THE ALL KENYAN MOOT COURT COMPETITION (AKMCC)

9TH EDITION

3RD-5TH JUNE 2021

THEME: COMBATING CORRUPTION FOR THE HIGHEST ATTAINABLE STANDARD OF HEALTH

TEAM CODE: 806

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RESEARCH TOPIC: A REVIEW OF CORRUPTION IN THE HEALTH SECTOR; THEORY, METHODS AND INTERVENTIONS.

Word Count: 4993

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ABSTRACT (132 Words)

Corruption is now recognized as not just an economic crime but also a human rights violator and a hindrance to development. These have extended all the way to the health sector and it is proving difficult the progressively realize the right of every Kenyan to the highest attainable standard of health as required by the Constitution and international human rights law. The perpetrators of the crime range all the way from junior persons to top ranking government officials who are required to uphold principles of leadership, integrity and public service. This paper shall analyze the right to health in Kenya, as well as how corruption is hindering its realization. It shall proceed to offer recommendations on how to combat it in order to attain the highest attainable standard of health for all.

ABBREVIATIONS AND ACRONYMS

WHO- World Health Organization

UDHR-Universal Declaration on Human Rights

ICESR-International Covenant on Economic Social and Cultural Rights

ACHPR-African Charter on Human and People's Rights

CoK- Constitution of Kenya

KEMSA- Kenya Medical Supplies Authority

PPADA-Public Procurement and Assets Disposal Act

PFMA-Public Finance Management Act

EACC-Ethics and Anti-Corruption Commission

ACECA- Anti Corruption and Economic Crimes Act

EACCA- Ethics and Anti-Corruption Commission Act

PPRA-Public Procurement Regulatory Authority

LIST OF STATUTES

KENYA

Constitution of Kenya, 2010

Health Act No. 21 of 2017

Public Health Act Cap 242

Anti-Corruption and Economic Crimes Act, 2003

Ethics and Anti-Corruption Commission Act, 2011

Kenya National Commission on Human Rights Act, 2011

Leadership and Integrity Act, 2012

Public Procurement and Assets Disposal Act 2015

Public Finance Management Act 2012

SINGAPORE

Prevention of Corruption Act

Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act

INTERNATIONAL LAWS

United Nations Convention Against Corruption 2005

UN International Code of Conduct for Public Officials 1996

The United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14 on the Right to the Highest Attainable Standard of Health.

United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, 1966.

The United Nations, United Nations Charter, 1945.

The United Nations General Assembly, Universal Declaration of Human Rights, 1948.

World Health Organization Constitution, 1945

African Charter on Human and People's Rights, 1986.

African Union Convention on Combating and Preventing Corruption 2003

LIST OF CASE LAWS

KENYA

Ukunda v Republic (1970) EA 512

John Kabui Mwai & 3 Others vs Kenya National Examination Council & 2 Others (2011) eKLR

M A O & another v Attorney General & 4 others [2015] eKLR

Isaac Ngugi vs Nairobi Hospital & 3 Others Petition No 407 of 2012

P.A.O and two others v Attorney General [2012] e KLR

Mathew Okwanda v Minister of Health and Medical Services & 3 others [2013] eKLR

Mitu-Bell Welfare Society v Attorney General & 2 others [2013] eKLR

Esther Theuri Waruru & Another v Republic (2008) Eklr

Christopher Ndarathi Murungaru V Kenya Anticorruption Commission and another [2006] eKLR

SOUTH AFRICA

Soobramoney v Minister of Health (Kwazulu Natal) 1998 (1) SA 765 (CC)

Government of the Republic of South Africa v Grootboom & Others 2001 (1) SA 46 (CC)

INDIA

Olga Tellis v Bombay Municipal Corporation AIR (1986) Supreme Court

1.0 INTRODUCTION

The right to health is a socio-economic right recognized under international human rights law. It is recognized as a right to standard of living under Article 25 of the UDHR[1] while article 12 of ICESCR requires states to recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.[2] The ACHPR guarantees every individual the right to enjoy the best attainable state of physical and mental health and mandates member states to take steps towards the realization of this right.[3] The WHO Constitution preamble defines health as the as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.[4]

John Githii, states that despite being historically underdeveloped, socio-economic rights have received recognition and are now justiciable. [5] He alludes to the *Grootboom Case* whereby it was concluded that the national housing program did not live up to the government's obligation as it did not provide relief to those in desperate need.[6] In discussing the justiciability of socio-economic rights, the court stated that these rights are to some extent justiciable and that they, just like the civil and political rights, impose a budgetary implication on the state. [7]

1.1 Essential Elements of the Right to Health

The General Comment No.14 lists down the elements of the right to health and notes that all these depend on the conditions prevailing in a particular state.[8]

1.1.1. Availability

Healthcare facilities ought to be available in sufficient quantities and should contain other determinants of health such as adequate sanitation standards, well equipped facilities, trained health care personnel among others.[9]

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[1]Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) (UDHR) art 25.
[2] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force on 3 January 1976) UNGA Res 2200A (XXI).
[3] Art 16, African Charter on Human and People 's Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982)
[4] World Health Organization Constitution Preamble.
[5] John Githii, 'The Case for Justiciability of Socio-Economic Rights in Kenya: Drawing from the Experience in South Africa, India and the United States' (2008) Central European University.
[6] Government of the Republic of South Africa v Grootboom & Others 2001 (1) SA 46 (CC)
[7] Ibid.
[8] General Comment No.14 (Twenty-second session, 2000) The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights, UN doc. E/C. 12/2000/4.
[9] Ibid para 12 (a)

1.1.2. Accessibility

This right ought to be availed to everyone within the jurisdiction of a particular state. Marginalized sections of the population and special needs groups should not be discriminated in this regard. Under physical accessibility, the facilities should be accessible for all including the vulnerable groups within the society. Health services should also be affordable and not segregate persons based on the wealth status. That they ought to be based on the principle of equity. Lastly, there should be information accessibility which entails the right to seek, receive ad impart information that relates to health. It though does not mean that patients' data should not be accorded the confidentiality it deserves.[10]

1.1.3. Acceptability

Acceptability herein denotes that health facilities should conform to ethical and cultural standards and be sensitive enough to improve the health status of those concerned.[11]

1.1.4. Quality

Health goods and services should be of an acceptable standard, they should be scientifically appropriate and this means there ought to be skilled medical personnel, scientifically approved and unexpired drugs proper hospital equipment, safe and portable water as well as adequate sanitation.[12]

1.2 Obligations of States towards Discharging the Right to Health

The General Comment No.14 equally places upon states several duties with regards to the realization of the right to health.[13] That all member states have the obligation to protect, fulfill and respect the right to health just like other human rights. Under the duty to respect, states are required to refrain from interfering with the enjoyment of the right.[14] On the other hand, the duty to protect mandates states to take measures that prevent third parties from interfering with the enjoyment of the right. [15]The duty to fulfill requires that states take legislative, policy and other measures that will ensure realization of the right to health for all.[16]

[10] Ibid para 12 (b)
[11] Ibid para 12 (c)
[12] Ibid para 12 (d)
[13] Ibid, para 33
[14] Ibid para 34
[15] Ibid, para 35
[16] Ibid, para 36

2.0 THE LEGAL FRAMEWORK GOVERNING HEALTH IN KENYA

The right to the highest attainable standard of health in Kenya is governed by the Constitution, International law, statutes and case law.

The Constitution provides for the right to the highest attainable standard of health at article 43(1) (a) and at article 22 grants the locus for aggrieved persons to enforce alleged human rights infringement cases in court of law. According to Jotham Arwa, this has revitalized socio-economic rights litigation in Kenya by creating new opportunities for socio-economic rights litigation.[17] The Constitution has created new opportunities for the development of progressive jurisprudence on socio-economic rights; something that was non-existent before.[18] This has been made possible by among others a wide entrenchment of socio economic rights as well as a departure from the traditional dualist doctrine[19] to a monist dispensation that allows application of international laws .[20] International laws ratified include ICESR, CEDAW,CRC,ACHPR among others. Present are also statutes such as the Health Act No.21 of 2017, Public Health Act as well as HIV/AIDS Prevention and Control Act among others.

Arwa lauds the expanded locus classicus for persons who can institute claims for alleged violation of human rights under article 22(2) of the Constitution of Kenya 2010.[21] To him, procedural constraints sometimes sender constitutional rights such as the right to health unavailable. To back this, he relies on the Indian Supreme Court Case of *Olga Tellis v Bombay Municipal Corporation* where the same was the position of the Court. [22]The position in the *John Kabui Mwai Case* was that the inclusion of socio-economic rights into the constitution was to advance the needs of the poor and accord them a life of dignity as part of its transformative agenda which looks beyond equity.[23]

[17]Jotham Okome Arwa, 'Litigating socioeconomic rights in domestic courts: The Kenyan experience' (Colloquium on the African Charter on Human and Peoples Rights, Cape Town South Africa, November 2012).
[18] Ibid.
[19] Ukunda v Republic (1970) EA 512
[20] Arwa (n29) 419 at 421
[21] Ibid.
[22] Olga Tellis v Bombay Municipal Corporation AIR (1986) Supreme Court 18.
[23]John Kabui Mwai & 3 Others vs Kenya National Examination Council & 2 Others (2011) eKLR

3.1 THE RIGHT TO 'HIGHEST ATTAINABLE STANDARD OF HEALTH' AND ITS 'PROGRESSIVE REALIZATION'

General Comment No.14 proclaims that all human beings are entitled to enjoyment of the highest attainable standard of health conducive to living a life in dignity. [24] The ICESR provides that this right it to be progressively realized. [25] Lawrence O. Gostin opines that it is important to obtain a clear definition of the human right to health as this will help clarify the extent of a state's obligation, the rights of individuals, violations as well as the methods of enforcement of the right.[26] This is important in determining violation of the right to health, and distinguishing between a state's inability due to lack of resources and unwillingness. [27]

Michael Krennerich states that the right to health does not amount to a legal guarantee to be healthy.[28] This is because fundamentally, no state can avail such a guarantee as it is beyond matters within the control of the state. [29]

Paul Hunt and Gunilla Backman opine that the highest attainable standard of health is concerned with both processes and outcomes so that we do not only look at what a health system does but also how it achieves it.[30] Regarding progressive realization, this right is subject to resource availability.[31] States are required to take effective measures that reflect some degree of progress and should meet the minimum threshold which includes ensuring access to health care in a non-discriminatory manner, having in place a national plan for development of a comprehensive health system, food and sanitation, clean water, as well as essential medicine and immunization among others.[32]

It is explained by some scholars that progressive realization could sometimes be interpreted to mean that states do not have the obligation to implement socio economic rights in case they do not have the resource

[24] Para 12
[25] ICESR, Art 2(1)
[26] Lawrence O Gostin, 'At Law: The Human Right to Health: A Right to the "Highest Attainable Standard of Health"' (2001) Vol 31 No 2 The Hastings Center Report pp 29-30.
[27] M A O & another v Attorney General & 4 others [2015] eKLR
[28] Michael Krennerich, 'The Human Right to Health.: Fundamentals of a Complex Right'' in Andreas Frewer and Others (eds), *Healthcare as a Human Rights Issue: Normative Profile, Conflicts and Implementation* (Transcript Verlag 2017) < https://www.jstor.org/stable/j.ctv1fxf7w.4 > accessed 11 May 2021
[29]Ibid.
[30]Paul Hunt and Gunilla Buckman, 'Health Systems and the Right to the Highest Attainable Standard of Health' (2008) Vol. 10 No.1 Health and Human Rights pp. 81-92.
[31] Ibid.
[32] Hunt and Buckman (n 47) 81 at 85

to do so. [33]The OCHCR notes that this actually is not the position and that treaties such as the ICESR have imposed a mandatory obligation on member states to take appropriate measures towards the full realization of these rights and that lack of resources cannot justify an inaction or postponement of measures to realize them.[34]

The Court in the *Soobramoney Case* stated that one of the limiting factors to the attainment of the constitutional guarantee to social economic rights is that of limited resources. .[35] In *Mathew Okwanda,* Majanja J assessed the case in the context of the right to access to healthcare and emergency treatment[36] and also affirmed that where rights are to be progressively realized, the state has to show that it has at least taken steps to actualize the rights in question.[37] Mumbi J in the *Mitu-Bell Case* stated, '*The argument that social economic rights cannot be claimed at this point, two years after the promulgation of the Constitution, also ignores the fact that no provision of the Constitution is intended to wait until the state* ***feels*** *it is ready to meet its constitutional obligations. Article 21 and 43 require that there should be* ***'progressive realization'*** *of social economic rights, implying that the state must begin to take steps, and I might add* ***be seen*** *to take steps, towards realization of these rights*.'[38]

As seen, the concept of progressive realization takes into account the resource dependent nature of socio-economic rights.[39] It requires proof of action and was not meant to be a tool for states to hide their undue delay in adopting measures towards the realization of socio-economic rights.

4.1 CORRUPTION AS AN IMPEDIMENT TO THE RIGHT TO HEALTH

Corruption is defined to mean an act that is done with the intention of conferring some advantage inconsistent with an official duty and the rights of others.[40] In the case of *Christopher Ndarathi Murungaru V Kenya Anticorruption Commission and another*, it was stated that: *'Corruption is equally a*

[33] Office of the United Nations High Commissioner on Human Rights, 'Frequently asked Questions on Economic, Social and Cultural Rights' Fact Sheet No.33 <https://www.ohchr.org/documents/publications/factsheet33en.pdf > accessed 9 May 2021
[34] OCHCR (n 53)
[35] Soobramoney v Minister of Health (Kwazulu Natal) 1998 (1) SA 765 (CC)
[36]Mathew Okwanda v Minister of Health and Medical Services & 3 others [2013] eKLR
[37] Isaac Ngugi vs Nairobi Hospital & 3 Others Petition No 407 of 2012,
[38]Mitu-Bell Welfare Society v Attorney General & 2 others [2013] eKLR

[39] Mark Mwendwa, 'The Jurisprudence of Kenya's Court of Appeal on Socio-economic Rights' (2019) Working Paper Series <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3379560 > accessed 7 May 2021
[40] https://legal-dictionary.thefreedictionary.com/Corruption

cancer which rob the society in general …it is a form of terrorism and tyranny to the poor, the majority of our populations'.[41]

James Urien notes that the major factor hampering socio-economic development in Nigeria is corruption.[42] Like a deadly virus, it has attacked the vital structures that would have seen the progression of the society. Other developing countries equally witness embezzlement, misappropriation and depletion of funds meant for infrastructural development in a manner that is not accounted for.[43] Urien attributes the rampant cases of corruption to its central role in politics and says that it is the major obstacle in the development of any country.[44]

Engelbert and Markus argue that there's a considerably huge link between corruption and human rights.[45] They demonstrate how corruption has brought about violation of human rights, that the duty to protect places on the state an obligation to prevent third parties from causing a violation and to offer remedies in cases to breach.[46] Further, they allude to the CESCR General Comment No. 24 on State Obligations under the ICESCR in the Context of Business Activities of 2017, para 18 which provides that states would violate their duty to protect if they fail to prevent conduct by businesses that lead to such rights being abused.[47] That such violations will exist where there are insufficient safeguards to deal with corruption by public officials or leave them [48]unremedied.[49]

5.1 THEORETICAL FRAMEWORK

5.1.1The Game Theory of Economics

Game theory was coined by a Hungarian born mathematician and economist John von Neumann and it is the study of how individuals or organizations apply strategy to achieve an outcome which is of benefit to them- pay off.[50] This theory can be used to explain the rationale for corrupt

[41] Christopher Ndarathi Murungaru V Kenya Anticorruption Commission and another [2006] eKLR
[42]James Urien, 'The Impact of Corruption on the Socio-Economic Development of Nigeria' (2012) Vol.2 No.3 Crown Research in Education pp. 143-152.
[43] Ibid.
[44] Ibid.
[45]Engelbert Annika and Kaltenborn Markus, 'Corruption and Social Rights Accountability' (2019) IEE Working Papers No. 213, Institute of Development Research and Development Policy (IEE), Ruhr University Bochum < http://hdl.handle.net/10419/202093 > accessed 9 May 2021.
[46] Ibid.
[47] Committee on Economic Social and Cultural Rights CESCR General Comment No. 24 on State Obligations under the ICESCR in the Context of Business Activities of 2017, para 18
[48] Ibid.
[49] Annika and Markus, (n 66)
[50] Sun Lianju, Peng Luyan, 'Game Theory Analysis of the Bribery Behavior ' (2011) Vol 2 No 8 International Journal of Business and Social Science pp. 104-107.

practices by public officials.[51] An individual faces a prisoner's dilemma which is the fear of a disadvantage if she refuses to engage in corrupt practices while other individuals do not refuse to do so in the same situation.[52] As a result, all individuals obtain some sort of benefit out of engaging in the corrupt act.[53]

5.2.2 Formalistic Theory

This is termed as the thin rule of law or rule by law and its where the government is expected to operate within the confines of the law- whatever those laws might be. It stipulates that laws should be prospective, adequately publicized and contain clear unambiguous rules which should be relatively stable and not be changed too often.[54] The theory is concerned with the functioning of the legal system in a way that individuals are able to predict the legal consequences of their actions.[55]

[51] Lerry Samuelson, 'Game Theory in Economics and Beyond' (2016) vol 30 No 4 The Journal of Economic Perspectives pp 107-130.
[52] Ibid.
[53] Muhammad Asyim and Andre Maytandi, 'Game Theoretical Analysis of Corruption on the Road in Indonesia' 3rd International Research Conference on Economics and Business. < file:///C:/Users/JJ/Downloads/6840-Article%20Text-28481-1-10-20200423.pdfy > accessed 9 May 2021
[54] Joseph Raz, '*The Rule of Law and its Virtue in J. Raz "The Authority of Law"* (1979) p. 187.
[55] Joseph Raz, '*The Rule of Law and its Virtue in J. Raz "The Authority of law" (1979)* p. 189.

6.1 CASE STUDY: INSTANCES OF CORRUPT PRACTICES WITHIN THE HEALTH SECTOR

6.1.1 Utilization of COVID-19 Funds and Donations by KEMSA

Following requests to the Auditor General to conduct a special audit on the utilization of COVID-19 funds, the same was carried out with the aim of finding out whether the funds were utilized in a lawful and effective manner.[56] The special audit looked at the budgeting and financing processes in relation to the procurement of medical supplies, incurred expenditures and accountability for donations as well as reviewing the procurement processes in relation to medical supplies for combating the COVID-19 Pandemic.[57]

In summary, the findings were that firstly, KEMSA violated the PPADA[58] in all material aspects, the budgetary process went contrary to the PFMA[59], and that there was no value for money realized as 97% of the procured items still lied in warehouses at the time of the conduct of the audit. [60]

6.1.2 Other Scandals

Transparency International details some of the scandals involving the health sector since 2010 as analysed by KELIN. [61]This paper shall mention these cases briefly in a bid to demonstrate that aside the covid scandals, the health sector has for the longest time continued to lag behind due to actions of some corrupt individuals.

Firstly, NHIF has been under investigations for the longest time regarding different allegations of graft perpetrated by its officials. Most recently, there were allegations of theft of funds and

[56] Transparency International Kenya, 'Tracking COVID-19: A Report on Transparency and Accountability in Government's Response to the COVID-19 Pandemic'
[57] Office of the Auditor General, 'Special Audit Report on Utilization of COVID-19 funds by the Kenya Medical Supplies Authority (KEMSA) for the Period 13 March-31 July 2020' <http://www.parliament.go.ke/sites/default/files/2020-10/SPECIAL%20AUDIT%20REPORT%20-KEMSA.pdf > accessed 21 April 2021
[58] Public Procurement and Assets Disposal Act, 2015
[59] Public Finance Management Act, 2012
[60] Office of the Auditor General (n 78)
[61] Transparency International (n 77)

promotion of staff to senior positions without relevant qualifications. The matter is still under investigations by the DCI.[62] It is said that approximately sh. ten million was lost in this scandal.

Present was the 'mafyahouse scandal' that involved the alleged manipulation of the IFMIS system resulting in loss of approximately five billion shillings.[63] No action was takes and the senior officials are said to have been transferred to other ministries. [64]

In a similar manner, the Senate ad-hoc committee investigating the Managed Equipment Services (MES) declared the Sh.63 billion medical equipment leased for counties as 'criminal enterprise' conceptualized to siphon taxpayers' billions of shillings.[65] It was found out that procurement officials awarded the contracts in a questionable manner. Approximately seven billion shillings was lost and so far, there are no reports of arrests and prosecution regarding the same.[66]

According to the UNDP, rampant corruption within the health sector usually includes cases such as absenteeism by the hospital staff, theft of drugs and medical supplies as well as bribes and informal payments for better and quicker services.[67] The grand cases include health care fraud, procurement and management of equipment of supplies, regulation of quality in products, services, facilities and professionals, education of health professionals and hiring and promotion.[68]

[62] Nasibo Kabale, 'Kenya: Detectives Probe Cash Theft Scandal at NHIF' *Daily Nation (*Nairobi) 20th September, 2020
[63] Transparency International (n 77)
[64] Ibid.
[65] Moses Nyabori and Roselyne Obara, 'Sh63b kits scam: Senate passes the buck to EACC' *The Standard* (Nairobi) 9th September 2020
[66] Transparency International (n 77)
[67] United Nations Development Programme, 'Fighting Corruption in the Health Sector; Methods, Tools and Good Practices' 2011
[68] Ibid.

7.1 REGULATION OF CORRUPTION IN KENYA (LEGAL AND INSTITUTIONAL FRAMEWORK)

Kenya has ratified the UN Convention Against Corruption which deals in depth with the prevention, criminalization and law enforcement measures, international cooperation, asset recovery, technical assistance and information exchange. This is with the aim of among others preventing and combating corruption effectively and adequately.[69] Present is also an African Convention on the same developed by African states upon becoming conscious of how much impunity was dragging down their economies.[70]

The national legal framework ranges all the way from the Constitution which provides for among others principles of public service such as accountability for public funds and transparency. Present is also a chapter on leadership and integrity that is authoritative in this regard.[71]

We have a statutory framework which include the ACECA whore role as stated in the preamble is to provide for the prevention, investigation and punishment of corruption, economic crime and related offences.[72] Secondly, is the POEA whose main purpose is to advance the ethics of public officers by providing for a code of conduct and ethics for public officers and requiring financial declarations from certain public officers.[73] Thirdly, the EACCA which establishes the EACC pursuant to Article 79 of the Constitution.[74] The PPADA equally falls here as it is seeks to enhance efficiency, transparency and accountability in the process.[75]

The institutions tasked herein include the EACC which is an integrity commission, the PPRA on procurement matters,[76] the Judiciary which is the arm of government that adjudicates all corruption matters. In so doing, it is expected to uphold the rule of law.[77] In the case of *Esther Theuri Waruru & Another v R,* the court found the two accused persons guilty of the offence of

[69] UNCAC, Art 1
[70] African Union Convention on Combating and Preventing Corruption (AUCCPC)
[71] Constitution of Keya, 2010
[72] Anti-Corruption and Economic Crimes Act
[73] Public Officers Ethics Act, 2003
[74] Ethics and Anti-Corruption Commission Act
[75] Public Procurement and Assets Disposal Act
[76] Public Procurement Regulatory Authority.

[77] Claries Gatwiri Kariuki, 'Towards a Human Rights Based Approach to Fighting Corruption in Kenya' (LLM Thesis, University of Nairobi 2010)

receiving a bribe in their capacity as health inspectors.[78] The media, public service commission, DCI as well as NGOs and civic groups play a key role, not forgetting the human rights commissions.[79]

[78] Esther Theuri Waruru & Another v Republic (2008) eKLR
[79] Kariuki (n 104)

8.1 COMPARATIVE ANALYSIS: A CASE OF SINGAPORE

Singapore is now regarded as one of the few countries in the world with low incidence of corruption. Their strategy is said to have begun with a **strong political will** established by their founding Prime Minister upon election to government.[80]

Effective Laws

These are the PCA and CDSA[81], PCA deals with persons who give or receive bribes in the public and private sector while the CDSA majorly confiscates corruption proceeds. These two laws make corruption in itself a high-risk offence and serves to deter corrupt behavior.[82] Singapore also hosts an independent judiciary.[83] The Constitution guarantees this independence and the courts then in working with relevant bodies such as the prosecution mete out harsh penalties and hefty fines in order to deter corrupt practices.[84]

Responsive Public Service

This service is guided by a Code of Conduct based on principles of integrity, incorruptibility and transparency and this is enshrined in the Government Instruction Manual.[85] The Government is equally committed in taking administrative and policy measures to tackle corruption. [86]

Effective Enforcement

The Corrupt Practices Investigation Bureau is the only agency tasked with investigating corrupt offences. [87]It acts swiftly and vigorously to enforce the tough anti-corruption laws impartially for all sectors to combat corruption. It works with other agencies and the private sector in gathering

[80] Nieves Zúñiga, 'Anti-corruption in the health sector in Southeast Asia' (2018) 25 U4 CMI Michelsen Institute.
[81] Prevention of Corruption Act and Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act
[82] Ibid.
[83] Vincent Lim, 'An Overview of Singapore's Anti-Corruption Strategy and the role of the CPIB in Fighting Corruption' <https://unafei.or.jp/publications/pdf/RS_No104/No104_18_VE_Lim_1.pdf > accessedn12 May 2021
[84] Ibid.
[85] Ibid.
[86] Ibid.
[87] Jon S.T. Quah 'Combating Corruption in Singapore: What Can Be Learned?' (2009) Vol 9 No.1 Journal of Contingencies and Crisis Management pp 29-35.

evidence.[88] It is readily available and enjoys public support meaning it receives complaints directly from them as well. [89]

Last and not least, the Bureau **engages the international community**.[90]This been a tool for education and sensitization against corruption and that is the reason the Transparency International Corruption Perception Indexes continue to rank Singapore as one of the least corrupt countries in the world.[91]

How Singapore Handled the Covid Pandemic

Singapore is ranked as sixth in countries with the best healthcare systems in the world. [92] With the Covid pandemic, she is also one of the best ranked nations in her response strategies.[93] As at April 25th for instance, the country had recorded a total of 61, 006 COVID-19 confirmed cases and reduced positivity rate and over a million vaccine doses had been administered.[94] A tracking application was developed and contact tracing capacities expanded as well as many other measures which were adhered to by the citizens.[95] The health institution in Singapore is indeed different from Kenya's. Indeed, that government is doing all it takes to progressively realize the right of its citizens to the highest attainable standard of health. There's much we can learn from them and change the situation here.

[88] Ibid.
[89] Ibid.
[90] Ibid.
[91] https://www.transparency.org/en/countries/singapore
[92] https://worldpopulationreview.com/en/country-rankings/best-healthcare-in-the-world
[93] Ibid.
[94] Ian Remmer, 'The Best Global Responses to the COVID-19 Pandemic, 1 Year Later' Time (California) 23 February 2021.
[95] Ibid.

9.0 CONCLUSION AND RECOMMENDATIONS

9.1 FINDINGS

This paper has broadly discussed the concept of socio-economic rights and particularly the right to health as well as the state's duty in realizing the right. It has also discussed the concept of corruption and the finding is that corruption is hindering the government's efforts in realizing the right to health of its citizens.

The paper has also acknowledged the presence of a robust legal and institutional framework as well as a functioning judiciary in Kenya. All these entities have always worked hard towards combating corruption yet the perception index still places Kenya as one of the most corrupt nations. Audits done further reveal cases of graft and improper utilization of funds meant to progressively realize the right of Kenyans to the highest attainable standard of health care.

9.2 RECOMMENDATIONS

1. Kenya should benchmark the models that have been adopted by countries such as Singapore and strive to develop proper policies that will guide the eradication of corruption in Kenya.
2. The political class should display exemplary conduct and avoid engaging in corruption themselves.[96] Should they be found culpable; they should be punished regardless of the position they hold in the society.[97]
3. EACC which is the main body tasked with investigating graft issues should be clothed with prosecutorial powers.[98] Just like the Corrupt Practices Investigation Bureau of Singapore, it could be strengthened and clothed with these powers as a measure to increase its capacity to address corruption.
4. Human rights approach could also be adopted in the fight against corruption as where corruption cases are linked to violation of human rights, present are various human rights institutions that could act to force accountability and hence create disincentives for corruption.[99]Public Interest Litigation cases regarding corruption could be instituted in court as the act as earlier demonstrated, brings about a violation of human rights and the courts will always strive to uphold

[96] Jon S T Quah, 'Combating Corruption in Singapore: What Can Be Learned?' (2001) Vol. 9 No. 1 Blackwell pp. 29-35.
[97] Ibid.
[98] M'mutiga Wilfred Gituma, 'Investigative Processes and Prosecutorial Strategies in the Fight Against Corruption in Kenya' (Masters Thesis, University of Nairobi 2017).
[99] Engelbert Annika and Kaltenborn Markus, 'Corruption and Social Rights Accountability' (2019) IEE Working Papers No. 213, Institute of Development Research and Development Policy (IEE), Ruhr University Bochum < http://hdl.handle.net/10419/202093 > accessed 9 May 2021.

human rights. [100]This approach shall also strengthen citizens to demand their rights and thus relevant agencies shall always be on a watch to avoid being on the spot.[101]

5. Kenyan courts should continue to work towards developing jurisprudence that will guide the current and future generations on how best to deal with corruption in order to realize socio-economic rights.[102]
6. Reforms should be directed to the public procurement sector. The OECD notes that public procurement is one of the most corrupt sectors due to the large volumes of money and complex contracts involved.[103] Being an area susceptible to corruption, Kenya ought to implement the OECD Recommendations on Public Procurement whose key principles include:[104]

   Integrity- entails upholding ethical standards and moral values to ensure fairness, non-discrimination, and compliance in the public procurement process. This can be done by setting standards for procurement officials, setting their specific code of conduct such the Canadian Code of Conduct for Procurement which consolidates the federal government's measures on conflict of interest and anticorruption as well as other legislative and policy requirements relating specifically to procurement. [105]

   Transparency- this promotes accountability and access to information. It entails adequate and timely information and visibility of flow of funds.[106]

   Stakeholder Participation- as a measure to promote government accountability and foster trust in public institutions, large set of stakeholders should be involved in the procurement process. [107]These include the including anti-corruption offices, private sector, end-users, civil society, the

[100] Ibid.
[101] Ibid.

[102] Evans Ayiema Mbicha, 'Judicial Enforcement of the Right to Health under the New Constitution of Kenya' (LLM Thesis, University of Nairobi 2013
[103] Organization for Economic Co-operation and Development, *Preventing Corruption in Public Procurement*, 2015.
[104] Organization for Economic Cooperation and Development, *Recommendations on Public Procurement*, 2015.
[105] Ama Eyo, 'Corruption and the Challenge to Sustainable Public Procurement (SPP): A Perspective on Africa' (2017) Vol. 12 No.3 European Procurement & Public Private Partnership Law Review pp. 253-265 < https://www.jstor.org/stable/26695462 >accessed 15 May 2021
[106]Keith F. Snider and Rene G. Rendon, 'Public Procurement: Public Administration and Public Service Perspectives' (2012) Vol.18 No.2 Journal of Public Affairs Education pp 327-348. < https://www.jstor.org/stable/23208657 > accessed 1 May 2021.
[107] Anne Janet De Ases, 'Developing Countries: Increasing Transparency and other Methods of Eliminating Corruption in the Public Procurement Process' (2005) Vol. 34 No.3 Public Contract Law Journal <https://www.jstor.org/stable/25755330 >accessed 21 April 2021.

media and the general public. These would act as a watchdog for the entire process and their voice is taken into consideration.[108]

Accessibility- all enterprises (potential competitors of all sizes) should be given access to the procurement contracts in order to get the best value for money through fair competition.

E-Procurement- the utilization of technology in public procurement will increase transparency, facilitate access to public tenders, reduce direct interaction between procurement officials and companies, increasing outreach and competition, and allow for easier detection of irregularities and corruption.[109]

Oversight and Control- this is to ensure a risk analysis of the process in question. It also supports accountability and provides appropriate ways of handling issue such as complaints. [110]Can be done by ensuring that legal, administrative and financial procedures are followed and include financial controls, internal audit and management controls.[111]

9.3 CONCLUSION

Corruption has proved to be not easy a concept to deal with and among the sectors most affected is the health sector. Dealing with it shall require strategies and dedication just like Singapore started.

[108]Njomëza Zejnullahu, 'Public Procurement Reforms in Kosovo: A Mechanism to Ensure Efficiency and Accountability in Public Procurement' (2016) Vol 11 No 3 European Procurement & Public Private Partnership Law Review pp. 247-253 < https://www.jstor.org/stable/26643427 > accessed 3 May 2021.

[109] Petra Ferk, 'Can the Implementation of Full E-Procurement into Real Life Address the Real Challenges of EU Public Procurement?' (2016) Vol.11 No. 4 European Procurement & Public Private Partnership Law Review pp. 327-339 <https://www.jstor.org/stable/26643569 > accessed 7 May 2021.

[110] Eyo (n 142)

[111] Ibid.

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