

# THE IMPACT OF CORRUPTION ON GOVERNANCE AND SOCIO-ECONOMIC RIGHTS

*We got a requisition from a province – it doesn't matter which one – and it was for R19m to put in place a piece of infrastructure for us, based on a quote from a certain company. It seemed rather a high amount so we refused to just simply pay it. In fact, we asked that it go out to tender. The same company put in exactly the same proposal, only now the price was R10m. The R9m was, I realised, the 'fat'. Had we not challenged the bill, we they would have got away with it. I suspect collusion at the provincial level – between the private, intermediary company and officials in the provincial department. This sort of thing happens all the time. Think of all the things we could do with that extra R9m.<sup>1</sup>*

“This happens all the time”. It is a simple but chilling phrase. The culture of ‘tenderpreneurship’, of greedy entrepreneurs exploiting weaknesses in accountability systems in the public sector, is growing. The South African Constitution says that human rights must be protected, but pervasive corruption leads to systemic human rights violations. Corruption is never ‘victimless’; “Think of all the things we could do with that extra R9m”...

Corruption has been described “as the abuse of public office for private gain.” This refers to gain of any kind – financial, in status – and it could be gain by an individual or a group, or those linked with such an individual or group.<sup>2</sup> Apart from bribery, it can include “patronage, nepotism, embezzlement, influence peddling, use of one’s position for self-enrichment, bestowing of favours on relatives and friends, moonlighting, partiality, absenteeism, late coming to work, abuse of public property, leaking and/or abuse of government information and the like.”<sup>3</sup> Whilst this definition focuses on the public sector, corruption also occurs in the private sector, as will be discussed below.

The source of corruption in South Africa is “rooted in the country’s bureaucratic traditions, political development, and social history”. Corruption has thrived, firstly, due to institutional weaknesses. “The normal motivation of public-sector employees to work productively has been undermined by many factors – including declining civil service salaries and promotion unconnected to performance. Staff members have also been demoralised by dysfunctional government budgets, inadequate supplies and equipment, delays in the release of budget funds, and a loss of organizational purpose. The motivation to remain honest has further been weakened as a result of senior officials and

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<sup>1</sup> Head of Infrastructure at a national ‘service delivery’ department, in conversation with Richard Calland, Director of DGRU, at Construction Sector Transparency Initiative workshop held by Construction Industry Development Board, Johannesburg, 29 June 2011

<sup>2</sup> Cooper Drury, Jonathan Kriekhaus and Michael Lusztig, “Corruption, Democracy and Economic Growth”, *International Political Science Review*, (2006), Vol 27, No. 2, 122

<sup>3</sup> Ayodele Aderinwale, “Corruption, Democracy and Human Rights in Southern Africa:” Summary Report of a Seminar organised Jointly by Africa Leadership Forum and Transparency International in Pretoria, South Africa 31 July – 2 August 1995, available at [www.africaleadership.org/.../corruption,democracy%20&%20human%20rights%20southern%20Africa.pdf](http://www.africaleadership.org/.../corruption,democracy%20&%20human%20rights%20southern%20Africa.pdf) Accessed 07-06-2011

political leaders using public office for private gain.”<sup>4</sup> Secondly, corruption arises out of social tensions. “The new social forces governing South Africa have historically been excluded from the economy, but now control state power, and are responsible for delivering services to previously excluded and marginalised people.”<sup>5</sup>

It is clear that South Africans perceive corruption as a significant problem - although actual experience of corruption is often lower than that perceived<sup>6</sup> - but measuring its impact on socio-economic rights is difficult. There is a lack of centralised, collated information on incidents of corruption and their prosecution.<sup>7</sup> Besides, it is difficult to measure the impact of corruption with certainty as it does not just refer to amounts of money lost, but also obstacles to development and increases in inequality – which are much more difficult to quantify.<sup>8</sup> Also, corruption is by its nature secretive so not much is known about where and how widespread it is.<sup>9</sup>

The information we do have, for example the Institute of Security Studies’ 2003 National Victims of Crime survey, ranks petty corruption as the second most prevalent crime in the country (after housebreaking).<sup>10</sup> The former National Party claimed that between 1994 and 1998 the government lost up to R20 billion as a result of corruption by government employees. Judge Heath’s Special Investigation Unit claimed in 1998 that the R10 billion worth of fraud it was investigating at the time was just five percent of the total.<sup>11</sup>

Surveys suggest that perceived levels of corruption increased from 1996 to 2000. One survey found that 11% of participants had been expected to bribe a government or public official to receive a job or basic service.<sup>12</sup> The National Anti-Corruption Hotline was set up in September 2004. By March 2008, 4,202 cases of alleged corruption had been reported to the Public Service Commission. According to government, R86 million was recovered through successful investigation and disciplinary procedures<sup>13</sup> but nevertheless the African Union has estimated that corruption costs Africa more than \$148 billion a year.<sup>14</sup>

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<sup>4</sup> Soma Pillay, “Corruption – the challenge to Good Governance: a South African Perspective”, *IJPSM*, 17, 7 P 589

<sup>5</sup> *Ibid*, p 592

<sup>6</sup> United Nations Office on Drugs and Crime and Department of Public Service and Administration, *Country Corruption Assessment Report: South Africa*, 2003, p. 3

<sup>7</sup> *Ibid*, p. 59

<sup>8</sup> U4 Anti – Corruption Resource Centre, *Africa: Scale of corruption and impact on poor*, available at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=20>

<sup>9</sup> *Corruption in South Africa, Results of an Expert Panel Survey*, ISS Monograph No 65, September 2001, available at <http://www.issafrica.org/Pubs/Monographs/No65/Chap3.html>

<sup>10</sup> Hennie van Vuuren, *Small Bribes, Big Challenge: Extent and Nature of Petty Corruption in South Africa*, Crime Quarterly No 9 2004, available at <http://www.issafrica.org/pubs/CrimeQ/No.9/VanVuuren.htm>

<sup>11</sup> Tom Lodge, *Countering public corruption in SA*, *Transformation* 46 (2001) ISSN 0258-7696 p. 58

<sup>12</sup> United Nations Office on Drugs and Crime and Department of Public Service and Administration, p. 95

<sup>13</sup> OECD, *Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation for further Combating Bribery of Foreign Public Officials in International Business Transactions*, 17 June 2010 (“OECD Report”), p. 14

<sup>14</sup> This estimate was made in 2002. U4 Anti – Corruption Resource Centre, *Africa: Scale of corruption and impact on poor*, available at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=20>

One writer explains: “Corruption impedes a state’s ability to use its available resources to progressively achieve the full realization of [socio-economic] rights because national resources are instead diverted into the pockets of public officials, or because development aid is mismanaged, misused or misappropriated.”<sup>15</sup> Corruption promotes wrong choices and competition does not keep down prices; rather, the competition is about the size of the bribe.<sup>16</sup> Corruption is costly. At a macro-fiscal level, the state loses revenue from abuse of taxes, customs levies, licensing fees and traffic fines. It also leads to high spending due to corruption loadings and fronting on state contracts.<sup>17</sup> The distortion of policy and resource and resource allocations increases inefficiency.<sup>18</sup>

Corruption also impacts on investment and growth, especially in countries in need of foreign productive capital. Foreign investors, especially those likely to make long-term contributions to development, are discouraged, although some investors looking to make fast profits through questionable schemes may try their luck. Furthermore, corruption in aid programmes means less for those most in need and may compromise future funding.

Corruption is costly, not only for the general public but mainly for the poor as resources are diverted away from them. Service delivery and related policy is distorted if allocation and prioritisation are determined by bribes. It means a few benefit at the expense of many which reinforces existing socio-economic inequality<sup>19</sup> and makes the poor even more vulnerable. Structural inequality leads to many being denied access to education, to information, and therefore to knowledge about their rights that could enable them to challenge abuse of power. Thus, it has been argued that:

“The roots of corruption lie in the unequal distribution of resources in a society. Corruption thrives on economic inequality. Economic inequality provides a fertile breeding ground for corruption – and, in turn, it leads to further inequalities.”<sup>20</sup>

#### **The impact of corruption on governance and democracy**

Good governance is a fundamental right in a democracy and it implies transparency and accountability.<sup>21</sup> Good governance entails “an administration that is sensitive and responsive to the needs of the people and is effective in coping with emerging challenges in society by framing and implementing appropriate laws and measures. It includes strict rules of accountability.”<sup>22</sup>

Corruption exists in both democratic and non-democratic states, but it develops “into an automatic by-product of the latter system and the chances for corrupt practices to be exposed, protested

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<sup>15</sup> Patricia Carrier, *Corruption as a Threat to Human Rights: A Proposal for Reform of the International Corruption Legal Regime*, p 7, available at <http://www.duo.uio.no/publ/jus/2008/83391/Finalxthesis.pdf>

<sup>16</sup> PPP Project document

<sup>17</sup> United Nations Office on Drugs and Crime and Department of Public Service and Administration, p. 131.

<sup>18</sup> Lala Camerer, *The consequences of corruption*, available at <http://odiousdebts.org/odiousdebts/print.cfm?ContentID=6213>

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

<sup>20</sup> Eric Uslaner, “Corruption and the Inequality Trap in Africa”, *Afro Barometer Working paper No. 69*, April 2007

<sup>21</sup> Santosh Hegde, Effect of Corruption on Good Governance, First CIPS Foundation Day Lecture, P1, accessed at [http://www.cips.org.in/public-sector-systems-government-innovations/documents/NS-Hegde\\_CIPS-FDL\\_ed20May11.pdf](http://www.cips.org.in/public-sector-systems-government-innovations/documents/NS-Hegde_CIPS-FDL_ed20May11.pdf), accessed 7 -06-2011

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

against and punished become much diminished under it".<sup>23</sup> Therefore democratic governance is a necessary requirement to fight corruption.

Corruption undermines the rule of law, democratic governance, accountability and sustainable development. It breaches the contract between citizens and public officials, and this has grave consequences for successful government.<sup>24</sup> Moreover, it is a consequence of a collapse of governance and is a cause of its continued failure.<sup>25</sup>

The Constitutional Court of South Africa recently held that:

"There can be no gainsaying that corruption threatens to fell at the knees virtually everything we hold dear and precious in our hard-won constitutional order. It blatantly undermines the democratic ethos, the institutions of democracy, the rule of law and the foundational values of our nascent constitutional project. It fuels maladministration and public fraudulence and imperils the capacity of the state to fulfil its obligations to respect, protect, promote and fulfil all the rights enshrined in the Bill of Rights. When corruption and organised crime flourish, sustainable development and economic growth are stunted. And in turn, the stability and security of society is put at risk."<sup>26</sup>

A study by the Council for the Advancement of the South African Constitution (CASAC) points out that:

"Corruption is therefore an antithesis to democracy and the rule of law. Corruption diverts resources that are needed to improve the lives of citizens to enrich a few, at great cost to many. Corruption prevents the state from fulfilling its constitutional obligations, erodes the legitimacy of our democratic government and subverts the rule of law. It gnaws away at the ethical fabric of our society, and stifles economic growth. It has a powerful negative effect on foreign investment by destroying investor confidence."<sup>27</sup>

In simple terms, national resources are diverted into the pockets of public officials, and because development aid is mismanaged, misused or misappropriated<sup>28</sup> corruption distorts the government's role in resource allocation. It affects not only broad macroeconomic variables, such as investment and growth, but also income distribution.<sup>29</sup>

Moreover, it presents a threat to democratic gains, impinges on development and worsens the gap between rich and poor<sup>30</sup> by reducing the level of social services for the poor. It also creates

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<sup>23</sup> Aderinwale, note 3 above

<sup>24</sup> Soma Pillay, Corruption – the challenge to Good Governance: a South African Perspective, IJPSM, 17, 7

<sup>25</sup> Patricia Carrier, "Corruption as a Threat to Human Rights: A Proposal for Reform of the International Corruption Legal Regime," p 7, available at <http://www.duo.uio.no/publ/jus/2008/83391/Finalxthesis.pdf> accessed 18-04-2011

<sup>26</sup> Glenister v President of the Republic of South Africa and Others CCT 48/10 [2011] ZACC 6, Para 166

<sup>27</sup> Casac, "Corruption: Towards a Comprehensive Societal Response, available at <http://www.casac.org.za/wp-content/uploads/2011/03/corruptionfullreport.pdf> accessed 18 - 05 - 2011

<sup>28</sup> Patricia Carrier, supra, note 2 above

<sup>29</sup> Sanjeev Gupta, Hammid Davoodi, and Rosa Alsonso-Terme, "Does Corruption Affect Income Inequality and Poverty?", Econ. Gov. (2002) 3, 23

<sup>30</sup> United Nations Office on Drugs and Crime and Department of Public Service and Administration, p. 85

incentives for higher investment in capital-intensive projects and lower investment in labour-intensive projects.<sup>31</sup>

This in itself leads to a loss of confidence in public institutions which can undermine the rule of law, security of property, respect for contracts, civil order and safety and ultimately, even the legitimacy of the state itself.<sup>32</sup> Legitimate state activities may be undermined by this lack of public confidence.<sup>33</sup>

Good governance largely depends “on the extent to which the general citizenry perceives a government to be legitimate, i.e. committed to improving the general public welfare ... deliver public services ... and equitable in its conduct, favouring no special interests or groups.” Therefore corruption is “the antithesis of good governance.”<sup>34</sup> Unjust access to limited social and political goods caused by corruption may cause social and political unrest,<sup>35</sup> and corruption, at least in the public sector, is inherently undemocratic, since it involves “the exercise of a public duty contrary to the wishes of the electorate which has determined that duty, and employs the relevant official to perform it properly.”<sup>36</sup>

It is argued that corruption has a particularly negative impact on political and economic institutions that are already fragile and contributes to failures in development.<sup>37</sup> In a speech in 2008, the Minister for Public Services and Administration, Geraldine Fraser-Moleketi, observed that:

“Corruption in both the public and private sectors poses important socio-economic, governance and values and ethics challenges in contemporary South Africa. Corruption is detrimental to the soul of the nation, the institutions of democracy and the values and ethos of a young democracy like ours...”<sup>38</sup>

### **The impact of corruption on socio-economic rights**

Corruption “denies development and quality of life to the most vulnerable members of society.”<sup>39</sup> It is especially harmful in developing countries, which have fewer resources and thus are more vulnerable if those resources are wasted or not used effectively and equitably.<sup>40</sup> Soaring levels of corruption have the potential to lead to high poverty for two reasons. “First, evidence suggests that a higher growth rate is associated with a higher rate of poverty reduction and that corruption slows

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<sup>31</sup> Sanjeev Gupta et al, 24

<sup>32</sup> United Nations Office on Drugs and Crime and Department of Public Service and Administration, p. 132

<sup>33</sup> PPP project document

<sup>34</sup> Lala Camerer, *Poverty and Corruption in South Africa: Government Corruption in Poverty Alleviation Programmes*, ISS Monograph No. 15, Costly Crimes, September 1997

<sup>35</sup> Ibid

<sup>36</sup> Lala Camerer, *Poverty and Corruption in South Africa: Government Corruption in Poverty Alleviation Programmes*, ISS Monograph No. 15, Costly Crimes, September 1997

<sup>37</sup> Lala Camerer, *The consequences of corruption*, available at <http://odiousdebts.org/odiousdebts/print.cfm?ContentID=6213>

<sup>38</sup> Keynote address by the Minister for the Public Service and Administration, Mrs Geraldine Fraser-Moleketi, at the South African Chapter of the Association of Certified Fraud Examiners tenth anniversary and Inaugural Africa Conference and Exhibition, 19 September 2008

<sup>39</sup> PPP project document

<sup>40</sup> Lala Camerer, *Poverty and Corruption in South Africa: Government Corruption in Poverty Alleviation Programmes*, ISS Monograph No. 15, Costly Crimes, September 1997

the rate of poverty reduction by reducing growth. Second, income inequality has been shown to be harmful to growth and if corruption increases income inequality, it will also reduce growth and thereby limit poverty reduction".<sup>41</sup>

Several recent high-profile instances of service delivery failures have been linked to allegations of corruption. Shortly before the 2011 local government elections, and in the aftermath of the Makhaza open-toilet controversy in the Western Cape, it was revealed that the Moqhaka municipality in the Free State had built around 1,600 open toilets.<sup>42</sup> News reports accused the mayor of the municipality of having personally profited from the construction of the unenclosed toilets as the contract had been awarded to a company she owned (when she was a ward councillor) with her husband. The contract was alleged to have been valued at R 1,6 million, but the construction was so poor that the municipality needed to call in a second company to rebuild the toilets. However, they remained unenclosed.<sup>43</sup>

The Minister of Cooperative Governance, Sicelo Shiceka, has been reported to have built a new house in his home village of Ingquza Hill in the Eastern Cape. The area is one of the poorest in the country, and has been the focus of protests by the local community about poor service delivery. In this context, the building of the Minister's house attracted criticism. Specifically, it was alleged that municipal trucks had carried water to the building site whilst water was not delivered to most of the local community. Furthermore, a tarred road costing R32 million was routed past the house whilst many of the nearby residents lacked even dirt roads to reach their villages. The house was also alleged to be among the first in the area to receive electricity.<sup>44</sup>

## Gender

Evidence suggests that corruption has a disproportionate impact on women, especially when it comes to public service delivery. When corruption results in decreased spending on basic services such as education, health care, family benefits and other social services, women, children and the poor, who are most dependent on those resources, suffer most.<sup>45</sup> Women, as primary users of public services, lose out particularly on health and educational opportunities.<sup>46</sup>

Furthermore, women frequently face obstacles in accessing institutions, and this can be compounded by corruption.<sup>47</sup> Resources earmarked for poor women are seen as especially vulnerable to being diverted as poor women are often seen as less aware of their rights to public resources and less likely to challenge corrupt officials.<sup>48</sup>

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<sup>41</sup> Sanjeev Gupta, p. 25

<sup>42</sup> Sibongakonke Shoba, *Big stink over ANC open toilets*, available at <http://www.businessday.co.za/articles/Content.aspx?id=142216>

<sup>43</sup> Sally Evans and Ilham Rawoot, *ANC mayor stood to profit from open toilets*, available at <http://mg.co.za/article/2011-05-11-toilet-town-anc-mayor-profited-from-open-lavatories>

<sup>44</sup> *Mail & Guardian*, *Zuma awaits Shiceka's response on spending allegations*, available at <http://mg.co.za/article/2011-04-17-zuma-awaits-shicekas-response-on-spending-allegations>

<sup>45</sup> U4, *Gender and Corruption*, available at <http://www.u4.no/helpdesk/queries/query98.cfm>

<sup>46</sup> Marie Chêne, *Gender and corruption in humanitarian assistance*, available at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=223>

<sup>47</sup> U4, *Gender and Corruption*, available at <http://www.u4.no/helpdesk/queries/query98.cfm>

<sup>48</sup> UNIFEM, p. 44.

Research suggests that corruption has a serious impact in the education sector, with many children left with sub-standard education services.<sup>49</sup> Marginalised groups who lack economic power are more vulnerable as they lack the resources to access alternative services.<sup>50</sup> In the longer term, corruption puts pressure on the education budget, undermining government service delivery, reducing investment in education and thereby undermining the quality of education. The disproportionate impact of corruption on education services on women is especially harmful as studies show female education can significantly boost social and economic development in the community.<sup>51</sup>

Women may also be vulnerable to sexual exploitation by officials who provide essential services.<sup>52</sup> International studies report incidents of young women being subjected to sexual extortion to gain access to schools or to obtain good marks. This may lead girl students to consider dropping out of school or to consenting to sexual relations out of fear of reprisals should they refuse.<sup>53</sup> Gender disparities in education are exacerbated by poverty and women are often unable to obtain redress due to traditional gender roles.<sup>54</sup> It is argued that corruption in law enforcement has a disproportionate impact on minority and less-advantaged groups.<sup>55</sup>

#### Social assistance

Corruption also impacts on the right to social security of the truly needy.<sup>56</sup> Corrupt officials can extend benefits to relatively wealthy population groups or drain off funds from poverty-alleviation programmes and weaken their impact.<sup>57</sup> This is significant as social security programmes, regarded by many as the state's main attempt to alleviate poverty,<sup>58</sup> often enable households to care for their vulnerable members and contribute significantly to the household income of many of South Africa's poor.<sup>59</sup>

Many studies show the extent to which funds that should have been spent on the country's poor are misused. A study on Corruption and Social Grants conducted by the Institute for Security Studies (ISS) reveals that in 1996 about R1,5 billion a year was lost through corruption and maladministration in the delivery of social grants.<sup>60</sup> At the time this amounted to 10 of the annual

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<sup>49</sup> Marie Chêne, *Gender, Corruption and Education*, p. 2, available at <http://www.u4.no/helpdesk/query.cfm?id=209>

<sup>50</sup> *Ibid*

<sup>51</sup> *Ibid*, p. 6

<sup>52</sup> United Nations Development Fund for Women ("UNIFEM"), *Who Answers to Women? Gender & Accountability: Progress of the World's Women 2008/2009*, p. 44

<sup>53</sup> Corruption Research Network

<sup>54</sup> Marie Chêne, *Gender, Corruption and Education*, p. 3, available at <http://www.u4.no/helpdesk/query.cfm?id=209>

<sup>55</sup> U4, *Gender and Corruption*

<sup>56</sup> See Section 27(1)(c) of the Constitution

<sup>57</sup> Sanjeev Gupta, p. 25

<sup>58</sup> Lala Camerer, *Poverty and Corruption in South Africa: Government Corruption in Poverty Alleviation Programmes*, ISS Monograph No. 15, Costly Crimes, September 1997

<sup>59</sup> *Ibid*

<sup>60</sup> Andile Sokomani and Trusha Reddy, *Corruption and Social Grants in South Africa*, available at <http://www.iss.co.za/uploads/MONO154FULL.PDF>, p. 1

welfare budget of R11 billion.<sup>61</sup> A study by the *Mail & Guardian* in February 1997 divulged that R1 billion was being lost to pension fraud per year, a significant portion of the R14,3 billion social security budget at that time.<sup>62</sup> In 1999, the Department of Social Development estimated that it was losing close to 10% of its R20 billion budget to social grant fraud.<sup>63</sup> The same year, authorities in the Eastern Cape identified some 985 civil servants who had awarded themselves grants worth a total of R462 950 a month.<sup>64</sup> The former Minister of Social Development, Zola Skweyiya, has stated that around R15 billion which had been allocated to pensions, social grants and other means of poverty alleviation was lost to corruption between 1994 and 2004.<sup>65</sup> A more recent study by the ISS showed R1,4 billion was lost to fraud in 2006 out of a total social security budget at the time of R57 billion.<sup>66</sup> It may well be that corruption is decreasing in proportion to the budget. Nevertheless huge sums of money which could and should have been spent on some of the most vulnerable members of society continue to land up in the wrong pockets.

Whilst there is a clear link between corruption and poverty, “reducing corruption in the context of social security is not simply a technocratic exercise that involves weeding out fraudulent beneficiaries, no matter how sophisticated the techniques are for doing so”.<sup>67</sup> The challenges being experienced in the social security system are chiefly connected to the system itself. Fraud and corruption are principally the consequence of flaws in the current management and administrative systems.<sup>68</sup> Corruption and related issues of lack of accountability and transparency, when left unchecked, can weaken sound policies<sup>69</sup> which in turn could adversely affect millions of citizens who depend on the social security system.

### Housing

All South Africans have the right to “access to adequate housing”.<sup>70</sup> “Adequate housing is measured in terms of certain core factors including legal security of tenure, the availability of services, materials, facilities and infrastructure, affordability, accessibility and location.”<sup>71</sup> The Constitution

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<sup>61</sup> Lala Camerer, *Poverty and Corruption: The Case of Social Security*, ISS Monograph No. 15, Costly Crimes, September 1997, Section 3, available at <http://www.issafrica.org/pubs/Monographs/No15/Section3.html>

<sup>62</sup> *Ibid*, p 19

<sup>63</sup> Sokomani and Reddy, p. 29

<sup>64</sup> Quoted in Tom Lodge, *Countering public corruption in SA*, Transformation 46 (2001) ISSN 0258-7696, p. 57

<sup>65</sup> Quoted in Hennie van Vuuren, *Small Bribes, Big Challenge: Extent and Nature of Petty Corruption in South Africa*, *Crime Quarterly* No 9 2004, available at <http://www.issafrica.org/pubs/CrimeQ/No.9/VanVuuren.htm>

<sup>66</sup> Sokomani and Reddy, p. 19.

<sup>67</sup> *Ibid*, p 3

<sup>68</sup> *Poverty and Corruption: The Case of Social Security*, available at <http://www.iss.co.za/Pubs/Monographs/No15/Section3.html>

<sup>69</sup> *Ibid*, p 3

<sup>70</sup> Section 26 of the Constitution

<sup>71</sup> John Hopkins, *Review of South Africa’s Housing Policy*, available at [http://www.cih.org.hk/publication\\_download/events2006112401/Social%20Housing%20in%20South%20Africa%20by%20John%20Hopkins.pdf](http://www.cih.org.hk/publication_download/events2006112401/Social%20Housing%20in%20South%20Africa%20by%20John%20Hopkins.pdf)

acknowledges that the right cannot be achieved instantaneously, but government must demonstrate that it has worked as effectively as possible to achieve this right.<sup>72</sup>

Corruption is a serious impediment to realising this right. Construction tenders have been awarded to unqualified or inadequately qualified constructors, which leads to poor workmanship. Numerous media reports have shown that houses built by the government for poor citizens are in a bad condition, with cracked walls, loose bricks and leaking roofs. For example, the Mpumalanga province had to destroy a housing project that cost R9.5-million after it was discovered that “the developer had used ‘weak bricks’ to build the 427 units”<sup>73</sup>

Government acknowledges that there is widespread corruption that affects the right to housing. The Minister of Human Settlement, Tokyo Sexwale, has said about 20 problematic housing projects worth R2-billion have been identified.<sup>74</sup> He further revealed that the investigation into abuse of the low-income housing subsidy scheme has led to more than 1,570 arrests and 1,189 convictions.<sup>75</sup> Fraud and corruption have also affected local municipalities. In the Nyandeni local municipality, for example, contractors have been paid for work not done or not completed, even though the work has been certified for payment.<sup>76</sup>

### **Corruption in the private sector**

Many South Africans associate corruption with government and the public sector, but corruption is not limited to these. In fact some argue that it is not corruption but rather lack of administrative skills that undermine delivery in the public sector. While that is debateable, it is said that corruption in the private sector gets less attention.<sup>77</sup>

Retired judge Willem Heath, the former director of the Special Investigation Unit, has alleged that corruption is more widespread in the private sector than in the public sector, and that R 1,5 billion has been taken out of South Africa in tax avoidance schemes.<sup>78</sup> Surveys suggest that a significant proportion of the business sector sees corruption as a serious issue facing business<sup>79</sup> and 62% of businesses surveyed felt that bribery was becoming an accepted business practice.<sup>80</sup>

A 2007 report commissioned by Business South Africa acknowledges that, whilst most international instruments for measuring corruption concentrate on the private sector’s perception of corruption in the public sector, they overlook the role the private sector plays in the ‘supply side’ of corruption

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<sup>72</sup> *Ibid*

<sup>73</sup> <http://ghettoverit.wordpress.com/2008/05/25/low-cost-housing-in-south-africa-a-story-of-fraud-corruption-and-general-mismanagement/>

<sup>74</sup> <http://www.southafrica.info/services/government/corruption-180810.htm> accessed 26-05-11

<sup>75</sup> <http://www.news24.com/SouthAfrica/Politics/1-570-held-for-housing-corruption-20100421>

<sup>76</sup> Liyanda Madikizela, *An Analysis of Factors Affecting Housing Delivery in the Nyandeni Local Municipality With Specific Reference to the Extension 4 Project: A Case Study of Ward 21 in Ngqeleni*, available at <http://www.nmmu.ac.za/documents/theses/LIYANDA%20MADZIDZELA.pdf>

<sup>77</sup> *Country Corruption Assessment Report: South Africa*, p. 116

<sup>78</sup> Quoted in news24, *Private sector corruption rife*, 29 March 2010

<sup>79</sup> United Nations Office on Drugs and Crime and Department of Public Service and Administration, *Country Corruption Assessment Report: South Africa*, 2003, p. 3

<sup>80</sup> *Ibid*, p. 98

(such as by paying bribes for government contracts)<sup>81</sup> as well as on the 'demand side' (such as in receiving bribes). There is also evidence of corruption between companies.<sup>82</sup>

A 2002 study commissioned by the Department for Public Service and Administration found that 15% of the private sector companies surveyed had had bribes demanded from them. This figure correlated closely with the findings of the Business South Africa report which also found that of the companies surveyed who had lost contracts due to bribery (13% of the total companies surveyed), the average percentage turnover lost by these companies was 13%.<sup>83</sup> This is a significant figure, and which would be likely to affect the willingness of companies to consider paying bribes in order to obtain contracts.<sup>84</sup> However, the report cautions these figures may not be reliable as it would be difficult for companies to know for certain that bribery was the sole or actual reason for them not getting the contract.

In 2010, audit firm BDO reported that company fraud in South Africa was "escalating at an alarming rate" and estimated that the "total annual leakage" from fraud, theft and corruption amounted to R100 billion.<sup>85</sup>

Perhaps the most high-profile instances of private sector corruption emerge from cases investigated by the Competition Commission where market-dominant companies formed anti-competitive cartels. An especially high-profile incident concerned the price of bread. Prices of wheat and flour had decreased since June 2008, but the bread price did not decrease in turn. Commentators remarked that there is seldom collusion in luxury goods, but it is more common in the production of basic items such as foodstuffs, building materials and medicines. The impact on food is especially serious as rising prices have made even basic foods such as bread and maize meal unaffordable to those who need them most.<sup>86</sup> The Competition Commission has argued that price fixing and collusion are significant factors in rising food prices.<sup>87</sup>

Price fixing and corruption are said to slow economic development by restricting fair competition, and by stifling small business growth. Consumers are denied a free selection of goods and services and have to pay more as prices are artificially manipulated.<sup>88</sup> International studies suggest that cartels use an average price mark-up of 15% and as the bread pricing scandal showed this can have a serious impact on poorer communities. According to the Competition Commission, the effect of uncompetitive behaviour by bread producers lead to an increase of around 30 cents in the prices of basic bread, as well as a reduction in discounts and alternatives available to distributors.<sup>89</sup>

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<sup>81</sup> Business against Crime and GTZ, *Research Report on Corruption in the South African Private Sector 2006*, 14 February 2007, page 3

<sup>82</sup> *Ibid.*, p. 12

<sup>83</sup> *Ibid.*, p. 12

<sup>84</sup> *Ibid.*, p. 25

<sup>85</sup> *SA second for fraud, corruption: BDO*, Timeslive, 20 August 2010

<sup>86</sup> Sybrandus Adema, *Price fixing can Land Company Directors in Jail*, available at <http://ipsnews.net/print.asp?idnews=48293>

<sup>87</sup> Eversheds Attorneys, *Fixing Price Fixing – South Africa*

<sup>88</sup> Presentation by Dr J Minnaar, quoted in *Report on proceedings of the Third Anti-Corruption Summit*, p. 86

<sup>89</sup> Presentation of Nandi Mokoena of the Competition Commission, quoted in *Report on proceedings of the Third Anti-Corruption Summit*, pp. 88 – 89

Following an investigation into alleged collusion in the pharmaceutical industry in tendering for State tenders, the Commission identified that this collusion had led to the State paying 10 – 15 % more for intravenous fluids, an estimated R20 to R60 million per annum.<sup>90</sup> Another well-known example of anti-competitive behaviour concerned the construction industry. The head of the Competition Commission has described collusion as being “the cultural norm of large businesses operating in the construction industry”,<sup>91</sup> and in February 2011 the Commission announced that it was investigating 65 bid rigging cases worth R29 billion.<sup>92</sup> The construction industry is seen as having a “multiplier effect” on the economy as one job in construction can lead to another two jobs in other sectors. Thus, anti-competitive behaviour in the construction industry hampers not only the development of the economy as a whole but also government employment initiatives.<sup>93</sup> As in the case of bread prices, an impact on employment creation schemes is also likely to be felt most acutely in less well-off communities.

### Concluding remarks

Studies suggest that democratic and transparent politics is correlated with low corruption, with freedom of the press and the rule of law having a strong influence on keeping levels of corruption down.<sup>94</sup> Studies further suggest that there may be a significant association between corruption and income inequality, with corruption perpetuating and increasing existing inequalities.<sup>95</sup> Corruption may also be a significant contributor to limiting economic growth,<sup>96</sup> a cause of low income and result in poverty traps.<sup>97</sup> In other words it must be concluded that corruption is clearly an obstacle to development.<sup>98</sup>

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<sup>90</sup> *Ibid.*, p. 89

<sup>91</sup> Quoted in *Mail & Guardian, Collusion widespread in the construction industry*, 30 October 2009, available at <http://mg.co.za/article/2009-10-30-collusion-widespread-in-the-construction-industry>

<sup>92</sup> Nicky Smith and Renee Bonorchis, *South Africa Investigating 65 Bid-Rigging Cases in Construction Industry*, Bloomberg, 1 February 2011

<sup>93</sup> Junior Khumalo, Pamela Nqojela and Yongama Njisane, *Cover pricing in the construction industry: understanding the practice within a competition context*, p. 7

<sup>94</sup> UNIFEM, Box 2F page 27

<sup>95</sup> See Jong-Sung You and Sanjeev Khagram, “A Comparative Study of Inequality and Corruption”, *American Sociological Review*, 2005, Vol. 70 (February: 136-157), pp. 31-33

<sup>96</sup> *Ibid.*, p. 33

<sup>97</sup> Toke S. Aidt, “Corruption, institutions, and economic development”, *Oxford Review of Economic Policy*, Volume 25, Number 2, 2009, pp. 271-291, p. 271

<sup>98</sup> *Ibid.*, p. 288