</sup> William “The antecedents and effects of national corruption” 2011 *Journal of world business* available at <http://0-linksource.ebsco.com.wam.seals.ac.za/FullText.aspx?> (accessed on 13 March 2015).

<sup>136</sup> *Ibid* 12.

(December 9<sup>th</sup>).<sup>137</sup> This theory further states that corruption itself is a socio economic phenomenon and only a meta-analysis review of this phenomenon can provide some answers and insights.<sup>138</sup> It postulates that corruption is an interdisciplinary phenomenon that requires a holistic perspective.<sup>139</sup>

By combining the game theory with the institutional perspective, Collier developed a model which he called an institutional choice perspective on corruption.<sup>140</sup> The model focuses on the internalised world of the agent who may or may not engage in corrupt behaviour as well as the externalised world surrounding the agent which serves to constrain or legitimise corrupt behaviour.<sup>141</sup> The author insightfully points out that corruption is not only an economic phenomenon but also a moral one.<sup>142</sup> Institutions such as ZRP (Zimbabwe Republic Police) and TIZ, are some of the most corrupt forces in Southern Africa.<sup>143</sup> The introduction of anti-corruption laws and a new Constitution which is seen to be part of the principles of the African renaissance have not brought the expected results. The power of the entrenched informal structures is such that these can resist the principles of the African renaissance, anti-corruption legislation and codes of conduct.<sup>144</sup> Since morality influences socio cultural norms of society, the socio economic institutions are also very important.<sup>145</sup>

Due to the fact that there is a general consensus that corruption needs to be exposed and reduced, there is need for understanding what behaviours can abate this phenomenon. The institutional choice theory notes that there has been an increase in the number of studies to determine what factors are causally related to corruption.<sup>146</sup>

The functionalist theory views corruption as ever present in a society but not always wanted.<sup>147</sup> This perspective believes that corruption has both negative and positive

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<sup>137</sup> Dr Shana Goodwill Chair of the Heads of Christian Denominations noted, "Here in Zimbabwe we have marched on our cities to show our anger at corruption". This shows that corruption is not only a problem in Harare but the whole country at large.

<sup>138</sup> *Ibid.*

<sup>139</sup> This is particularly true due to the fact that corruption is a social phenomenon that affects both political and economic spheres.

<sup>140</sup> Collier *Explaining corruption: An institutional choice* 2002 Crime, Law and Social change Volume 38.

<sup>141</sup> *Ibid* 23.

<sup>142</sup> *Ibid* 31.

<sup>143</sup> Transparency International Zimbabwe 2014.

<sup>144</sup> *Ibid.*

<sup>145</sup> The article concludes that ongoing international and nationalistic corruption programs will likely fail unless they include reforms to state internal structures and also political cultures.

<sup>146</sup> See South African Department of Public Service and Administration 2002:3.

<sup>147</sup> Andras "From corruption to extortion" 2003.

effects on the delivery of public service.<sup>148</sup> The perspective also highlights that corruption has a positive impact because it results in things being done in time though at the expense of socio economic rights.<sup>149</sup> However, it concludes by noting that the level of corrupt activities must be reduced.<sup>150</sup> Corruption is not manageable in Zimbabwe as it has become a way of life and an endemic feature of society.<sup>151</sup> Former Assistant Commissioner of the ZRP, Isaac Dziva, stated that reports that the country lost 2 billion dollars to corruption last year as illustrated by the Commissioner General of the Zimbabwe Revenue Authority (ZIMRA) are very disturbing.<sup>152</sup> In everyday life most people in Zimbabwe have accepted corruption as part of their culture.<sup>153</sup> From a business executive in Harare to a magistrate in Gweru, a traffic policeman along the Kambuzuma road, a commuter omnibus driver in Chitungwiza and a worker at the passport office, corruption has become endemic.<sup>154</sup>

The moralist normative perspective notes that corruption is inherently evil.<sup>155</sup> The approach is anchored on morality and humanity.<sup>156</sup> It postulates that any transaction between an official and the general public that disadvantages a third person will be deemed unacceptable.<sup>157</sup> For example, in Zimbabwe this happens when officials receive payments to facilitate a transaction in one's favour at the expense of another. The latter needs a service and this normally happens within the socio economic rights radar and as such socio economic rights are impeded.<sup>158</sup>

The public office legalist perspective postulates that legal institutions that are independent of the government, such as the anti-corruption agents or any legal institutions created by legislation, are required to combat corruption within state institutions.<sup>159</sup> The public interest institutionalist perspective views such institutions as being highly corrupt.<sup>160</sup> It derives its interest from the fact that all public enterprises are

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<sup>148</sup> *Ibid* 34.

<sup>149</sup> See also South African Department of Public Service and Administration 2002:3.

<sup>150</sup> *Ibid* 20.

<sup>151</sup> The Zimbabwean Situation July 2014.

<sup>152</sup> *Ibid* 4.

<sup>153</sup> *Ibid* 5.

<sup>154</sup> *Ibid* 5.

<sup>155</sup> Vishny "Corruption and its effects" 1993 *The Quarterly Journal of Economics in line with Morality* available at <http://0-www.jstor.org.wam.seals.ac.za> (accessed on 12 March 2015).

<sup>156</sup> *Ibid* 20.

<sup>157</sup> *Ibid* 23.

<sup>158</sup> *Ibid* 25.

<sup>159</sup> See South African Department of Public Service and Administration 2002:3.

<sup>160</sup> *Ibid* 3.

established for the people; thus what officials do should be a reflection of their characteristics.<sup>161</sup> It postulates that the veil of secrecy in the public service has to be removed.<sup>162</sup>

### **2.3 Forms and typologies of Corruption in Zimbabwe**

It should be noted that corruption is found in various types depending on its nature and kind. However, all the distinctions given to corruption have no value; no form of corruption is better or worse than another.<sup>163</sup> There are two main forms of corruption, namely, grand and petty corruption.<sup>164</sup> Grand corruption is a form of corruption that pervades the highest levels of national government leading to a broad erosion of confidence in good governance, the rule of law and economic stability.<sup>165</sup> It is the most dangerous and covert type of corruption. It is found where public officers in high positions in the process of making decisions of significant economic value routinely demand bribes in order to ensure that tenders are awarded to specific contractors.<sup>166</sup> On the other hand, petty corruption is a form of corruption practised on a smaller scale.<sup>167</sup> It usually involves relatively small amounts of money or speed payments.<sup>168</sup> The public servant abuses his/her position by accepting a benefit for what is a routine transaction or approval.<sup>169</sup>

Business corruption is often not regarded as a crime, but rather as a means to accelerate business processes.<sup>170</sup> Proponents claim that the end result is not affected but the mechanisms used to achieve the result are simply accelerated.<sup>171</sup> In essence, bureaucracy is bypassed and time is saved.<sup>172</sup> On the other hand, political corruption occurs predominantly in developing countries and this has seen most politicians being figured in political corruption.<sup>173</sup> It is usually associated with the electoral process and it includes nepotism, voting irregularities, false political promises, paying journalists for

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<sup>161</sup> *Ibid* 4.

<sup>162</sup> *Ibid* 5.

<sup>163</sup> Ravi "Corruption" 2014 McKinsey Quarterly.

<sup>164</sup> Frank "Grand corruption instead of commitment" 2013.

<sup>165</sup> *Ibid* 4.

<sup>166</sup> *Ibid* 5.

<sup>167</sup> David "Petty corruption in Central and Eastern Europe: the client's perspective" 2013.

<sup>168</sup> *Ibid*.

<sup>169</sup> *Ibid*.

<sup>170</sup> Hugo "Does corruption cause encumbered business regulations" 2013.

<sup>171</sup> *Ibid*.

<sup>172</sup> *Ibid*.

<sup>173</sup> Nubia "Political corruption as a form of state crime" 2015.

favourable coverage, influencing voters by the distribution of money and food, and also holding on to power against the will of the people.<sup>174</sup>

There is also organised or systemic corruption in which there is a clear idea of whom to bribe, how much should be offered and people are confident that they will receive favours in return.<sup>175</sup> Organised corruption is often perpetrated by criminal gangs and syndicates and includes white collar crime and identity theft.<sup>176</sup> On the other hand, chaotic corruption occurs in a disorganised system where there is no clarity regarding whom to bribe and how much payment should be offered.<sup>177</sup> There is no guarantee that further bribes will not have to be paid to other officials. Corruption in Zimbabwe it is postulated has become so endemic that individuals expect to pay a bribe for any aspect of delivery of everyday service.<sup>178</sup>

Bribery is another form of corruption and probably the most common.<sup>179</sup> Bribery is the bestowing of a benefit in order to unduly influence an action or decision.<sup>180</sup> It can be initiated by a person who offers and then pays bribes.<sup>181</sup> The benefit in bribery can virtually be any inducement, money and valuables, company shares, inside information, sexual or other favours, entertainment, employment or indeed the mere promise of incentives.<sup>182</sup> The benefit may be passed directly or indirectly to the person who bribed or a third party. The conduct for which the bribe is paid can be active.<sup>183</sup> Bribes can be paid individually on a case by case basis or as part of a continuing relationship in which officials receive regular benefits in exchange for regular favours.<sup>184</sup> In Zimbabwe bribes are paid to immigration and customs officers to pass goods through immigration ports of entry without paying any tax.<sup>185</sup>

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<sup>174</sup> *Ibid.*

<sup>175</sup> Anna et al "Why Anti-corruption reforms fail: Systemic corruption as a collective action problem" 2013.

<sup>176</sup> *Ibid.*

<sup>177</sup> Levendis "Corporate corruption and chaos: A formal recursive model" 2009 International Journal of Business and Management Science.

<sup>178</sup> Wafawarova "Corruption in Zimbabwe" 2011.

<sup>179</sup> Bayley "The effects of corruption in a developing nation" 2012 The Western Political Quarterly.

<sup>180</sup> *Ibid* 2.

<sup>181</sup> *Ibid* 3.

<sup>182</sup> Ades "Rents, Competition and Corruption" 2011 American Economic Review.

<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid.*

<sup>185</sup> TIZ 2011.

Institutional corruption pervades particular institutions or sectors of activity.<sup>186</sup> For example, certain line ministries may be riddled with corrupt officials whereas in others the practice is much less pervasive reflecting differential opportunities and controls.<sup>187</sup> It should be noted that corruption may also feature in sectors where it is easier for public officials to extract rent due to weaknesses in the prevailing system of controls and regulations.<sup>188</sup> It involves larger numbers of public officials and an element of organisation and conspiracy.<sup>189</sup> This kind of corruption is typically found in government departments or parastatals such as procurement agencies and marketing boards. The intensity of such corruption varies from *ad hoc* incidents to situations where corruption becomes intrinsic to the way power is exercised.<sup>190</sup> The post office is said to pocket one and half million dollars a month on average but they only remit eight hundred thousand dollars while traffic officers collect 2 million dollars a month from roadblocks with only less than a million remitted to the Treasury.<sup>191</sup>

There is also incidental corruption which is confined to instances of malfeasance on the part of individual politicians or public officials and is episodic rather than systemic.<sup>192</sup> It is small scale corruption and usually involves isolated individuals or small numbers of individuals.<sup>193</sup> Furthermore, there is corruption in the form of favouritism, nepotism and clientelism which involves abuse of discretion.<sup>194</sup> Such abuses, however, are governed not by the self-interest of an official but by the interests of someone linked to him through membership to a family, political party, tribe, religious or other group.<sup>195</sup> If an individual bribes an official to hire him the official acts in self-interest.<sup>196</sup> If a corrupt official hires a relative, he acts in exchange for the less tangible benefit of advancing the interests of the family or the specific relatives involved (nepotism).<sup>197</sup> Nepotism is very popular in Zimbabwe and it has become clear

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<sup>186</sup> Lessig "Institutional Corruption" 2012 available at <http://www.cityethics.org/content/institutional-corruption-conference-ii-definition-and-diagnosis> (accessed on 30 March 2015).

<sup>187</sup> *Ibid.*

<sup>188</sup> Fukushima "Corruption overview" 2013.

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

<sup>191</sup> This was highlighted by former Minister of Finance Mr Tendai Biti Bulawayo 24, 2011.

<sup>192</sup> Newhouse "Incidental corruption" 2013.

<sup>193</sup> *Ibid.*

<sup>194</sup> Nadler and Schulman "Favoritism, Cryonyism and Nepotism" 2014.

<sup>195</sup> *Ibid* 4.

<sup>196</sup> *Ibid* 6.

<sup>197</sup> *Ibid* 8.

that, if one has a relative with a top post in government, then he is likely to win many tenders.<sup>198</sup> The favouring of, or discriminating against individuals can be based on a wide spectrum of group characteristics ranging from ethnicity, religion, geographical factors, political or other affiliation as well as personal or organisational relationships such as friendship or membership of clubs or associations.<sup>199</sup>

In the context of corruption, embezzlement, theft and fraud all involve the taking or conversion of money, property or valuable items by individuals who are not entitled to them.<sup>200</sup> However, by virtue of their positions or employment, those involved have access to them and, in the case of embezzlement and theft, the property is taken by someone to whom it was entrusted.<sup>201</sup> On the other hand, fraud consists of the use of false or misleading information to induce the owner of the property to relinquish it voluntarily.<sup>202</sup>

In Zimbabwe, corruption can involve the abuse of discretion vested in an individual for personal gain.<sup>203</sup> An official responsible for government contracting may exercise the discretion to purchase goods or services from a company in which he or she holds a personal interest.<sup>204</sup> Such abuse is often associated with bureaucracies where there is broad individual discretion and few oversight or accountability structures.<sup>205</sup> On the other hand, extortion as a form of corruption relies on coercion to induce cooperation.<sup>206</sup> As with other forms of corruption, the victim can be the public or individuals adversely affected by a corrupt act or decision and this has led many people in Zimbabwe to be victims of corruption.<sup>207</sup> In extortion cases, however, a further victim is created, namely, the person who is coerced into cooperation.<sup>208</sup> Whilst government officials or insiders can commit extortion, they can also be victims of it.<sup>209</sup>

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<sup>198</sup> Shana "Corruption and Tenders in Zimbabwe" *A new era* 2012.

<sup>199</sup> Nadgrodkiewicz "The other corruption: Nepotism, Cronyism and Clientelism" 2012.

<sup>200</sup> World Bank Live "Fraud and Corruption" 2015 available at <http://live.worldbank.org/fraud-and-corruption> (accessed on 30 March 2015).

<sup>201</sup> *Ibid* 5.

<sup>202</sup> *Ibid* 8.

<sup>203</sup> Beddow "Abuse of discretion" 2014.

<sup>204</sup> *Ibid* 7.

<sup>205</sup> *Ibid* 9.

<sup>206</sup> Hindricks "Extortion" 2000 *Journal of Public Economics*.

<sup>207</sup> *Ibid* 8.

<sup>208</sup> *Ibid* 11.

<sup>209</sup> *Ibid* 15.

Political corruption results in gaining political power and it occurs when the behaviour deviates from the principles that guide any policing decisions with abuse of power.<sup>210</sup> This then means that the private interests displace the public and common interest.<sup>211</sup> In this case, power is used to service the private interest. On the other hand, economic corruption can be defined as the sacrifice of the principal's interest for the agent's interest.<sup>212</sup> It results in making profits but has implications of determining the loss of income, for the principal, agent, state, consumer and the economy.<sup>213</sup>

Administrative corruption refers to the implementation of existing laws, regulations and decrees.<sup>214</sup> It contributes profoundly to the enduring malaise of societies, states and firms alike. Administrative corruption spreads if corrupt officials have to pay an entry fee and have to resort to other citizens to finance the entry fee, allowing additional groups of voters to have a state in corruption.<sup>215</sup> The Harare City Council has been involved in such kind of corruption with USD 5 million which was paid by residents of Budiro suburb over two years going missing due to corrupt elements in the City Council.<sup>216</sup>

A new type of corruption known as the "uninstitutionalised political influence" was directly generated from the rise of new groups of wealth and power during the turn of the millennium.<sup>217</sup> These groups' efforts are to make themselves effective in politics in a political system that is slow to provide legitimate channels.<sup>218</sup> This theory on corruption is derived from the hypothesis that the more rapidly a country modernises, the higher the level of corruption.<sup>219</sup> The process of modernisation in countries contributes to generating high levels of corruption. This is through the expansion of government activities, the rise of a new rich social class seeking political influence and changes.<sup>220</sup> However, this cannot apply to Zimbabwe.

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<sup>210</sup> Cost "Why Political corruption matters" 2015.

<sup>211</sup> *Ibid* 8.

<sup>212</sup> Hernandez "The Multiple Faces of Corruption: Typology forms and levels" 2012.

<sup>213</sup> *Ibid* 32.

<sup>214</sup> *Ibid* 35

<sup>215</sup> *Ibid* 46.

<sup>216</sup> Chiminya "Administrative Corruption in Harare City Council" *Pande* 2013

<sup>217</sup> Tella "Political corruption" 2013 American Law Review.

<sup>218</sup> *Ibid* 67

<sup>219</sup> *Ibid* 87

<sup>220</sup> *Ibid* 91.

Heidenheimer classifies corruption as white, grey and black.<sup>221</sup> According to the author, white corruption is corrupt behaviour that is coded tolerantly.<sup>222</sup> This is typically the case in a traditional family based system as well as in patron client based system.<sup>223</sup> On the other hand, grey corruption is regarded with some opprobrium.<sup>224</sup> It is corruption that is reprehensible in public moral standards but the affected persons widely miss a consciousness of doing wrong.<sup>225</sup> This is typical for modern constitutional states Zimbabwe included and those in transition towards democratic political structure.<sup>226</sup> Black corruption is generally regarded as severe violation of community moral and legal norms. This is characteristic of modern democratic media societies. It should be noted that corruption in societies is inevitable, being a part of informal politics and this is the justification that has been used in Zimbabwe.<sup>227</sup>

According to legal and moral aspects of corruption, corruption is where the law is clearly broken.<sup>228</sup> This requires that all laws must be precisely stated, leaving no doubts about their meaning and no discretion to the public officials.<sup>229</sup> A legal interpretation of corruption provides a clearly demarcated boundary between what is a corrupt activity and what is not.<sup>230</sup> If an official's act is prohibited by laws established by the government, it is corrupt; if it is not prohibited, it is not corrupt even if it is abusive or unethical.<sup>231</sup> However, the problem with this approach in Zimbabwe is that the Constitution is still new and the general population does not even know about the Constitution, let alone to talk about their rights.

Legislating on behaviour warrants focus upon the legality of an action and not the morality of that same action.<sup>232</sup> Morality is increasingly being legislated for in the absence or loss of faith in self-regulated behaviour.<sup>233</sup> Although an act is committed within legal parameters, it may lie outside moral boundaries.<sup>234</sup> A corrupt act can be

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<sup>221</sup> Heidenheimer "Perspectives on the Perception of corruption" 2013.

<sup>222</sup> *Ibid* 5.

<sup>223</sup> *Ibid* 6.

<sup>224</sup> *Ibid* 13.

<sup>225</sup> *Ibid*.

<sup>226</sup> *ibid* 134.

<sup>227</sup> *Ibid* 145.

<sup>228</sup> Byrne "The Moral and Legal development of corruption" 2007.

<sup>229</sup> *Ibid* 56.

<sup>230</sup> Gardiner "Defining corruption" 1993.

<sup>231</sup> *Ibid* 13.

<sup>232</sup> Kaufmann "Corruption, Governance and Security" 2006.

<sup>233</sup> *Ibid* 13.

<sup>234</sup> *Ibid* 15.

camouflaged by lawful justification.<sup>235</sup> For example, undue emphasis on narrow legalism has obscured more subtle yet costly manifestations of bad governance where legal corruption may be more prevalent than illegal forms.<sup>236</sup> From this perspective, corruption encompasses undue influence over public policies, institutions, laws and regulations by vested private interests at the expense of the public interest.<sup>237</sup> Cultural, rather than legal change, may be necessary to impede corrupt behaviour.<sup>238</sup> Non-corrupt actions may be within the letter of the law but do not account for the spirit of the law.<sup>239</sup> The legal approach diminishes the role of moral discretion and is constrained by clearly defined edicts.<sup>240</sup>

Police corruption is a specific form of police misconduct designed to obtain financial benefits, other personal gain and or career advancement for a police officer or officers in exchange for not pursuing, or selectively pursuing, an investigation or arrest.<sup>241</sup> One common form of police corruption is soliciting and or accepting bribes in exchange for not reporting organised drug or prostitution rings or other illegal activities.<sup>242</sup> Another example is police officers flouting the police code of conduct in order to secure conviction of suspects, for example, through the use of falsified evidence.<sup>243</sup> More rarely, police officers may deliberately and systematically participate in organised crime themselves and in Zimbabwe, the ZRP officers fleece the public by taking bribes for committing minor traffic offences.<sup>244</sup> In major cities, there are internal affairs sections to investigate suspected police corruption practices or misconduct.<sup>245</sup>

Judicial corruption refers to corruption related misconduct of judicial officers, through receiving or giving bribes, improper sentencing of convicted criminals, bias in the hearing and judgment of arguments and other misconduct.<sup>246</sup> Government corruption of the judiciary is broadly known in many transitional and developing countries

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<sup>235</sup> *Ibid* 17.

<sup>236</sup> *Ibid* 19.

<sup>237</sup> *Ibid* 21.

<sup>238</sup> *Ibid* 24.

<sup>239</sup> *Ibid* 28.

<sup>240</sup> *Ibid* 31.

<sup>241</sup> Bayley "Police corruption" 2001.

<sup>242</sup> *Ibid* 23.

<sup>243</sup> Perito "Police corruption" 2001.

<sup>244</sup> *Ibid* 24.

<sup>245</sup> *Ibid* 31.

<sup>246</sup> According to Windsor "How to fight corruption" 2011, judges are corrupt and they protect each other. Attorneys are even afraid to represent in the fight against judicial corruption because of fear or retribution from the judges. He noted that if you fight corruption judges will hurt you every chance they get.

because the budget is almost completely controlled by the executive.<sup>247</sup> The latter undermines the separation of powers principle as it creates a critical financial dependence of the judiciary.<sup>248</sup> The proper national wealth distribution inducing the government spending on the judiciary is subject to constitutional economics.<sup>249</sup> According to Tizor, the judiciary in Zimbabwe has lost both its independence and ability to dispense justice impartially and give deserving sentences to those individuals involved in corrupt practices particularly the ruling elite and the wealthy.<sup>250</sup> When the judiciary is part of the corrupt system, those with means to pay bribes operate with impunity and are confident that a well-placed pay off will deal with any legal problem.<sup>251</sup>

Another form of corruption is patronage.<sup>252</sup> Patronage refers to favouring supporters, for example, with government employment.<sup>253</sup> This may be legitimate as when a newly elected government changes the top officials in the administration in order to effectively implement its policy.<sup>254</sup> It can be seen as corruption if this means that incompetent persons, as a payment for supporting the regime, are selected before those that are more competent.<sup>255</sup> In tyrannical rule many government officials are often selected for loyalty rather than ability.<sup>256</sup> This may be almost exclusively selected from a particular group that support the regime in return for such favours. One glaring example is of Aeneas Chigwedere who was just an education officer but went on to become Minister of education due to party loyalty.<sup>257</sup>

A corrupt coalition occurs among seemingly antagonistic groups for *ad hoc* or hidden gain, generally some influential non-governmental group forming ties with political parties, supplying funding in exchange for the favourable treatment.<sup>258</sup> A kickback is an official's share of misappropriated funds allocated from his or her organisation involved in corrupt bidding.<sup>259</sup> For example, a politician is in charge of choosing how

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<sup>247</sup> *Ibid* 23.

<sup>248</sup> *Ibid* 34.

<sup>249</sup> *Ibid* 41.

<sup>250</sup> Tizor "Corruption in Zimbabwe" 2011.

<sup>251</sup> *Ibid* 24.

<sup>252</sup> Jefferson "Patronage as a form of Corruption" 2009.

<sup>253</sup> *Ibid* 13.

<sup>254</sup> *Ibid* 15.

<sup>255</sup> *Ibid* 17.

<sup>256</sup> *Ibid* 19.

<sup>257</sup> TIZ 2010.

<sup>258</sup> Brunneti "Corruption" 2011.

<sup>259</sup> Wedder "Corruption in the wider sense: A thorough analysis" 2014.

to spend some public funds, can give a contract to a company that is not the best bidder or allocate more than such a company deserves.<sup>260</sup> In this case, the company benefits in exchange for betraying the public, the official receives a kick back payment, which is a portion of the sum the company received.<sup>261</sup> This sum itself may be all or a portion of the difference between the actual (inflated) payment to the company and the (lower) market based price that would have been paid had the bidding been competitive.<sup>262</sup>

Another example of a kick back would be if a judge receives a portion of the profits that a business makes in exchange for his judicial decisions. Kickbacks are not limited to government officials; in any situation in which people are entrusted to spend funds that do not belong to them are susceptible to this kind of corruption.<sup>263</sup> While the Zimbabwean economy is in the doldrums corruption has become an accepted and almost expected way of doing business especially in the public sector. In many instances if civil servants go to work today, it is not because of the salary but the opportunities to enhance their paltry income with corrupt acts using the state's resources.<sup>264</sup>

## **2.4 Conclusion**

From the above discussion, it is important to highlight that corruption does not have a single definition. Many definitions have been propounded and they all have different concepts and ideas in line with corruption. It is upon this background that a comprehensive definition for the study has been chosen. There are theoretical perspectives which try to illustrate more about the definitions of corruption. Sometimes they bring clarity on how corruption is defined and they also bring confusion. These theories can only assist and guide but they should not be the ultimate source of how corruption is defined. Different classifications of corruption and types of corruption have been discussed so that it is clear how corruption is divergent.

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<sup>260</sup> *Ibid* 15.

<sup>261</sup> *Ibid* 17.

<sup>262</sup> *Ibid* 18.

<sup>263</sup> *Ibid* 20.

<sup>264</sup> Tizor "Corrupt tendencies" 2009.

## CHAPTER THREE

### SOCIO ECONOMIC RIGHTS IN ZIMBABWE

#### 3.1 Socio Economic Rights Protected Under the Constitution of Zimbabwe

This chapter examines the socio economic rights that are protected under the Zimbabwean Constitution of 2013 which came into force on 22 May 2013.<sup>265</sup> It will then seek to demonstrate how such rights are impacted by the graft syndrome. Chapter 3 of the Constitution provides a number socio economic rights which include the right to education; access to healthcare; food and safe and clean water; right to a healthy environment; among other rights that are protected.<sup>266</sup> This chapter it should be noted focuses on the right to education and the right to food.<sup>267</sup>

Corruption creates a vicious circle that undermines respect for law and the effective functioning of democratic institutions.<sup>268</sup> As a consequence, civil, political, socio economic and cultural rights of the people are violated.<sup>269</sup> A society free of corruption is essential for good governance, development and realisation of socio economic rights.<sup>270</sup>

It should be noted that prior to the 2013 Constitution, there was the Lancaster House Constitution (LHC).<sup>271</sup> The LHC did not include socio economic rights since it focused mainly on restoring black majority rule. It made strong commitment to civil liberties and political rights thereby neglecting socio economic rights.<sup>272</sup> These socio economic rights are judicially enforced rights. Like the South African Constitution of 1996, the 2013 Constitution of Zimbabwe creates various mechanisms for holding state organs and non-state actors accountable for any infringement of socio economic rights.<sup>273</sup>

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<sup>265</sup> See Constitution of the Republic of Zimbabwe 2013.

<sup>266</sup> Chapter 3 of the Constitution of the Republic of Zimbabwe of 2013.

<sup>267</sup> See Article 5 of the Vienna Declaration and Programme of Action (1993) adopted by the World Conference on Human Rights in Vienna.

<sup>268</sup> Carrier "Corruption is costly" 2013.

<sup>269</sup> *Ibid* 29.

<sup>270</sup> *Ibid* 35.

<sup>271</sup> Lancaster House Constitution, 1979 (LHC).

<sup>272</sup> The LHC lacked an explicit framework for protecting and enforcing socio economic rights as justiciable rights, an anomaly corrected by the 2013 Constitution firstly by protecting these rights as judicially enforceable rights and protecting them in the Constitution.

<sup>273</sup> Constitution of the Republic of South Africa 1996.

This chapter will focus on how some of these socio economic rights are impacted by corruption.

### 3.2 The nature of Obligations imposed by Socio Economic Rights

The effective protection and guarantee of human rights recognises that socio economic rights impose a combination of negative and positive duties. Recent developments in human rights law have established that all human rights impose at least four levels of duties on the state.<sup>274</sup> These obligations include the obligation to respect, protect, promote and fulfil.<sup>275</sup> In the case of *Social and Economic Rights Action Centre (SERAC) and another v Nigeria (SERAC case)*<sup>276</sup>, the African Commission on Human and Peoples Rights held that,

*Obligations to respect, protect, promote and fulfil act as an analytical tool for assessing state compliance with human rights obligations under the African Charter on Human and Peoples' Rights.*

This illustrates a set of duties imposed on the state by the obligation to respect, protect, promote and fulfil, and this typology helps to understand the specific state action required for the implementation of a particular right. Additionally, using this typology has greatly assisted in identifying, deconstructing and redressing violations of rights, especially socio-economic rights.<sup>277</sup>

Section 44 of the Constitution enjoins the state and every person, including juristic persons and every institution and agency of the government at every level, to respect, protect, promote and fulfil the rights and freedoms set out in the Bill of Rights.<sup>278</sup> The importance of these obligations in the 2013 Constitution is that they create a framework for analysing and clarifying the nature and scope of state obligations imposed by human rights norms. These duties act as an important analytical tool in elaborating the demands that socio-economic rights impose on the government.

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<sup>274</sup> *Ibid* note 3.

<sup>275</sup> *Ibid*.

<sup>276</sup> 2001 AHRLR 60 (ACHPR 2001).

<sup>277</sup> *Ibid*.

<sup>278</sup> 2013 Constitution.

### 3.3 The Obligation to Respect

The obligation to respect requires that the state refrains from any act that violates economic, social, and cultural rights. States should recognise and uphold the economic, social and cultural rights of all the individuals who live under their jurisdiction (both nationals and non-nationals).<sup>279</sup> Special attention should be shown to the right of groups that have been traditionally discriminated, such as the rights of women and minorities. States should incorporate into national legislation rights that are recognised by the international community and as set forth in international treaties and conventions.<sup>280</sup> Separate from the notion of progressive realisation, this implies an immediate prohibition upon states from engaging in activities that deprive people of their rights.<sup>281</sup> Section 44 notes that the state and every person, including juristic persons and every institution and agency of the government at every level must respect, protect, promote and fulfil the rights and freedoms of the people.<sup>282</sup>

### 3.4 The Obligation to Protect

The obligation to protect enjoins the states to take measures that prevent non-state actors (third parties), such as individuals, groups, co-operations and other entities from interfering with individuals or groups in the enjoyment of socio-economic rights.<sup>283</sup> The obligation to protect entails the creation and maintenance of an environment by an effective interplay of laws, regulations and other measures so that individuals and groups may realise their rights and freedoms. It is provided that the obligation to protect requires more than the passage of legislation. It thus entails a regulatory system which includes inspection, prosecution and other monitoring mechanisms to restrain individuals, corporations and other entities from interfering with the enjoyment of socio-economic rights.<sup>284</sup> The duty to protect is particularly relevant where the state cannot fully provide all the social goods and services to those within its territory.<sup>285</sup> This is because the states should, and must regulate private interactions to ensure that individuals are not arbitrarily deprived of the enjoyment of their socio-economic

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<sup>279</sup> UN Human Rights Office of the High Commissioner for Human Rights 2015.

<sup>280</sup> *Ibid.*

<sup>281</sup> *Ibid.*

<sup>282</sup> *Ibid.*

<sup>283</sup> *Ibid.*

<sup>284</sup> Currie and de Waal *The Bill of Rights a handbook* (2005).

<sup>285</sup> *Ibid* 23.

rights by other private individuals or groups.<sup>286</sup> Accordingly, the obligation to protect mandates the state to establish effective regulatory and control mechanisms, which include independent monitoring, genuine public participation and the provision of legal remedies for non-compliance.<sup>287</sup>

### **3.5 The Obligation to Fulfil**

The obligation to fulfil requires states parties to take appropriate legislative, administrative, budgetary, judicial and other actions towards the full realisation of socio economic rights.<sup>288</sup> It means that states must take positive action to facilitate the enjoyment of basic human rights.<sup>289</sup> In the same accord as other obligations, the obligation to fulfil is enshrined in section 44 of the Constitution. In terms of this obligation, Zimbabwe is required by the Constitution to adopt appropriate and reasonable legislative, administrative, judicial and other measures towards the full realisation of socio-economic rights. The obligation to fulfil is the most difficult duty to implement.<sup>290</sup> This is because it is often difficult to articulate a clear violation of the duty to fulfil as it involves the courts evaluating the adequacy of government policies and programmes.<sup>291</sup> Such a task may involve highly technical issues that are beyond the expertise of the courts. Nevertheless, the obligation to fulfil is important to the realisation of socio-economic rights in the Constitution.

### **3.6 The Obligation to Promote**

Under international human rights law, the state not only has the obligation to avoid, prevent and remedy human rights abuses, it must also do its utmost to advance awareness of human rights.<sup>292</sup> Socio economic rights education is an integral part of the duties of human rights themselves. States bear the burden of promoting a culture of human rights and challenging beliefs that run counter to human rights through education, public awareness and other means, as well as ensuring the broadest access to knowledge and information about human rights standards and principles.<sup>293</sup>

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<sup>286</sup> *Ibid* 41.

<sup>287</sup> *Ibid* 17.

<sup>288</sup> Office of the High Commissioner.

<sup>289</sup> *Ibid*.

<sup>290</sup> Liebenberg *Socio Economic Rights under a Transformative Constitution* (2010).

<sup>291</sup> *Ibid*.

<sup>292</sup> *Ibid* 27.

<sup>293</sup> *Ibid* 31.

States should ensure that all people have access to basic information regarding their rights. Such information should be readily available and accessible in libraries, schools, government offices, and other public institutions.<sup>294</sup> Furthermore states should actively engage in programs to raise awareness about women's rights to property, land and fair employment. Member states should include awareness of economic, social and cultural rights in educational curricula.<sup>295</sup> The African Charter of Human and Peoples' Rights articulates this duty very clearly in Article 25 which provides:

*State Parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.*<sup>296</sup>

This is a very important provision for states parties.

In conclusion international human rights law lays down obligations which states are bound to respect.<sup>297</sup> By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights.<sup>298</sup> The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights.<sup>299</sup> The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

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<sup>294</sup> *Ibid* 31.

<sup>295</sup> *Ibid* 35.

<sup>296</sup> African Charter on Human and Peoples' Rights of 1986.

<sup>297</sup> *Ibid* 26.

<sup>298</sup> *Ibid*.

<sup>299</sup> *Ibid*.

## **3.7 Socio Economic Rights Protected by the Constitution of 2013 with reference to the right to the right to education and the right to food**

### **3.7.1 The nature and scope of the right to education**

The right to education in the Constitution of 2013 entails that every citizen and permanent resident of Zimbabwe has a right to a basic state funded education.<sup>300</sup> This includes adult basic education and further education which the state, through reasonable, legislative and other measures, must make progressively available and accessible to all.<sup>301</sup> Furthermore, every person has the right to establish and maintain at their own expense independent educational institutions of reasonable standards, provided they do not discriminate on any ground prohibited by the Constitution.<sup>302</sup> The state must take reasonable legislative and other measures within the limits of the resources available to it, to achieve the progressive realisation of the right.

Given the resource constraints the fulfilment of socio economic rights, and the provision of the right to education in this regard can only be achieved over time. Progressive realisation does not mean that governments do not have obligations in terms of these rights until a certain level of economic development is reached but rather there will be continual progress towards the attainment of these rights.<sup>303</sup> States should take deliberate steps immediately and in future toward the full realisation of the right to education. Governments, irrespective of the level at their disposal, must take immediate steps within their means towards the fulfilment of socio economic rights.

According to General Comment 13 of the Committee on ESCR, education is both a human right in itself and an indispensable means of realising other human rights. As an empowerment tool, education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.<sup>304</sup> Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognised

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<sup>300</sup> Section 75 of the 2013 Constitution.

<sup>301</sup> *Ibid.*

<sup>302</sup> *Ibid.*

<sup>303</sup> *ibid* 32.

<sup>304</sup> See CESCR *General Comment* 13

as one of the best financial investments states can make. The importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence as is a well-educated citizenry.<sup>305</sup>

### **3.7.2 The nature and scope of the right to food**

Every person has the right to sufficient food and the state must take reasonable legislative and other measures within the limits of the resources available to it, to achieve the progressive realisation of the right.<sup>306</sup> The human right to adequate food is recognised in several instruments under international law. The CESCR deals more comprehensively, than any other instrument with the provision of this right and Zimbabwe is a state party. Pursuant to Article 11 (1) of the Covenant, States parties recognise "the right of everyone to an adequate standard of living for himself/herself and his/her family, including adequate food, clothing and housing, and to the continuous improvement of living conditions", while pursuant to Article 11(2) (CESCR General Comment No 12) recognise that more immediate and urgent steps may be needed to ensure "the fundamental right to freedom from hunger and malnutrition". The human right to adequate food is of crucial importance for the enjoyment of all rights. It applies to everyone thus the reference in Article 11(1) to "himself and his family" does not imply any limitation upon the applicability of this right to individuals or to female-headed households.<sup>307</sup>

The right to adequate food is realised when every man, woman and child, alone or in community with others, has physical and economic access, at all times, to adequate food or means for its procurement.<sup>308</sup> The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients as alluded by paragraph 8. The right to adequate food will have to be realised progressively. However, states have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of Article 11, even in times of natural or other disasters.

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<sup>305</sup> See CESCR *ibid* 13 para 4

<sup>306</sup> Section 77 of the 2013 Constitution.

<sup>307</sup> ICESCR Article 11.

<sup>308</sup> *Ibid*.

## 3.8 How Corruption negatively affects the right to education and the right to food in Zimbabwe

### 3.8.1 The right to education

Corruption is Zimbabwe's biggest enemy.<sup>309</sup> Zimbabwe has collapsed because of unprecedented corruption that is prevalent in all facets of society leading to violation of the enjoyment of socio economic rights in particular with reference to the right to education and the right to food.<sup>310</sup> The euphoria of independence has gone and Zimbabwe has entered a gloomy era where poverty, diseases have ransacked Zimbabweans. Due to unprecedented corruption all the visions that were espoused at independence have all become pipedreams and nightmares.<sup>311</sup> Former Judge Smith categorically stated that parastatals were posting losses year in year out because of endemic corruption which impedes the enjoyment of socio economic rights.<sup>312</sup>

Corruption has been rampant in the education sector where gross nepotism has been used by education officials to exclude deserving orphans.<sup>313</sup> These orphans have been excluded from benefiting from the Basic Assistance Module<sup>314</sup> hence violating their right to education. TIZ reports that 62% of Zimbabweans have paid a bribe to the education system.<sup>315</sup> Textbooks meant for deserving school children have been misdirected and sold somewhere else meaning education is no longer accessible to these children.<sup>316</sup>

For many years Zimbabwe was lauded for its rapid post-independence achievement of universal primary education.<sup>317</sup> By 2000 Zimbabwe was one among five Sub Saharan countries to have achieved universal primary education.<sup>318</sup> Consequently many researchers looked to Zimbabwe for lessons about how to improve education in

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<sup>309</sup> Munakiri "Corruption in Zimbabwe" *Making the connection* 2012.

<sup>310</sup> *Ibid* 23.

<sup>311</sup> *Ibid* 31.

<sup>312</sup> Mawere "Immoral Business Practices by Zimbabwean Government and Parastatals" 2012.

<sup>313</sup> TIZ 2011.

<sup>314</sup> Established in 2001 as a key component of the Enhanced Social Protection Programme (ESSP), the Basic Education Assistance Module (BEAM) is based on a policy and legal framework that is designed to provide quality education to students, including specific policies aimed at supporting orphans and vulnerable children.

<sup>315</sup> *Ibid* 313.

<sup>316</sup> Chikeya "Corruption in Zimbabwe" (2013) *Longman Press* Zimbabwe.

<sup>317</sup> Zimbabwe Human Rights Lawyers annual report 2013 <http://www.zimhumanrightslawyers.ac.za>

<sup>318</sup> *Ibid*.

other African countries.<sup>319</sup> However by the turn of the millennium due to systemic corruption the right to education has been negatively affected. Money for infrastructure to build schools such as Zaka primary school has been lost due to corruption and universal primary education is now a herculean task.<sup>320</sup> Students continue to use outdated textbooks since the money apportioned for such a purpose has been lost to systemic corruption which negatively impacts against the right to education.<sup>321</sup>

Corruption in the country has devastated the education sector. Raymond Majongwe, secretary general of the Progressive Teachers Union of Zimbabwe (PTUZ) compared the current state of education in Zimbabwe to that of “a war torn country”.<sup>322</sup> It is difficult to imagine the meltdown in the education sector happening in a country that is at peace. The secretary general attributed this to the rampant corruption that is going on in the education sector which impedes the right.<sup>323</sup> Scholarships that used to be given to students are vanishing since that money is being lost to corruption and this is at the expense of the students.<sup>324</sup> This makes education inaccessible, poor and unacceptable.

Drastically reduced public financing and corruption has led to the deterioration of school infrastructure and many schools lack basic educational necessities such as books, desks, chalks, pens, water and power.<sup>325</sup> School fees have increased so dramatically that education is unaffordable. Groups that have been and continue to be disadvantaged in education including girls, the mentally or physically handicapped, and cultural or linguistic minorities have the right to education impeded.<sup>326</sup> The few resources financed by government are lost to rampant corruption and this then means that the enjoyment of the right to education is limited.

Most high density suburb schools teachers have hindered the enjoyment of the right to education.<sup>327</sup> This is due to the fact that teachers are paid for extra lessons which

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<sup>319</sup> *Ibid.*

<sup>320</sup> Zimbabwe “Human Rights in Crisis Shadow Report to the African Commission on Human and Peoples’ Rights” (2007).

<sup>321</sup> *Ibid.*

<sup>322</sup> *Ibid* 318.

<sup>323</sup> *Ibid.*

<sup>324</sup> *Ibid.*

<sup>325</sup> Tizor “Corrupt tendencies” (2009) Longman Press.

<sup>326</sup> Shangwa “The Zimbabwean Times” Almaga (2012) Longman Press Zimbabwe.

<sup>327</sup> *Ibid.*

they do not even attend. Such corruption is the one defined by Dike as the violation of established rules for self-gain and as an effort to secure wealth or power through illegitimate means at the expense of the public.<sup>328</sup> Such behaviour by teachers limits the right to education.

The recruitment of teachers has also been marred by corruption forces. The teachers are being recruited on the basis of nepotism and not on merit.<sup>329</sup> This has led to education of poor quality as some teachers who are being recruited do not even hold a diploma in education not to talk of a degree. The Zimbabwean dream of putting the country as the face of education in Africa has been lost due to rampant nepotism in the education sector.

### **3.8.2 The right to food**

Presenting the 2014 National Budget in December 2013 amid food shortages and hunger the Minister of Finance and Economist Mr Patrick Chinamasa, noted that Zimbabwe faced severe socio economic challenges which he partly attributed to lack of transparency.<sup>330</sup> According to figures released during the presentation, Zimbabwe's external debt obligations at the end of 2013 were estimated to be USD 10.6 billion.<sup>331</sup> This is over 80 % of the country's gross domestic product.<sup>332</sup> The government failed to achieve greater transparency in diamond production and revenue collection. This has affected its ability to invest in desperately needed public services, including essential services such education and food.

Almost every corruption scandal in Zimbabwe involves a major politician and these politicians try to cover up every time they are involved in corrupt tendencies.<sup>333</sup> No politician associated with any of the major corruption scandals has been prosecuted.<sup>334</sup> In most extreme cases, it is the weak small "fish" that get slapped.<sup>335</sup> In the Paweni scandal, the then Minister Kumbirai Kangai, who authorised payment of fake invoices was never sanctioned while Paweni was jailed. Kangai remained a

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<sup>328</sup> Dike "Corruption in Nigeria" 2003.

<sup>329</sup> *Ibid.*

<sup>330</sup> News Day Zimbabwe 2014.

<sup>331</sup> *Ibid.*

<sup>332</sup> *Ibid.*

<sup>333</sup> Shangwa "The Zimbabwean Times" *Almaga* 2012.

<sup>334</sup> *Ibid.*

<sup>335</sup> *Ibid* 86.

cabinet minister for decades after the scandal and went on to preside over the Ministry of Agriculture years later.<sup>336</sup> The fake invoices impeded the rights of people to get their maize on time which adversely affected their right to food. It is this non prosecution that encourages top officials in government to continue with corruption even at the expense of the rights of people.

Survivors of the Tokwe Mukosi floods were provided food by well-wishers but it never reached them.<sup>337</sup> Thousands of Zimbabweans flood victims were displaced after torrential rains caused partial collapse of the Tokwe Mukosi dam in Masvingo. Families were provided with 150 000 tons of grains amid shortages of food but through rampant corruption only 20 000 tons of grains reached Masvingo.<sup>338</sup> Due to an outbreak of diseases some drugs were provided but they never reached the area.<sup>339</sup> This shows that in Zimbabwe corruption has become endemic and no one is immune from falling prey to this evil practice. It has become the order of society and it is especially fuelled by the current scarcities in fuel and basic commodities. In an environment where nothing is readily available, that becomes a groundswell for corruption. However this is at the expense of socio economic rights of people and in this case the right to food and healthcare.

In 2014, the government of Zimbabwe sought to distribute drought relief grain to families in various districts in almost all the provinces of the country.<sup>340</sup> These families were affected by poor yields due to the low rains recorded the previous year. About 700 000 tonnes of grain was supposed to be distributed but due to rampant corruption only 100 000 tonnes reached the affected families, the remaining was sold on “black market”. What started as a noble and humanitarian gesture turned out to be indifferent to the plight of those affected by the floods.

A huge amount of money on programs meant to address the problem of food shortages in the country is being siphoned off because of corruption.<sup>341</sup> The ICESCR requires that governments that have ratified the Covenant take steps to the maximum

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<sup>336</sup> *Ibid.*

<sup>337</sup> Zimbabwean Situation “Tokwe Mukosi flood victims” 2014

<sup>338</sup> *Ibid.*

<sup>339</sup> *Ibid.*

<sup>340</sup> Chirinda “Zimbabwe and drought relief grain” *An analysis* 7 2014.

<sup>341</sup> Newsday Zimbabwe “Zimbabwe’s food shortages” 2014.

of their available resources to full realise the codified rights.<sup>342</sup> However in the Zimbabwean case corruption is one of the main reasons why the government is failing to fulfil individuals' right to food. Beneficiaries of food aid projects continue to suffer from losses resulting from theft and corruption.

In 2014 Zimbabwe declared a state of disaster in parts of the country which were badly hit by one of the worst drought it has seen in recent years. As many as 2.4 million people almost a quarter of Zimbabwe's population were in need of food aid as the drought adversely affected crop supplies.<sup>343</sup> The government issued that about USD 200 million would be spent on food imports. A bulk of that amount was supposed to be spent on buying corn from neighbouring Zambia. However only half of that amount was used as corruption impeded the realisation of the right to food.

### **3.9 Conclusion**

The 2013 Constitution protects socio economic rights that are vital to the well-being of the citizens. However, it should be noted that the graft syndrome does impact negatively on these rights. Corruption creates a vicious circle of lack of respect for law and undermines the effective functioning of democratic institutions. As a consequence, socio economic rights are violated. It has been highlighted also how the right to education and the right to food have been negatively affected by corruption.

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<sup>342</sup> Article 11 (1).

<sup>343</sup> Munakiri "Corruption tendencies in Zimbabwe" Making the connection 2015.

## CHAPTER FOUR

### MEASURES INSTITUTED TO FIGHT CORRUPTION

#### 4.1 General measures, policies and legislation

Corruption in Zimbabwe has become deeply embedded in culture and this culture of corruption is widely debated by several commentators such as Makumbe, Nyarota, and Shana.<sup>344</sup> However, this perspective is criticised by Mamdani and Gatsheni who point out that what becomes significant is to look at the ways in which a culture of corruption can emerge.<sup>345</sup> This rests on the idea that persistent corruption can become so entrenched in everyday life that the systemic argument takes on a new form. This highlights the manifestation of the prevalent practices such as patronage and nepotism.<sup>346</sup>

The two authors noted that if activities such as nepotism and patronage were such important cultural factors, there would be no reason for these practices to be illegal at all.<sup>347</sup> In Zimbabwe laws have already been put in place to curb this graft. However, lack of funding threatens to derail the work being done to combat corruption.<sup>348</sup> It should be noted that Zimbabwe is making progress despite revelations of corruption involving senior officials in government and other organisations.<sup>349</sup> ZACC (Zimbabwe Anti-Corruption Commission) and the National Prosecuting Authority (NPA) were set up to ensure that corruption is dealt with by law, so this is a very good starting point for the country.

Clear policies that ensure justice, transparency and accountability are needed and it is very important for the country's leadership to show commitment and political will towards the total eradication of this phenomenon.<sup>350</sup> Such commitment needs to be shown through making available enough resources for the ZACC to function effectively.<sup>351</sup> Effective policies and political will alone are not enough. This has to be

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<sup>344</sup> Makumbe "Corruption in Zimbabwe" 2011.

<sup>345</sup> Mamdani and Gatsheni "Corruption and systemic nature" 2012.

<sup>346</sup> They highlight that corruption has become a reckless cancer in Zimbabwe.

<sup>347</sup> *Ibid* 7.

<sup>348</sup> TIZ 2013.

<sup>349</sup> *Ibid* 4.

<sup>350</sup> *Ibid* 6.

<sup>351</sup> *Ibid* 9.

supported through implementation of the said policies and funding ZACC and other organisations mandated to deal with the scourge. In the absence of funding, ZACC cannot effectively fulfil its mandate.<sup>352</sup>

Chapter 9 of the Constitution lays basic principles governing public administration in all tiers of government, including institutions and agencies of the state and government controlled entities.<sup>353</sup> Public enterprises must be governed by the democratic values and principles in the Constitution. This chapter of the Constitution fights corruption as it lays a high standard of professional ethics which must be promoted and maintained.<sup>354</sup> It states that services must be provided impartially, fairly, equitably and without bias. Public administration must be fostered by providing the public with timely, accessible and accurate information. States must take measures including legislative measures to promote these values and principles.<sup>355</sup> Appointments to offices in all tiers of government including government institutions and agencies and government controlled entities and other public enterprises must be made primarily on the basis of merit. Chapter 9 thus seeks to promote principles of transparency and fairness. These principles go a long way in the fight against corruption.

Moreover, it is commendable that parliamentarians are playing their legislative role in contributing towards the fight against corruption and this supports the view fact that progress is being made. The country's laws create a substantially healthy legislative framework for the total eradication of corruption.<sup>356</sup> The Prevention of Corruption Act<sup>357</sup>, the Anti-Corruption Commission Act<sup>358</sup>, the Criminal Law Codification and Reform Act<sup>359</sup> and the Criminal Procedure and Evidence Act<sup>360</sup> are some of the Anti-corruption statutes creating an effective legal framework for a solid anti-graft mechanism. Members of parliament were elected by people who are fed up with corruption. One would postulate that they want to be re-elected and this means that they have to represent the people and contribute meaningfully towards combating it.<sup>361</sup>

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<sup>352</sup> *Ibid.*

<sup>353</sup> Chapter 9 of the Constitution of the Republic of Zimbabwe.

<sup>354</sup> *Ibid.*

<sup>355</sup> *Ibid.*

<sup>356</sup> Governance World Watch 2011.

<sup>357</sup> Act 14 of 2002.

<sup>358</sup> Act 13 of 2004.

<sup>359</sup> Act 16 of 2006.

<sup>360</sup> Act 14 of 2004.

<sup>361</sup> *Ibid.*

It should be noted that fighting corruption requires the effort of everyone. There is need for a properly coordinated approach involving government, citizens and non-governmental organisations. Without funding it is very difficult to eradicate corruption and bring to book those implicated in corruption.<sup>362</sup>

TIZ Director, Mary Jane Ncube, noted that because institutions promoting financial discipline and transparency in the public and private sectors are extremely weak, the country is not making headway in dealing with corruption. Failure to respond positively and aggressively in dealing with corruption cases when the public bring such issues to light makes it difficult to reduce the practice.<sup>363</sup> People feel that nothing happens to those alleged to be corrupt. Citizens have lost faith in institutions such as the ZRP and ZACC.<sup>364</sup> There is need to reform such institutions and ensure that legislation which protect whistle blowers is enacted. Furthermore politicians pay lip service to the fight against corruption. There are also members of society who will engage in corrupt dealings knowing that they can never be prosecuted because of their high office or political affiliation.<sup>365</sup>

The 9<sup>th</sup> of December every year, has been designated by the United Nations General Assembly as International Anti-Corruption Day. This is meant to raise awareness of corruption and what the United Nations Convention against Corruption (UNAC) is doing to fight corruption.<sup>366</sup> Various states and competent regional economic integration and organisations have signed and ratified the UNAC Zimbabwe included. This Convention is the first legally binding, international anti-corruption instrument that provides an important opportunity to fight corruption globally.<sup>367</sup> The UNAC has a peer review mechanism to ensure its successful implementation; the review mechanism is a global and inclusive process without marginalisation or rankings.<sup>368</sup> Zimbabwe signed this Convention on the 20<sup>th</sup> of February 2004 and also ratified it on the 8<sup>th</sup> of March 2007. The AU Convention is also key in the fighting of corruption. Zimbabwe signed the AU Convention on the 18<sup>th</sup> of November 2003 and ratified it on the 17<sup>th</sup> of December 2006. These Conventions are a first step taken to curb corruption. However

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<sup>362</sup> *Ibid.*

<sup>363</sup> TIZ 2014.

<sup>364</sup> These are the institutions that are supposed to be fighting corruption but they are doing the opposite.

<sup>365</sup> *Ibid* note 39.

<sup>366</sup> *Ibid.*

<sup>367</sup> *Ibid.*

<sup>368</sup> *Ibid.*

it should be noted these Conventions on their own cannot curb the volatile phenomena but action does.

According to Chipangura, the Anti-Corruption Commission of Zimbabwe (ACCZ) was formed in 2009 to combat corruption and its members are appointed by the President in consultation with the Parliament Committee on Standing Rules and Orders.<sup>369</sup> The ACCZ has duties that include investigating and combating cases of corruption and abuse of power both in public and private sectors. In addition to the ACCZ, there is the TIZ, which is a non-profit, non-partisan, systems oriented local chapter of the international movement against corruption.<sup>370</sup> The TI-Z aims to fight corruption and related vices through networks of integrity in line with the Global Strategy.

Among the challenges that have been faced in the implementation of anti-corruption strategies is lack of political will by elites across the political spectrum to deal with corruption and the inefficiency of the ACCZ. Furthermore, undemocratic government legislation and the attitude of the public itself hamper anti-corruption efforts. The government has to put in place codes of conduct and strong independent oversight bodies that can help to ensure that the acceptable standards of behaviour are respected in central government bureaucracy and local authorities. The improvement of remuneration can also be used to reduce cases of corruption.

During the 1980s there were several instances where a judge was appointed to investigate a corruption matter such as the Sandura Commission.<sup>371</sup> The most famous was the Willowvale scandal where it eventually emerged that a handful of ministers had abused the privilege of jumping the queue to buy one car for personal use by effectively entering the car trade.<sup>372</sup> The government could have built on that experience with a more permanent body. In the last year or so people entrusted with running State and public bodies are being paid excessive salaries.<sup>373</sup> This has been solved with audits, to uncover the facts, some changes in boards, however, there is still need to bring in people who know how to cope better and a change in rules to

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<sup>369</sup> Chipangura "How to curb corruption in Zimbabwe" 2012.

<sup>370</sup> *Ibid* 56.

<sup>371</sup> This was an inquiry set up by President Robert Mugabe, headed by the late former Judge President Wilson Sandura. This was done to investigate government officials who were given preference in buying vehicles at the Willowvale motor industries at discounted prices and reselling them at very inflated prices.

<sup>372</sup> Government reform in Zimbabwe 2013.

<sup>373</sup> *Ibid*.

ensure that decisions regarding remuneration and contracts of employment were made by a committee rather than one person.<sup>374</sup> One has to learn from those bad experiences and this is a solution in trying to curb corruption.

The President Robert Mugabe pledged to strengthen the judiciary, law enforcement and ZACC in order to capacitate them in the fight against corruption. The pledge to adopt a “zero tolerance” policy on corruption and arming the ZACC with stronger investigative powers demonstrates the President’s awareness of the problem. He spelt out that corruption has been the biggest enemy to foreign investors and the overall socio economic development. The President illustrated that the state has been undertaking legislative measures to prevent and combat acts of corruption and the related offences committed by individual groups and or organisations.<sup>375</sup> The commission is tasked to establish mechanisms to encourage participation by the public and the private sector in controlling corruption. It should be noted that development partners can only continue to support the country if their donations are accounted for. Such a stance shows commitment from the President in the fight against corruption.

It is vital to point out that the commissioners who serve in ZACC were nominated by political parties and appointed by the President thus report to the Parliamentary Committee through the Ministry of Home Affairs. Given this fact, the Commissioners’ independence is compromised. Therefore ZACC finds it challenging to investigate and expose corruption that is taking place in its own parent Ministry.<sup>376</sup> The public should have been included in the process of choosing the commissioners. They should have been nominated through public platforms with their profiles set out in the public domain.

TIZ has numerous objectives specifically to fight corruption. It aims to help develop and broaden Zimbabwe’s economic and social development by countering corruption in the public and private sectors.<sup>377</sup> Since its formation in 1996, it sought to formulate policies that discourage and penalise unethical conduct. It works to strengthen public support and understanding of anti-corruption programmes by enhancing public

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<sup>374</sup> *Ibid.*

<sup>375</sup> The Herald 20 March 2013.

<sup>376</sup> Werner “The Development of Political Corruption” 2013.

<sup>377</sup> TIZ 2011.

transparency and accountability in both public and private sectors.<sup>378</sup> Some of the initiatives put in place include public awareness campaigns, networking and coalition building, advocacy and lobbying and research publications.

The Law Society of Zimbabwe (LSZ) has engaged with authorities in the past in an effort to mitigate the challenges of corruption. The LSZ considers that a multi sectoral approach and a swift one alone will address the ills of corruption.<sup>379</sup> LSZ former President Tinoziva Bere has also highlighted that corruption and inefficiency is a threat to judicial independence and the rule of law.<sup>380</sup> It erodes public confidence in the justice delivery system and needs to be firmly and deliberately tackled.<sup>381</sup> In the face of internal and external forces, Bere asserted that it is the duty of the LSZ to defend the right of the legal profession to self-regulate.<sup>382</sup>

Public and private partnerships, transparent policies and public awareness campaigns are key to the total eradication of corruption.<sup>383</sup> Eradicating corruption starts with every individual.<sup>384</sup> There is need for government to work together with the public and other institutions to ensure the support of the positive and proactive stance against corruption.<sup>385</sup> There is need for education in many societies to provide a corruption free Zimbabwe. Many people are not fully aware of their role in society to fight corruption, hence the need for the inclusion of comprehensive anti-corruption education in the school curriculum as a way to instil awareness.<sup>386</sup>

## 4.2 The Courts

The courts seem to have taken a hard stance in fighting corruption as demonstrated by many cases of this nature. In the case of *S v Machosa*<sup>387</sup> the appellant was found guilty of contravening sections of the Prevention of Corruption Act and some extortion charges. He was sentenced to nine months imprisonment of which five months were suspended on condition of good behaviour, In the case of *Attorney General of*

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<sup>378</sup> *Ibid.*

<sup>379</sup> Law Society of Zimbabwe 2012.

<sup>380</sup> *Ibid.*

<sup>381</sup> *Ibid.*

<sup>382</sup> *Ibid.*

<sup>383</sup> TIZ 2015.

<sup>384</sup> *Ibid.*

<sup>385</sup> *Ibid.*

<sup>386</sup> *Ibid.*

<sup>387</sup> CA 325/01 HH 9 2002.

*Zimbabwe vs Johnsen*<sup>388</sup> the court highlighted that if the offender is a police officer or agent of the state, a custodial punishment would be called for unless there are cogent reasons which indicate the contrary. In the case of *S v Ngara*<sup>389</sup> it was highlighted that any form of corruption resorted to by government servants especially police officers whose duty is to uphold the law and by their conduct set an example of impeccable honesty and integrity, is rightly viewed by the courts with abhorrence.

In *S v Choba*<sup>390</sup> the appellant solicited a bribe from the complainant in order to drop the charges and he was sentenced to twelve months imprisonment with two months suspended. In *S v Sinawa*<sup>391</sup> the Supreme Court confirmed the sentence of twelve months imprisonment with five months suspended where the appellant had solicited a bribe from the accused. All these cases demonstrate the courts' stance in fighting corruption.

Stiffer anti-corruption laws and cases should be brought before judges and magistrates.<sup>392</sup> Processes should be established for continuous monitoring of employees in order to quickly identify corrupt activities and loop holes which create opportunities; frequent visits by external auditors will also help curb corrupt practices. It is not enough to remove corrupt officials without also removing opportunities and ensuring that honest law abiding officials are being appointed to positions of trust.<sup>393</sup> There is also need to set up special courts with specially trained judges and prosecutors to try corruption cases.

### **4.3 The role of the media**

The media is an integral pillar of the fight against corruption.<sup>394</sup> Freedom and integrity of the media should be protected and reserved so it can investigate, report and expose corruption without undermining the credibility of anti-corruption efforts.<sup>395</sup> When the media are working well to prevent corruption, they employ investigative journalism to reveal inequity, and violations in an educational sense, reinforce the social value that

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<sup>388</sup> SC 119 1998.

<sup>389</sup> 1987 (1) ZLR 91 (SC).

<sup>390</sup> SC 114 1992.

<sup>391</sup> SC 195 1995.

<sup>392</sup> Global Watch 2013.

<sup>393</sup> *Ibid.*

<sup>394</sup> The Daily News 22 March 2012.

<sup>395</sup> *Ibid.*

reduce the incidence of corruption in government and business. Relying on freedom of speech, the media perform their watchdog function in society as they curb and expose social injustice. In an open, pluralistic, democratic and technologically developed society, the media are a particularly effective weapon for exposing and preventing corruption.

Since the year 2000 journalists have been arrested, detained and harassed by the police for reporting or publishing stories related to corrupt activities hence a huge dent in the fight against the graft syndrome.<sup>396</sup> Criminal libel and defamation suits have been brought against the media.<sup>397</sup> Some newspapers such as the Financial Gazette even avoided publishing names of corrupt individuals and journalists investigating the story. This gives the spectre of corruption a fertile ground to prosper. An effective media is a critical strategy in any country's anti-corruption crusade as it maps out the path to follow in combating corruption. It is important to emphasise that despite the difficult conditions of constricted democratic space for operations faced by the independent media in fighting corruption they have continued as watchdogs in society, raising alarm when something is not going right in the country.<sup>398</sup> However the state owned media has remained silent on all contentious issues raised by the independent sector and this is not a good thing in the fight against corruption.

#### **4.4 Conclusion**

Combating corruption requires the effort of every sphere of government and also the private sector. As such the chapter has illustrated various mechanisms and measures that have been taken to curtail this vice. Government departments, the courts, the media among other organisations have played some roles in the fight against corruption.

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<sup>396</sup> *Ibid.*

<sup>397</sup> *Ibid.*

<sup>398</sup> *Ibid.*

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 5.1 Important findings

The previous chapters have demonstrated that fighting corruption is not a one person's job.<sup>399</sup> There is need for a properly coordinated approach involving government, citizens and non-governmental organisations.<sup>400</sup> Without funding, it is very difficult to eradicate corruption and bring to book those implicated in corrupt dealings.<sup>401</sup> Zimbabwe is making progress despite revelations of corruption involving senior people in government and other organisations.<sup>402</sup> It is vital to lay down policies that ensure justice, transparency and accountability, it is also equally vital for the country's leadership to show commitment and political will towards the total eradication of corruption.<sup>403</sup> That commitment needs to be shown through a clear anti-corruption policy and framework backed by resources available enough resources.<sup>404</sup>

In chapter two the discussion centred on the theories and definitions of corruption. The discussion has shown that there are many theories in relation to corruption. These theories broaden one's understanding of the concept of corruption. The same chapter has also demonstrated that corruption does not have a single definition. Many definitions have been provided to try and elucidate more about this phenomenon. Different classifications and types have also been provided so that it becomes clear how corruption is divergent.

In chapter three the discussion established the linkage between corruption and the realisation of social economic rights. The chapter has demonstrated that corruption is detriment to the realisation of socio economic rights with particular reference to the right to education and the right to food. Various instruments impose duties on states parties to oblige in respecting, protecting, promoting and fulfilling human rights.

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<sup>399</sup> Bailey "Corruption and democratic governability" 2006.

<sup>400</sup> *Ibid* 45.

<sup>401</sup> Doig "Corruption and Anti-Corruption strategies" 2013.

<sup>402</sup> *Ibid* 35.

<sup>403</sup> *Ibid* 45.

<sup>404</sup> *Ibid*.

Chapter three also highlighted the efforts being made by various stakeholders in the fight against corruption. It has been discussed how the media remains a pillar in the fight against corruption, however some journalists are still being arrested in violation of the freedom and integrity of the media. The chapter has also demonstrated how the President has adopted a “zero tolerance” on the fight against corruption. The LSZ has not been left out in this fight as demonstrated by their will power. Case law and chapter 9 of the Constitution mechanisms have also been provided in the fight against corruption.

## **5.2 Recommendations**

Since corruption is regarded as a major enemy of the country and the right to education and the right to food as fundamental there is really need to curtail the phenomenon of corruption. Soon after independence Zimbabwe’s education was lauded and was a shining example in Africa but rampant corruption has torn down this right. Thus there is really need to bring to book all those involved in corruption. All those paying bribes and involved in nepotism should be arrested so as to deter the public from such behaviour.

The commissions that have been set up should be independent and the government should provide finances in order for the commissions to do their job efficiently. Without the financial muscle the efforts of the commissions will be in vain and corruption will remain a challenge that impedes socio economic rights.

If a corruption free Zimbabwe is to be achieved there is need for government to work together with the public and other institutions to fight against corruption. There is need for some education on the citizens in relation to corruption and its effects on the society. The majority of people are not really aware of their role in society in the fight against corruption, hence the call for a comprehensive anti-corruption education and institutions such as the ZACC should play a fundamental role in such awareness campaigns. Courts should continuously take a hard stance in the fight against corruption so as to deter the general public.

There is need to reform institutions such as the ZRP and the ZACC due to the fact that people have lost confidence in the institutions that are supposed to fight against corruption. All those in high offices and are involved in corrupt dealings should be brought to book as this will be a good example to the general public. However it should

be noted that all the recommendations to be taken by the government must meet the test of specificity, feasibility, targeted and they should remain precise.

### **5.3 Areas of further study**

The research has focused primarily on how the right to education and the right to food are impeded by corruption. Further studies are necessary to address other socio economic rights in Chapter 3 of the Constitution.

### **5.4 Conclusion**

Corruption creates a vicious environment of the lack of respect for law and undermines the effective functioning of democratic institutions. As a consequence, socio economic rights of people are impeded in Zimbabwe. The 2013 Constitution does have socio economic rights but they are being violated by rampant corruption that is taking place both in the public and private sphere. A society free from corruption is essential for good governance and development, hence there are anti-corruption strategies that have been put in place. However, these strategies will not work if there is no political commitment or resources to implement them.

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