Humanizing (Anti)corruption:

The socio-legal values of a human rights-based approach to corruption

by

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Dissertation, 30 higher education credits
Erasmus Mundus Master's Programme in Human Rights Policy and Practice

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Spring 2019

Declaration Form

The work I have submitted is my own effort. I certify that all the material in the Dissertation, which is not my own work, has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.

Bruna de Castro e Silva

Date: 24 May 2019

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Acknowledgments

No words could ever tell what we have experienced and learned in the last two years. About that, I will only say that I feel blessed and I am eternally grateful.

Muito obrigada to my family and friends for the endless support—even more needed considering the distance.

I thank firstly my supervisor, professor Bryan Mabee, for his prompt assistance and the trust placed in me, both essential for this work.

I thank the several professors and researchers at The QoG Institute and GLD with whom I brainstormed about my thesis, and from whom I got much inspiration. Among them, a distinct acknowledgment goes to professor Bo Rothstein, whose words of incentive mean a lot for someone researching corruption and human rights.

Furthermore, I individually thank: professor Marwa Shalaby, who gave me valuable recommendations from day one; Dr. Staffan Michelson, who kindly shared his excellent Ph.D. dissertation with me, which inspired my choice for case studies; and Dr. Leonie Hensgen, whose work on corruption and human rights was the first one I encountered more than one year ago, and who receptively talked to me and encouraged this work.

Lastly, I thank professor Anne Peters, one of the most important names of my theoretical framework, who, with just an email, confirmed that I was following the right direction.

Jag vill rikta ett särskilt tack till den svenska familj som välkomnade mig till sitt hem och erbjöd mig en trygg och omvårdande miljö—i ordens alla bemärkelser—där jag spenderade oräkneliga timmar på att skriva min avhandling.

Contents

Abstract

This master's thesis intends to contribute to the current academic and policy debate on the values of determining whether a particular human rights violation was caused by a corrupt behavior; and to defend a human rights-based approach to corruption, based on its added socio-legal values. With this purpose, it analyzes and compares the legal reasoning and socio-legal dynamics of three human rights court cases involving and not involving corruption. By applying a directed content analysis combined with socio-legal interpretative technique, this study explores and compares the rationality and the values addressed in both corrupt and non-corrupt cases. The research questions addressed are: *(i) What is the socio-legal value of a human rights-based approach to corruption? (ii) Why try to determine whether a particular human rights violation was caused by corruption?* Additionally, the complementary sub-question is: *(iii) What is the value of identifying whether especially economic and social rights violations were caused by corruption?* The results reveal that there are interconnected and mutually reinforcing socio-legal values in applying the human rights lens to combating corruption: (i) it is an improvement towards the justiciability of economic and social rights; (ii) it is a change of paradigm from the insufficient criminal approach to a focus on the social harm; and (iii) it is a more satisfactory approach to the overlapping harmful effects of corruption and inequality. The combination of these values can be used as a legal empowerment strategy, with a particular social accountability dimension, in order to strengthen the disadvantaged, and fight the encroachment caused by corruption on the enjoyment of human rights, especially economic and social rights.

Keywords: human rights-based approach; corruption; economic and social rights; justiciability; socio-legal values; social harm; inequality; legal empowerment.

Word count: 15,445 words (the amount of words above the word limit were used in the tables and in-text citations, according to the allowed length variation).

List of acronyms and abbreviations

ACHR – American Convention on Human Rights

ACHRP – African Charter on Human and Peoples' Rights

CESCR – Committee on Economic, Social and Cultural Rights

DCA – Directed Content Analysis

ECOWAS – Community Court of Justice of the Economic Community of West African States

ECS-rights – Economic and Social Rights

IACHR – Inter-American Commission on Human Rights

IACtHR – Inter-American Court of Human Rights

ICPC – Independent Corrupt Practices and Other Related Offences Commission

SERAP – The Registered Trustees of the Socio-Economic Rights and Accountability Project

TD – Transdisciplinary (Research)

UBEC – Universal Basic Education Commission of Nigeria

UNCAC – United Nations Convention against Corruption

1 Introduction

1.1 Background and Problem statement

In recent years, scholars have vastly held that corruption is an enormous obstacle to the realization of human rights. “The money stolen through corruption every year was enough to feed the world’s hungry 80 times over. From 2002 to 2009, developing countries lost US$ 8.44 trillion to illicit financial flows, equivalent to 10 times more than the foreign aid they received” (Hensgen 2013, p. 216).

However, anti-corruption international law and global policies highlight the criminal aspects of corruption and pay less attention to a people-centered approach, downplaying its drastic economic and social consequences and the impact of corrupt behavior on human rights (Hensgen 2013). “The anti-corruption practice and human rights practice seem to evolve in parallel tracks, in separate forums, and with distinct agendas” (Raoul Wallenberg Institute 2018b, p. 2). Therefore, it is necessary to understand how human rights law and practice can frame anti-corruption and what the value is of doing so, in order to build bridges between those mechanisms and increase compliance with both systems.

Although a deeper analysis of the link between corruption and human rights is still nascent in the literature, and more research needs to be undertaken on this topic (Raoul Wallenberg Institute 2018a), it has been claimed that the human rights lens “provides a valuable normative framework” to address corruption. Notwithstanding, the **problem** is that this assertion by the UN human rights institutions and part of the scholarship has been questioned, and the human rights-based approach has been criticized (Peters 2018).

1.2 Purpose, Thesis statement, and Research questions

The aim of this master’s thesis is twofold: (i) it intends to contribute to the current academic and policy debate (Section 2.3.) on the values of determining whether a particular human rights violation was caused by a corrupt behavior; and (ii) to defend the **thesis statement** of *a human rights-based approach to combating corruption, based on its added socio-legal values*. With this **purpose**, I analyze and compare the legal reasoning and socio-legal

dynamics of three human rights court cases involving and not involving corruption. By applying a directed content analysis combined with socio-legal interpretative technique, this study explores and compares the rationality, and the values addressed in both corrupt and non-corrupt cases.

The **research questions** addressed are: *(i) What is the socio-legal value of a human rights-based approach to corruption? (ii) Why try to determine whether a particular human rights violation was caused by corruption?*

Additionally, the complementary **sub-question** is: *(iii) What is the value of identifying whether especially economic and social rights violations were caused by corruption?*

It is essential to clarify that this study does not seek to examine the doctrinal legal claim of whether and when a corrupt conduct can be appropriately conceptualized as a violation of international human rights. Although this problem is undoubtedly part of the core context of the present analysis, it is not the scientific inquiry itself.

On that matter, the doctrinal account offered by professor Anne Peters (2019, p. 1) is adopted as a premise: "corrupt acts or omissions can under certain conditions technically be qualified as violating international human rights (notably social rights), although the difficulty to establish causality remains the most important doctrinal obstacle." This premise is intrinsic to Professor Peters' theory integrating the theoretical framework in Chapter 3; therefore, it will be further referred to throughout the thesis.

1.3 Relevance of the study

The relevance of this research can be characterized as *(i) practical relevance:* it has a potential value for anti-corruption and human rights policies and practices, ultimately contributing to the compliance with human rights and anti-corruption international law, by shedding light on the importance of identifying whether a particular human rights violation was caused by corruption. Also, as *(ii) theoretical relevance:* this research leads to the accumulation of knowledge by filling the gap in the existent literature on the humanization of International Anti-Corruption Law.

1.4 Dissertation outline

To answer the research questions, I will first engage in the literature review, presenting the current debate on a human rights-based approach to corruption in Chapter 2. In Chapter 3, I introduce Anne Peters' account in combination with the Theory of Social Harm, and the concept of Legal Empowerment, forming the theoretical framework. The details on my methods will be displayed in Chapter 4. The cases selected for the research will be presented in Chapter 5. In Chapter 6, the directed content analysis will be carried out, and I will present its findings through a Socio-legal analysis. Conclusions will follow in Chapter 7. Chapter 8 makes suggestions for further research and recommendations.

2 Literature Review

2.1 Overview: Corruption as a human rights violation

By and large, scholarship on corruption as a violation of international human rights has remained scarce. "Although, in recent years, scholars have begun to examine the links between corruption and human rights and have widely held that corruption violates human rights; most of such assertions fail to show in a detailed manner the ways in which the rights are infringed on by different corrupt practices" (Bacio-Terracino 2008, p. 3).

Notwithstanding, Bacio-Terracino (2008) analyses when and how a corrupt practice entails a human rights violation by examining how the most common corrupt practices may violate several fundamental human rights. He provides a "model analysis" that can be applied more generally to cases of corruption in order to establish the extent to which they concern a violation of human rights. Also, he adds that "understanding corruption as a violation of human rights serves to add a new perspective to those working for human rights and those fighting against corruption" (Bacio-Terracino 2008, p. 1).

Building on case studies and applying various statistical techniques, prior work has also shed some light on the existing causal mechanisms that make it possible to assert that more corruption equals more violations of human rights (Cardona *et al.* 2018; Ortega *et al.* 2018).

Rothstein (2017) offers a normative analysis of human rights and anti-corruption, presenting a common ground linking the two discourses based on a normative basis of "justice" and "non-discrimination." Cardona *et al.* (2018) consider the relations between corruption and human rights violations, illustrating four stances in which corruption impacts human rights. Building on that, they empirically analyze processes and magnitudes of human rights violations resulting from corruption.

Pearson (2013, p. 59) has examined the role and responsibility of states to respect, protect and fulfill human rights, and she argues that the tolerance of corruption by states through action or omission can result in breaches of human rights. The author complements that "taking a human rights approach to corruption highlights the fact that corruption is more than just

misappropriation of money or abuse of power; corruption also has deleterious effects on people, which can lead to breaches of human rights."

Lastly, a more focused analysis has been done by Beco (2011), who brings a human rights perspective to corruption monitoring, and affirms that "human rights monitoring can be an inspiration for making corruption monitoring more action-oriented, with a focus on the consequences of corruption for the enjoyment of human rights."

The literature presented above offers supportive evidence of *how* corruption encroaches human rights. The authors explain *how* the human rights lens can be used to address corruption. Consequently, this literature foments the next question, the question about the *"scope",* about the *"why"*. *Why* applying a human rights-based approach to corruption? What is the *value* of doing so? And these are the questions this study seeks to answer.

2.2 The critique of "human rightism"

There is some apprehensiveness among scholars of international law on employing human rights lens to address corruption. Professor Anne Peters (2018, p. 1286) summarizes this critical account: "Some international lawyers might complain that this smacks of 'human rightism' or of a 'hubris' of international human rights. Indeed, there is a risk of overusing the human rights language. Therefore, the human rights-based approach to corruption should not be employed as a panacea. The language of law generally (and of rights, more particularly) is a limited one, as the critique of the human rights-based approach to corruption points out."

As one of its representatives, Pellet (2000, p. 4) contributes to the critique of "human rightism": "[Human rights law] is, and can only be, the art of the possible, and by wanting to ask the impossible of it, the 'human rightists' harm the cause that they intend to defend more than they serve it." The author highlights one of the procedures which constitute the most dangerous tendencies of human rightism, and compares it to a "wishful thinking" (Pellet 2000, p. 5), in the sense that human rightists tend to take their desires for realities and to consider tendencies still in their infancy or, worse, that exist only in their dreams, as legal truths.

Rose (2016) also explains why applying human rights lens to combating corruption might not be the best approach, since human rights law is limited as a vocabulary describing the harms of corruption, which results in a potential overuse or misappropriation of this rhetoric. She exemplifies that claims of a right to a corruption-free society, or the insistence on a human rights approach to the issue of corruption held by lawyers and activists may push this rhetoric beyond its limits—with the possible effect of weakening the fabric of this body of law.

Therefore, it is essential to emphasize how this criticism is applied to the phenomena here examined. In opposition to the idea that the human rights lens could complement the traditional criminal law approach to corruption, this critique argues that doing so would result in overusing the human rights language—"because human rights are certainly a wonderful thing, but they are not everything" (Pellet 2000, p. 15). However, as will be discussed, this study intends to disagree.

2.3 Current debate

A very recent academic debate between three scholars in the field advanced this conversation, transcended the core doctrinal question of when exactly a particular corrupt act can be technically considered a human rights violation; and raised follow-up questions that provoked and shaped the present study. The debate occurred between professors Anne Peters, Kevin E. Davis, and Franco Peirone on 14 February 2019, and was published at the European Journal of International Law[1]. Due to the outline of the research questions, this section will focus only on the accounts of Peters and Davis.

2.3.1 Anne Peters

Peters (2018, p. 1253) examined the legal quality of the assumed 'link' between corruption and human rights, the exact legal consequences of a human rights-based approach, its added value and its drawbacks. Importantly, she distinguished the vague idea of a 'link' between corruption and human rights from the sharper legal claim that under certain conditions a

[1] European Journal of International Law, Volume 29, Issue 4, November 2018, EISSN 1464-3596, https://academic.oup.com/ejil/issue/29/4. The citations in the text are made separately for each author and his/her respective article, according to the applied reference system.

corrupt act (or the toleration of corruption) itself may constitute an actual violation of human rights.

She found out that the "demonstration of an actual violation is difficult in terms of both legal argument and proof—but it is not impossible" (Peters 2018, p. 1287). "Corrupt acts or omissions can under certain conditions technically be qualified as violating international human rights (notably social rights), although the difficulty to establish causality remains the most important doctrinal obstacle" (Peters 2019, p. 1).

She goes beyond the doctrinal analysis and makes a policy assessment, affirming that human rights analysis might be valuable in efforts to close the well-known 'implementation gap' that exists between the aspirations and the reality of anti-corruption policy. The author concludes suggesting the use of international human rights law as a lens for analyzing corrupt acts or omissions.

2.3.2 Kevin E. Davis

Davis (2018, p. 1289), however, replies to Peters, arguing that she "does not offer any convincing reason to believe that human rights analysis is helpful in that context." In other words, he believes that "she fails to explain how human rights analysis adds value, especially given the considerable effort required to show that any given corrupt act qualifies as a human rights violation and the sophistication of the existing anti-corruption regime."

In this sense, the author ponders that the analysis of whether corruption violates human rights must be careful and context-specific, and then he raises back to Peters interesting policy questions: "what is the value of undertaking such an analysis? In other words, what is the value of trying to determine whether a particular human rights violation was caused by corruption? Why make an effort to determine whether the consequences of corruption include human rights violations?" (Davis 2018, p. 1291).

These questions raised by Davis challenging Peters' account provoked this study. Therefore, the proposed research questions sprang out of this current debate in the literature that is still unresolved and needs teasing out.

3 Theoretical framework

3.1 Justiciability of Economic and Social Rights

Economic and Social rights are in the spotlight of this analysis—shaping the sub research question. The reason is hereby explained. Professor Peters (2018, p. 1285) informs that "[s]ocial and economic rights (hereafter ESC-rights) are the set of rights most affected by corruption. However, so far, the question at what point a social human right is actually violated in an individual case in the sense of constituting a breach of international law triggering state responsibility has not been fully resolved". She exemplifies that it is so far unclear which facts can be meaningfully qualified as a 'restriction of,' or as an 'interference with,' a social right, as we do about civil and political rights.

The author accurately points out that the more significant and basically unresolved question is: "how to exactly determine at which point a concrete ESC-right is violated." "This challenge is often described as a lack of justiciability. It is not only a procedural matter but relates to the material structure of the ESC-rights." (Peters 2019, p. 2).

Since "social rights violations very often result from systemic governance deficiencies, based on political budgetary decisions, and affect large groups of people" (Peters 2019, p. 2), the question whether and how systemic governance deficits can be articulated in the language of rights is not only relevant for corruption. The situation of corruption is only one modality of impinging notably on ESC-rights (Peters 2019, p. 2).

In this sense, Anne Peters' account on the correlation between addressing corruption and the justiciability of ESC-rights is part of the adopted theoretical framework.

3.2 Existing Gaps in the Criminal Approach and the Theory of Social Harm

At both domestic and international levels, the traditional legal account on anti-corruption is a criminal one. The purpose of criminal proceedings is—broadly speaking—to identify the person responsible for the offense. However, focusing criminal proceedings on the

perpetrator can neglect the victim of corruption. “Furthermore, the criminal approach does not offer ways of addressing the structural problems caused by corruption. It is concentrated, by its very nature, on a single offense, and typically cannot address the collective and general effects of corruption” (Human Rights Council 2015).

Barkhouse *et al.* (2018, p. 6) explain that applying the concept of Social Harm could help move anti-corruption policy away from a narrow focus on corruption as an economic crime to be sanctioned under criminal law, to a comprehensive understanding and approach designed to respect, protect and fulfil human rights, and promote societal well-being. Widening the focus of anti-corruption efforts in this way, to address the consequences of corruption for individual people and society, enables the application of international law, with potentially far-reaching consequences.

“Social Harm is a concept recognized in human rights law, for it encompasses the social, economic, psychological and environmental injury or damage inflicted on society by the acts of individuals, organizations or governments (national or international). It has allowed an assessment of illegal and harmful acts beyond domestic criminal justice systems, by providing a bridge to international human rights law” (Barkhouse *et al.* 2018, p. 6).

Additionally, the concept of Social Harm is reflected in the preamble of the United Nations Convention Against Corruption United Nations Convention Against Corruption 2003: “the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice,” and the Convention states that “a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively.”

3.3 Legal empowerment

There has been an evolution of the concept of legal empowerment throughout recent years, but a consensus arises from the similarities shared by the several definitions and the UN Secretary-General’s report on legal empowerment: “Legal empowerment is broad and multifaceted in nature; it does not consist of a single strategy and certainly does not constitute a magic pill for alleviating poverty. Nevertheless, the consensus does suggest a core concept:

Legal empowerment is the use of law specifically to strengthen the disadvantaged" (Golub 2010, p. 5).

There are four key elements of the concept that deserve further explanation in the light of this research. The first element, *'"The use of law,'* involves not just legislation and court rulings, but the many regulations, ordinances, processes, agreements and traditional justice systems that constitute the law for the disadvantaged" (Golub 2010, p. 6).

In the present context, the law in question that can empower the poor and disadvantaged is the international human rights law. One way of strengthening the linkages to the human rights discourse would perhaps be to view legal empowerment as a sub-set of the broader HRBA discourse. Thus, Sengupta examines the legal empowerment process from the human rights perspective and argues that in order to effect real change, it is important to define legal empowerment in terms of the recognition of basic human rights and ensure that the poor actually have the opportunity to exercise these rights (Sengupta 2008, cited in Banik 2009, p. 123).

The second element of the definition, *'"Specifically,"* captures the reality that legal empowerment features activities and strategies that focus on the disadvantaged. Such efforts include legal reforms exclusively or mainly aiming to benefit disadvantaged populations" (Golub 2010, p. 6). Therefore, the human rights-based approach constitutes a strategy that, in combination with the other theoretical premises, and in conformity with the phenomena here investigated, can be used to focus on the disadvantaged.

The third element, '*"Strengthen,"* captures the empowerment aspect of the concept (…) The term also reflects the fact that legal empowerment is both a process and a goal" (Golub 2010, p. 6). In this study, the strength through legal empowerment is directly connected to giving the poor and marginalized, which are also the primary victims of corruption, protagonism towards a people-centered approach to fighting corruption.

Lastly, the interpretation of who is the *"disadvantaged"* in this work is intrinsically connected with the consideration of the overlapping harmful effects of corruption and inequality (which will be further explored in Section 6.4.2).

3.4 Theoretical Prepositions

The relevant concepts introduced by this theoretical approach are the Justiciability of Economic and Social Rights, the Theory of Social Harm and Legal Empowerment, forming the theoretical prepositions:

i. The *Theory of Social Harm* emphasizes the socioeconomic impacts of corruption and focus on the victims, mostly the poor and marginalized people. These people are, also, by and large, the ones suffering ESC-rights violations; as a result of overlapping harmful effects of corruption and inequality, reinforcing the social struggles faced by the most disadvantaged.

ii. Thus, a human rights-bases approach to corruption can be used as a *Legal Empowerment* strategy to strengthen the disadvantaged, and contribute to the *Justiciability of Economic and Social Rights*.

4 Research design, Methodology, and Data

This chapter introduces the study's methodological considerations, including detailed descriptions of research strategy and design, case selection, data collection, and analysis methods.

4.1 Triangulation: mixed methods

This research applies a multi-method approach, so-called triangulation of methods. The term triangulation in social research describes the use of multiple methods to examine a scientific phenomenon. According to Wolfram Cox and Hassard (2005, p.111, cited in Kohlbacher 2006, p. 9), the implicit assumption in the social science literature on triangulation "is of developing a more effective method for the capturing and fixing of social phenomena in order to realize a more accurate analysis and explanation."

Different methods have different strengths and weaknesses. If they converge, it is more likely to get the true picture (Gillham 2000, p. 13, cited in Kohlbacher 2006, p. 9). In fact, the "effectiveness of triangulation rests on the premise that the weaknesses in each single method will be compensated by the counter-balancing strengths of another" (Jick 1979, p. 604, cited in Kohlbacher 2006, p. 9). Therefore, triangulation "can potentially generate what anthropologists call 'holistic work' or 'thick description' (Jick 1979, p. 609, cited in Kohlbacher 2006, p. 9).

Hence, directed content analysis and socio-legal research are appropriate analysis and interpretation methods for the present multiple-case study research design, as justified below.

4.1.1 Justification

4.1.1.1 Theory-guided analysis

Theory-guided analysis is the specific strength of directed content analysis (Section 4.4.1), which aligns with case study research's feature: "The central idea is that researchers constantly compare theory and data—iterating toward a theory which closely fits the data" (Eisenhardt 1989, p. 541, cited in Kohlbacher 2006, p. 11). Besides, an essential feature of

theory building is comparison of the emergent concepts, theory or hypotheses with the extant literature because tying the emergent theory to existing literature enhances the internal validity, generalizability, and theoretical level of theory building from case study research (Eisenhardt 1989, p. 544-545, cited in Kohlbacher 2006, p. 11). That is why Gläser and Laudel (1999, abstract, cited in Kohlbacher 2006, p. 11) state that qualitative—including directed—content analysis "could be an interesting form of data analysis for projects that aim to start from theory and contribute to it."

4.1.1.2 Integration of context

One of the key features of directed content analysis is that "the context is also central to the interpretation and analysis of the material" (Kohlbacher 2006, p. 11). Moreover, it is not only the manifest content of the material that is important, but also the latent content needs to be taken into consideration in order to achieve a holistic and comprehensive analysis of complex social phenomena (Kohlbacher 2006).

Socio-legal research also integrates the context of the observed phenomenon, which is, in this study, the context within which international human rights law and anti-corruption law exist, be that a sociological, historical, economic, geographical or another context." (Thomas 2000, p. 271 in Feenan 2013, p. 22).

Accordingly, "the key feature of the case study approach is not method or data but the emphasis on understanding processes as they occur in their context" (Hartley 1994, p. 227; 2004, p. 332, cited in Kohlbacher 2006, p. 11).

4.1.1.3 Conclusion

In this sense, directed content analysis can be viewed as a comprehensive approach to data analysis, which seems to be especially suitable for multiple-case study research. It can undoubtedly contribute to adding and enhancing rigor, validity, and reliability of case study research. Additionally, in the present study, the socio-legal lens brings the socioeconomic and political context into the spotlight, also in line with the multiple-case study design.

Therefore, directed content analysis and socio-legal research perfectly fit the credo of the multiple-case study research: helping to understand complex social phenomena (Kohlbacher 2006, p. 11).

4.2 Multiple-case study

4.2.1 Definition

This study applies a comparative design using a multiple-case study approach and employing a qualitative research strategy. Alan Bryman (2016, p. 74) explains that "a multiple-case (or multi-case) study occurs whenever the number of cases examined exceeds one." The main argument in favor of the multiple-case study is that it improves theory building. "By comparing two or more cases, the researcher is in a better position to establish the circumstances in which a theory will or will not hold (Eisenhardt 1989; Yin 2009, cited in Bryman 2016, p. 74)." Furthermore, the comparison may itself suggest concepts that are relevant to an emerging theory.

4.2.2 Justification

The research design is appropriate to answer the proposed research questions because the investigated phenomena—the values of a human-rights based approach to corruption—are deeply complex, and multiple-case study "embodies the logic of comparison, in that it implies that we can understand social phenomena better when they are compared in relation to two or more meaningfully contrasting cases or situations" (Bryman 2016, p. 72).

Furthermore, since "[t]he key to the comparative design is its ability to allow the distinguishing characteristics of two or more cases to act as a springboard for theoretical reflections about contrasting findings" (Bryman 2016, p. 75), it helps to improve theory building, allowing me to extend Anne Peters' (2019) account on the humanization of international anti-corruption law, and to contribute to the respective current academic debate (Section 2.3).

4.2.3 Case selection

Cases were selected on the basis that they represent extreme types (Bryman 2016, p. 75), in other words, they are important precedents in their respective regional jurisprudences on the

matter of ESC-rights, and a step forward on the justiciability of those rights. Three cases were selected according to this approach: (*i) Lagos del Campo v. Peru. Series C. No. 340, Inter-American Court of Human Rights (IACtHR), 31 Aug 2017; (ii) Gonzales Lluy Y Otros v. Ecuador. Series C No 298, Inter-American Court of Human Rights (IACtHR), 1 Sep 2015;* and *(iii) The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria and Universal Basic Education Commission. ECW/CCJ/JUD/07/10, Community Court of Justice of the Economic Community of West African States (ECOWAS), 30 Nov 2010*.

The reason why this study focuses on ESC-rights instead of another category of human rights (e.g. civil and political rights), or simply human rights in general, relies on the theoretical framework; following Anne Peters' (2019) premises that (i) corrupt acts or omissions can under certain conditions technically be qualified as violating *notably social rights*; and (ii) corruption is one modality of impinging *especially on ESC-rights*.

"With case selection approach such as this, the findings that are common to the cases can be just as interesting and important as those that differentiate them" (Bryman 2016, p. 75). By strategically choosing human rights court cases in this way, I could establish the common and divergent factors that lay behind the legal reasoning and the dynamics of the courts' decision-making processes, evaluating whether or not the consequences of corrupt and non-corrupt behaviors resulted in ESC-rights violations. By doing so, I could ultimately investigate the value of trying to determine whether a particular human rights violation was caused by corruption.

The reason for choosing one case involving corruption, and two cases not involving corruption is: by comparing the legal reasoning of whether a particular human rights violation was caused by corruption, on the one hand, and by other types of behaviors, on the other hand; this study will further understand both phenomena. The commonalities and dissonances of the cases will shed light on the proposed inquiries, and expose how claims of ESC-rights violations were recognized or rejected and based on which values and legal fundaments.

4.2.4 Limitations

The limitation of this design concerning the present study refers to the differences that are observed between the contrasting cases, since they "[m]ay not be due exclusively to the distinguishing features of the cases. Thus, some caution is necessary when explaining contrasts between cases in terms of differences between them" (Bryman 2016, p. 74). The strategy I use to address this limitation is applying the socio-legal lens to understand the socioeconomic context of each case deeply.

4.3 Techniques for data analysis

4.3.1 Directed content analysis

4.3.1.1 Definition

The first applied technique for data analysis is Directed content analysis—an approach to conventional qualitative content analysis—"a method for systematically describing the meaning of qualitative data [performed by] assigning successive parts of the material to the categories of a coding frame" (Schreier 2014, cited in Boréus and Bergström 2017, p. 24).

When an existing theory or prior research about a phenomenon would benefit from further description, directed content analysis can be used. "This approach aims to validate or extend conceptually a theoretical framework or theory" (Hsieh and Shannon 2005, p. 1281). Therefore, this research uses this method to contribute to Anne Peters' (2019) account on the humanization of International Anti-Corruption law, and to support her arguments by extending the examination of the adopted theoretical framework (Chapter 3).

Existing theory helps focus the research questions. It provides predictions about the variables of interest or the relationships among variables, thus helping to determine the coding scheme—here called categorization matrix. This has been referred to as deductive category application (Mayring 2000, cited in Hsieh and Shannon 2005, p. 1281). Accordingly, the combination of Peters' (2019) arguments supporting the added value of a focus on rights in combating corruption; the Theory of Social Harm, and the concept of Legal Empowerment

focused the proposed research questions and defined the formative categorization matrix as explained below.

4.3.1.2 Analytical steps taken in directed content analysis

This research adapted Assarroudi *et al.*'s (2018, pp. 48–51) methodological model of directed content analysis (hereafter called DCA), resulting in the present model consisted of 10 steps and three phases described below: preparation phase (steps 1–5), organization phase (steps 6–9), and reporting phase (step 10).

The preparation phase:

Step 1: Selection of the appropriate research strategy: multiple-case study. DCA uses a rule-based and methodologically controlled approach in order to deal with the complexity and to gradually reduce it. Thus, as already justified above based on the Triangulation theory (Section 4.2), this method perfectly fits the credo of case study research: "helping to understand complex social phenomena" (Kohlbacher 2006, p. 11).

Step 2: Case selection: (The approach to case selection for the multiple-case study was already detailed in section 4.3.3).

Step 3: Specifying the unit of analysis. The units of analysis are the smallest components of texts in which the occurrence and the characterization of variables (categories) are examined (Herkner 1974, p. 173, cited in Titscher *et al.* 2015, p. 4).

In this sense, the three Court decisions: (i) Lagos del Campo v. Peru, at the Inter-American Court of Human Rights; (ii) Gonzales Lluy Y Otros v. Ecuador, at the Inter-American Court of Human Rights; and (iii) The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. Nigeria and Universal Basic Education Commission, at the ECOWAS Community Court, are considered as the units of analysis.

Holsti (1968 p. 647, cited in Titscher *et al.* 2015, p. 4) distinguishes between recording unit and context unit: "(a) the recording unit is the smallest textual unit within which the occurrence of variables is examined; (b) the context unit is invoked to establish the characterization of variables, such as their positive or negative assessment". Hence, for the purpose of this

research, both recording unit (manifest/written legal reasoning of the cases) and context unit (context of the cases/latent content) were considered as the units of analysis.

Step 4: Deciding on the analysis of manifest and/or latent content. Complementing the previous step, and considering the study's aim, both manifest and latent content were analyzed. The manifest content is limited to the literal legal reasoning of the decisions, and the latent content includes both the researcher's interpretations of the available text and the socio-legal context of the cases. "Both types of content are recommended to be considered for data analysis because a deep understanding of data is preferred for DCA" (Thomas and Magilvy 2011, cited in Assarroudi *et al.* 2018, pp. 48–51).

Step 5: Immersion in data. The three human rights court decisions were read and reviewed several times in the light of the research questions. The questions guided me to get immersed in data and to extract related meanings (Elo and Kyngäs, 2008; Elo *et al.*, 2014, cited in Assarroudi *et al.* 2018, pp. 48–51).

The organization phase:

Step 6: Developing a formative categorization matrix. A formative matrix of themes and related categories was deductively derived from the theoretical framework (Chapter 3). The prominent feature of this matrix is the derivation of themes from (1) Anne Peters' (2019) account on Justiciability of Economic and Social Rights; (2) the Theory of Social Harm (Barkhouse *et al.* 2018); and (3) the concept of Legal Empowerment (Golub 2010). In line with the deductive approach, the interpretations of the categories were also linked to the existing theories in order to draw inferences—as better explained in the next step.

Theoretical framework	**Theme**	**Category (manifest and/or latent; in vivo and/or abstract)**
Justiciability of Economic and Social Rights (Peters 2019)	1) Legal reasoning on ESC-rights' encroachment trough systemic governance deficiencies	a) Violation of ESC-rights through one of the branches of government
		b) Maximum available resources ("maximum efforts");

		c) Existing institutions not functioning properly
Theory of Social Harm (Barkhouse et al. 2018)	2) Assessment of illegal and harmful corrupt and non-corrupt acts and behaviors	a) People-centered approach: considers the victims, the human dimension and social implications of the conduct
		b) The victim is overlooked: negligence or omission regarding the social harm caused
Legal empowerment (Golub 2010)	3) Social, political and economic factors/context of the cases	a) Marginalization and vulnerability affect the victims and overlap with the effects of corrupt and non-corrupt behaviors

Table 1: Deductive formative categorization matrix. Source: Author's original

Step 7: Theoretical definition of the themes and categories. The categorization reduced the amount of raw data to what is relevant to the research questions, broke the data down to manageable sections, and took the research through the transformation of raw data to higher-level insights or abstractions as the development of themes (Vaismoradi *et al.* 2015, p. 105).

Derived from the theoretical framework, the above definitions of categories are accurate and objective (Mayring 2000, 2014, cited in Assarroudi *et al.* 2018, pp. 48–51), and in order to ensure that, this study adapted Constas' (1992, cited in Vaismoradi *et al.* 2015, p. 103) categorization process:

Components	Description/Implementation
Origination	*Description:* The researcher can refer to previous research in the relevant area and derive categories from statements or conclusions found in the literature regarding the investigated phenomenon. *Implementation:* I referred to the theoretical framework and applied its statements and concepts to formulate the "descriptions of the categories," so-called coding rules, as explained in the next step.
Verification	*Description:* It consists of sources of referential verification (utilizing existing research findings or theoretical arguments to justify categories). *Implementation:* I applied the main arguments of the authors Anne Peters 2019 (2019), Barkhouse *et al.* (2018), and Golub (2010) to verify the accuracy of the coding rules.
Nomination	*Description:* It concerns with naming categories. Category names can be derived from existing theories and the body of literature. *Implementation:* Similarly, I applied the nomenclature used by the aforementioned authors to define the categories' terminology.

Table 2: Author's original based on Constas' (1992, cited in Vaismoradi et al., 2015, p. 103) categorization process

"A category is an idea that is directly expressed in the text, but a theme is more than a category. The former is more general and abstract and has intellectual and affective content depending on the interpretation of the researcher. It is through the development of theme that category is given a depth of meaning." (Vaismoradi *et al.* 2015, p. 103).

Themes 1, 2, and 3 are implicit topics which have a high degree of generality and organize ideas regarding the subject of inquiry (Vaismoradi *et al.* 2015, p. 102). They refer to a more abstract level, which required interpretation using the Socio-Legal lens (Section 4.4.2). Their respective categories refer to manifest and/or latent content of the three court decisions.

S*tep 8: Determination of the coding rules for categories*. The coding rules are purely the description of the categories already detailed in the matrix, developed based on the theoretical framework, by following a clear and structured categorization process (Step 8) (Mayring 2014, cited in Assarroudi *et al.* 2018, pp. 48–51). The coding rules contribute to a clearer distinction between the categories, thereby improving the trustworthiness of the study.

Step 9: Performing the main data analysis. Meaning units related to the study's aim and categorization matrix were selected from the reviewed content. Next, they were summarized (Graneheim and Lundman 2004, cited in Assarroudi *et al.* 2018, pp. 48–51) and given conceptual codes.

The reporting phase:

Step 10: Reporting the directed content analysis and findings. The case reports and the data collection are presented in Chapter 5. The findings from the directed content analysis are systematically and descriptively presented and interpreted in Chapter 6, employing Socio-Legal lens, in such a way that the association between the raw data and the categorization matrix is clearly shown and quickly followed. They offer supporting evidence for Anne Peters' (2019) account on the humanization of International Anti-corruption law.

Detailed descriptions of case selection, data collection, and analysis methods were exhaustedly presented in this section.

4.3.1.3 Justification

The justification for applying this technique was already explained in Section 4.2, based on the Triangulation Theory. Furthermore, Chapter 6 shows that the categories and themes used in this research informed the "Findings," which supported Anne Peters' (2019) theory on the values of the humanization of International Anti-corruption law. Therefore, the methodological choice is justified, since "[t]he main strength of DCA is that existing theory can be supported and extended" (Hsieh and Shannon 2005, p. 1283).

4.3.1.4 Trustworthiness

The trustworthiness criteria were adopted within the steps outlined below in the detailed description of the analytical steps taken in directed content analysis. They consist of: (i) Definition of a clear formative categorization matrix *(Step 7)*; (ii) Application of Constas' (1992, cited in Vaismoradi *et al.* 2015, p. 103) categorization process *(Step 8)*; and (iii) formulation of accurate and objective coding rules *(Step 9).*

4.3.1.5 Limitations

Hsieh and Shannon (2005, p. 1283) explain that DCA does present challenges to the naturalistic paradigm. Using theory has some inherent limitations, whereby researchers approach the data with an informed but, nonetheless, strong bias. Therefore, researchers might be more likely to find evidence that is supportive rather than nonsupportive of a theory. Second, an overemphasis on the theory can blind researchers to contextual aspects of the phenomenon.

These limitations are related to neutrality or confirmability of trustworthiness as the parallel concept to objectivity (Lincoln and Guba 1985, cited in Hsieh and Shannon 2005, p. 1283). To achieve neutral or unbiased results, an audit trail and audit process can be used. (Hsieh and Shannon 2005, p. 1283).

4.3.2 Socio-legal research

4.3.2.1 Definition

The second technique for data analysis and interpretation is Socio-legal research. Although there is no agreed definition of socio-legal studies (Feenan 2013, p. 21), this study follows the Socio-Legal Studies Association (SLSA), which conceives the method as embracing "disciplines and subjects concerned with law as a social institution, with the social effects of law, legal processes, institutions and services and with the influence of social, political and economic factors on the law and legal institutions" (Feenan 2013, p. 21).

"The 'socio' in socio-legal studies means to us an interface with a context within which law exists, be that a sociological, historical, economic, geographical or another context." (Thomas 2000, p. 271, cited in Feenan 2013, p. 22). Its purpose will generally be "to facilitate a future change, either in the law itself, or in the manner of its administration" (Chynoweth 2008, p. 30); and the method is also called "law reform research" or "law in context" (Arthurs 1983, cited in Chynoweth 2008, p. 30). Socio-legal studies are an interdisciplinary alternative and a challenge to doctrinal studies of law. The "socio" in socio-legal studies does not refer to sociology or social sciences, but represents "an interface with a context within which law exists" (Wheeler and Thomas 2000).

"The epistemological nature of the research applying socio-legal methods changes from that of an internal inquiry into the meaning of the law to that of external inquiry into the law as a social entity" (Chynoweth 2008, p. 30). Examples are an evaluation of the effectiveness of a piece of legislation in achieving particular social goals, or an examination of the extent to which it is being complied with. Therefore, this technique consists of research about law rather than research in law (Chynoweth 2008).

4.3.2.2 Justification

Social-legal research is an adequate technique to analyze the case data because this research aims to extrapolate the doctrinal analysis of the intersections between international human rights law and international anti-corruption law and look at the values of a reconceptualization of particular corrupt behaviors as actual violations of human rights.

A traditional doctrinal legal research does not suffice to address the proposed research questions. It is necessary to consider the influence of social, political, and economic factors on the harmful effects of corruption on mainly ESC-rights, in order to further understand the values of a human rights-based approach to corruption.

The ultimate purpose of this analysis is to contribute to the current debate presented in Section 2.3, complementing professor Anne Peters' (2019) doctrinal account (adopted as a doctrinal premise in Page 5) and policy assessment, adding to that a socio-legal examination of the context within the observed phenomenon happens, and the international human rights law and anti-corruption law exist and are applied in concrete cases. Therefore, the socio-legal is the most appropriate lens to look at the present inquiries.

The advantages of this technique are that by putting the legal institution of corruption in context, it sheds light on the influence of social, political, and economic factors involved when corrupt behaviors affect human rights. This approach challenges the traditional criminal account applied on anti-corruption laws and policy, and reveals the values of adding a human rights-based approach to corruption, in which the focus on the victims reveals the socioeconomic aspects of the encroachment of human rights by corruption.

5 The Cases

This chapter will present the examined court cases which illuminated the proposed research questions and shed light on the dynamics of determining whether a particular human rights violation was caused by corruption. In other words, the cases helped to comprehend the value of doing so, and at the same time, allowed me to explore how this phenomenon happens. In order to do that, a DCA of the three selected cases will be provided in Chapter 6, applying the Socio-legal analytical and interpretative technique.

5.1 Lagos del Campo v. Peru (IACtHR)

In 1989, Lagos del Campo was discharged from the company where he had worked as an electrician for over 13 years. Lagos del Campo conducted a magazine interview in the capacity of president-elected of his union in which he criticized the company for exerting pressure and threatening workers to influence union elections. Lagos del Campo was fired after the interview in response to his statements. After the second instance Labor Court upheld Lagos del Campo's dismissal, the former unionist was not reinstated in his job, was ineligible to receive compensation or benefits, and lost the possibility of accessing a pension for retirement.

This case is the first time the IACtHR condemned "the violation of article 26 of the American Convention on Human Rights" (Lagos del Campo v. Peru 2017, p. 4) for denying the plaintiff the right to work and for infringing upon his rights to labor stability and association. The court found a violation of Lagos del Campo's ESC-rights suggesting that by denying Lagos del Campo an adequate judicial forum to defend his labor rights, the state failed to use maximum available resources to protect the right to work and associated rights.

The court found violations of the rights above, as well as Lagos del Campo's right to a fair trial and judicial protection. The court held that the State's obligation to respect the right to work includes the provision of effective legal mechanisms through which worker claims of unjustified firings in the private sector could be brought and remedied through reinstatement and other measures. The Peruvian state failed to adopt appropriate measures to protect against violations of the right to work attributable to third parties. Because the Peruvian court

supported the improper dismissal in its judicial system, the State violated the so-called "Obligation to Protect" individuals against human rights violations caused by third parties. In this sense, the IACtHR ordered compensatory damages, including lost salary, retirement pension, and social benefits, as well as additional damages for emotional distress.

This first judgment of the Inter-American Court of Human Rights recognizing the direct enforceability of ESC-rights is a breakthrough case within the Inter-American regional human rights system, and strengthens global recognition of ESC-rights broadly. The Special Rapporteurship on Economic, Social, Cultural and Environmental Rights of the Inter-American Commission on Human Rights (2017, n.p.) has welcomed the decision as a "historic milestone" and "a step forward in the region for the interdependence and indivisibility between civil and political rights, on the one hand, and economic, social, cultural and environmental rights, on the other."

5.2 Gonzales Lluy Y Otros v. Ecuador (IACtHR)

In 1998, when Talía was three years old, she was infected with the HIV virus while receiving a blood transfusion on which the respective serological tests were not done. The blood was obtained from a blood bank of the Red Cross, and the transfusion was done in a private clinic in Ecuador. After Talía was infected, her mother sought criminal and civil justice, as well as payment of damages. However, she did not succeed (The Secretariat of the Inter-American Court of Human Rights n.d.).

When Talía was five years old, she was banned from a public primary school, after her health condition was disclaimed. Talía's mother filed a judicial complaint against the Ministry of Education and Culture, the school principal and the teacher, alleging deprivation of Talía's right to education, and requested her reintegration into school, as well as the payment of damages. Nevertheless, the Ecuadorian court did not decide in favor of Talía (The Secretariat of the Inter-American Court of Human Rights n.d.).

The Inter-American Court educed that the State bears a duty of supervision and control of health services, even if offered by a private entity. It found that the blood bank that provided the blood that was transfused to Talía was insufficiently monitored and inspected by the State. This severe omission had allowed blood which had not been subjected to the most basic

security tests, such as HIV tests, to be delivered to Talía's family for transfusion, resulting in her infection and consequent permanent damage to her health (Gonzales Lluy Y Otros v. Ecuador 2015).

The IACtHR concluded that Ecuador was responsible for the violation of the duty to inspect and supervise the provision of health services (private and public) arising from the right to health and the obligation not to expose life to risk enshrined in Articles 5 and 4 American Convention on Human Rights 1969. Therefore, the negligence that had led Talía to contract HIV was attributable to the State, which had occurred while she was in the care of a private entity (The Secretariat of the Inter-American Court of Human Rights n.d.).

Furthermore, following the UN Committee on Economic, Social and Cultural Rights, the Court held that in order to ensure the right to education, "four essential and interrelated features should be fulfilled in all educational levels: (i) availability, (ii) accessibility, (iii) acceptability and (iv) adaptability" (Gonzales Lluy Y Otros v. Ecuador 2015, p. 68).

Regarding Talía's expulsion from school, the Court acknowledged that there was no adaptability of the educational environment to Talía's health situation (The Secretariat of the Inter-American Court of Human Rights n.d.). In this sense, the IACtHR concluded that "Talía had suffered discrimination resulting from her status as a female child living in poverty and with HIV, and the Ecuadorian state violated her right to education, under Article 13 of the Protocol of San Salvador, in relation to Articles 1(1) and 19 of the ACHR" (Gonzales Lluy Y Otros v. Ecuador 2015, p. 88).

5.3 SERAP v. Nigeria (ECOWAS)

In 2005, Nigeria's anti-corruption commission started an investigation into allegations of corruption at the Universal Basic Education Commission (UBEC), a government agency which provides additional federal funding support for schools in disadvantaged areas of the country (Mumuni 2016).

The investigation by the Independent Corrupt Practices and Other Related Offences Commission (ICPC) was launched in response to a petition filed by the Nigerian NGO SERAP (The Registered Trustee of the Socio-Economic Rights and Accountability Project), bases on

information from whistleblowers and SERAP's own investigative efforts. "Its final report detailed extensive corruption and mismanagement in the handling of approximately $270 million in government funds during 2005 and 2006; the report found evidence that funds meant for building and repairing schools and classrooms had been diverted to fraudulent front companies, while in other cases state officials had overpaid favored contractors for work that was either substandard or not done at all" (Mumuni 2016, p. 3).

In 2007, SERAP used the findings of the ICPC as evidence to submit a human rights' claim at the ECOWAS Court, arguing that the kind of corruption documented was not an isolated case, but an example of systematic high-level corruption and theft of funds meant for primary education in Nigeria.

The NGO claimed that due to this type of corruption, Nigeria has been unable to attain an acceptable level of education, and this reality reflects the sordid statistics that "over five million Nigerian children have no access to primary education, and there is a poor learning environment disseminated across the country" (Mumuni 2016, p. 4). Furthermore, SERAP reasoned that the Nigerian government contributed to these problems by failing to seriously address allegations of corruption at the highest levels of government. Finally, it was emphasized that corruption destroys the people's natural wealth and public resources, and is the primary cause of the problems denying the majority of the citizens' access to quality education.

"Overall, the case was based on the provisions of Article 4(g) of the 1993 Revised Treaty of ECOWAS, as well as Articles 1, 2, 17, 21 and 22 of the ACHPR. The core substantive rights involved were the right to education, the right of the people not to dispossessed of their wealth and natural resources, and the right of people to economic and social development" (The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria and Universal Basic Education Commission 2010, p. 2).

The court found that "[t]he UBEC, by the law establishing it, has a responsibility to ensure that the funds they disburse to the Nigerian states are utilized for the purposes for which they were disbursed" (Mumuni 2016, p. 7). Therefore, UBEC cannot be exempted from the responsibility if funds given to the states are not adequately accounted for, since the agency

has the onus to monitoring the use of the funds, hence the power given to UBEC to refuse further disbursements.

The court agreed that embezzling, stealing or even mismanagement of funds meant for the education sector would have a negative impact on education since “it reduces the amount of money made available to provide education to the people” (The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria and Universal Basic Education Commission 2010, p. 4).

However, the decision emphasized that “There must be a clear linkage between the acts of corruption and a denial of the right to education. In a vast country like Nigeria, with her massive resources, one can hardly say that an isolated act of corruption contained in a report will have such devastating consequence as a denial of the right to education, even though as earlier pointed out it has a negative impact on education” (The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria and Universal Basic Education Commission 2010, p. 4).

According to the court, “whilst steps are being taken to recover the funds or prosecute the suspects, as the case may be, it is in order that [the government] should take the necessary steps to provide the money to cover the shortfall to ensure a smooth implementation of the education program, lest a section of the people should be denied a right to education” (The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria and Universal Basic Education Commission 2010, p. 5).

6 Findings

Chapter 5 reported the three cases object of this research. This chapter presents the DCA and reveals the cases' common and diverse aspects that are relevant to the study's purpose; which, in the light of the adopted theoretical framework, assemble the foundation underlying the reflections and discussions hereby developed. Since "[t]he key to the comparative design is its ability to allow the distinguishing characteristics of two or more cases to act as a spring-board for theoretical reflections about contrasting findings" (Bryman 2016, p. 75).

Therefore, following the analytical steps presented in Chapter 4 and applying the Formative Categorization Matrix, this section provides an in-depth elucidation of findings concerning the *themes* and *categories* about which it will engage in a Socio-Legal analysis.

6.1 ***Theme 1:*** Legal reasoning on ESC-rights' encroachment trough systemic governance deficiencies

6.1.1 Category 1 a): Violation of ESC-rights through one of the branches of government

6.1.1.1 Case Lagos Del Campo

In this case, the IACtHR recognized that the State violated Lagos del Campo's right to work under the Article 26 (progressive development of economic, social and cultural rights realization) of the American Convention on Human Rights, in relation to the obligation to protect that right, by supporting his dismissal by a third-party employer through its domestic judicial system (Lagos del Campo v. Peru 2017).

The obligation to protect requires states to prevent third parties from interfering in any way with the enjoyment of human rights (Bacio-Terracino 2008). In the concrete case, Lagos del Campo filed his initial claim in the state Labor Court, claiming that his dismissal was motivated by his union advocacy and, therefore, violated his right to freedom of expression, was an illegal interference with union and labor activity, and directly violated his right to work. The Labor Court ruled in his favor, holding that his dismissal was illegal. However, the

second instance court reversed the decision, holding that freedom of expression does not include the ability to denigrate the honor and dignity of an employer.

It is essential to highlight here that "protective obligations are addressed to all three branches of government. They obligate the legislative power to enact effective laws, the executive power to undertake effective administrative measures, and the judicial power to engage in effective legal prosecution" (Peters 2018, p. 1259). Therefore, the clear picture of the concrete case unambiguously shows how the judicial power failed to prosecute the third party that dismissed the victim illegally and, consequently, in direct violation of the obligation to protect his right to work.

6.1.1.2 Case Ecuador

In this case, the IACtHR found that the negligence that had led Talía to contract HIV was attributable to the State, since Ecuador violated the duty to inspect and supervise the provision of health services arising from the right to personal integrity and the obligation not to expose life to risk enshrined in Articles 5 and 4 of the ACHR.

The decision recalled that the State bears a duty of supervision and control of health services, even if offered by a private entity (Gonzales Lluy Y Otros v. Ecuador 2015). In this sense, similarly to the previous case, it was recognized that Ecuador violated the obligation to protect individuals under its jurisdiction from human rights violations by a third party, which is the private clinic where the victim was infected with HIV.

Additionally, in the same line as Lagos del Campo case, the violation occurs through one of the branches of government, but here it is the executive power who had an obligation to protect by undertaking effective administrative measures in order to inspect and supervise the provision of health services, ultimately protecting the right to health.

6.1.1.3 Case SERAP

In the SERAP case, the ECOWAS also explicitly recognized the state's duty to "inspect and supervise" the funds allocated for primary education in Nigeria:

> "It is clear from even a cursory reading of this provision in the Act which the second defendant themselves relied upon that <u>they have a responsibility to ensure that the funds they disburse</u>

> to the States, *inter alia*, are utilized for the purposes for which they were disbursed (…) It is clear from the use of the mandatory expression 'shall not disburse' that the Act has placed the onus on them (…) that the funds are properly utilized, hence the power given to them to refuse further disbursements" (The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria and Universal Basic Education Commission 2010, p. 3).

The second defendant mentioned by the Court is the Universal Basic Education Commission of Nigeria (UBEC), and as so, part of the Executive branch of its government. Hence, the decision found that the state (represented by UBEC) did have an obligation to ensure that the embezzled funds were appropriately used and failed to do so.

Once the state has an obligation to ensure that public funds for education are used properly, which is precisely what didn't happen due to corruption, then evidently "Nigeria failed to comply with this obligation through its Executive power in the moment the public funds were embezzled" (Barkhouse *et al.* 2018, p. 7).

Therefore, similarly to the previous cases, the decision recognizes the failure of the state in inspecting and supervising, not the delivery of services, but the funds allocated for primary education in Nigeria instead. Nevertheless, it still does not frame it as a violation of ESC-rights through one of the branches of government. In this regard, it is essential to highlight that, in the previous cases, the failures were related to states' obligation to protect, which means to protect the individuals against human rights violations by third parties. Here the duty of inspecting and supervising the funds allocated for primary education does not refer to the obligation to protect human rights, but to the obligation to fulfill them instead.

Bacio-Terracino (2008, p. 30) explains precisely how this violation occurs: "The obligation to fulfill requires states to take positive measures that enable and assist individuals and communities in enjoying the right to education. States must work towards free education and must make education facilities and teaching materials available to their citizens. When embezzlement of funds destined to education results in lack of education facilities and teaching materials, the state is clearly not complying with its obligation to fulfill."

In the concrete case, the embezzlement of funds not merely resulted in a lack of facilities or materials, but in the very unavailability of the right to education to an enormous parcel of

Nigerian children. Notwithstanding these important legal advances, in the end, the Court decided that it could not be proved that Nigeria had violated its obligations under the ACHPR African Charter on Human and Peoples' Rights 1981 because:

> "In a vast country like Nigeria, with her massive resources, one can hardly say that an isolated act of corruption (...) will have such devastating consequence as a denial of the right to education" (The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria and Universal Basic Education Commission 2010, p. 4).

The Court did acknowledge that the embezzlement of funds by UBEC necessarily had "a negative impact on education." Still, because it was not possible to prove a direct causal link between the act or omission of the state (the corrupt acts of UBEC officials) and the denial of the right to education, it was not possible, according to the Court, to find Nigeria in violation of its human rights obligations under the ACHPR (Barkhouse *et al.* 2018, p. 7).

6.1.2 Category 1 b): Maximum available resources ("maximum efforts")

6.1.2.1 Case Lagos del Campo

The court found a violation of Lagos del Campo's ESC-rights suggesting that by denying him an adequate judicial forum to defend his labor rights, the state failed to use maximum available resources to protect the right to work and associated rights (Lagos del Campo v. Peru 2017).

In the concrete case, the principle of maximum available resources (or efforts) is stated in Art. 34, item "g" Charter of the Organization of American States 1948 and obligates states to dedicate "maximum efforts" towards the full realization of human rights by economic development and peace, including dedicating maximum efforts towards guaranteeing economic and social rights.

In General Comment 3, the Committee on Economic, Social and Cultural Rights reiterated the onus of states in defending their failure to allocate resources to ensuring peoples' ESC-rights: "In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been

made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations" (Committee on Economic, Social and Cultural Rights 1990).

In this sense, the resources in Peru's disposition can be understood not only as economic resources (e.g., public funds, allocated budgets, etc.) but also as public services. Thus, the provision of effective legal mechanisms through which the individual can seek judicial protection of his rights according to the rule of law is part of the public services provided by the Judicial Power, and in the concrete case, the state failed to make the efforts to use these mechanisms that were already at its disposition—the specialized Labor Court.

Consequently, the Peruvian state failed to dedicate "maximum efforts" to protect against violations of the right to work attributable to third parties, as the Peruvian court supported the improper dismissal in its judicial system, therefore, implicitly endorsing the violation of Lagos del Campo' human rights (Lagos del Campo v. Peru 2017).

6.1.2.2 Case Ecuador

The Inter-American Court stressed that the right to education epitomizes the indivisibility and interdependence of all human rights. On the basis of standards set forth by the UN Committee on Economic, Social and Cultural Rights, the Court held that in order to ensure the right to education, four essential and interrelated characteristics should be fulfilled in all educational levels: (i) availability, (ii) accessibility, (iii) acceptability and (iv) adaptability.

Regarding Talía's expulsion from school, the Court concluded that there was no adaptability of the educational environment to Talía's health situation (Gonzales Lluy Y Otros v. Ecuador 2015). Since accessibility and adaptability are essential features of the right to education, every effort has not been made to use all resources that were at the State's disposition to satisfy, as a matter of priority, those essential features.

The adaptability requirement means that "education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. Additionally, the accessibility feature means that "educational institutions and programs have to be accessible to everyone, without discrimination, within the jurisdiction of the State party" (Committee on Economic, Social and Cultural Rights 1999, p. 3).

Furthermore, the non-discrimination aspect of accessibility is crucial in this context: "education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds" (Committee on Economic, Social and Cultural Rights 1999, p. 3). The Ecuadorian state failed to dedicate the maximum efforts to provide the victim with an education without discrimination, since, in this regard, the Court concluded that there are obligations inherent in the right to education of people living with HIV/AIDS which were violated by Ecuador (Gonzales Lluy Y Otros v. Ecuador 2015).

6.1.2.3 Case SERAP

In the same line of the previous cases, the ECOWAS court recognized the lack of availability and accessibility of education in Nigeria, and even ordered the state to provide the money to cover the shortfall to ensure a smooth implementation of the education program, and consequently, guarantee the availability and accessibility of that right, indirectly recognizing the omission of the state in that regard, but it still didn't uphold the violation itself:

> Admittedly, embezzling, stealing, or even mismanagement of funds meant for the education sector will have a negative impact on education since it reduces the amount of money made available to provide education to the people. (…) Thus, whilst steps are being taken to recover the funds or prosecute the suspects, as the case may be, it is in order that the first defendant should take the necessary steps to provide the money to cover the shortfall to ensure a smooth implementation of the education program, lest a section of the people should be denied a right to education. (The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria and Universal Basic Education Commission 2010, p. 5)

When the Court affirms that Nigeria should provide the resources to cover the shortfall in order to ensure the implementation of the right to education, that is a recognition that the state didn't use the maximum of available resources for that purpose whatsoever, once the exact available resources that should have been used in that case were, on the contrary, embezzled by corruption.

Accordingly, the Independent Expert on the Question of Human Rights and Extreme Poverty, Magdalena Sepulveda (2003, cited in Balakrishnan *et al.* 2011, p. 3), has drawn the following conclusion regarding the obligation of governments to use the "maximum of available

resources" to realize ESC-rights: "(…) Failure to curb corruption is a failure to comply with this obligation".

6.1.3 Category 1 c): Existing institutions do not function properly

6.1.3.1 Case Lagos Del Campo

The court implicitly acknowledged that Peru, in fact, possessed the adequate institutions to protect Lagos del Campo' rights through its judicial system and yet failed to do so. By declaring the judicial processes afforded to him to be inadequate, the Court implies that the state fails its obligation to protect ESC-rights in that concrete case when its existing institutions do not function properly (Lagos del Campo v. Peru 2017).

The Labor Justice is one of the sub-divisions of the Judiciary into specialized tribunals and legal systems, which, consequently, has specific principles, rules, procedures, and the institutional role to regulate work relationships and all related conflicts in a particular jurisdiction and, ultimately, to protect the right to work, under the rule of law. On that account, the second instance of the Labor Court of Peru indubitably failed to execute its institutional role, consequently violating the state's obligation to protect the victim's right to work.

6.1.3.2 Case Ecuador

Comparably to Lagos del Campo's case, the Ecuadorian domestic court and the Ministry of Education did not function according to their institutional responsibilities and commitment to the protection of rights under the rule of law.

Although Talía's mother filed a judicial claim against the Ministry of Education and Culture, the school principal and the teacher, alleging a deprivation of Talía's right to education, and requested her reintegration into school, the domestic court determined that "there was a conflict of interest between Talía's individual rights and the interests of a student conglomerate, and this collision caused social or collective rights to prevail, as it is the right to life vis-à-vis the right to education" (Gonzales Lluy Y Otros v. Ecuador 2015, p. 97).

The decision of the case Gonzales Lluy Y Otros v. Ecuador (2015, p. 82) straightforwardly emphasized the institutional failure of the Ecuadorian's judicial system, and highlighted that

"under a test reviewing the necessity and strict proportionality of the measure, the means chosen by the domestic authorities constituted the most damaging and disproportionate alternative available in order to protect the integrity of other pupils".

6.1.3.3 Case SERAP

The second defendant, in this case, is the Universal Basic Education Commission of Nigeria (UBEC), and the ECOWAS recognized its institutional role of taking care of the basic educational needs of the Nigerian people, and that UBEC did have an obligation to ensure that the embezzled funds were appropriately used and yet failed to do so.

> "The Federal Government of Nigeria has established institutions, including the 2nd defendant to take care of the basic education needs of the people of Nigeria. It has allocated funds to these institutions to carry out their mandate" (The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria and Universal Basic Education Commission 2010, p. 4)

There is no obscurity or ambiguity in the highlighted statement. ECOWAS upheld that the misappropriated funds were allocated to UBEC to carry out its mandate to implement the right to education in Nigeria, and due to its corrupt behavior, the institution did not function properly by omission—in preventing any type of corruption; and by embezzling the allocated funds.

6.1.4 First value: The justiciability of Economic and Social rights

The analysis of *Theme 1* and respective categories illustrates Anne Peters' (2019) observation regarding whether and how systemic governance deficits can be articulated in the language of rights. As she affirms, this problematic is not only relevant for corruption, once "[t]he situation of corruption is only one modality of impinging notably on ESC-rights."

In this sense, the way governance deficits encroach ESC-rights was observed in the analysis of the three *categories*.

Applying Peters' (2019) account on the complexity of justiciability of ESC-rights (in the theoretical framework), a common and interesting pattern was found within this *theme*: the encroachment of ESC-rights through one of the branches of government was part of the legal

reasoning in all cases. However, in the SERAP case, contrastingly to the other ones, that common argument did not lead to a recognition of an actual violation of ESC-rights.

The legal reasoning sustaining the decisions in both Lagos del Campo and Ecuador cases—even though these are not corruption cases—is the encroachment on ESC-rights through one of the branches of government, therefore, in line with the legal reasoning in the SERAP case. The ECOWAS acknowledged that the Executive's failure in inspecting and supervising the funds allocated for primary education necessarily had a negative impact on education. Which means, in other words, the impingement on ESC-rights through one of the branches of government.

Still, because it was not possible to prove a direct causal link between the act or omission of the State and the denial of the right to education, it was not possible, according to the Court, to find Nigeria in violation of its human rights obligations under the ACHPR (Barkhouse *et al.* 2018, p. 7). In that respect, professor Peters (2019, p. 2) clarifies that "the conceptual juridical work towards defining ESC-rights violations which trigger state responsibility and potentially reparation (as opposed to vague statements of noncompliance) is only in its infancy."

Although the doctrinal issue of causality prevented Nigeria's corrupt behavior to be considered an actual legal violation in that specific concrete case, the **value** addressed in the ECOWAS legal reasoning is clearly there: it is an improvement towards the justiciability of ESC-rights, since the decision recognizes Nigeria's failure, through the Executive power, in inspecting and supervising the funds allocated for primary education, which impinged on the enjoyment of that right. Yet, "[b]ecause social rights violations very often result from systemic governance deficiencies, based on political budgetary decisions, affect large groups of people, and pose threshold questions, the problem of causation is ubiquitous here—not only with regard to corruption" (Peters 2019, p. 2).

Notwithstanding the lack of causality, the SERAP case is highly significant in the context of more comprehensive efforts to reconceptualize the prosecution of corruption as an ESC-rights violation and deciding in favor of the justiciability of the right to education under the

ACHPR. The ECOWAS Court set an important regional and international precedent (Barkhouse *et al.* 2018, p. 7).

Consequently, since "corruption is one modality of impinging especially on ESC-rights" (Peters 2019, p. 2), the case data support the conclusion that one value of trying to determine whether a particular human rights violation was caused by corruption is the advancement on the justiciability of ESC-rights, especially when considering how ESC-rights are negatively affected through one of the branches of government, or, in other words, systemic governance deficits.

6.2 ***Theme 2*: Assessment of illegal and harmful corrupt and non-corrupt acts and behaviors**

6.2.1 Category 2 a): People-centered approach: considers the victims, and the human dimension and social implications of the conduct

6.2.1.1 Case Lagos Del Campo

In this case, the IACtHR considers the human dimension and the social implications of the Peruvian's state conduct—more specifically, an act of power exercised by the Judicial branch of the government, when issuing the Labor Court decision. The State's conduct was not only seen as a "Judicial error" or "overall malfunction of the Labor Legal system," but it comprehended the socio-economic damage inflicted on society, and more specifically, inflicted on the concrete victim of this case.

The primary evidence supporting that the IACtHR considered the socio-economic consequences for the victim due to the State's conduct is the Peru's condemnation to pay "compensatory damages to Lagos del Campo, including lost salary, retirement pension, and social benefits, as well as additional damages for emotional distress" (Lagos del Campo v. Peru 2017).

When considering ESC-rights, there is a risk of calling actual violations merely "State's malpractice," "insufficient or bad governance/policy" or "governance deficits." In doing so, the consequences for victims are overlooked, and so is the social harm caused. Therefore, a

"people-centered approach is essential to create a more inclusive understanding of the causes of human suffering" (Barkhouse *et al.* 2018).

6.2.1.2 Case Ecuador

In the same line of the previous case, the IACtHR considers the victim and the negative consequences affecting her life due to the Ecuador's conduct, and the collective social harm. The Court found that the negligence that had led Talía to contract HIV was attributable to the State, since Ecuador was responsible for the *violation of the duty to inspect and supervise the provision of health services* arising from the right to health and the obligation not to expose life to risk. The social harm is collectively addressed here since the health services that should have been supervised have obviously a collective dimension.

Again, the State's conduct is not only addressed as a "State's malpractice" from a pure governance approach, but the social implications of the conduct were considered, by applying a people-centered approach to that conduct.

The same approach was applied to the violation of the right to education. The Court recognized the social implications caused by the omission of the Ecuadorian's State to all people living with HIV, when it concluded that there are *three obligations inherent in the right to education of people living with HIV/AIDS violated in the case:* (i) the right to receive timely and unprejudiced information on HIV/AIDS; (ii) a prohibition on banning access to educational centers to people with HIV/AIDS, and (iii) the right that the education promote their inclusion and non-discrimination within the social environment (Gonzales Lluy Y Otros v. Ecuador 2015).

6.2.2 Category 2 b): The victim is overlooked: negligence or omission regarding the social harm caused

6.2.2.1 Case SERAP

In the SERAP case, the ECOWAS recognizes the collective and general negative effects of the corrupt behavior: "Admittedly, embezzling, stealing or even mismanagement of funds meant for the education sector will have a negative impact on education since it reduces the amount of money made available to provide education to the people" (The Registered

Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria and Universal Basic Education Commission 2010, p. 4).

In the same line, the applicant argues that it was not an isolated case, but an illustration of high-level corruption and theft of funds meant for primary education in Nigeria, which clearly ties in with the Court's general reference to "the people" as the victims of the corrupt behavior, indirectly admitting its collective dimensions.

However, somewhat contradictorily, in the end, the Court still holds on to the criminal account only, approaching the case as an individual offense, focusing on the perpetrator, and neglecting the agency of the people affected. The decision calls the corrupt behavior "a criminal matter" and refuses to address the structural problems caused by high-level corruption in the educational sector.

6.2.3 Second value: Change of paradigm applying the Theory of Social Harm

The contrasting findings within this theme show that, in the Lagos del Campo and Ecuador cases, the IACtHR considers the victims and the negative consequences affecting their lives; whereas in the SERAP case, the final word of the ECOWAS overlooks the victims, applying a criminal approach to corruption purely. In this regard, the UN Human Rights Council (2015, p. 10) observes that "[c]riminal prosecution is not, however, an effective tool for remedying the negative consequences of corruption for the individual, for specific groups or for society in general, since from a human rights perspective, States are required not only to prosecute such crimes but also to take measures to address the negative impact of corruption (…) In that sense, a human rights perspective to combating corruption and its effects is complementary to criminal law."

Anne Peters (2018, p. 1278) also illuminates this approach: "[o]verall, the infusion of international human rights law into efforts to combat corruption seems apt to complement or bolster the criminalization of corruption and, to that extent, has benign effects." Hence, a human rights perspective on the impact of corruption can add an approach that moves the victim to the center of the fight against corruption. It does so by emphasizing the negative impacts that corruption brings to the individual concerned, to groups of individuals typically affected by

corruption (which are very often marginalized groups), and to society overall (Human Rights Council 2015).

A human rights-based approach to corruption may contribute to a better understanding of its effects—notably, its human dimension and social implications—and can be an essential step towards making corruption a public issue. "In that way, the social impact of corruption is made visible; this generates awareness in society about the consequences of this scourge and creates new alliances in the fight against corruption" (Human Rights Council 2015, p. 10).

In this sense, another **value** of determining whether the consequences of corruption include human rights violations is a change of paradigm from the insufficient criminal approach to considering the human dimension and social implications of corruption, based on the Theory of Social Harm.

A human rights-based approach to anti-corruption policy-making may also help to focus international efforts on those who are most at risk, most marginalized and most vulnerable, or, according to the terminology of the 2030 Agenda for Sustainable Development, those who are "left furthest behind." (Barkhouse *et al.* 2018, p. 6). The marginalized are most of the people whose human rights are violated through corruption, as will be better discussed below in the analysis of *Theme 3.*

6.3 ***Theme 3:*** Social, political and economic factors/context of the cases

6.3.1 Category 3 a): Marginalization and vulnerability affect the victims and overlap with the effects of corrupt and non-corrupt behaviors

6.3.1.1 Case Lagos Del Campo

In the first case, Lagos del Campo was an electrician who, after working 13 years for the same company, had his right to work violated as he was unlawfully dismissed, could not have access to any compensation or benefits and lost the possibility of accessing a pension for retirement. The case clearly shows the victim's position of vulnerability in the respective context, since Lagos del Campo was not a powerful and wealthy businessman but an ordinary

employee, and as so, his socio-economic vulnerability put his in a position where he was in the most need for protection of his ESC-rights.

6.3.1.2 Case Ecuador

In the second case, the IACtHR explicitly recognized the layers of vulnerability and marginalization supported by Talía, resulting from her status as a female child living in poverty and with HIV. Ecuador's violations to the obligation to protect Talía's right to education affected her disproportionally, since, in addition to that, she suffered countless other human rights' violations based on marginalization and discrimination because of her socio-economic and health conditions.

6.3.1.3 Case SERAP

Lastly, in the SERAP case, the vulnerability is intrinsic to the majority of the children in Nigeria without access to primary education for obvious reasons—due to their status as poor marginalized children, in a country marked by general inequality and prevalent poverty. Therefore, the case studies demonstrate the similarity of how the victims' vulnerability compounded the effects on ESC-rights caused by both corrupt and non-corrupt behaviors.

6.3.2 Third value: Consideration of overlapping harmful effects of corruption and inequality—corruption hits poor people hardest

It is a consensus at both the international anticorruption system and scholarship that the most vulnerable and marginalized are the ones mostly suffering the negative impacts of corruption. Transparency International (2019, n.p.) assertively affirms that "[y]ear after year, it is the same. Our Global Corruption Barometer confirms that corruption hits poor people hardest—with devastating consequences." In this sense, "[c]orruption is a perpetrator and perpetuator of poverty and inequality" (Alexander 2016, cited in Lewis 2017, p. 7); it secures and reinforces privileges and marginalization, leading to increasing oppression and discrimination.

Regardless of the category—grand, political or petty—corruption's adverse effects are most harmful on people that already have overlapping layers of disadvantage over them, and different examples can illustrate that. For instance, a bribe demanded by a police officer may

mean that a low-income family cannot afford school fees or even food to eat. Findings from Mexico show that the typical poor Mexican family can spend up to one-third of their income on bribes (Transparency International 2019).

Accordingly, the UN Secretary-General Kofi Annan (2003, n.p.) emphasized this reality in his speech on the adoption of the UNCAC by the General Assembly: "This evil phenomenon [corruption] is found in all countries big and small, rich and poor but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid. Corruption is a key element in economic under-performance, and a major obstacle to poverty alleviation and development".

In the same line, ESC-rights violations also affect the most vulnerable disproportionately, and the inequalities in accessing essential services needed for the enjoyment of those rights are alarming. Amnesty International (2014, pp. 13–14) explains that "[t]his is the result not only of a lack of resources but also of unwillingness, negligence, and discrimination by governments and others. Many groups are specifically targeted because of who they are; those on the margins of society are often overlooked altogether."

The full realization of economic, social, and cultural rights requires significant human, economic, technological, and other resources. Yet limited resources are not the principal cause of widespread violations of ESC-rights, and cannot be used as an excuse to deny specific individuals and groups these rights. "In many countries, ethnic minorities, Indigenous Peoples, women, members of the opposition or religious groups, people living with HIV/AIDS or disabilities and others risk deprivation as a result of discrimination, inequality, marginalization and injustice" (Amnesty International 2014, pp. 13–14).

States must protect people against risks and vulnerabilities in an equal and non-discriminatory manner. Human rights obligations go beyond eliminating discrimination in law, policy, and practice, and require States to take special measures to protect the most vulnerable segments of society as a matter of priority, while taking measures to ensure universal protection progressively (General Assembly 2010).

Hence, considering that both corruption and ESC-rights violations affect marginalized people hardest, a human rights-based approach to corruption is fundamental in channeling anticorruption policies towards those who are most vulnerable and suffer the most destructive effects of corruption.

In this context, the analysis of *Theme 3* emphasizes the socio-economic vulnerability of the victims in all the case studies, and once more, the similarities between them serve as a springboard for theoretical reflections.

That being said, and taking into account that corruption is one modality of encroaching especially on ESC-rights (Peters 2019); the combination of the findings within the previous themes with the present reflections brings to a conclusion that another **value** of a human rights-based approach to corruption is a more adequate response to the many facets of how corruption undermines ESC-rights of the most vulnerable disproportionately. It gives due attention to the critical vulnerability and subjective daily assaults on human dignity that accompany the overlapping deleterious impacts of corruption and inequality.

"People belonging to minorities, indigenous peoples, migrant workers, persons with disabilities, refugees, prisoners, women, children and those living in poverty are often the first to suffer from the impact of corruption. This underscores the obligation of every State to protect the human rights of people belonging to those groups in order to prevent any human rights violation caused by corruption" (Human Rights Council 2015, p. 8).

7 Conclusion

The evidence presented in this thesis has shown how corrupt behaviors undermine especially ESC-rights; and how a human rights-based approach to corruption is complementary to the traditional criminal law account, giving protagonism and agency to the victim, instead of focusing only on the perpetrator of the offense. Additionally, a people-centered approach to corruption addresses how it harms the most vulnerable disproportionally; and the human rights lens can help to understand the multifaceted reality of critical vulnerability and subjective daily assaults on human dignity that accompany the overlapping damages of corruption, oppression and inequality. "[H]uman rights, rights violations, and corruption should never be disconnected from the socioeconomic order and mainstream politics" (Andersen 2018, p. 182).

That being said, the conclusion is that contrarily to the critique of the human rights-based approach to corruption (Section 2.3), the DCA findings and socio-legal analysis indicate that there is no risk in overusing the human rights language in the particular phenomena analyzed. Instead, there would be a shift towards using the human rights language as a tool of legal empowerment, ultimately leading to social transformation. How could one argue an excessive 'human rightism' when corruption undermines mostly the ECS-rights of the marginalized people, who are also the main ones suffering human rights violations in general to begin with?

As already examined, the criminal law language is not enough to address the complexities of corruption and its impacts on human rights, especially on the rights of the most vulnerable. "With regard to corruption, the purely criminal law approach has so far not worked all too well, and this suggests trying out complementary strategies" (Peters 2018, p. 1286). Therefore, the human rights language can, more than be only complementary, be also empowering.

In this sense, people whose ESC-rights are affected are mainly the ones who need them most, since, as already discussed, corruption affects the poor and marginalized disproportionally. Therefore, the rationality of applying a human rights-based approach to corruption as a tool of legal empowerment is that this institution aims to strengthen the disadvantaged through

the use of law (Golub 2010, p. 5), and in this case, the law in question is precisely the international human rights law.

Consequently, this conclusion provokes the follow-up question: How can a human rights-based approach to corruption empower those most affected by it?

The social accountability dimension of legal empowerment is the aspect of this institution that appropriately answers this question. "The social accountability dimension of Legal empowerment illuminates the links between legal empowerment and social accountability—that is, the ability of society and its citizens to hold governments accountable for service delivery and other functions" (Golub 2010, p. 3). Therefore, it enables to hold governments accountable not only for corruption itself, but for the combination of overlapping deleterious consequences that a human rights-based approach to corruption can bring to light, as discussed in this study.

In this regard, professor Peters adds that: "[t]he classical argument [supporting a human rights-based approach to corruption] is 'empowerment.' The human rights approach can highlight the rights of persons affected by corruption, such as the rights to safe drinking water and free primary education, and show these persons how, for instance, the misappropriation of public funds in those areas interferes with their enjoyment of the goods to which they are entitled. In that way, affected persons would be empowered to denounce corruption to which they otherwise would be helplessly exposed" (Peters 2018, p. 1276).

In conclusion, the argument of the risk of "human rightism" could only make sense in an idealistic legal positivist world where anti-corruption law, human rights law, and even the rule of law, ultimately, are as effective in practice as they are meant to be in the letter of the law. However, the main problem with this account is the same "old problem" very well known by human rights lawyers, practitioner, and activists: there is a significant difference between the letter of human rights law (and also anti-corruption law, in this case), and the actual implementation and effectiveness of those laws. The so-called implementation gap of international human rights law cannot be disregarded, especially when combined with overlapping harms caused by inequality; and this study shows that a socio-legal analysis of a human rights-based approach to corruption is crucial to remedy that.

As Professor Peters (2019, p. 4) wisely emphasizes: “In acknowledgment of the dangers of exaggerated rightism, I insist on the added value of a focus on rights in combating corruption. This also means to refute the current overblown critique of rights. As long as that critique does not present any meaningful alternative to (human) rights as instruments of social struggle and as vehicles of emancipation it amounts to no more than a ‘debilitating quietism’” (O'Connell 2018, p. 982, cited in Peters 2019, p. 4) “[W]hile many of the critiques of human rights raise important concerns, they fail to meaningfully address the central question of the relationship between human rights and social struggles” (O'Connell 2018, pp. 962–963).

“What Patricia Williams wrote 20 years ago for people of color in the United States remains true for large populations worldwide: ‘“Rights” feels so new in the mouths of most black people. It is still so deliciously empowering to say.’ (Williams 1987, cited in Peters 2019, p. 4). Rights transform victims into citizens. Moreover, these citizens are needed to build states and global governance institutions that work” (Peters 2019, p. 4).

Therefore, considering the political and socio-economic reality of the phenomena studied in this research; using the case data and the findings of the directed content analysis as a springboard to apply the employed theories and concepts underlying the current debated addressed in this study; this chapter concludes that there are interconnected and mutually reinforcing socio-legal values in applying a human rights lens to combating corruption. The values are: *(i) it is an improvement towards the justiciability of ESC-rights; (ii) it is a change of paradigm from the insufficient criminal approach to a focus on the social harm; and (iii) it is a more satisfactory approach to the overlapping harmful effects of corruption and inequality.*

8 Recommendations

This study provides a policy recommendation and suggestions for further research.

The policy recommendation is the application of a human rights-based approach to anti-corruption law and practice, based on its added socio-legal values. The combination of these values can be used as a legal empowerment strategy, with a particular social accountability dimension, in order to strengthen the disadvantaged, and fight the encroachment caused by corruption on the enjoyment of human rights, especially ESC-rights.

Additionally, further research is largely needed on how to use law as a tool of social transformation in general, including international human rights law and anti-corruption law. Particularly regarding the phenomena examined, the multifaceted and deeply complex issues of overlapping damages of inequality and corruption undermining economic and social rights could benefit from transdisciplinary research, in order to co-produce and integrate knowledge and expertise from a variety of sources, including communities, academia, local administration and businesses. I believe it is an appropriate approach considering that it is driven by the need to create processes where values and transformations towards combating corruption acknowledge the role of crucial actors, for instance, private actors.

Transdisciplinary (TD) research has a plurality of definitions, but it can be broadly characterized as "a longer-term collaboration between academic researchers from different disciplines and practitioners, typically from different sectors. TD research integrates knowledge and skills from these different backgrounds, aiming to solve a common practical problem. Indeed, the involvement of practitioners has been found to result in knowledge that is more useful in practice. Practitioners can help to adapt knowledge to local contexts and to translate scientific terminology to concepts that are understood in a practical context" (Hessels *et al.* 2018, p. 1).

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