IHRDA
INSTITUTE FOR HUMAN RIGHTS AND DEVELOPMENT IN AFRICA

STRATEGIC ANTI-CORRUPTION HUMAN RIGHTS LITIGATION (SACHRLIT) IN AFRICA

A Practice Guide



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ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ALACs	Advocacy and Legal Advice Centres
APDHE	Asociación Pro Derechos Humanos de España
AU	African Union
AUCPCC	African Union Convention on Preventing and Combating Corruption
CBI	Central Bureau of Investigation
CCFD	Catholic Committee against Hunger and for Development
CESCR	Committee on Economic, Social and Cultural Rights
CESR	Center for Economic and Social Rights
CoA	Cause of Action
COMESA	Common Market for Eastern and Southern Africa
CRC	Convention on the Rights of the Child
CSOs	Civil society organisations
DPCI	Directorate for Priority Crime Investigation
DSO	Directorate of Special Operations
EAC	East African Community
EACJ	East African Court of Justice
ECOWAS	Economic Community of West African States
ECOWAS Court	ECOWAS Community Court of Justice
EFCC	Economic and Financial Crimes Commission
FBLs	Foreign bribery laws
FCPA	Foreign Corrupt Practices Act
FEPA	Foreign Extortion Prevention Act
FIDH	International Federation for Human Rights
FMO	Forum de Monitoria do Orçamento
HRBA	Human rights-based approach
IACHR	Inter-American Commission on Human Rights
ICC	International Criminal Court

ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IGG	Inspector General of Government
IHRDA	Institute for Human Rights and Development in Africa
ILC	International Law Commission
NHRIs	National Human Rights Institutions
OHCHR	Office of the United Nations High Commissioner for Human Rights
QCIL	Quality Chemical Industries Limited
SACHRLit	Strategic Anti-Corruption Human Rights Litigation
SADC	Southern African Development Community
SERAC	Social and Economic Rights Action Centre
SERAP	Socio-Economic Rights and Accountability Project
SIU	Special Investigating Unit
SLAPPs	Strategic lawsuits against public participation
SPDC	Shell Petroleum Development Company of Nigeria
TFV	Trust Fund for Victims
TI	Transparency International
TOJIL	Transparencia y Justicia (TOJIL México)
UBEC	Universal Basic Education Commission
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNODC	United Nations Office on Drugs and Crime

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- Southern African Development Community Protocol against Corruption (adopted 14 August 2001, entered into force 6 July 2005)
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LEGAL NOTES

Civil society organisations (CSOs), including NGOs, trade unions, business associations, think tanks, scholars, and the media, play a crucial role in efforts both to combat corruption and to promote and protect human rights. Although much of the work they do is complementary, with some important exceptions, human rights and anti-corruption organisations do not regularly collaborate or share their knowledge and experiences. This Guide seeks, in part, to contribute to bridging that gap by exploring how human rights mechanisms and strategic litigation can be utilised in anti-corruption efforts.

This Guide does not purport to be exhaustive and should not be relied upon as a single source by legal practitioners bringing cases before any court, tribunal, or monitoring body. Practitioners are strongly encouraged to consult in detail the relevant litigation rules, procedural instructions, practice directions, and the original judgments and decisions referred to throughout this Guide. Specialised training from qualified providers is also recommended where appropriate.

Legal practitioners are further encouraged to consult complementary resources and remain up to date with legal and institutional developments in the field. Additional materials are available in different formats, including resources developed by the Institute for Human Rights and Development in Africa (IHRDA). For further information or assistance, readers may contact: ihrda@ihrda.org.

PREFACE

A recent trend in strategic litigation against corruption reflects its growing potential to advance social and economic justice, with some scholars arguing that corruption may provide one of the clearest entry points for demonstrating the violation of socio-economic rights. Despite this development, legal commentary and academic engagement specifically focusing on the use of strategic litigation to address the intersection between corruption and human rights remain relatively limited.

This Practical Guide is therefore both a commentary on anti-corruption cases and an exploration of the use of Strategic Anti-Corruption Human Rights Litigation (SACHRLit) to protect and advance human rights where violations arise from or result from corrupt conduct by public officials in Africa. It draws on both successful and unsuccessful attempts to hold states and institutions accountable through human rights-based litigation.

In this context, litigation can serve multiple functions. It can raise public awareness, compel states to act against corruption, provide remedies and compensation to victims, and contribute to the development of legal principles capable of assisting others facing similar violations. At the same time, the effectiveness of litigation has important limitations. Successful cases require credible evidence, sustained cooperation between victims, lawyers, and advocates, and often the support of highly skilled legal teams that may be inaccessible to many affected communities. In some contexts, courts themselves may be compromised by corruption, legal frameworks may be inadequate, and judicial systems may lack independence or capacity. As a result, success is never guaranteed, even where the legal merits are strong. Those most affected by corruption are often also those least able to pursue lengthy and expensive litigation.

Strategic litigation may nevertheless help address some of these challenges. Human rights organisations, including IHRDA, have over time developed significant expertise in strategic litigation, and these experiences offer valuable lessons for anti-corruption advocacy. Where appropriate, anti-corruption organisations should also consider the use of strategic litigation to advance objectives such as accountability, institutional reform, transparency, asset recovery, and the protection of affected communities.

At the same time, where levels of corruption are high, human rights are less likely to be respected. Both anti-corruption and human rights organisations and actors therefore share an interest in promoting civil and political rights that hold power accountable and enable civil society to organise and operate effectively. Opportunities therefore exist for meaningful collaboration between anti-corruption and human rights actors across a broad range of activities, including participatory budgeting, monitoring public expenditure, citizen oversight initiatives, advocacy campaigns, and strategic litigation. Such collaboration is not always straightforward. Anti-corruption practitioners may find the language and concepts of human rights overly abstract or disconnected from practical enforcement challenges, while human rights practitioners may not always engage sufficiently with the technical dimensions of corruption or the legal tools available to address it.

Effective collaboration will therefore require efforts on both sides to bridge differences in language, practice, and institutional culture. Human rights organisations in particular may need to communicate their legal expertise in ways that are both rigorous and accessible to broader anti-corruption audiences. Importantly, corruption must be framed as a human rights issue in public discourse.

01 INTRODUCTION

1.1 BACKGROUND

On 14 March 2014, the BBC reported on a major scandal in Zimbabwe involving senior executives of financially distressed State-owned enterprises and public entities who were allegedly receiving salaries and benefits of up to US$500,000 per month, while the average government employee earned approximately US$370. The revelations quickly attracted widespread media attention and became known as the "Salarygate" scandal.[1] One of the most striking examples concerned a national medical insurance entity serving public employees. Its chief executive was reportedly receiving a basic salary of approximately US$230,000 per month and additional monthly benefits of about US$305,499. At the same time, the medical insurance entity owed substantial sums to medical service providers, and some contributors were reportedly required to pay for treatment themselves or were turned away because it had not settled its obligations.[2]

The expected criminal accountability did not follow the initial revelations. In 2017, the national prosecutor rightly concluded that several specific payments and benefits did not violate criminal law, as they had been authorised under existing policies, employment arrangements or board decisions and the available evidence provided no basis for prosecution.[3] The episode therefore raises a critical question for anti-corruption and human rights scholarship: when criminal law cannot adequately address conduct that appears deeply abusive but does not satisfy the elements of an offence, could a link to human rights such as the right to healthcare—provide an alternative path to accountability?[4]

> Set against this backdrop, Salarygate reflects a broader and deeply troubling reality. Corruption remains entrenched across many African societies and functions as a structural driver of poverty, inequality, institutional weakness and the erosion of fundamental human rights. Corruption is not a victimless crime. It diverts resources intended for public services, distorts access to opportunities, weakens the rule of law and often places the heaviest burden on people who are already vulnerable or marginalised.[5]

This remains the case despite the numerous policy options adopted to combat corruption. These include whistleblowing hotlines and protection mechanisms, specialised courts or prosecutorial units, dedicated anti-corruption commissions, public-sector codes of conduct, asset-declaration systems and substantial investment in awareness campaigns. Across the continent, billboards, posters, media advertisements, public slogans and educational programmes are commonly displayed in government offices, schools, hospitals, roadsides and other public spaces.

1. Brian Hungwe, BBC News report on Zimbabwe's "Salarygate" scandal (14 March 2014); Transparency International Zimbabwe, Annual State of Corruption Report: Focus on State-Owned Enterprises (2014) 40–42 <https://www.tizim.org/wp-content/uploads/2020/07/ASCR-2014-SoE.pdf> accessed 6 August 2026.
2. Transparency International Zimbabwe (n 1) 22, 40–42 and 59; Silas Luthingo Rusvingo, 'The Salarygate Scandal in the Zimbabwe Parastatals Sector: Another Darkside of the Nation (2013–2014)' (2014) 14(10) Global Journal of Management and Business Research 17, 20–23 <https://globaljournals.org/GJMBR_Volume14/3-The-Salarygate-Scandal-in-the-Zimbabwe.pdf> accessed 6 August 2026.
3. Zvamaida Murwira, 'Cuthbert Dube Not Off the Hook' The Herald (13 June 2017) <https://www.heraldonline.co.zw/cuthbert-dube-not-off-the-hook/> accessed 6 August 2026. The Commission stated that its conclusion concerned specific allegations and did not necessarily end every investigation relating to PSMAS.
4. Constitution of Zimbabwe Amendment (No 20) Act 2013, ss 76 and 194; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 16; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 12.
5. United Nations Human Rights Council Advisory Committee, Final Report on the Issue of the Negative Impact of Corruption on the Enjoyment of Human Rights, UN Doc

African states have also strengthened anti-corruption frameworks through legislative reform, institutional restructuring and extensive capacity-building for prosecutors, judges, investigators and anti-corruption bodies. Yet enforcement outcomes remain uneven. High-level prosecutions continue to be the exception rather than the norm, while politically connected actors may use their influence to delay investigations, frustrate enforcement or preserve impunity.[6] This reality suggests that formal legal reforms and institutional mechanisms, although indispensable, may be insufficient on their own to confront entrenched and systemic corruption.

For this reason, strategic litigation emerges as an additional enforcement mechanism, as well as a potentially transformative tool. A carefully selected case can advance accountability, expose systemic failures, compel institutional action, clarify the law, provide remedies to affected people and promote broader structural change.[7] Strategic litigation does not replace criminal investigation, prosecution, institutional reform or public advocacy. It brings these efforts together around a legal case capable of producing consequences beyond the immediate parties.

1.2
OBJECTIVES OF THE GUIDE

The principal aim of this Guide is to explore the use of SACHRLit to fight the scourge of corruption. Instead of starting afresh, the Guide examines how the anti-corruption field can borrow from the human rights field, which has long used strategic litigation to challenge impunity, secure remedies and bring about legal and institutional change. It also considers how existing human rights guarantees can provide a basis for challenging corruption before courts and other competent bodies.

SACHRLit therefore seeks not only to fight corruption, but also to protect and advance human rights where violations arise from, are facilitated by, or result from corrupt conduct by public officials, corporations or other private actors. This victim-centred approach complements traditional criminal law by asking not only whether an offence has been committed, but also who has been harmed, which rights and duties are engaged, and what remedy is required.[8]

The Guide argues that SACHRLit can and should be considered where corruption is understood either as conduct that contributes to a violation of recognised human rights or, where the applicable law permits, as a violation in and of itself. It also engages with the emerging argument that freedom from corruption should be recognised as a standalone human right. Rather than resolving these academic debates in the abstract, the Guide brings them together and examines their practical value for litigation.

Its objectives are to:

- Explain the conceptual and legal connections between corruption and human rights;
- Assist litigators in identifying corruption cases with strategic human rights potential;
- Provide guidance on jurisdiction, standing, evidence, causation, remedies and implementation;

A/HRC/28/73 (5 January 2015) paras 20–28 <https://undocs.org/A/HRC/28/73> accessed 6 August 2026; African Union Convention on Preventing and Combating Corruption (adopted 11 July 2003, entered into force 5 August 2006) art 2(4); International Federation for Human Rights, Transparency International and Transparency International France, Breaking the Silos: A Practical Guide to Fighting Corruption with a Human Rights-Based Approach (June 2026) 8–15 <https://www.fidh.org/IMG/pdf/20260615_fidh_guide-corruption_en_web.pdf> accessed 6 August 2026.

6. African Union Advisory Board against Corruption, Report of the 5th African Anti-Corruption Dialogue (2021) 9–12 <https://anticorruption.au.int/sites/default/files/files/2022-03/en-finalreportofthe5thafricananti-corruptiondialogue.pdf> accessed 6 August 2026; Transparency International, Tackling Grand Corruption Impunity: Proposals for a Definition and Special Measures (2023) 4–11 <https://www.transparency.org/en/publications/tackling-grand-corruption-impunity-proposals-for-definition-and-special-measures> accessed 6 August 2026.

7. Kris van der Pas, 'Conceptualising Strategic Litigation' (2021) 11(6S) Oñati Socio-Legal Series S116, S121–S132 <https://doi.org/10.35295/osls.iisl/0000-0000-0000-1226>; International Commission of Jurists, Guide on Strategic Litigation for Lawyers and Civil Society Organizations (February 2026) 9–19 <https://www.icj.org/wp-content/uploads/2026/02/ICJ-Guide-on-strategic-litigation-for-lawyers-and-CSOs_February-2026.pdf> accessed 6 August 2026.

8. International Federation for Human Rights, Transparency International and Transparency International France (n 5) 16–35; United Nations Office on Drugs and Crime, University Module Series: Anti-Corruption, Module 7—Corruption and Human Rights (2021) 25–28 <https://grace.unodc.org/grace/uploads/documents/academics/Anti-Corruption_Module_7_Corruption_and_Human_Rights.pdf> accessed 6 August 2026.

- Demonstrate how civil, constitutional, administrative and criminal proceedings may be transformed into effective anti-corruption tools; and
- Strengthen the capacity of citizens and CSOs to seek accountability and enforce social, economic, civil and political rights affected by corruption.

The principal aim of this Guide is to explore the use of SACHRLit to fight the scourge of corruption.

Table 1 Guide objectives and practical applications

Guide objective	Practical Application
Connect anti-corruption and human rights.	Identify the protected right, the duty-bearer, the affected rights-holder and the link to the corrupt conduct.
Support strategic case selection.	Assess whether a case can clarify the law, expose a systemic practice, secure an effective remedy or influence institutional conduct.
Guide litigation design and implementation.	Evaluate jurisdiction, standing, evidence, causation, remedies, enforcement and the prospects of implementation.
Broaden and transform available legal pathways.	Consider how civil, constitutional, administrative and criminal proceedings may be used as effective anti-corruption tools.
Strengthen citizen and civil society action.	Equip citizens and civil society organisations to seek accountability and enforce social, economic, civil and political rights affected by corruption.

Through this approach, the Guide broadens the scope of strategic human rights litigation, identifies a wider range of cases and enhances access to justice. Strategic anti-corruption litigation may contribute significantly to the protection and enforcement of human rights, while also strengthening transparency, participation, equality, accountability and the rule of law.

1.3
RATIONALE

The significance of this Guide lies in bringing together the fields of anti-corruption and human rights, which have too often developed in separate institutional and professional silos. Anti-corruption practice has traditionally concentrated on criminalisation, investigation, prosecution, prevention and asset recovery. Human rights practice has focused on rights-holders, State obligations, access to justice, remedies and institutional reform. SACHRLit draws on the strengths of both fields.[9]

The Guide serves as a reference point and practical guide for lawyers, CSOs, human rights defenders, anti-corruption practitioners, prosecutors, investigators, judges, academics and communities interested in litigating corruption. Although SACHRLit is a growing area of international practice, it remains relatively

9. International Federation for Human Rights, Transparency International and Transparency International France (n 5) 8–15; Daniel Kempken, 'Anti-Corruption and Human Rights: Breaking Down Silos' Due Process of Law Foundation (20 March 2025) <https:/dplf.org/en/2025/03/20/anti-corruption-and-human-rights-breaking-down-silos/> accessed 6 August 2026.

under-explored in Africa. The number of cases expressly linking corruption to human rights before domestic, regional and international courts remains limited, and existing practice is often ad hoc and uncoordinated. There is consequently a dearth of systematic precedent and practical guidance for lawyers and judges working in this developing area.[10]

The need for such guidance is especially pressing because corruption cases present distinctive challenges. Evidence may be concealed across several institutions or jurisdictions; victims may be numerous or difficult to identify; causation may be contested; powerful defendants may obstruct proceedings; and a successful judgment may still require sustained advocacy and monitoring before it is implemented. A practical Guide can assist litigators in anticipating these challenges and designing cases that are legally sound, ethically responsible and capable of achieving meaningful change.

1.4
METHODOLOGY

The methodology of this Guide is based primarily on doctrinal analysis of established black-letter law found in national constitutions, legislation, and regional and international human rights and anti-corruption instruments. These include the African Charter on Human and Peoples' Rights, the African Union Convention on Preventing and Combating Corruption(AUCPCC), the United Nations Convention against Corruption (UNCAC) and the principal international human rights treaties.[11]

The Guide also employs qualitative case-law analysis. It examines selected proceedings brought by African citizens, lawyers and CSOs before domestic, regional and international courts and quasi-judicial bodies. The cases were selected for their ability to illuminate questions of jurisdiction, standing, evidence, causation, remedies, implementation and broader strategic impact. Where relevant, the Guide also draws on comparative jurisprudence and practitioner experience from outside Africa that may assist African litigants while remaining attentive to local legal, political and institutional contexts.

> This methodology is practical rather and its purpose is to translate legal rules, case experience and human rights principles into concrete questions and tools that can guide litigation teams from case identification through implementation.

1.5
STRUCTURE OF THE GUIDE

> Chapter 2 examines the linkages between corruption and human rights and provides the conceptual and normative foundation for understanding the corruption-human rights nexus. It explains the principal approaches to the relationship, the meaning and typologies of corruption, the distinction between grand and petty corruption, and the human rights that may be engaged.

> Chapter 3 provides an initial framework for determining whether a proposed matter is suitable for strategic anti-corruption litigation. It addresses the identification of victims, the legal nexus, evidence, public-interest value, remedies, forum availability, feasibility and safety.

10. United Nations Office on Drugs and Crime (n 8) 23–30; International Federation for Human Rights, Transparency International and Transparency International France (n 5) 10–18.
11. African Charter on Human and Peoples' Rights (n 4); African Union Convention on Preventing and Combating Corruption (n 5); United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (n 4).

Chapter 4 develops the case-selection analysis by examining strategic value, individual and systemic harm, the choice of plaintiffs, pilot cases, litigation risks and public-interest communications.

Chapter 5 examines forum selection and litigation strategies before domestic, regional and international courts and mechanisms. It considers jurisdiction, admissibility, standing, causation, attribution, enforcement and the strategic choice of forum.

Chapter 6 explores interventions beyond direct litigation, including requests for advisory opinions, amicus curiae briefs, participation in criminal proceedings and coalition building.

Chapter 7 examines the design of effective remedies, including compensation, restitution, asset recovery, public acknowledgement, investigation, legislative and institutional reform, publication and monitoring.

Finally, Chapter 8 draws together the Guide's principal conclusions and proposes a way forward for developing SACHRLit as a coordinated practice capable of producing lasting accountability and change.

02 LINKING CORRUPTION TO HUMAN RIGHTS

2.1 INTRODUCTION

In recent years, the question of whether corruption is a violation of human rights has attracted more than superficial attention from human rights and anti-corruption scholars, practitioners, policymakers and organisations.[12] Corruption has been linked to the violation of human rights generally and to specific rights, including the rights to health, education, housing, equality, dignity and access to justice. It diverts public resources, weakens institutions, distorts decision-making and often places the heaviest burden on people who are already vulnerable or marginalised.[13]

The relationship is nevertheless not automatic. Evidence that corruption occurred does not, without more, establish a human rights violation. A litigant must identify the corrupt conduct, the protected right, the State obligation engaged, the person or community affected, and a sufficiently clear connection between the conduct and the harm. The assessment is therefore case-specific and evidence-based.[14]

Despite the now-common understanding of the linkages between corruption and human rights, debate continues about the most convincing legal framework for bringing the two fields together. Three principal approaches have emerged. Each carries different opportunities and risks for strategic anti-corruption litigation, as discussed in the section that immediately follows.

2.2 APPROACHES TO THE CORRUPTION – HUMAN RIGHTS RELATIONSHIP

2.2.1 Corruption as Having a Negative Impact on Human Rights

The first approach is couched in relatively cautious language and is commonly used by the United Nations and other international organisations. It states that corruption has a "negative impact" on the enjoyment of human rights, "undermines" rights, creates a significant obstacle to their enjoyment, or facilitates violations.[15]

12. See generally Kolawole Olaniyan, Corruption and Human Rights Law in Africa (Hart Publishing 2014); Anne Peters, 'Corruption as a Violation of International Human Rights' (2018) 29(4) European Journal of International Law 1251; Cecily Rose, 'The Limitations of a Human Rights Approach to Corruption' (2016) 65(2) International and Comparative Law Quarterly 405; International Council on Human Rights Policy and Transparency International, Corruption and Human Rights: Making the Connection (ICHRP 2009) <https://ssrn.com/abstract=1551222> accessed 16 August 2026; Human Rights Council Advisory Committee, 'Final Report on the Issue of the Negative Impact of Corruption on the Enjoyment of Human Rights' (5 January 2015) UN Doc A/HRC/28/73; Inter-American Commission on Human Rights, Corruption and Human Rights: Inter-American Standards (6 December 2019) OEA/Ser.L/V/II Doc 236; Raoul Wallenberg Institute of Human Rights and Humanitarian Law, The Nexus between Anti-Corruption and Human Rights (RWI 2018) <https://rwi.lu.se/app/uploads/2018/10/Nexus-report-online.pdf> accessed 16 August 2026; Kaunain Rahman, Anti-Corruption and Human Rights: Integration in Development Programmes (U4 Helpdesk Answer 2022:17, U4 Anti-Corruption Resource Centre 2022) <https://www.u4.no/publications/anti-corruption-and-human-rights-integration-in-development-programmes> accessed 16 August 2026.

13. United Nations Human Rights Council Advisory Committee, Final Report on the Issue of the Negative Impact of Corruption on the Enjoyment of Human Rights, UN Doc A/HRC/28/73 (5 January 2015) paras 20–28 <https://undocs.org/A/HRC/28/73> accessed 6 August 2026.

14. United Nations Office on Drugs and Crime, University Module Series: Anti-Corruption, Module 7—Corruption and Human Rights (2021) 7, 18–28 <https://grace.unodc.org/grace/uploads/documents/academics/Anti-Corruption_Module_7_Corruption_and_Human_Rights.pdf> accessed 6 August 2026; Anne Peters, 'Corruption as a Violation of International Human Rights' (2018) 29(4) European Journal of International Law 1251, 1262–1278 <https://doi.org/10.1093/ejil/chy070>.

15. United Nations Human Rights Council Advisory Committee (n 13) paras 17–19; Office of the United Nations High Commissioner for Human Rights, 'Corruption and Human Rights' <https://www.ohchr.org/en/good-governance/corruption-and-human-rights> accessed 6 August 2026.

This approach stops short of treating corruption itself as a direct human rights violation. It is nevertheless significant for litigants and courts. Recognition by international bodies that corruption obstructs the realisation of human rights provides persuasive normative support, particularly when demonstrating the wider social and institutional consequences of corrupt conduct. It may also help a court to understand why a dispute that appears to concern procurement, public finance or administrative irregularity has a concrete human impact.

> However, the limitation with this approach is that broad statements about negative impact do not, on their own, prove the legal elements of a particular claim. The litigant must still connect the conduct to an applicable right, an identifiable duty and admissible evidence of harm.

2.2.2
The Human Rights-Based Approach

The second and more assertive approach asks whether particular corrupt practices breach existing human rights obligations. It uses the Human Rights-Based Approach (HRBA), which recognises individuals and communities as rights-holders and States as duty-bearers. It does soby applying the principles of participation, transparency, accountability, equality and non-discrimination to the design and implementation of anti-corruption measures.[16]

The HRBA does not require corruption to be characterised as a separate human rights violation. Instead, it links corrupt conduct to an existing right and to the State's obligation to respect, protect or fulfil that right. This is particularly useful for strategic litigators because it complements the criminal law with a broader and more victim-centred methodology.[17] The approach shifts attention from punishing a corrupt actor to examining how corruption affects people. A bribe demanded for medical treatment may obstruct access to healthcare. The diversion of school funds may undermine the availability and quality of education. Corrupt allocation of housing may violate equality, non-discrimination and housing rights.

> This approach also supports arguments based on positive State obligations. Depending on the applicable law, a State may be required to prevent foreseeable interference with rights, regulate private conduct, investigate credible allegations, hold responsible persons accountable, recover diverted resources and provide an effective remedy to those harmed.

2.2.3
A Standalone Right to Freedom from Corruption

The third and most ambitious approach proposes a standalone human right to live free from corruption. Matthew Murray and Andrew Spalding argue that freedom from official corruption should be recognised as a fundamental and inalienable human right.[18] Berihun Adugna Gebeye similarly emphasises that anti-corruption and human rights share a concern for an orderly and decent human life rooted in dignity and equality, although his principal argument is for an integrated approach to the two fields.[19]

16. United Nations Sustainable Development Group, 'The Human Rights-Based Approach' <https:/unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach> accessed 6 August 2026; United Nations Human Rights Council, The Negative Impact of Corruption on the Enjoyment of Human Rights, UN Doc A/HRC/RES/41/9 (11 July 2019).
17. United Nations Office on Drugs and Crime (n 14) 25–28; International Council on Human Rights Policy and Transparency International, Corruption and Human Rights: Making the Connection (2009) 3–8, 24–31 <https:/assets.publishing.service.gov.uk/media/57a08b6540f0b64974000b10/humanrights-corruption.pdf> accessed 6 August 2026.
18. Matthew Murray and Andrew Spalding, Freedom from Official Corruption as a Human Right (Brookings Institution, January 2015) 1–5 <https:/www.brookings.edu/wp-content/uploads/2016/06/murray-and-spalding_v06.pdf> accessed 6 August 2026.
19. Berihun Adugna Gebeye, 'Corruption and Human Rights: Exploring the Relationships' (2012) 12 Human Rights & Human Welfare art 10 <https:/digitalcommons.du.edu/hrhw/vol12/iss1/10/> accessed 6 August 2026.

This position places corruption at the centre of rights-based litigation rather than treating it as an indirect or secondary concern. It also challenges the normalisation of corruption as cultural, political or inevitable. However, no universal human rights treaty presently recognises a general standalone right to freedom from corruption. A court may therefore be reluctant to enforce such a right unless it can be grounded in a constitution, legislation, regional law or a persuasive interpretation of existing rights. An alternative route is to rely on the right to an effective remedy for damage caused by corruption, including the remedial framework contemplated by Article 35 of the UNCAC (UNCAC).[20]



Guide focus

In this Guide, SACHRLit may draw on any of the three approaches. The decisive question is not the label attached to the claim, but whether the chosen approach is supported by the applicable law, the facts and the remedy sought.

Table 2 | **Approaches to the corruption – human rights relationship**

Approach	Central proposition	Principal litigation value
Negative-impact approach	Corruption obstructs or undermines the enjoyment of human rights.	Supplies context and persuasive support, but still requires proof of the legal link.
Human rights-based approach	Particular corrupt conduct may breach existing human rights obligations.	Centres victims, identifies duty-bearers and opens the way to rights-based remedies.
Standalone-right approach	Every person should enjoy a right to live free from corruption.	Offers a powerful normative claim, but its direct enforceability depends on the legal system.

2.3
WHAT IS CORRUPTION?

Whether corruption violates human rights or contributes to their violation is partly a question of fact and partly a question of terminology. Litigants must therefore be clear about what corruption means in the relevant jurisdiction. Susan Rose-Ackerman and Bonnie Palifka observe that corruption has different connotations across time, place and discipline.[21] No single definition is sufficient for every form of legal or policy analysis.

2.3.1
Competing Definitions

Across the academic, legal and policy literature reviewed for this Guide, several recurring approaches to defining corruption emerge.

First, public-office definitions focus on the misuse of public office for private gain. They are familiar and often useful where the alleged conduct involves a public official, but may exclude corruption in the private sector and conduct intended to benefit a political party, family, network or other group.

20. Anita Ramasastry, 'Is There a Right to Be Free from Corruption?' (2015) 49 UC Davis Law Review 703, 706–711; United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41, art 35.
21. Susan Rose-Ackerman and Bonnie J Palifka, Corruption and Government: Causes, Consequences, and Reform (2nd edn, Cambridge University Press 2016) 7–12.

Second, definitions based on the abuse of power are broader. Transparency International, for example, defines corruption as "the abuse of entrusted power for private gain". The reference to entrusted power can include public and private actors, while "gain" can be financial or non-financial.[22]

Third, public-interest or decay definitions focus on the damage that corruption causes to institutions, public responsibility and the common good. Historically, corruption was often understood as institutional or moral decay. These definitions may capture systemic conduct that a narrow offence-based definition misses, but they are usually too open-ended to establish criminal liability on their own. In litigation they should operate as a normative framework, not as a substitute for the elements of an offence, constitutional breach or civil wrong.

> The definition chosen must therefore fit the legal question. A criminal prosecution requires the statutory elements of the offence. A constitutional or administrative claim may focus on abuse of public power, irrationality, improper purpose, equality or misuse of public resources. A human rights claim must identify the conduct and connect it to the State obligation and protected right relied upon.

2.3.2
Indigenous Values and Philosophies as Normative Anti-Corruption Frameworks

The third definitional approach discussed above, which understands corruption broadly as institutional or moral decay and conduct contrary to the public interest, provides an important entry point for indigenous values and philosophies. This approach recognises that corruption is more than the violation of a criminal prohibition: it represents the abuse of communal trust, the abandonment of public responsibility and the erosion of relationships between public institutions and the communities they serve.

South Africa provides one example of how indigenous values and philosophies may inform efforts to combat corruption. Ubuntu, which is rooted in human dignity, solidarity, communal responsibility and mutual respect, offers a normative basis for explaining why the abuse of entrusted power harms the community as a whole.[23] Its recognition in South African constitutional jurisprudence as a value relevant to dignity, restorative justice and the balancing of individual and collective interests illustrates how indigenous philosophies may complement formal legal rules.[24] Where relevant, litigants may draw upon Ubuntu, alongside the applicable legal framework, to frame corruption as a breach of public trust and a failure to exercise public power consistently with accountability, human dignity and the common good.[25]

Comparable approaches can be found elsewhere in Africa. In Botswana, Botho which similarly emphasises humanity, respect and responsibility towards others—has been adopted as a national principle and incorporated into the institutional values of public bodies alongside integrity, transparency and accountability.[26] In many African states the Constitution gives legal expression to comparable values by requiring public institutions and officials to observe good governance, integrity, transparency and accountability.

22. John Gardiner, 'Defining Corruption' in Arnold J Heidenheimer and Michael Johnston (eds), Political Corruption: Concepts and Contexts (3rd edn, Transaction Publishers 2002) 25–40; Transparency International, 'What Is Corruption?' <https://www.transparency.org/en/what-is-corruption> accessed 6 August 2026.
23. Yvonne Mokgoro, 'Ubuntu and the Law in South Africa' (1998) 4 Buffalo Human Rights Law Review 15; Thaddeus Metz, 'Ubuntu as a Moral Theory and Human Rights in South Africa' (2011) 11 African Human Rights Law Journal 532.
24. S v Makwanyane and Another 1995 (3) SA 391 (CC) [224], [263] and [308]; Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC) [37]; Dikoko v Mokhatla 2006 (6) SA 235 (CC) [68]–[69] and [113]–[115].
25. See, for example, Barkhuizen v Napier 2007 (5) SA 323 (CC) [51], recognising that public policy is informed by Ubuntu.
26. Presidential Task Group for a Long Term Vision for Botswana, Vision 2016: Towards Prosperity for All (Government of Botswana 1997) 2–4.

These values and philosophies cannot replace the text of a constitution, statute or treaty, nor should they be invoked as abstract slogans. Their strategic value lies in interpreting existing legal duties and giving local meaning to principles of integrity, accountability and responsible stewardship of public resources. Properly grounded in applicable law, they can strengthen arguments for transparent decision-making, institutional reform, reparative remedies and the protection of communities harmed by corruption.

2.4
TYPOLOGIES AND LITIGATION PURPOSE

Corruption can be classified by scale, sector, actor, transaction, function or harm. A typology is useful only if it serves the purpose of the analysis. Jennifer Bussell cautions that there are many ways to distinguish corrupt behaviour and that no typology is useful for every purpose.[27] However, for strategic litigation, the classification should help answer a legal or evidential question. Distinguishing grand from petty corruption may reveal scale and institutional reach. Distinguishing bribery from embezzlement may identify the relevant offence. Distinguishing public from private corruption may determine who bears the relevant duty. Distinguishing individual from systemic corruption may shape the remedy.

Against this background, the following subsections examine two classifications of particular relevance to strategic litigation: the distinction between grand and petty corruption, and the definitions and prohibited acts recognised under applicable anti-corruption treaties.

2.4.1
Grand and Petty Corruption

The distinction between grand and petty corruption provides a useful conceptual starting point for understanding the different ways in which corruption may affect human rights. It is not, however, a legal classification and does not determine whether a particular act constitutes an offence or a human rights violation. As Anne Peters observes, petty and grand corruption are "not a legal distinction but merely describe variations of the same theme."[28]

Grand corruption generally involves senior public officials, substantial public resources or the distortion of important State institutions and decision-making processes. Petty or bureaucratic corruption ordinarily occurs in the daily interaction between individuals and public officials, including demands for small bribes to obtain healthcare, education, identification documents, police protection or other public services.

The boundary between the two categories is neither rigid nor fixed. Repeated acts of petty corruption may form part of an organised or systemic practice, while a single act of grand corruption may produce immediate and identifiable harm to individuals and communities. The purpose of the distinction is therefore not to suggest that one category is necessarily more serious than the other. Rather, it helps identify the level at which the conduct occurs, the actors involved, the scale and distribution of the harm, and the institutional practices that may sustain it. At this conceptual stage, the grand–petty distinction assists in describing the corruption–human rights nexus. Its practical implications for selecting plaintiffs, evidence, causes of action and remedies are considered in section 4.3.1 below.[29]

27. Jennifer Bussell, 'Typologies of Corruption: A Pragmatic Approach' in Susan Rose-Ackerman and Paul Lagunes (eds), Greed, Corruption, and the Modern State: Essays in Political Economy (Edward Elgar 2015) 21–45 <https:/doi.org/10.4337/9781784714703.00007>.
28. Anne Peters, 'Corruption as a Violation of International Human Rights' (2018) 29(4) European Journal of International Law 1251, 1255.
29. For the application of the grand–petty distinction to the selection and design of a SACHRLit case, see section 4.3.1 below.

2.4.2
Treaty Definitions and Prohibited Acts

Before arguing the corruption–human rights link, a litigant must identify the applicable international, regional, sub-regional and domestic instruments. Anti-corruption conventions do not always define and criminalise "corruption" as a single offence. UNCAC, for example, requires States Parties to criminalise or consider criminalising specified conduct, including bribery, embezzlement, trading in influence, abuse of functions, illicit enrichment, laundering of proceeds and obstruction of justice.[30]

The AUCPCC defines corruption as the acts and practices, including related offences, proscribed in the Convention. Article 4 then identifies conduct including bribery, diversion of property, trading in influence, illicit enrichment, concealment and participation.[31]

At sub-regional level, the SADC Protocol against Corruption provides a general definition tied to the acts in Article 3 and to the abuse of entrusted responsibilities for an undue advantage.[32] The ECOWAS Protocol on the Fight against Corruption takes a different drafting route. Article 1 defines related terms but not corruption itself; Article 6 identifies the acts of corruption to which the Protocol applies.[33]

Table 3 | **Regional anti-corruption instruments and litigation implications**

Instrument	Drafting approach	Litigation implication
UNCAC	Enumerates conduct rather than creating one general offence of corruption.	Plead the specific conduct and the corresponding domestic offence or obligation.
AUCPCC	Defines corruption by reference to the acts and related offences proscribed in the Convention.	Use Articles 1 and 4 together; also consider its express human rights and development objectives.
SADC Protocol	Combines a general definition with a list of acts.	Test the facts against both the definition in Article 1 and the conduct in Article 3.
ECOWAS Protocol	Defines related terms and separately lists acts of corruption.	Avoid attributing a general definition to Article 1; identify the applicable act under Article 6.



These instruments provide an important legal framework, but the cause of action will ordinarily depend on domestic incorporation, constitutional provisions, administrative law, private-law remedies or the jurisdiction of a regional court. Litigants should therefore distinguish carefully between a treaty obligation binding the State and a directly enforceable right or offence in the forum seized.[34]

30. For the application of the grand–petty distinction to the selection and design of a SACHRLit case, see section 4.3.1 below.
31. United Nations Convention against Corruption (n 11) arts 15–25. African Union Convention on Preventing and Combating Corruption (adopted 11 July 2003, entered into force 5 August 2006) arts 1, 2(4) and 4 <https:/anticorruption.au.int/sites/default/files/files/2021-06/combattingcorruptionconventiona5v2enreduced.pdf> accessed 6 August 2026.
32. Southern African Development Community Protocol against Corruption (adopted 14 August 2001, entered into force 6 July 2005) arts 1 and 3 <https:/www.sadc.int/file/3722/download?token=KuBKkLJ7> accessed 6 August 2026.
33. Economic Community of West African States Protocol on the Fight against Corruption (adopted 21 December 2001) arts 1 and 6 <https:/eos.cartercenter.org/uploads/document_file/path/406/ECOWAS_Protocol_on_Corruption.pdf> accessed 6 August 2026.
34. For the selection and comparative assessment of domestic, regional and international forums, see Chapter 5 below, especially sections 5.2, 5.4 and 5.5.

2.5
WHICH HUMAN RIGHTS?

The connection between corruption and human rights should be grounded in the rights recognised by the applicable legal system and expressed in language that makes sense to the affected community. Human rights advocates have described this process as "vernacularisation": translating international norms into local institutions, meanings and forms of action.[35]

For practical purposes, this Guide primarily refers to the rights protected under the African Charter on Human and Peoples' Rights, which provides a foundation for civil, political, economic, social, cultural and peoples' rights across the continent. Where relevant, it also draws on other African human rights instruments. These regional standards are complemented by widely ratified international treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Many of the same rights are guaranteed in national constitutions and legislation.[36]

Human rights are universal, indivisible, inter-dependent and interrelated.[37] A single corrupt act may therefore affect several rights. The diversion of funds from a rural clinic may implicate health, life, equality and non-discrimination. Bribery in school admissions may engage education, equality and the rights of the child. Manipulation of an election may affect political participation, expression, information and equality. Corruption in the police or judiciary may compromise liberty, fair trial, dignity and an effective remedy.

The litigant should resist the temptation to plead every conceivable right. A focused claim identifies the right that best fits the facts, the strongest legal source and the remedy sought.

Table 4 | **Corrupt conduct, affected rights and linking questions**

Illustrative corrupt conduct	Potentially affected rights	Questions for establishing the link
Bribe demanded for access to a public service.	Equality and non-discrimination; dignity; health; education; housing; water; freedom of movement or access to justice.	Was access denied, delayed or made conditional on payment? Who could not pay, and did the practice disproportionately affect women, children, minorities, indigenous peoples or low-income groups?
Embezzlement or diversion of social-programme funds.	Food; health; education; housing; water; life and an adequate standard of living.	What resources were lost? Did the diversion reduce the availability, accessibility, quality or coverage of an essential service, and can that loss be connected to identifiable people or communities?

35. Sally Engle Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' (2006) 108(1) American Anthropologist 38, 39–41.
36. African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005); African Charter on the Rights and Welfare of the Child (adopted 1 July 1990, entered into force 29 November 1999); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.
37. Vienna Declaration and Programme of Action, UN Doc A/CONF.157/23 (12 July 1993) para 5.

Health-sector corruption, including bribes for treatment, diversion of medicines or procurement fraud.	Health; life; dignity; equality and non-discrimination.	Were treatment, medicines, staff or safe equipment unavailable or unaffordable because of the corrupt conduct? What patient, procurement and budgetary evidence proves the impact?
Education-sector corruption, including bribes for admission or grades, examination fraud or theft of school funds.	Education; equality and non-discrimination; dignity and the rights of the child.	Were learners excluded, disadvantaged or exposed to lower-quality education? Did the conduct affect admission, assessment, staffing, infrastructure or learning materials?
Corruption in land or housing allocation, including bribery, favouritism or diversion of construction funds.	Adequate housing; food; property; equality; participation; culture and the rights of indigenous peoples.	Was allocation based on payment, influence or political connection rather than lawful criteria? Did the conduct cause eviction, exclusion, insecure tenure or loss of access to land and livelihoods?
Water or environmental corruption, including bribing regulators, unlawful extraction, toxic dumping or diversion of project funds.	Water; health; life; housing; food and a clean and healthy environment.	Did improper influence permit unsafe activity or prevent regulation? Did it cause shortages, contamination, environmental damage or unequal access, and can the resulting harm be traced?
Judicial or law-enforcement corruption, including bribery, extortion, arbitrary detention or interference with proceedings.	Fair trial; effective remedy; liberty and security; equality and non-discrimination.	Did improper influence affect an investigation, arrest, detention, prosecution or judicial decision? Was a remedy denied, delayed or made dependent on payment?
Political or electoral corruption, including vote-buying, bribery of election officials or trading in influence.	Political participation; expression; information; association and equality.	Did money, patronage or abuse of office distort political choice, candidate access, electoral administration, public information or the equal participation of citizens?
Corruption enabling trafficking, forced labour or unlawful adoption.	Liberty and security; freedom from slavery and trafficking; family life; identity and the rights of the child.	Did officials accept payment or other benefits to facilitate, conceal or fail to investigate exploitation? Which protection, registration, border-control or justice safeguards were compromised?
Corruption used to suppress expression or access to information.	Expression; information; participation; equality and effective remedy.	Did bribery, intimidation or concealment suppress reporting, public records or scrutiny? Did the resulting secrecy prevent affected people from challenging the

2.5.1
State Obligations across the Full Spectrum of Human Rights

When assessing whether corruption violates a human right, litigants should first identify the right concerned, its legal source, the corresponding State obligation, the conduct or omission attributable to the State, and the connection between that conduct and the alleged harm.[38] Across the human rights system, State obligations are commonly organised as duties to respect, protect and fulfil rights. Within the African human rights system, the duty to promote rights is also frequently stated as a distinct obligation. The duty to respect requires the State and its officials to refrain from unjustified interference with rights. The duty to protect requires reasonable measures against interference by private actors, while the duties to promote and fulfil require legislative, administrative, budgetary, judicial and educational measures that make rights effective. The African Commission articulated this framework in Social and Economic Rights Action Center and Center for Economic and Social Rights v Nigeria ("SERAC v Nigeria").[39]

Civil and political rights provide an important starting point. Under Article 2(1)–(3) of the International Covenant on Civil and Political Rights (ICCPR), States must respect and ensure Covenant rights without discrimination, adopt the measures necessary to give them effect and provide an effective remedy when violations occur. These obligations are generally immediate, although particular rights may permit strictly defined limitations or derogations. The Human Rights Committee has explained that States must not only refrain from violating rights but may also be required to prevent, investigate, punish and remedy violations committed by public officials and, in appropriate circumstances, abuses committed by private persons or entities.[40]

Corruption may violate civil and political rights where it influences the exercise of public power. Bribery involving judges or court officials may undermine equality before the courts and the right to a competent, independent and impartial tribunal. Police extortion or corruption may contribute to arbitrary arrest, detention or the denial of protection. Electoral bribery, vote-buying and trading in influence may undermine the right to participate freely in public affairs and genuine elections. The concealment of public information, corruption within the media, or retaliation against journalists, whistle-blowers and anti-corruption defenders may interfere with freedom of expression and access to information. Corrupt practices that exclude particular individuals or communities from public services may also engage the rights to equality and non-discrimination.[41]

In such cases, litigants should determine whether the corrupt conduct constituted a direct interference with a right, whether the State failed to exercise due diligence to prevent interference by private actors, or whether it failed to investigate the conduct and provide an effective remedy. This distinction helps identify the applicable obligation, the evidence required and the appropriate remedy.

Economic, social and cultural rights impose both progressive and immediate obligations. Under Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), States must take steps, using the maximum of their available resources, towards the progressive realisation of these rights. However, the obligation to take deliberate, concrete and targeted steps, the duty of non-discrimination and the protection of minimum essential levels of rights are immediate. Retrogressive measures also

38. International Council on Human Rights Policy and Transparency International, Corruption and Human Rights: Making the Connection (ICHRP 2009) 24–31.
39. African Charter on Human and Peoples' Rights, Article 1; Social and Economic Rights Action Center and Center for Economic and Social Rights v Nigeria, Communication No 155/96, African Commission on Human and Peoples' Rights, paras 44–47.
40. International Covenant on Civil and Political Rights, Article 2(1)–(3); UN Human Rights Committee, General Comment No 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), paras 5–8 and 15–18.
41. ICCPR, Articles 9, 14, 19, 25 and 26; UN Human Rights Committee, General Comment No 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, UN Doc CCPR/C/GC/32 (2007), particularly para 19; UN Human Rights Committee, General Comment No 25, Participation in Public Affairs and the Right to Vote, UN Doc CCPR/C/21/Rev.1/Add.7 (1996); UN Human Rights Committee, General Comment No 34, Freedoms of Opinion and Expression, UN Doc CCPR/C/GC/34 (2011), paras 2–3 and 18–19.

require careful justification.[42]

Corruption may therefore be legally relevant where it:

- diverts available resources,
- distorts budgetary priorities,
- blocks access to essential services,
- lowers the quality of those services or
- demonstrates that the State has failed to adopt reasonable measures.

Availability, accessibility, acceptability and quality provide useful tools for assessing these violations. In relation to education, adaptability is also relevant. A public service may exist formally but remain inaccessible because a bribe is demanded, resources have been diverted, facilities have not been constructed or corruption excludes a particular community. Procurement corruption may reduce the quality of medicines, schools, housing or water infrastructure, while embezzlement may undermine their availability altogether.[43]

The analysis also extends to peoples' rights recognised under the African Charter, including the rights of peoples to freely dispose of their wealth and natural resources, to development and to a satisfactory environment. Corruption involving land concessions, extractive industries, public procurement, environmental regulation or the disposal of public resources may violate these rights where it deprives communities of their resources, exposes them to environmental harm or prevents equitable participation in development. The decision in SERAC v Nigeria demonstrates how failures of regulation, protection and accountability may engage both individual and collective rights.[44]

Corruption does not automatically constitute a human rights violation. A sustainable claim requires litigants to move beyond establishing that a corrupt act occurred and demonstrate its connection to a specific right and State obligation. This requires identifying the affected rights-holders, the responsible duty-bearer, the relevant act or omission, the resulting harm or risk of harm, and an appropriate remedy. This structured approach allows strategic litigation to address corruption across the full spectrum of civil, political, economic, social, cultural and peoples' rights.[45]

2.5.2
The Practical Linking Exercise

The International Council on Human Rights Policy distinguishes direct, indirect and remote links between corrupt conduct and human rights harm.[46] The closer and better evidenced the link, the stronger the claim is likely to be.



Before commencing proceedings, the litigation team should complete the following exercise:[47]

1. Define the conduct
Identify precisely what happened, who acted, what power or responsibility was entrusted, and what advantage was sought or obtained.

42. International Covenant on Economic, Social and Cultural Rights, Article 2(1)–(2); UN Committee on Economic, Social and Cultural Rights, General Comment No 3, The Nature of States Parties' Obligations, UN Doc E/1991/23 (1990), paras 1–2 and 9–10.
43. UN Committee on Economic, Social and Cultural Rights, General Comment No 14, The Right to the Highest Attainable Standard of Health, UN Doc E/C.12/2000/4 (2000), para 12; UN Committee on Economic, Social and Cultural Rights, General Comment No 13, The Right to Education, UN Doc E/C.12/1999/10 (1999), para 6.
44. African Charter on Human and Peoples' Rights, Articles 21, 22 and 24; SERAC v Nigeria, Communication No 155/96, paras 50–58.
45. International Council on Human Rights Policy and Transparency International, Corruption and Human Rights: Making the Connection (ICHRP 2009) 23–31; Anne Peters, 'Corruption as a Violation of International Human Rights' (2018) 29(4) European Journal of International Law 1251–1287.
46. International Council on Human Rights Policy and Transparency International (n 38) 27–31.
47. For the application of causation and evidentiary requirements at the case-assessment and merits stages, see sections 3.3.2–3.3.3 and 5.5.3 below.

2. Identify the legal basis
Match the conduct to the applicable offence, constitutional provision, administrative-law rule, treaty obligation or civil wrong.

3. Identify the right and duty
State the protected right, its legal source and whether the alleged failure concerns the duty to respect, protect or fulfil.

4. Identify the rights-holder
Name the individual, group or community affected. Explain any disproportionate impact on vulnerable or marginalised persons.

5. Establish the link
Show how the corrupt conduct caused, contributed to, facilitated or created a real risk of the rights violation. Avoid relying only on general correlation.

6. Prove the harm
Assemble financial records, procurement documents, service-delivery data, witness evidence, expert analysis and other admissible material that connects the conduct to the impact.

7. Choose an effective remedy
Seek relief that addresses both the corrupt practice and its human consequences, including cessation, disclosure, investigation, restitution, compensation, recovery of resources, institutional reform or guarantees of non-repetition.[48]

2.6
CONCLUSION

The corruption–human rights relationship is powerful, but it must be pleaded with precision. Corruption may provide the context for a violation, constitute the means by which an existing right is breached, or support the emerging argument for a standalone right to freedom from corruption. Each approach can contribute to strategic litigation, but none removes the need to establish jurisdiction, legal duty, causation, evidence and remedy.

For the strategic litigator, the essential task is to make the human impact visible without weakening legal discipline. Define the corrupt conduct carefully, identify the right and duty engaged, centre the affected people, prove the connection and seek a remedy capable of changing both the individual injustice and the system that allowed it to occur.

48. For a detailed discussion of compensation, restitution, asset recovery, structural relief and monitoring, see Chapter 7 below.

03 GETTING STARTED: IS THIS A STRATEGIC ANTI-CORRUPTION CASE?

3.1 INTRODUCTION

Almost all corruption cases may have an impact on human rights. That impact, however, does not automatically make every corruption case a strategic anti-corruption case. This Guide is concerned with litigation that brings the human rights-anti-corruption nexus before a court or other competent forum in a deliberate, credible and transformative way. The litigant must therefore ensure that the case strongly represents both human rights and anti-corruption concerns, and that its value extends beyond the interests of the individual litigant.

SACHRLit is not defined only by the seriousness of the corrupt conduct or the amount of money involved. A petty corruption case may expose a wider discriminatory practice, while a grand corruption case may fail to establish an identifiable victim, a recognised right or the necessary causal link.[49] The strategic character of a case depends on its capacity to combine individual justice with broader public interest objectives, including accountability, remedies, legal development, institutional reform, transparency and, where appropriate, asset recovery.[50]

Until recently, the United Nations and regional human rights systems showed considerable reluctance to address human rights violations resulting from corruption. That position is changing. Courts, scholars and practitioners increasingly recognise that corruption may cause, facilitate or deepen violations of civil, political, economic, social and cultural rights. At the same time, this emerging field requires disciplined legal reasoning. Corruption should not simply be relabelled as a human rights violation. The litigant must identify the applicable duty, the victim, the harm, the causal link, the evidence, the forum and the remedy.[51]



Guide focus

The initial question is whether litigation can convert the alleged corruption into an effective legal response.

3.2 WHAT IS STRATEGIC ANTI-CORRUPTION LITIGATION?

For the purposes of this Guide, SACHRLit refers to the deliberate use of judicial or quasi-judicial proceedings to address corruption and its human rights consequences while pursuing change beyond the immediate dispute. It brings together anti-corruption and human rights law by connecting corrupt conduct, institutional failure or the diversion of public resources to a recognised right and a corresponding legal obligation.

SACHRLit may seek to secure an effective remedy for identified victims, clarify the relationship between corruption and human rights, establish precedent, compel public authorities to act, expose institutional

49. See sections 3.3 and 4.2–4.7 below for the initial assessment and selection of strategic cases.
50. International Commission of Jurists, Guide on Strategic Litigation for Lawyers and Civil Society Organizations (February 2026) <https://www.icj.org/wp-content/uploads/2026/02/ICJ-Guide-on-strategic-litigation-for-lawyers-and-CSOs_February-2026.pdf> accessed 5 August 2026;
51. International Federation for Human Rights (FIDH), Breaking the Silos: A Guide to Fighting Corruption through a Human Rights-Based Approach (June 2026) <https://www.fidh.org/IMG/pdf/20260615_fidh_guide-corruption_en_web.pdf> accessed 5 August 2026.

failures, recover diverted resources or reform the systems that enabled corruption. Its legal foundation must nevertheless remain precise. Describing corruption as harmful is insufficient.

The litigant must identify the affected rights-holders, the corrupt act or omission, the recognised right, the responsible duty-bearer, the causal connection, the available evidence and the remedy sought.[52]

The success of SACHRLit cannot therefore be measured only by whether the applicant wins the immediate case. Litigation may also have strategic value where it reveals concealed information, opens public institutions to scrutiny, strengthens the participation of victims and civil society, changes administrative practice or creates a platform for wider advocacy. Conversely, a favourable judgment may have limited strategic value if it is not implemented, does not benefit the affected community or leaves the structures that enabled the corruption untouched.

SACHRLit may be classified into three principal, and sometimes overlapping, categories:

- rights-based anti-corruption litigation,
- litigation seeking to enforce existing legal and institutional commitments, and
- litigation involving corporations and other private actors.

These categories are discussed in the subsections below. Chapter 4 returns to this definition and examines the additional factors that make a particular SACHRLit case suitable for strategic selection and design.

3.2.1
Rights-Based Anti-Corruption Litigation

Human rights law is increasingly invoked as part of efforts to hold states and other actors accountable for the impact of corruption on the fundamental rights of individuals and communities. There is well-established jurisprudence on the duties of states to respect, protect and fulfil the human rights of persons within their jurisdiction. These arguments are now being developed and honed in the anti-corruption context.

This distinction matters. The strategic litigant should not begin with the broad proposition that corruption is harmful. The case theory should show how the corrupt act or systemic practice engages a particular legal obligation and produces, contributes to or facilitates an identifiable violation.

Case Study: SERAP v Nigeria

The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria and Universal Basic Education Commission, Suit No ECW/CCJ/APP/12/07, Judgment No ECW/CCJ/JUD/07/10 (30 November 2010), is a landmark decision concerning the relationship between corruption and socio-economic rights within the African human rights system.

Background

SERAP instituted proceedings before the ECOWAS Community Court of Justice against the Federal Republic of Nigeria and the Universal Basic Education Commission (UBEC). The case arose from investigations into the alleged mismanagement and diversion of public funds allocated to basic education in ten Nigerian states. Reports by Nigeria's Independent Corrupt Practices and Other Related Offences Commission provided prima facie evidence that substantial sums intended for basic education

52. International Commission of Jurists (n 50) 9–19; International Federation for Human Rights, Transparency International and Transparency International France (n 51) 8–18.

had been misappropriated. SERAP argued that the diversion of education funds, together with the authorities' failure to monitor their use, recover the missing resources and address the alleged corruption, had contributed to the denial of free, quality and compulsory basic education to millions of Nigerian children. Rather than presenting corruption exclusively as a financial or criminal offence, SERAP linked the diversion of public resources to Nigeria's obligations under Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples' Rights.

The Strategic Litigation Approach

The case was built around the following causal pathway:



This approach enabled SERAP to frame the consequences of corruption as a matter of human rights accountability. It also allowed the organisation to seek remedies directed not only towards the alleged perpetrators but also towards the restoration of the affected public service.

The Court's Findings

In its preliminary ruling of 27 October 2009, the Court rejected the argument that the right to education was classified as a directive principle of state policy and therefore incapable of judicial enforcement. It held that the right to education guaranteed under Article 17 of the African Charter was justiciable before the ECOWAS Court.

In its judgment on the merits, the Court recognised that embezzlement, theft or mismanagement of education funds would negatively affect the education sector by reducing the resources available for the provision of education. It also held that UBEC had a statutory responsibility to ensure that funds disbursed to state authorities were used for their intended purposes.

The Court nevertheless rejected the proposition that corruption automatically constitutes a violation of the right to education. It emphasised that there must be a clear linkage between the corrupt conduct and the alleged denial of the right. The investigative reports constituted prima facie, rather than conclusive, evidence of corruption, and the Court declined to declare the alleged diversion unlawful or order the arrest and prosecution of the suspected officials.

The Court nevertheless directed the Nigerian Government to provide the resources necessary to cover the shortfall caused by the alleged diversion while measures were being taken to recover the funds or prosecute the suspects. This was necessary to ensure that affected children were not denied their right to education because public funds had been misappropriated.

Strategic Significance

The case offers several important lessons for SACHRLit:

1. **Socio-economic rights are justiciable**
   A state cannot avoid its regional human rights obligations solely because a particular right is classified as a directive principle under domestic law.

2 **Corruption must be linked to a specific human rights violation**
Evidence that public resources have been misappropriated is not, by itself, sufficient. Litigants must demonstrate how the diversion caused, contributed to or increased the risk of a particular violation.

3 **Official investigations may provide an evidentiary foundation**
Audit reports and findings by anti-corruption bodies may establish prima facie evidence, although additional evidence may be required to prove both the corruption and its human rights consequences conclusively.

4 **Strategic remedies can protect affected communities**
The Court's direction that the Government cover the funding shortfall demonstrates that remedies need not be confined to prosecution or asset recovery. They may also require the state to restore the resources necessary for the enjoyment of the affected right.

5 **Institutional monitoring obligations matter**
Public bodies responsible for distributing funds may also be held accountable for failing to monitor whether those resources are used for their intended purposes.

The central significance of SERAP v Nigeria therefore lies not in establishing that every act of corruption automatically constitutes a human rights violation, but in demonstrating that corruption may engage state responsibility where a sufficiently clear and evidenced connection exists between the diversion of public resources and the denial of a protected right.

3.2.2
Enforcing Existing Commitments

Strategic anti-corruption litigation may also take the form of compelling states to honour existing anti-corruption, constitutional and human rights commitments. Depending on the jurisdiction, these commitments may be enforced through constitutional review, administrative law, public procurement litigation, civil claims, criminal proceedings, asset recovery processes, regional economic community treaties or international human rights mechanisms.

This approach helps to close the implementation gap between formal legal commitments and institutional practice. It also recognises that anti-corruption treaties should not be treated as isolated criminal law instruments. Their preventive, participatory and asset recovery provisions may reinforce arguments based on transparency, equality, access to information, public participation, effective remedies and the protection of public resources.[53]

Case Study: Glenister v President of the Republic of South Africa

The Constitutional Court of South Africa declared legislation which disbanded and replaced an anti-corruption body constitutionally invalid. The Court gave Parliament 18 months to amend the legislation. The applicant, South African businessman Hugh Glenister, successfully argued that the South African Constitution imposes an obligation on the state to establish and maintain an independent anti-corruption body, and that a recently formed body lacks sufficient independence.

53. Daniela Cepeda Cuadrado and others, Advancing Human Rights and Anti-Corruption: Innovative Practices from Latin America (U4 Anti-Corruption Resource Centre, 27 April 2026) <https:/www.u4.no/publications/advancing-human-rights-and-anti-corruption-innovative-practices-from-latin-america> accessed 5 August 2026.

Background

In 2009, the President signed into law the *National Prosecuting Authority Amendment Act 2008 and the South African Police Service Amendment Act 2008* ("the Acts"). The Acts disbanded the Directorate of Special Operations ("DSO"), an anti-corruption body located within the prosecuting authority and replaced it with the Directorate of Priority Crime Investigation ("DPCI"), located within the police service.

The former DSO was markedly different from the DPCI in terms of its employment conditions and political oversight. The DPCI's members are subject to the same conditions of tenure as ordinary members of the police force and no longer enjoy statutorily secured remuneration levels. A Ministerial Committee, comprising the Ministers for Finance, Home Affairs, Intelligence, Justice and Police, as well as any other Minister designated by the President, was established to determine policy guidelines for the DPCI and to direct the selection of "national priority offences". To offset these changes, one of the Acts contains an interpretive provision emphasising the need for the DPCI to possess the necessary independence.

The applicant unsuccessfully challenged the Acts in the High Court. On appeal to the Constitutional Court, the applicant maintained that corruption undermines the enjoyment of human rights and that therefore the state is obliged to maintain an independent anti-corruption body.

Decision

A majority of the Court granted the application for leave to appeal, suspending the declaration of constitutional invalidity for 18 months in order to give Parliament the opportunity to remedy the Acts' defects. The majority's reasoning proceeded in three steps.

First, it emphasised the need to combat corruption, a force which "threatens to fell at the knees virtually everything we hold dear and precious in our hard-won constitutional order". Corruption was said to undermine human dignity and the advancement of human rights, disproportionately hurting the poor.

Second, the majority found that the state is constitutionally obliged to establish and maintain an independent anti-corruption body. Although the Constitution does not expressly command it, "its scheme taken as a whole" was said to require such a body. Section 7(2) of the Constitution obliges the state to "respect, protect, promote and fulfil the rights in the Bill of Rights", implicitly requiring that it do so reasonably and effectively. As corruption undermines those rights, this obligation extends to anti-corruption measures. In determining what are "reasonable" and "effective" measures, the majority turned to s 39(1)(b), which directs that when interpreting the Bill of Rights (including s 7(2)) a court "must consider international law". The Court also turned to s 231(2), which provides that an international agreement approved by Parliament "binds the Republic". Relevant international law included an "inter-locking grid of conventions, agreements and protocols" which variously require independent anti-corruption bodies, and as a result "reasonable" and "effective" measures under s 7(2) required the same.

Third, the DPCI was found not to be sufficiently independent. The majority accepted that relevant international law requires independence within a state's own legal conceptions, and that South Africa's constitutional structure necessitates political accountability. However, the DPCI's lack of specially secured employment conditions and its oversight by political executives were said to be inimical to the independence required. Further, the interpretive provision emphasising the need for necessary independence was judged ineffectual.

To summarise, the state is obliged to protect human rights and thus to combat corruption. Understood in the context of international law, this obligation includes establishing anti-corruption bodies with greater independence than the DPCI.

Strategic Significance

Glenister demonstrates how constitutional rights and State obligations, interpreted in the light of binding international commitments, can be used to challenge the institutional architecture of anti-corruption enforcement. Its strategic significance extends beyond South Africa: litigators may use constitutional duties relating to rights, accountability, legality and institutional independence to compel States to establish effective anti-corruption mechanisms, even where the constitution does not expressly prescribe a particular institutional model.

3.2.3
Cases Involving Corporations

Most rights-based cases have traditionally been brought against states because states remain the principal bearers of international human rights obligations. Whether and to what extent corporations have directly enforceable human rights obligations depends on the applicable legal system and cause of action.

The United Nations Guiding Principles on Business and Human Rights (UNGPs) affirm that business enterprises have a responsibility to respect human rights, avoid causing or contributing to adverse impacts, and address impacts with which they are involved. The UNGPs are not, by themselves, a binding cause of action. They may nevertheless assist in interpreting corporate due diligence, complicity, disclosure, procurement, tort, environmental, company law and other obligations recognised in domestic or regional law.[54]

Cases against corporations may be strategic where they expose the private actors and professional enablers that sustain corrupt systems; establish duties of prevention, disclosure or remediation; protect affected communities; or connect anti-corruption compliance with human rights due diligence. Lessons from environmental and climate litigation may be useful, particularly where litigants combine public law, private law and human rights arguments. The legal basis must, however, remain anchored in the applicable jurisdiction rather than in soft law alone.

Case Study: Kiobel v Shell

Kiobel v Royal Dutch Petroleum Co, 569 US 108 (2013); Esther Kiobel and Others v Royal Dutch Shell plc and Others, District Court of The Hague, ECLI:NL:RBDHA:2019:4233 (1 May 2019) and ECLI:NL:RBDHA:2022:2448 (23 March 2022).

Background

Esther Kiobel and three other widows of members of the Ogoni Nine brought proceedings against several companies within the Shell corporate group. Their husbands had been arrested, detained, convicted by a special tribunal and executed by Nigeria's military government on 10 November 1995. The proceedings arose against the wider background of protests by the Ogoni people concerning the environmental and human rights consequences of oil extraction in Ogoniland.

The claimants alleged that Shell had been involved in the human rights violations suffered by their husbands. In particular, they alleged that the Shell Petroleum Development Company of Nigeria Ltd (SPDC) had participated in bribing prosecution witnesses to provide false incriminating statements. According to the claimants, those statements contributed to the arrest, detention, conviction and

54. Office of the United Nations High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (United Nations 2011), Principles 11-15

eventual execution of their husbands. The Dutch proceedings followed earlier litigation in the United States. Esther Kiobel and other Nigerian nationals had brought claims under the Alien Tort Statute (ATS), alleging that Shell companies had aided and abetted the Nigerian Government in committing violations of international law. These included extrajudicial killings, torture, crimes against humanity, arbitrary detention and violations of the rights to life, liberty, security and association.

In 2013, the United States Supreme Court held that the claims could not proceed under the ATS because all the relevant conduct had occurred outside the United States. The Court applied the presumption against extraterritoriality and concluded that the claims did not "touch and concern" the territory of the United States with sufficient force to displace that presumption.[55] The Court did not determine whether the alleged human rights violations had occurred or whether Shell was responsible for them.

The Strategic Litigation Approach

Following the dismissal of the United States proceedings, the claimants pursued the case in the Netherlands, where Royal Dutch Shell was then headquartered. The change of forum required the claimants to reformulate their legal strategy. Rather than relying on the ATS, they brought civil claims against the Dutch parent company and related British and Nigerian Shell entities, principally under Nigerian law.

The litigation was built around the following alleged causal pathway:



The claimants' strategy involved joining several companies within the Shell corporate group in the same proceedings. The Dutch parent company provided the jurisdictional connection to the Netherlands, while the claims against the other Shell entities were presented as sufficiently closely connected to justify their consideration in the same proceedings.

The case also sought to use the procedural opportunities available in the Dutch courts to obtain and present evidence concerning events that had occurred in Nigeria more than two decades earlier. The claimants relied on witness testimony, historical documents, internal corporate material and evidence obtained during the earlier United States proceedings.

> This approach illustrates how strategic litigation may continue after the closure of proceedings in one jurisdiction. However, changing the forum also required the claimants to satisfy different jurisdictional, choice-of-law, evidentiary and substantive requirements.

The Court's Findings

In its interim judgment of 1 May 2019, the District Court of The Hague accepted jurisdiction over the claims against the relevant Shell entities. Jurisdiction over the Dutch parent company was based on its domicile in the Netherlands, while the closely connected claims against the British and Nigerian entities could also

55. Kiobel v Royal Dutch Petroleum Co, 569 US 108, 124–125 (2013),

be considered by the Court.[56] Following a preliminary assessment of the allegations, the Court permitted the claimants to produce further evidence concerning SPDC's alleged involvement in bribing witnesses. The claimants were required to prove both that SPDC had participated in the bribery and that the resulting statements had contributed to the arrest, detention or conviction of their husbands. In its judgment of 23 March 2022, the Court accepted that it could not be ruled out that certain witnesses had been pressured, coerced or promised rewards in exchange for making incriminating statements. However, the central question extended beyond whether witness interference had occurred. The claimants also had to prove that SPDC had participated in or financed that interference.

The Court found that the witnesses' belief that Shell officials had been involved was largely based on assumptions, hearsay and statements made by other persons. References to "Shell" did not establish which particular company or representative had been involved. The Court also found insufficient objective evidence linking the payments, promises of employment or meetings with witnesses to SPDC.

Consequently, the Court concluded that the claimants had not proved SPDC's involvement in bribing the witnesses. Because this first part of the evidentiary burden had not been satisfied, the Court could not proceed to determine whether statements resulting from the alleged bribery had contributed to the arrest, detention or conviction of each claimant's husband. The claims were therefore dismissed, and the claimants were ordered to pay €2,870 in legal costs.[57] The claimants initially appealed the judgment but withdrew the appeal in November 2022, bringing the Dutch proceedings to an end.[58]

Strategic Significance

The case provides several important lessons for strategic anti-corruption and human rights litigation involving corporations:

1. **Forum selection may be an evolving process**
   The failure of the United States proceedings did not necessarily prevent the claimants from seeking a remedy elsewhere. Strategic litigants should consider the corporation's place of incorporation, headquarters, subsidiaries, assets and operational presence when identifying possible forums.

2. **The forum and the cause of action must be considered together**
   The ATS provided a possible cause of action in the United States but was restricted by the presumption against extraterritoriality. In the Netherlands, the claimants relied on domestic civil procedure, private international law and Nigerian substantive law. A favourable jurisdictional connection is of limited value unless the applicable law also provides a viable claim

3. **Access to a corporate home-State court can create important procedural opportunities**
   Dutch proceedings enabled Nigerian claimants to bring claims against parent and subsidiary companies in a European forum, present witness testimony and seek access to corporate evidence. Nevertheless, obtaining jurisdiction did not guarantee success on the merits.

4. **Corporate attribution must be proved with precision**
   It is insufficient for evidence to refer generally to "Shell" or to persons believed to be associated with the company. Litigants must identify the particular corporate entity, officials or agents

56. Esther Kiobel and Others v Royal Dutch Shell plc and Others, District Court of The Hague, ECLI:NL:RBDHA:2019:4233 (1 May 2019); English version ECLI:NL:RBDHA:2019:6670<https://www.ohchr.org/sites/default/files/documents/publications/GuidingprinciplesBusinesshr_eN.pdf> accessed 5 August 2026.
57. Esther Kiobel and Others v Royal Dutch Shell plc and Others, District Court of The Hague, ECLI:NL:RBDHA:2022:2448 and ECLI:NL:RBDHA:2022:2449 (23 March 2022), particularly paras 2.4–2.26 and 2.33.
58. Lucas Roorda, 'Inequality of Harms, Inequality of Arms: Kiobel v Shell Comes to an End' Verfassungsblog (28 November 2022),

involved and establish the legal basis upon which their conduct can be attributed to the defendant.

5 **The corruption allegation and its human rights consequences must both be established**
The claimants had to prove that SPDC participated in bribing witnesses and that the resulting statements contributed to the detention, conviction or execution of their husbands. The failure to prove the alleged bribery prevented the Court from considering the second part of the causal chain.

6 **Historical cases require an early evidentiary strategy**
Delay may affect the availability of documents, the memory and security of witnesses, the ability to trace payments and the identification of responsible corporate officials. Practitioners should therefore assess the evidentiary gaps, disclosure mechanisms, preservation of records and financial capacity to sustain prolonged proceedings before filing the case.

7 **Inequality of arms may affect access to an effective remedy**
Transnational corporate litigation frequently places individual claimants against well-resourced multinational corporations. Litigation costs, lengthy proceedings, restricted access to corporate information and the burden of proving events in another country may significantly affect the viability of the claim.

The central significance of *Kiobel v Shell* lies in demonstrating both the possibilities and limitations of transnational litigation against corporations. A home-State forum may provide access to courts and evidence that is unavailable in the country where the violations occurred. However, successful litigation still requires a viable cause of action, precise corporate attribution, admissible evidence and a clearly established causal connection between the alleged corruption and the resulting human rights violations.

3.3
INITIAL CASE ASSESSMENT CHECKLIST

The initial assessment should test the legal strength, public interest value and practical feasibility of the proposed case. The following questions are interconnected: weakness in one area may require the litigant to reformulate the claim, collect further evidence, identify a different applicant, seek another remedy or choose another forum.[59]

3.3.1
Is There a Victim?

The first threshold question is: who are the real victims of the alleged corruption? Traditionally, the answer has been "the State" because corruption involves the misuse of public office, interference with public administration or the theft and diversion of public resources. Within that framework, the State prosecutes the offence, claims the financial loss and receives any recovered assets.

In Forum de Monitoria do Orçamento v Manuel Chang, before the High Court of South Africa, Gauteng Local Division, Victor J opened her judgment with a powerful rejection of the notion that corruption is a victimless offence:

59. For the fuller case-selection framework, see Chapter 4 below.

The myth that corruption has no victim is a dangerous fantasy. Corruption causes disastrously inefficient economic, social and political outcomes. It diverts public resources from critical development projects thereby exacerbating job creation, growth and opportunity. It makes poor nations poorer.[60]

This statement captures the direct and far-reaching harm caused by corruption to individuals and communities.

A human rights-based approach requires a wider inquiry. Although the State may suffer legal, institutional or financial injury, it is not always the only or ultimate victim. Individuals and communities may lose access to healthcare, education, housing, water, justice, security, information or political participation. Harm may be direct, as where a person is detained for refusing to pay a bribe, or indirect and structural, as where diverted resources cause persistent failures in essential public services. It may also be material, legal, procedural or dignitary. Corruption frequently affects marginalised and structurally disadvantaged groups most severely because they depend more heavily on public services and possess fewer opportunities to avoid corrupt demands or obtain remedies.[61]

At the initial assessment stage, the litigation team should identify:

- the person, group or community affected;
- the corrupt act, omission, policy or institutional practice;
- the public resource, service, decision or institution involved;
- the material, legal, procedural or dignitary harm suffered;
- the preliminary connection between the corruption and that harm;
- whether the harm is individual, collective, direct, indirect or systemic;
- any possible difficulties relating to standing or representation; and
- the remedy that would meaningfully respond to the harm.

The purpose of this inquiry is to establish that the proposed litigation is grounded in the experience and interests of real rights-holders. It does not yet determine who should formally bring the proceedings. A person may be a victim but lack standing or procedural capacity, while an organisation may possess standing to represent affected people without itself having suffered the underlying harm. The separate process of moving from the identification of victims to the selection of an appropriate plaintiff is examined in section 4.4.1 below.[62]

Victims should not be included to strengthen standing, attract publicity or provide a compelling narrative. Their informed participation, expectations, security and preferred remedies must remain central throughout the litigation.

Comparative Case Study: Litigating on Behalf of Victims of Corruption — The Javier Duarte Proceedings in Mexico

Caution on the Authority and Status of the Case

This case is included as a comparative example and must be approached with caution. It does not form part of African jurisprudence and is therefore not binding on African domestic or regional courts. At most, it may provide persuasive guidance on how CSOs can use strategic litigation to seek recognition and participation for victims of corruption.

60. Forum De Monitoria Do Orcamento v Chang and Others (40441/2021) [2021] ZAGPJHC 808; [2022] 2 All SA 157 (GJ), para 1, citing William Gumede, 'Combating Corruption in South Africa' (Democracy Works Foundation, Policy Brief No 14, 3 March 2017).
61. International Federation for Human Rights, Breaking the Silos: A Guide to Fighting Corruption through a Human Rights-Based Approach (FIDH 2026); Due Process of Law Foundation, 'Centrality of Victims and the Inclusion of Civil Society Organizations in Corruption Investigations and Proceedings in Peru' (21 January 2026).
62. For the distinction between identifying a victim and selecting the person or organisation that will formally bring the proceedings, see section 4.4.1 below.

Furthermore, the initial Mexican *amparo* ruling recognising a civil society organisation as a victim of corruption was subsequently overturned by a higher court. The litigation has therefore not produced a settled domestic precedent. The matter is now pending before the Inter-American Commission on Human Rights (IACHR), which initiated its admissibility process in 2023. As at August 2026, the Commission has not issued a final admissibility or merits decision. The matter is not presently before the Inter-American Court of Human Rights and may reach that Court only after further procedural stages. It should therefore be treated as an evolving litigation strategy rather than an established rule of regional human rights law.

Background

Javier Duarte, the former Governor of the Mexican State of Veracruz, was accused of directing an extensive corruption network through which more than USD 30 million intended for social programmes, including education and healthcare, was allegedly embezzled. The alleged diversion of these resources raised questions not only about financial loss to the State but also about the consequences for the individuals and communities who depended upon the affected public services.

Duarte left Mexico in 2016 following mounting public and legal accusations of corruption. He was arrested in Guatemala in April 2017 and subsequently extradited to Mexico. In September 2018, he entered into a plea bargain with the Mexican Attorney General's Office. The agreement resulted in a nine-year prison sentence and a fine of less than USD 3,000. No compensation was ordered for the individuals or communities allegedly affected by the diversion of public resources.[63]

The plea bargain attracted considerable criticism. Among other matters, questions were raised about the withdrawal or reduction of serious charges and allegations that the agreement may itself have resulted from improper arrangements between Duarte and federal prosecutors. These allegations have not been conclusively established. However, the absence of any person or organisation formally recognised as a victim meant that no participating victim could challenge the plea bargain, submit evidence concerning the alleged collective harm or seek reparation within the criminal proceedings.

The Strategic Litigation Approach

In response, the Mexican civil society organisation TOJIL filed a separate criminal complaint concerning possible bribery involving Duarte and officials within the Attorney General's Office. TOJIL alleged that prosecutors may have received improper benefits in exchange for agreeing to favourable terms in the plea bargain.

TOJIL also requested recognition as a victim in this second criminal investigation. Its argument was that corruption does not harm only the State as an abstract legal entity. Grand corruption may cause collective damage to society, undermine the proper administration of public institutions and deprive individuals and communities of resources intended to fulfil their rights.

The strategy was built around the following pathway:



63. Estefanía Medina and Adriana Greaves, 'Litigating on Behalf of Victims of Corruption: The Duarte Case from Mexico' UNCAC Coalition (18 February 2021).

Recognition as a victim was strategically important because the Mexican Constitution and criminal justice framework grant recognised victims important procedural rights. These include the ability to present evidence, challenge certain decisions of prosecutors and judges, participate in criminal proceedings and seek reparation for the harm suffered.[64]

TOJIL relied on domestic constitutional and legislative provisions, as well as Article 13 of the UNCAC, which requires States Parties to promote the active participation of individuals and CSOs in preventing and combating corruption.[65] UNCAC does not expressly require every reporting organisation to be recognised as a victim in criminal proceedings. TOJIL therefore used Article 13 as interpretive support for a broader understanding of participation, collective harm and victim status rather than as an independent and automatic source of standing.

The Domestic Courts' Findings and Regional Proceedings

The Attorney General's Office initially refused to recognise TOJIL as a victim. After an unsuccessful challenge, TOJIL brought an *amparo* proceeding. In 2019, the Sixth District Court for Criminal *Amparo* Matters in Mexico City ruled in TOJIL's favour. In *Amparo* 22/2019, the Court recognised that the proper administration of public institutions could constitute a collective legal interest and that a civil society organisation could, in principle, be recognised as a victim where corruption causes harm to society at large.

The ruling was significant because it challenged the traditional view that corruption is a victimless crime or that the State is always its only legally recognised victim. The Court reached its conclusion through a systemic interpretation of the Mexican Constitution, criminal procedure legislation, the General Law of Victims and UNCAC.

> However, the Attorney General challenged the ruling before a higher court. A Collegiate Circuit Court overturned the decision by a majority and denied TOJIL victim status. The decision was not unanimous. A dissenting judge argued that the proper administration of public institutions is a collective legal interest belonging to society and that CSOs should be capable of representing that interest in cases of grand corruption.[66]

After exhausting the available domestic remedies, TOJIL submitted a petition to the IACHR in 2020. The Executive Secretary initially rejected the petition on 23 December 2020. TOJIL requested reconsideration, and on 24 October 2023 the Commission notified the Mexican State and commenced the admissibility process. The petition alleges that Mexico violated the rights of TOJIL's co-founders by denying them recognition and participation as victims in the criminal proceedings. The rights invoked include the right to be heard, freedom of association, participation in public affairs and judicial protection. The Mexican Government has submitted observations, but the Commission must still determine whether the petition is admissible before considering its merits. As at August 2026, the proceedings remain pending before the Commission.[67]

The IACHR has therefore not determined that TOJIL was legally entitled to victim status, nor has it found Mexico internationally responsible. Its 2019 thematic report, Corruption and Human Rights: Inter-American Standards, nevertheless recognises the importance of placing victims at the centre of anti-corruption measures, identifying the persons and communities harmed by corruption, ensuring their participation and providing adequate reparation.[68]

64. Constitution of the United Mexican States, Article 20(C); General Law of Victims, Articles 4, 7 and 26–27.
65. United Nations Convention against Corruption, Article 13.
66. Adriana Greaves, Estefanía Medina and Isaac F Martínez, 'Corruption Victims in Mexican Jurisprudence' Due Process of Law Foundation (7 May 2025).
67. Estefanía Medina and Adriana Greaves, 'Duarte's Case: Inter-American Commission on Human Rights Commences Admission Process' UNCAC Coalition (13 November 2023); TOJIL, 'Strategic Litigation'; UNCAC Coalition, 'CSOs and Experts Continue Fighting for the Recognition of Victims' Rights in Anti-Corruption' (2026).

Strategic Significance

Subject to the cautions concerning its jurisdictional origin, reversal and pending status, the Duarte proceedings offer several lessons for SACHRLit:

1. **Corruption should not automatically be treated as a victimless crime**
   The State may suffer financial loss, but individuals and communities may also experience material, legal and dignitary harm when resources intended for healthcare, education or other public services are diverted.

2. **The identification of victims must be legally precise**
   Litigants should distinguish between directly affected individuals, communities suffering collective harm, whistle-blowers, CSOs representing public interests and the State itself. Each category may have a different basis for standing and participation.

3. **The existence of victims does not automatically establish organisational standing**
   Even where corruption has caused collective harm, a civil society organisation must still demonstrate that the applicable procedural law permits it to represent that interest or participate in the proceedings.

4. **Victim status may affect the entire course of criminal proceedings**
   Recognition may enable victims to submit evidence, challenge decisions not to prosecute, scrutinise plea agreements, seek judicial review and request reparation. Denial of victim status may leave these matters almost entirely within prosecutorial discretion.

5. **UNCAC may support, but cannot substitute for, a domestic legal basis**
   Article 13 strengthens arguments for meaningful civil society participation, but litigants must connect it to constitutional provisions, victim participation legislation, criminal procedure rules or other enforceable domestic rights.

6. **Interim victories should not be presented as established precedent**
   The favourable amparo ruling was overturned and therefore does not constitute settled Mexican law. The case demonstrates the importance of following the complete procedural history of a judgment before relying upon it.

7. **Proceedings before the Commission must be distinguished from proceedings before the Court**
   The IACHR's initiation of an admissibility process does not amount to a finding that the petition is admissible or that human rights have been violated. No regional judgment presently exists in the Duarte matter.

8. **Comparative jurisprudence must be translated into the applicable African legal framework**
   African litigants may draw persuasive insights from the litigation strategy, but any claim must be anchored in domestic standing rules, constitutional rights, victim participation provisions and relevant African instruments. These may include Article 7 of the African Charter on Human and Peoples' Rights and Article 12 of the AUCPCC, which recognises the importance of civil society participation.

68. Inter-American Commission on Human Rights, Corruption and Human Rights: Inter-American Standards, OEA/Ser.L/V/II, Doc 236 (6 December 2019), particularly paras 487–488 and 524.

The principal value of the Duarte proceedings lies not in establishing a binding precedent, but in placing an important question before courts and regional mechanisms: when corruption causes diffuse or collective harm, who should be entitled to participate, challenge prosecutorial decisions and seek reparation? For the purposes of strategic litigation in Africa, the case provides a persuasive but unsettled comparative example of how victim participation may be used to challenge impunity in corruption proceedings.

3.3.2
Can the Corruption Be Linked to a Recognised Right?

Having identified the victim or affected community, the next inquiry is whether the alleged corruption can be linked to a right recognised under the applicable constitution, statute, treaty or regional human rights instrument. Establishing that corruption occurred is not, by itself, sufficient to sustain a human rights claim. The litigant must demonstrate how the corrupt act, omission or institutional practice interfered with a protected right, contributed to the conditions in which a violation occurred, or prevented the State from discharging its obligations to respect, protect, promote and fulfil that right. This legal connection will shape the cause of action, the evidence required, the applicable standard of causation and the remedies sought. Four principal legal relationships may arise between corruption and human rights:

01. Direct violations

Corruption may directly interfere with a recognised right. A police officer who arrests a person for refusing to pay a bribe interferes with liberty and due process. Bribery, cronyism or influence peddling may also produce discrimination or a denial of equality before the law.

02. Contributions to systemic conditions in which violations occur

The diversion of public resources may reduce the state's capacity to provide healthcare, housing, education, water or other services linked to economic and social rights. Grand corruption may also capture institutions and weaken the rule of law.

03. Restrictions on rights necessary to detect and challenge corruption

Corrupt systems may suppress access to information, freedom of expression, media freedom, assembly, association and public participation in order to avoid scrutiny.

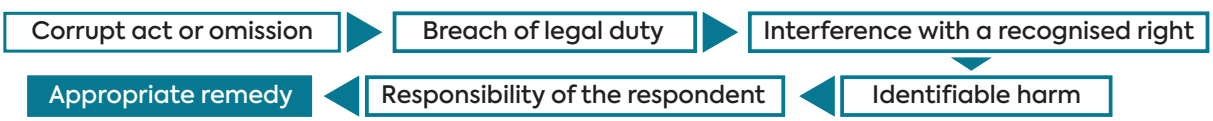
04. Abuse of anti-corruption measures

Anti-corruption tools may themselves be used aggressively, selectively or in bad faith, interfering with property, privacy, liberty, due process and the presumption of innocence.

The above list is not exhaustive; other relationships may arise, including disputes concerning the return and use of confiscated assets. The central point is that the relationship must be legally explained, not asserted. Anne Peters argues that a human rights framing can complement the predominant criminal law approach, but the proposition remains contested and requires careful attention to attribution, causation and the scope of the state's obligations.[69]

Testing the Causal Link

The litigant should map the proposed causal chain:



69. Anne Peters, 'Corruption as a Violation of International Human Rights' (2018) 29(4) European Journal of International Law 1251 <https://doi.org/10.1093/ejil/chy070>.

The same *SERAP v Federal Republic of Nigeria* case examined in section 3.2.1 above is particularly instructive at this stage, but for a different purpose. Whereas the earlier case study considered its broader strategic significance, the present discussion focuses on the Court's treatment of evidence and the causal connection between corruption and a recognised human right. In paragraph 18, the Court held that the investigation report relied upon by SERAP provided prima facie, rather than conclusive, evidence of corruption. More importantly, in paragraph 19, it explained that even conclusive evidence of the embezzlement, theft or mismanagement of education funds would not, without more, establish a violation of the right to education. Although such conduct would reduce the resources available for education and negatively affect the sector, the applicant was still required to demonstrate a "clear linkage" between the corrupt acts and the denial of the protected right.

The Court therefore rejected, in paragraph 20, the broad contention that the reported diversion necessarily demonstrated systemic high-level corruption resulting in the denial of education, holding that such a serious allegation required strict proof. It further emphasised in paragraph 21 that the alleged human rights violation had to be specifically pleaded and supported by evidence. Nevertheless, in paragraph 28, the Court accepted that the loss of education funds could create a shortfall capable of preventing the sector from performing its functions. It consequently directed the Government to provide replacement funding while efforts were made to recover the diverted resources or prosecute those responsible. The decision therefore provides an important warning for strategic litigants: the more diffuse or systemic the alleged harm, the more carefully the pleadings and evidence must connect the corrupt conduct, the resulting institutional failure, the affected rights-holders and the denial or threatened denial of the recognised right.

3.3.3
Is There Sufficient Evidence?

Direct proof of corruption is often unavailable. Corrupt arrangements are concealed, records may be incomplete, witnesses may be afraid, and much of the relevant information may be controlled by the state or private actors. Strategic cases therefore frequently rely on a combination of direct and circumstantial evidence.

The evidentiary plan should distinguish between proof of:

- the corrupt act or systemic practice;
- the respondent's knowledge, participation, omission or institutional responsibility;
- the existence and content of the legal duty;
- the identity and standing of the victim or applicant;
- the causal link between corruption and the rights interference;
- the nature and extent of loss or harm; and
- the factual basis for each requested remedy.

> Potential sources include audit and parliamentary reports, procurement records, budget and expenditure data, company and beneficial ownership information, bank and asset records lawfully obtained, witness and whistleblower testimony, expert evidence, court records, investigative journalism, open-source material, photographs, videos and statistical or pattern evidence. Each source must be assessed for authenticity, reliability, admissibility, chain of custody and the safety risks created by its use.

Regional human rights courts do not apply one uniform evidentiary standard. A litigant should not assume that a regional forum will cure a weak factual record. The African systems differ in their treatment of burdens, presumptions, hearings, amicus interventions, fact-finding and remedies.

The African Court's Practice Directions adopted on 5 March 2024 include an annex clarifying aspects of the Court's approach to evidentiary matters.[70] The Court may consider different forms of evidence and, where appropriate, request additional material or clarification. Academic analysis nevertheless identifies tension between a flexible, applicant-centred approach and more formalistic tendencies in practice.[71]

Table 5 | Evidentiary questions before the African Court

Evidentiary question	General starting point	Practical implication for the litigant
Who bears the burden?	The applicant must establish the claim.	Identify which facts are controlled by the state and argue for disclosure, presumptions or a shift in the evidential burden where the applicable law permits.
What standard applies?	The standard depends on the forum, claim and procedural stage.	Verify the governing rules and jurisprudence; do not use criminal-law language where a civil or human rights standard applies.
What forms of evidence are available?	Documentary, oral, affidavit, expert, digital and circumstantial evidence may be relevant.	Explain why primary documents are missing and corroborate alternative evidence wherever possible.
How will causation be proved?	General evidence that corruption is harmful is insufficient.	Connect expenditure, institutional conduct and the experience of victims through records, experts, witnesses and a clear chronology.
What proves the remedy?	Liability evidence may not prove loss or the need for structural relief.	Collect evidence of individual and collective harm, implementation failures, institutional gaps and the cost of remediation.

3.3.4

Does the Case Have Public Interest Value?

A case has public interest value where it seeks to secure a benefit for society, protect marginalised groups or correct institutional failure rather than resolve a private dispute. This overlaps with strategic litigation, where advocates deliberately select and frame cases to pursue broader legal, political or systemic change.[72] Public interest value should be assessed against five core criteria:

1. **Systemic and precedent-setting impact**
   Can the case clarify, challenge or improve a law, policy or practice affecting people beyond the immediate parties? Can it establish precedent on transparency, illicit financial flows, public accountability or the protection of public resources?

70. African Court on Human and Peoples' Rights, Practice Directions (adopted 5 March 2024), including the Annexure on evidentiary matters; see African Court, 'African Court on Human & Peoples' Rights Adopts New Practice Directions' (3 May 2024) <https://www.african-court.org/afchpr/african-court-on-human-peoples-rights-adopts-new-practice-directions/> accessed 5 August 2026.
71. Edward Kahuthia Murimi, Evidence at the African Court on Human and Peoples' Rights: The Case for an Equitable Applicant-Centred Approach as a Pathway to Substantively Fairer Decisions (doctoral thesis, Ghent University Faculty of Law and Criminology 2025).
72. International Commission of Jurists (n 50); SDG16 Guide, 'Using Strategic Litigation to Advance SDG16 Implementation' <https://www.sdg16Guide.org/explore/implementation-of-sdg16/using-strategic-litigation-to-advance-sdg16-implementation/> accessed 5 August 2026.

2 **A clear human rights-anti-corruption nexus**
Can the legal strategy show how the corrupt conduct interfered with the enjoyment of recognised rights, rather than relying on a general assertion that corruption is harmful?

3 **Representation of structurally disadvantaged groups**
Does the case amplify the voices of persons who face discriminatory barriers to justice, such as low-income communities, minorities, indigenous peoples, refugees, women, children or persons with disabilities?

4 **Institutional and regulatory remediation**
Can the proceedings expose or correct the gaps that enabled the corruption, especially where regulators, investigators or oversight bodies are weak, captured or compromised?

5 **Narrative power and public mobilisation**
Can the case provide a clear and accurate account of the misconduct, support public education, empower whistleblowers and complement civil society, media or legislative advocacy without prejudicing the proceedings or endangering participants?

The case does not need to satisfy every criterion equally. The assessment should identify the principal strategic objective and test whether litigation is the best route to achieve it. In some circumstances, investigation, legislative advocacy, administrative engagement, public campaigning or a combined strategy may offer a more effective and less harmful intervention.[73]

3.3.5
What Remedies Are Sought?

Remedies should be considered at the beginning, not after liability has been established.[74] A strategic case requires a realistic account of what the chosen forum may order, who will implement the order and how the remedy will reach the victims.



Potential remedies include:

- declarations of illegality or rights violations;
- compensation, restitution or rehabilitation for individual or collective harm;
- injunctions, interim measures or orders preventing further dissipation of assets;
- disclosure of information, contracts, beneficial ownership or expenditure records;
- investigation, prosecution or reconsideration by a competent authority, where the forum has power to order it;
- recovery, return or victim-centred use of assets;
- independent audits, transparent procurement, monitoring and reporting arrangements;
- amendment or withdrawal of unlawful policies and administrative practices; and
- guarantees of non-repetition and other structural remedies.

The remedy must respond to the proven violation and remain within the forum's legal powers. Structural orders may have high strategic value but require specificity, institutional capacity, monitoring and sustained engagement. Asset recovery is not automatically victim reparation: the litigation strategy should address who receives recovered property, the legal basis for distribution and the safeguards needed to ensure transparent, accountable and rights-respecting use.[75]

73. Due Process of Law Foundation (n 50); U4 Anti-Corruption Resource Centre, 'The Role of Civil Society in Anti-Corruption Legislative Advocacy' (8 July 2025) <https://www.u4.no/publications/the-role-of-civil-society-in-anti-corruption-legislative-advocacy> accessed 5 August 2026.
74. For the detailed treatment of remedies and their implementation, see Chapter 7 below.
75. International Federation for Human Rights (n 51); Due Process of Law Foundation, 'In Search of Reparation for the Harm Caused by Corruption: Civil Society

3.3.6
What Forum is available?

Forum selection shapes[76] standing, applicable law, evidence, remedies, costs, security, duration and the prospects of implementation. Litigants should assess domestic, subregional, continental and, where relevant, international mechanisms together rather than assume that an international forum is strategically superior.

i. Domestic Forums

Domestic courts are usually the first and often the most important avenue. Possible entry points include constitutional petitions, judicial review, administrative law, public procurement challenges, civil claims, company and securities litigation, environmental proceedings, criminal complaints, private prosecutions where permitted, asset recovery proceedings and applications for access to information.

Domestic litigation may offer stronger fact-finding powers, closer access to victims and evidence, and more direct enforcement. It may also be affected by delay, cost, political interference, restrictive standing or captured institutions. These factors should be documented rather than assumed. Exhaustion of domestic remedies may be required before a continental or international human rights claim, unless an exception applies.

ii. African Continental and Subregional Forums

The African regional landscape is fragmented. The strategic utility of a forum depends on the respondent state, the applicable treaty, the applicant's standing, time limits, exhaustion rules, subject-matter jurisdiction and available remedies.

Table 6 | African regional and subregional forums

Forum	Strategic opening	Principal access or admissibility issue
African Court on Human and Peoples' Rights	Claims concerning the African Charter and other human rights instruments ratified by the respondent state.	Direct applications by individuals and eligible NGOs depend on ratification of the Court Protocol and an operative Article 34(6) declaration; current declaration status must be checked.
ECOWAS Community Court of Justice	Direct human rights jurisdiction and an established body of public interest litigation, including corruption -related socio economic rights claims.	Applications must satisfy the 2005 Supplementary Protocol and the Court's standing and admissibility jurisprudence; the same matter must not already be before another international court.
East African Court of Justice	Treaty-based challenges concerning legality, rule of law, good governance and state compliance with the EAC Treaty.	It is not a general human rights court. References under Article 30 are subject to a strict two-month filing period and must be framed within Treaty jurisdiction.

Experiences in Colombia' (1 July 2025) <https://dplf.org/en/2025/07/01/in-search-of-reparation-for-the-harm-caused-by-corruption-civil-society-experiences-in-colombia/> accessed 5 August 2026.

76. For the comparative framework governing forum selection, admissibility, jurisdiction and enforcement, see Chapter 5 below.

SADC Tribunal	The historical jurisprudence remains relevant to regional accountability arguments.	Under the present institutional framework, there is no reliable direct route for individual human rights or anti-corruption claims against member states. Verify any institutional reform before relying on this forum.
COMESA Court of Justice	Residents may challenge acts or decisions alleged to infringe the COMESA Treaty; 2025 Rules govern current procedure.	The Court's jurisdiction is Treaty-based rather than a general human rights mandate, and local remedies are ordinarily required for challenges to member-state acts, subject to recognised exceptions.
Other REC mechanisms	Treaty, administrative or economic integration obligations may create specialised openings.	Some courts or complaint mechanisms are not operational or do not provide direct individual access. The constitutive instrument and current practice must be verified.

For the African Court, Article 34(6) remains a decisive access hurdle for direct applications by individuals and NGOs. The Court's official declarations record should be checked immediately before filing because declarations may be deposited or withdrawn.[77] Where direct access is unavailable, the African Commission route and other forms of institutional referral or transfer should be considered.

The ECOWAS Court has jurisdiction over human rights violations in member states, and the 2005 Supplementary Protocol permits individual applications without imposing an exhaustion requirement.[78] Its decision in SERAP v Nigeria is particularly relevant to corruption-related rights claims, but it also demonstrates the need to prove a clear causal link and to distinguish state responsibility from the criminal liability of individual officials.[79]

The EACJ provides access to residents challenging the legality of state or Community action under the EAC Treaty. Articles 6(d) and 7(2) provide important rule of law and good governance hooks, but Article 30(2) requires proceedings to be instituted within two months of the relevant act or of the date it came to the applicant's knowledge.[80]

The COMESA Court permits references by legal and natural persons resident in member states concerning acts alleged to infringe the Treaty. Its current guidance confirms the Treaty-based nature of the jurisdiction, the ordinary exhaustion requirement and the exceptional circumstances recognised in its jurisprudence.[81]

Foreign Domestic Courts and International Forums

Because corruption frequently crosses national borders, the courts of another State may provide an additional forum. These remain domestic courts, even where they exercise extraterritorial jurisdiction or adjudicate transnational conduct. The transnational character of corruption does not, by itself, establish jurisdiction. Litigants must identify a legally recognised connection, such as conduct or harmful effects

77. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, arts 3, 5 and 34(6); African Court on Human and Peoples' Rights, 'Declarations' <https://www.african-court.org/afchpr/declarations-2/> accessed 5 August 2026.
78. Supplementary Protocol A/SP.1/01/05 Amending the Protocol Relating to the Community Court of Justice, arts 9(4) and 10(d) <https://courtecowas.org/wp-content/uploads/2025/06/Supplementary_Protocol_ASP.10105_ENG.pdf> accessed 5 August 2026.
79. SERAP v Federal Republic of Nigeria, ECW/CCJ/APP/08/09, Judgment No ECW/CCJ/JUD/18/12 (14 December 2012).
80. Treaty for the Establishment of the East African Community, arts 6(d), 7(2) and 30(2) <https://www.eacj.org/?page_id=33> accessed 5 August 2026.
81. Treaty Establishing the Common Market for Eastern and Southern Africa, art 26; COMESA Court of Justice, 'Access to the Courts' <https://comesacourt.org/access-to-the-courts/> and 'Frequently Asked Questions' <https://comesacourt.org/frequently-asked-questions-faqs/> accessed 5 August 2026.

within the forum State, the nationality, residence or presence of the defendant, the domicile of a corporation, use of the State's financial system, or the location of relevant evidence or assets. The applicable domestic legislation must authorise the court or prosecuting authority to act on that basis.

Foreign domestic proceedings may include criminal prosecution, civil or non-conviction-based forfeiture, private-law claims, corporate or human rights litigation, and applications for disclosure, freezing or enforcement orders. The Manuel Chang prosecution demonstrates how transactions involving United States investors and the international financial system supported proceedings in the United States, while the Obiang proceedings illustrate the use of the jurisdiction in which suspected proceeds were located. Dos Santos v Unitel SA demonstrates the value of a foreign court capable of issuing urgent worldwide freezing orders, whereas the Dutch Kiobel proceedings show how corporate presence and evidence obtained through proceedings in another jurisdiction may support litigation concerning harm committed in Africa.[82]

International judicial and quasi-judicial forums are more limited. There is presently no international court with general jurisdiction over corruption or before which individuals and civil society organisations may bring corruption claims as such. Human rights bodies may consider corruption-related conduct only where it can be linked to a right within their jurisdiction, as discussed in sections 3.3.2 and 5.5. The International Court of Justice ordinarily hears disputes between States and depends on an accepted basis of jurisdiction. Equatorial Guinea v France accordingly concerned immunity and the claimed diplomatic status of property arising from French criminal proceedings; it did not determine the underlying allegations of corruption.[83] UNCAC facilitates jurisdiction, extradition, mutual legal assistance and asset recovery, but does not create a general individual cause of action before an international court.

The strategic question is therefore not simply whether a foreign or international forum exists, but what function it can perform within the wider litigation strategy. One jurisdiction may provide evidence, another may determine liability, and another may freeze, confiscate or enforce against assets. Practitioners should consider standing, limitation periods, immunity, forum non conveniens, lis pendens, res judicata, double-jeopardy protections, victim participation, costs and the coordination of parallel proceedings. As discussed in Chapter 6, civil society organisations that lack standing to commence proceedings may still contribute by documenting harm, submitting complaints or evidence, intervening as amici curiae, representing affected communities, advocating for appropriate remedies and monitoring implementation.

Legal note

Forum rules, state declarations, membership, limitation periods and access requirements may change. Practitioners must consult the current constitutive instrument, protocol, rules, practice directions and original jurisprudence before filing. This Guide is not a substitute for forum-specific legal advice.

3.3.7
Is the Case Feasible and Safe?

A legally strong case may still be strategically unwise if the necessary resources, partnerships or protection measures are absent. Strategic litigation can be lengthy, costly and politically sensitive, particularly where it challenges powerful public officials, corporations or entrenched corruption networks. Practitioners must therefore assess whether the case can be initiated, sustained and followed through to implementation without exposing applicants, affected communities, witnesses, lawyers or partner organisations to disproportionate risks. This does not mean that every difficult or dangerous case should be abandoned.

82. See sections 3.2.3, 5.2.1.1–5.2.1.3 and 7.4.2; see also section 5.5.1.2.2 on the proceedings against James Ibori in the United Kingdom and section 5.5.1.2.3 on territorial and extraterritorial jurisdiction.
83. See section 5.5.1.2.2 on Immunities and Criminal Proceedings (Equatorial Guinea v France) and section 5.5.1.2.4 on the subject-matter jurisdiction of regional and international forums.

Rather, foreseeable risks should be identified, discussed with those affected and addressed through appropriate mitigation and protection measures.

Feasibility therefore requires a candid assessment of:

- legal costs and the likely duration of proceedings;
- access to counsel, experts, investigators and evidence;
- the financial and emotional burden on victims and witnesses;
- retaliation, surveillance, harassment, prosecution or strategic lawsuits against public participation (SLAPPs);
- digital, physical and information security;
- conflicts of interest and professional ethics;
- adverse precedent if the case is weak or premature;
- the risk that litigation will displace other accountability strategies; and
- the capacity to monitor and enforce any judgment.

The assessment should include a protection plan, a communications plan, a resource plan and an exit strategy. The interests and informed choices of affected persons must take priority over the institutional ambition of the litigating organisation.

3.4
DECISION TREE FOR LITIGATORS

The following sequence provides an initial go/no-go assessment:

1. **Identify the victims and strategic objective**
   Who is affected, what change is sought and whose interests will the case represent? If these questions cannot be answered, pause and consult affected communities.

2. **Define the legal nexus**
   Identify the corrupt conduct, the responsible actor, the legal duty, the recognised right and the harm. If the link is only political or moral, investigate whether another legal cause of action provides a stronger route.

3. **Test causation and attribution**
   Ask whether the evidence can connect the conduct to the rights interference and attribute responsibility to the proposed respondent. If not, narrow the claim or gather further evidence.

4. **Audit the evidence**
   Determine what is available, what remains under the respondent's control, what can lawfully be obtained and what is required to prove liability and remedies.

5. **Assess public interest value**
   Identify the systemic, precedent-setting, representative, remedial or mobilisation value of the case. If the impact is confined to a private dispute, reconsider whether it is strategic litigation.

6. **Select the forum and remedy together**
   Confirm jurisdiction, standing, admissibility, limitation, exhaustion, available relief and enforcement. Do not choose a forum before identifying the remedy it can lawfully provide.

7 **Evaluate feasibility, safety and implementation**
Confirm resources, partnerships, victim consent, protection measures and the capacity to sustain the case beyond judgment.

Table 7 | Initial case-assessment outcomes

Assessment outcome	Recommended response
The legal nexus, evidence, forum, remedy and strategic value are sufficiently strong.	Proceed, subject to a documented litigation, protection, communications and implementation plan.
The case has strategic potential but contains material gaps.	Refine or investigate further: narrow the claim, gather evidence, identify another applicant, seek an interim remedy or reconsider the forum.
Litigation is unlikely to secure the intended change or creates disproportionate risk.	Do not file at this stage: consider advocacy, administrative engagement, investigation, coalition-building or another accountability mechanism.

3.5
COMMON PITFALLS

Practitioners should guard against the following recurring weaknesses:

01.
Treating every corruption case as a human rights violation
Corruption may provide context or contribute to harm without satisfying the legal elements of a rights claim.

02.
Individualising a structural problem
Focusing only on the bilateral relationship between the state and an individual victim may obscure the social and political conditions that sustain systemic corruption.

03.
Failing to identify the real victims
Treating the state as the only victim may exclude affected communities from participation, remedies and the use of recovered assets.

04.
Assuming causation
Evidence of corruption does not, without more, prove the denial of a particular right. The case must establish proximity, foreseeability or the applicable causal standard.

05.

Choosing the forum too early

A prestigious regional forum may have restrictive access, limited fact-finding powers or remedies that do not meet the strategic objective.

06.

Underestimating admissibility and limitation

Exhaustion, standing, victim status, duplication of international proceedings and short filing periods can defeat a strong case before the merits are considered.

07.

Overstating corporate obligations

The UNGPs are influential but do not automatically create a binding cause of action. Corporate claims must be tied to enforceable law.

08.

Seeking remedies the forum cannot implement

Broad structural demands should be translated into specific, lawful and monitorable orders.

09.

Equating judgment with impact

A decision that is not implemented may have little value for victims. Enforcement, communications and institutional follow-up are part of the litigation strategy.

10.

Ignoring retaliation and unintended consequences

Litigation may expose victims, witnesses, lawyers and organisations to serious risks, or produce adverse precedent that narrows future access to justice.

Human rights courts are not general anti-corruption commissions. Their mandate is to determine legal responsibility for recognised violations and provide remedies. Strategic litigation should use that mandate carefully while connecting the individual case to the structural conditions that produced the harm.



3.6 PRACTICAL TIPS FOR LITIGATORS

01.

Begin with the remedy

Identify the change sought and work backwards to the right, duty, respondent, evidence and forum.

02.

Prepare a one-page case theory

Set out the corrupt conduct, victim, recognised right, causal link, attribution, evidence and requested remedy in a single logical chain.

03.

Centre victims from the beginning

Agree on representation, informed consent, security, communications, expectations and the distribution
distribution of any material benefit.

04.

Build a multidisciplinary team

Strategic anti-corruption cases may require human rights lawyers, criminal and asset recovery practitioners, investigators, forensic accountants, procurement specialists, data analysts, communications experts and protection professionals.

05.

Create an evidence map

Separate facts already proved, facts supported by leads, facts controlled by the respondent and facts that remain speculative. Link each element of the claim to admissible evidence.

06.

Use a forum matrix

Compare standing, jurisdiction, limitation, exhaustion, interim measures, disclosure, costs, remedies, enforcement and security across all realistic forums.

07.

Combine legal routes where appropriate

Litigation may be reinforced by access-to-information requests, complaints to oversight bodies, asset recovery measures, legislative advocacy, media engagement and international mechanisms. Ensure that parallel proceedings do not create duplication or admissibility problems.

08.

Protect the integrity of the case

Communications should be accurate, victim-centred and consistent with due process. Avoid allegations that cannot be supported or publicity that compromises witnesses and evidence.

09.

Plan for implementation before filing

Identify the authorities responsible for compliance, likely resistance, monitoring indicators, coalition partners and the resources required after judgment.

10.

Use periodic go/no-go reviews

Reassess evidence, risks, costs, victim instructions and strategic value at each major stage. Strategic litigation is a continuing process of strategic judgment, not a single decision to file.[84]

84. International Commission of Jurists (n 50).

04 CASE SELECTION: THE PRACTICAL CONSIDERATIONS

4.1 INTRODUCTION

Chapter 3 provided an initial framework for determining whether a matter is suitable for strategic anti-corruption litigation. It considered whether there is an identifiable victim, a connection between corruption and a recognised right, sufficient evidence, public-interest value, an appropriate remedy and forum, and whether the proposed litigation is feasible and safe. Once a matter has passed that preliminary assessment, a more focused process of case selection and design becomes necessary. Chapter 3 therefore asks whether a matter is potentially suitable for strategic litigation; this chapter examines which case, claimant and litigation model should be selected to pursue it effectively.

Human rights, environmental and climate justice organisations commonly use strategic litigation. U4 notes that more than 2,000 climate litigation cases were initiated between 2015 and 2023.[85] In contrast, strategic litigation remains underutilised in the anti-corruption field, notwithstanding the long-standing practice developed by several CSOs through domestic, regional and transnational cases. This makes careful case selection particularly important because an unsuitable case may produce an adverse precedent, expose claimants to unnecessary risks or weaken the wider development of SACHRLit. Selecting a strategic case requires more than identifying unlawful conduct and filing proceedings. The litigation team must determine whether the proposed case can produce an impact beyond the immediate dispute; whether it addresses individual or systemic harm; whether the evidence and claimant are suitable; whether it can serve as a pilot case or form part of a broader litigation and advocacy strategy; and whether its likely benefits justify the financial, legal, political, reputational and security risks.

> The chapter therefore examines what makes a case strategic, how to identify individual and systemic corruption, how to select and support appropriate plaintiffs, and how to manage litigation risks and public-interest advocacy.

These choices must remain grounded in the rights and interests of the people affected. A case is not strategic because it attracts publicity, concerns a large sum of money or involves a prominent public official. It becomes strategic through its purpose, design and capacity to advance both the immediate interests of the claimant and a broader legal, institutional or social objective. The claimant's interests, informed instructions, dignity and safety must therefore remain central through- out the selection and litigation process.

4.2 WHAT MAKES A STRATEGIC CASE?

As explained in section 3.2, SACHRLit is concerned both with obtaining a remedy for the immediate claimant and with pursuing wider legal, institutional or social change. Having determined through the preliminary assessment in Chapter 3 that a matter may be suitable for SACHRLit, the next question is what makes that particular case strategic. The strategic character of a case does not arise simply from the

85. Sophie Lemaître, 'Strategic litigation and its untapped potential for anti-corruption' (U4 Anti-Corruption Resource Centre, 11 July 2023) <https://www.u4.no/blog/strategic-litigation-untapped-potential-for-anti-corruption> accessed 6 August 2026.

seriousness of the alleged corruption, the amount of money involved or the public prominence of the defendants. It arises from the deliberate selection, design and use of the litigation to advance objectives extending beyond the immediate proceedings.



Strategic litigation, sometimes called impact litigation, involves selecting and bringing a case with the aim of producing broader change in the law, public policy, institutional practice or patterns of behaviour. The case must therefore respond to the interests of the claimant while also considering its potential effect on other affected persons, public institutions and future cases.

Nani Jansen Reventlow identifies three common elements of strategic litigation.

- First, the litigation seeks change in the law, its application or the policies surrounding a particular issue.
- Second, its potential impact extends beyond the individual or group acting as claimants.
- Third, the proceedings form part of a wider strategy or movement.[86]

Within SACHRLit, these general elements must be connected to a clear anti-corruption and human rights objective. The proposed case should demonstrate how corruption caused, contributed to or facilitated an identifiable harm; connect that harm to a recognised right or legal obligation; and pursue a remedy capable of benefiting both the claimant and, where appropriate, a wider group or public interest. It should also consider whether the proceedings can expose or prevent systemic corruption, strengthen institutional accountability, protect public resources, improve victim participation or contribute to the progressive development of anti-corruption and human rights jurisprudence.

A SACHRLit case is therefore strategic when the immediate claim forms part of a deliberate and ethically responsible effort to achieve broader accountability and lasting change. This wider purpose must never displace the claimant's interests, informed consent, dignity or safety. Rather, the individual and strategic objectives should reinforce one another throughout the litigation.

4.2.1
Advocacy and Results

Through litigation, advocates can use the courts to pursue legal and social change. A case may form part of an overall advocacy campaign designed to expose a particular form of corruption, protect a disadvantaged population, compel public authorities to act or influence the government to reform its laws and practices. Proceedings may also create an authoritative public record, uncover information, test a new legal argument, strengthen the position of reformers or mobilise others to join the cause.

When successfully used, strategic litigation can produce groundbreaking results.[87] These may include:

- a judgment recognising that corruption caused or contributed to a human rights violation;
- a declaration that an official act, policy or failure to act was unlawful;
- compensation, restitution or another remedy for affected people;
- disclosure of information that was previously concealed;
- an order requiring investigation, institutional reform or protection of public resources;
- a precedent that assists future claimants;
- a change in public policy or administrative practice; or
- greater public awareness and political accountability.

86. International Commission of Jurists (n 50).
87. For a detailed discussion of the range, selection and framing of remedies available through SACHRLit, see Chapter 7 below.

Success should not be measured only by whether the court grants every remedy sought. A case may lose in court yet expose an injustice, preserve evidence, identify a procedural barrier that requires reform or generate a strong coalition. Conversely, a favourable judgment may have limited strategic value if it is not implemented, does not benefit affected communities or produces harmful precedent.

Strategic litigation differs from ordinary legal services because it seeks to change wider policies and patterns of behaviour. This does not reduce the lawyer's duty to the claimant. The strategic objective must never displace competent representation, informed consent, confidentiality, independence or the claimant's best interests. Where the claimant's interests and the organisation's campaign objectives diverge, the lawyer must address the conflict openly and place professional obligations first.[88]

Table 8 | **Strategic case-selection factors**

Strategic factor	Questions for the litigation team
Wider change	What legal, institutional, policy or social change is the case intended to produce?
Impact beyond the parties	Who else may benefit from the judgment, remedy, evidence or public debate?
Legal pathway	Is there a recognised cause of action, a suitable forum and an enforceable remedy?
Evidence	Can the corrupt conduct, human rights harm and causal connection be proved?
Claimant interests	Does the claimant understand and support both the personal and strategic objectives?
Wider strategy	How will litigation connect to advocacy, research, community mobilisation or policy reform?
Implementation	Who will monitor, enforce and communicate the result?
Risk	Are the financial, political, reputational and security risks proportionate and manageable?

4.3
INDIVIDUAL VERSUS SYSTEMIC HARM

The corruption–human rights nexus is fundamentally grounded in the theory of social harm, which exposes corruption as a human rights concern through the concrete injury it inflicts on individuals, communities and institutions.[89] Therefore, case selection requires a clear understanding of the harm. Corruption may injure an identifiable individual, affect a group or operate through a system that undermines institutions and rights on a much larger scale. The distinction is important because it influences the choice of claimant, evidence, cause of action and remedy.[90]

88. International Commission of Jurists, A Guide on Strategic Litigation for Lawyers and Civil Society Organisations (ICJ 2026) <https://www.icj.org/wp-content/uploads/2026/02/ICJ-Guide-on-strategic-litigation-for-lawyers-and-CSOs_February-2026.pdf> accessed 6 August 2026; Open Society Foundations, Advancing Public Health through Strategic Litigation: Lessons from Five Countries (2016) <https://www.opensocietyfoundations.org/publications/advancing-public-health-through-strategic-litigation> accessed 6 August 2026.
89. Angela Barkhouse, Hugo Hoyland and Marc Limon, Corruption: A Human Rights Impact Assessment (Universal Rights Group and Kroll 2018) 5–6.
90. For the conceptual meaning and limitations of the grand–petty distinction, see section 2.4.1 above.

4.3.1

Grand and Petty Corruption

Building on the conceptual distinction introduced in section 2.4.1, the relevant question at the case-selection stage is not simply whether the alleged conduct should be labelled grand or petty corruption. The litigation team must determine how the scale, actors and pattern of corruption affect the availability of claimants, evidence, legal arguments and remedies.

Grand-corruption cases may have considerable strategic value because they can expose institutional capture, the large-scale diversion of public resources and failures involving senior public officials. A successful case may influence national policy, public finance, institutional design and accountability at the highest levels of government. Such cases may nevertheless present significant difficulties. The harm may be widely distributed and therefore difficult to connect to particular victims; essential evidence may be concealed within government or corporate structures; and the proceedings may involve considerable political, financial and security risks.

Petty-corruption cases may offer a more direct route to establishing the relationship between corruption and human rights. A person who is denied medical treatment, education, police protection or an administrative service after refusing to pay a bribe may provide an identifiable claimant, direct evidence and a clearer causal connection between the corrupt conduct and the affected right. Where similar experiences are repeated across a hospital, school, police service or public authority, an apparently individual case may also reveal a broader institutional practice.

Grand and petty corruption may therefore be connected. Impunity at senior levels may create a permissive environment for corruption within everyday public administration, while payments collected by lower-level officials may flow upwards through patronage networks. A carefully selected petty-corruption case may expose these wider relationships and serve as a pilot for addressing systemic practices. Conversely, litigation concerning grand corruption may reveal how the diversion of resources produces concrete harm at the level of public-service delivery.

The strategic value of a proposed SACHRLit case consequently lies in whether the available facts can establish the corrupt act, identify the affected rights-holders, demonstrate the human rights harm and support an effective remedy. Where individual transactions appear to form part of an organised network or stable institutional practice, the litigation team should proceed to the systemic analysis developed in section 4.3.2 below.

4.3.2

Recognising a Corruption System

Corrupt actions may be isolated incidents, transactions or schemes. When corruption becomes systemic, however, it can endanger institutions, welfare and democracy and become resistant to ordinary anti-corruption measures.[91] Case selection must therefore determine whether the proposed claim concerns an isolated act or exposes part of an entrenched system.

David Jackson cautions that systemic corruption does not simply mean 'a lot' of corruption. Drawing on systems thinking, he argues that corruption forms part of a system where it is perpetrated by networks, operates according to stable practices and norms, and serves political or social functions that emerge

91. David Jackson, 'When Corruption Is Entrenched, Systemic and Resilient: Anti-Corruption Can Help' (U4 Anti-Corruption Resource Centre, 2 December 2022) <https://www.u4.no/blog/corruption-entrenched-systemic-resilient-anti-corruption-can-help> accessed 16 August 2026; OECD, Combatting High-level Corruption in Eastern Europe: Insights and Solutions (OECD Publishing 2024) <https://doi.org/10.1787/3c82f87d-en> accessed 16 August 2026.

through design or dysfunction.[92]

Table 9 | Indicators of systemic corruption

Type of corruption	Networks	Institutionalisation	Political or social functions
Transactional corruption	Absent	Possible	Absent
Corruption scandal	Possible	Absent	Absent
Corruption scheme	Present	Possible	Absent
Corruption system	Present	Present	Present

The boundaries are not rigid or fixed. Transactional corruption may become a scheme if an official who belongs to a wider network begins to demand a share. A scheme may become a system when political protection is exchanged for corrupt payments and the gains are used to finance elections, reward allies or weaken accountability institutions.

This analysis has practical consequences. A case directed only at one official may provide individual accountability without disturbing the network, norms and functions that sustain the corruption. Where the harm is systemic, the team should consider remedies capable of addressing those deeper features. These may include disclosure, institutional reform, independent investigation, protection of affected groups, public reporting and continuing judicial supervision. The case should nevertheless plead concrete acts, duties and harms. Describing conduct as 'systemic' cannot substitute for evidence.

4.4
SELECTING PLAINTIFFS

Not everyone can bring a case before every court. In strategic litigation, as in all lawsuits, determining who the players are is central. The litigation team must identify who will sue, whether that person or organisation has standing, whether the claimant can establish the required harm and whether third parties may intervene or otherwise participate. The choice of claimant also affects credibility, evidence, remedies, publicity and risk. The most visible claimant is not always the most appropriate one. A person may have strong standing but face unacceptable security risks. An organisation may bring continuity and expertise but lack standing. A community may experience the most serious harm but require representative proceedings. These questions should be resolved before filing, not after an objection is raised.[93]

4.4.1
Identifying Plaintiffs and Harm

Section 3.3.1 established the threshold requirement that a proposed SACHRLit case should identify the individuals or communities harmed by corruption. The inquiry now moves from identifying those victims to determining who should formally bring the proceedings. The victim and the plaintiff may be the same

92. David Jackson, 'When corruption is entrenched and systemic, more resilient anti-corruption can help' (U4 Anti-Corruption Resource Centre, 2 December 2022) <https://www.u4.no/blog/corruption-entrenched-systemic-resilient-anti-corruption-can-help> accessed 6 August 2026; see also David Jackson and Inge Amundsen, Tuning in to the Politics of (Anti-)Corruption: Astute Interventions and Deeper Accountability (U4 Issue 2022:3) <https://www.u4.no/publications/tuning-in-to-the-politics-of-anti-corruption-astute-interventions-and-deeper-accountability> accessed 6 August 2026.

93. For standing requirements before regional and international forums, see section 5.5.1.1 below.

person, but they are not necessarily identical.

The person who has suffered the most serious harm may lack standing, procedural capacity, access to evidence or the ability to sustain prolonged proceedings.[94] They may also face unacceptable security, financial or reputational risks. Conversely, a civil society organisation may possess expertise, resources and institutional continuity but lack authority to represent the affected community or standing to bring the claim in its own name. Selecting a plaintiff therefore requires a careful assessment of both legal eligibility and strategic suitability.

The legal recognition of victims and plaintiffs differs between jurisdictions and procedures. Criminal law may treat corruption principally as an offence against public administration, while civil, constitutional and human rights procedures may recognise individuals and communities harmed by its consequences. UNCAC requires States Parties, subject to domestic law, to protect witnesses, experts and victims; permit the views and concerns of victims to be presented during criminal proceedings; and ensure that persons or entities damaged by corruption can initiate proceedings for compensation.[95] These provisions provide important support for victim participation but do not create identical rules of standing in every jurisdiction.

When selecting a plaintiff, the litigation team should consider:

- whether the person or organisation has standing before the selected forum;
- whether the claimant can establish the required personal, representative or public interest;
- the strength of the claimant's factual and evidential connection to the alleged corruption;
- whether the claimant can seek the intended remedy;
- whether the claimant genuinely represents the affected interests;
- the existence of informed consent and clear instructions;
- the claimant's willingness and capacity to participate throughout the proceedings;
- the physical, digital, financial and reputational risks involved;
- any actual or potential conflict between the claimant's interests and the wider strategic objective;
- whether another form of participation would be more appropriate.

The most visible or publicly compelling victim is not necessarily the most appropriate plaintiff. The final choice must protect the claimant's interests while supporting the evidential, procedural and remedial objectives of the case. The available models—including individual, organisational and third-party participation, representation of children, group actions and the recruitment of plaintiffs - are examined in sections 4.4.2–4.4.5 below.

4.4.2
Individual, Organisational and Third-Party Participation

Standing rules determine whether an organisation may file a complaint in its own name, represent people who have suffered harm or support proceedings brought by others. Where there is a lawful choice between an individual and organisational claimant, the decision should be based on standing, evidence, remedy, safety and client interests rather than publicity alone.

An individual claimant may provide direct evidence of harm and a strong basis for compensation. An organisation may offer continuity, specialist knowledge and the capacity to pursue structural remedies. Some constitutions and regional procedures permit public-interest, representative or *actio popularis* claims, while others require personal and direct injury. An organisation should not assume that its anti-

94. For the preliminary identification of victims, affected communities and forms of harm, see section 3.3.1 above.
95. United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41, arts 32(5) and 35; see also arts 13 and 53–57.

corruption mandate automatically gives it standing.

Standing also determines whether interested third parties may intervene or join a case. A legally oriented civil society organisation may seek intervention because the issues are central to its mandate or because its evidence and expertise will assist the court. If direct intervention is unavailable, the organisation may be permitted to submit an *amicus curiae* brief. *Amicus curiae* means 'friend of the court'. The *amicus* is ordinarily not a party and should assist the court on relevant law, evidence or context without taking over the claimant's case.

4.4.3
Children and Representatives

Children may have legal rights but lack procedural capacity to conduct proceedings personally. National and international procedures commonly allow a parent, guardian, litigation representative, organisation or other authorised person to act on a child's behalf. The precise rules must be checked in the selected forum; a child should not be assumed to have no remedy because they cannot file personally.

The child's best interests must be a primary consideration, and the child should be given an opportunity to express views in accordance with age and maturity.[96] The interests of a child and an adult representative may not always coincide. The litigation team should therefore establish appropriate representation, communicate in a child-sensitive manner, protect identity and privacy, and plan for the possibility of family pressure, retaliation or unwanted publicity.

4.4.4
Group Actions

A group action, also known in different jurisdictions as a class action, collective action or group litigation, may be available where many people have suffered a similar form of harm. Under a representative model, selected claimants or an authorised organisation proceed on behalf of a larger group. Group proceedings may avoid the cost and inconsistency of multiple claims and may reveal the collective impact of corruption. They may also create difficult questions about group definition, common issues, consent, notice, representation, distribution of compensation and settlement authority. Court approval may be required. Before filing, the team should establish whether the procedure is opt-in or opt-out, who may represent the group, whether individual issues predominate and how the remedy will reach members.

4.4.5
Finding and Recruiting Plaintiffs

Not every strategic case is carefully selected from the outset. A team may encounter a compelling case through ordinary legal work, or it may identify a systemic problem and then look for people with standing and relevant experience. In either situation, the claimant must not be reduced to a vehicle for an organisational cause.

Before approaching potential claimants, examine local laws and professional rules on solicitation, advertising, conflicts, fees and client confidentiality. Explain the organisation's strategic objective, the possible outcomes, costs, duration, publicity and risks. Obtain informed consent and revisit it as the case develops.

Subject to those safeguards, potential claimants may be identified through:

96. Convention on the Rights of the Child, adopted 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3, arts 3 and 12; Committee on the Rights of the Child, General Comment No 12, 'The right of the child to be heard' (1 July 2009) UN Doc CRC/C/GC/12.

- field visits and interviews;
- referrals from legal aid services and lawyers;
- referrals from civil society and community organisations;
- existing complaint channels, community centres and trade unions;
- dedicated and secure channels for receiving complaints;
- consultation or office hours;
- training programmes and community meetings;
- newsletters, casework bulletins and other publications; and
- lawful print or online notices.

The team should keep a written record of the selection process and apply consistent criteria. Where several people could act as claimant, consider standing, evidence, safety, reliability, availability, remedy and willingness to sustain a potentially long case. Avoid selecting a person because their story is attractive to the media.

4.5
PILOT CASES

A pilot case tests a new legal argument or litigation model through a carefully selected claim before it is used more widely. Pilot litigation may be particularly valuable in SACHRLit because the link between corruption and human rights is still developing in many jurisdictions. A focused case can clarify standing, causation, admissibility or available remedies without exposing a large group to the risks of untested litigation. The strongest pilot case is usually the case with clear facts, reliable evidence, a suitable claimant, a recognised right, a manageable causal chain and a remedy the court is able to grant. The political importance of the dispute should be balanced against procedural simplicity and the risk of adverse precedent.

Table 10 | **Pilot-case selection criteria**

Pilot-case criterion	Practical question
Clear facts	Can the essential events be explained simply and supported by documents or reliable witnesses?
Legal foundation	Is there a recognised right, duty and cause of action?
Causation	Can the corrupt conduct be connected to a concrete human rights harm?
Suitable claimant	Does the claimant have standing, informed consent and sufficient protection?
Appropriate forum	Can the court hear the claim and grant an effective, enforceable remedy?
Replicability	Could a favourable ruling assist other cases or groups?
Contained risk	Can costs, security, delay and the risk of adverse precedent be managed?

Pilot cases should be documented carefully. The team should record what worked, what failed, the resources required and whether the legal theory can be replicated. A weak pilot should not be repeated without understanding why it failed. Equally, a successful pilot should not be expanded mechanically where later claimants, facts or forums differ.

4.6
LITIGATION RISKS

The anti-corruption community has often approached strategic litigation cautiously because SACHRLit carries substantial evidential, financial and security risks. Corruption usually occurs behind closed doors, without independent witnesses, and may involve financial arrangements extending across several jurisdictions. Important documents may also be controlled by the alleged wrongdoers, financial institutions or public authorities. Obtaining evidence and establishing the necessary connection between corrupt conduct, resulting harm and a human rights violation can therefore be difficult and expensive.

Litigation may also take many years. The *Biens mal acquis* proceedings illustrate this risk. Transparency International France filed its complaint in 2008 concerning assets allegedly acquired in France with misappropriated public funds from Equatorial Guinea. The proceedings continued until 2021, when the French Court of Cassation confirmed the conviction of Teodorin Obiang for money laundering and upheld[97] the confiscation of substantial assets. Although the litigation was ultimately successful, the thirteen-year process required sustained institutional commitment, funding and legal representation. Such delay can exhaust claimants, consume resources, weaken evidence and reduce public interest. Outcomes are equally uncertain. In the OPL 245 proceedings, Italian prosecutors alleged that payments connected to the award of a Nigerian oil licence involved international corruption. After a lengthy investigation and trial, the Milan Tribunal acquitted Eni, Shell and the other defendants in March 2021, concluding that the alleged offences had not been established. The acquittals subsequently became final.[98] The case demonstrates that serious public allegations and extensive investigations do not guarantee a conviction. An adverse judgment may also create unfavourable precedent, discourage future claimants or be presented publicly as disproving the wider governance problem that motivated the litigation. Funding presents a further challenge. The litigation arising from the alleged misappropriation of Zambian public funds during the presidency of Frederick Chiluba illustrates the potential scale of these costs. In Attorney General of Zambia v Meer Care & Desai, Zambia instituted civil proceedings in England against numerous defendants and obtained significant findings concerning the misappropriation of public money. The case involved a lengthy trial, consequential proceedings on interest and costs, appeals and subsequent attempts to register and enforce the English judgment in Zambia.[99] It demonstrates that expenditure may continue well beyond the initial judgment, particularly where appeals, asset tracing and cross-border enforcement are required.



A realistic litigation budget should therefore include investigation, legal fees, experts, translation, travel, witness protection, communications, enforcement and possible adverse costs. It should also consider whether mediation or another form of settlement may be appropriate, since an unreasonable refusal to explore alternative dispute resolution may itself affect the recovery of legal costs.[100] Dependence on a single donor may undermine the continuity of proceedings or create pressure over litigation strategy.

Finally, strategic litigation may expose CSOs, lawyers, claimants, journalists, witnesses and their families to threats, intimidation, arrest, surveillance, online smear campaigns or loss of employment. Powerful companies, public officials and politically exposed persons may also misuse legal proceedings through strategic lawsuits against public participation (SLAPPs). These may take the form of defamation, privacy, confidentiality or related claims intended primarily to intimidate critics, exhaust their resources and

97. Cour de cassation, Chambre criminelle, 28 July 2021, No 20-81.553, ECLI:FR:CCASS:2021, especially paras 1–7 and 40–43.
98. Tribunale di Milano, Sezione VII Penale, Judgment No 3055/2021, 17 March 2021, reasons deposited 9 June 2021, proceedings Nos 1351/18 R.G. Trib. and 54772/13 R.G.N.R. The judgment is available in Italian through Giurisprudenza Penale and in an English translation through Eni's case-document archive.
99. Attorney General of Zambia v Meer Care & Desai (A Firm) & Others [2007] EWHC 952 (Ch); consequential judgment [2007] EWHC 1540 (Ch); and appeal [2008] EWCA Civ 1007. The principal and consequential judgments may be consulted through vLex. For the Zambian enforcement proceedings, see Attorney General v Chiluba and Others, High Court of Zambia, Case No 2007/HP/FJ/004, judgment of 25 August 2010.
100. Attorney General of Zambia v Meer Care & Desai (A Firm) & Others [2007] EWHC 1540 (Ch), particularly the court's consideration of costs and the claimant's refusal to mediate.

discourage public-interest advocacy.[101] These risks do not mean that SACHRLit should be avoided. They must, however, be identified at the earliest stage and addressed through careful case selection, sustainable funding, evidence preservation, security planning, communications strategies and appropriate partnerships. The following checklist provides a practical framework for undertaking this assessment before proceedings are filed.

4.6.1
Risk-Mitigation Checklist

Risk mitigation should begin before proceedings are filed and continue throughout the life of the case. The litigation team should identify foreseeable legal, financial, political, reputational, digital and physical risks; assess their likelihood and potential severity; and agree on practical measures, responsibilities and contingency arrangements for addressing them. Before filing, the litigation team should:

- prepare an evidence map showing what is proved, what remains inferential and what must be obtained;
- obtain a written opinion on standing, jurisdiction, limitation periods and adverse costs;
- assess whether interim measures are needed to preserve evidence, assets or personal safety;
- prepare a realistic multi-year budget and funding-continuity plan;
- conduct an individual and organisational security assessment;
- agree confidential communication, data-protection and media protocols;
- identify potential conflicts of interest and pressure on claimants;
- prepare for counterclaims, SLAPPs, disciplinary complaints and reputational attacks;
- plan how an adverse judgment will be explained and whether an appeal is viable; and
- review risks throughout the case rather than treating assessment as a one-time exercise.

4.7
PUBLIC INTEREST AND MEDIA STRATEGY

High-stakes legal battles are no longer confined to courtroom arguments and judicial rulings. Complex, international and contentious cases unfold across traditional media, digital platforms and the court of public opinion. Public perception may affect political attention, the safety of participants, settlement discussions and implementation of the judgment. A media strategy should support the legal objective without prejudicing the proceedings or compromising the claimant. It must respect confidentiality, privacy, professional duties, court rules and the presumption of innocence. The case should not be tried through the media. Public communications should distinguish established facts, allegations, legal submissions and judicial findings. Misinformation, including manipulated or AI-generated material, presents additional challenges. Uncontrolled early statements may become 'narrative landmines' that damage credibility or provide leverage to the opposing side. The litigation and communications teams should therefore:

- agree on a clear, accurate account of the case;
- identify authorised spokespersons;
- verify material before publication;
- preserve records; and
- prepare rapid corrections for false claims.

The claimant should decide, on an informed basis, whether and how to speak publicly. Some claimants may benefit from visibility, while others may require anonymity or a low-profile strategy. Publicity should never be imposed because it benefits the campaign. The strategy should also recognise that public attention may decline long before judgment, making sustained engagement and implementation planning essential.

101. Council of Europe, Recommendation CM/Rec(2024)2 of the Committee of Ministers to Member States on countering the use of strategic lawsuits against public participation, 5 April 2024, available from the Council of Europe; Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings, available through EUR-Lex.

05 FORUM SELECTION

5.1
INTRODUCTION

This chapter examines forum selection and litigation strategies in the context of SACHRLit, particularly in cases involving grand corruption and related human rights violations. The Guide proceeds from the major premise that, by connecting acts of corruption to violations of human rights, new channels of action can be created. Corruption may then be challenged through the many national, regional and international mechanisms that monitor and enforce compliance with human rights obligations.[102]

Grand corruption cases are often complex, politically sensitive and transnational. In many instances, domestic institutions may be weak, compromised, unwilling or unable to investigate and prosecute powerful actors effectively. Litigants, CSOs, human rights defenders, victims and anti-corruption advocates may therefore need to consider alternative forums capable of offering effective remedies, independent adjudication or broader public accountability. The choice of forum may influence jurisdiction, admissibility, standing, access to evidence, judicial independence, available remedies, enforcement, public participation, the framing of corruption as a human rights violation and the time required to resolve the claim.

Litigation also provides an important opportunity for collaboration between human rights and anti-corruption organisations. Proceedings may be brought before domestic, regional or international judicial and quasi-judicial bodies. They may be contentious or non contentious and may include constitutional applications, judicial review, civil claims, criminal proceedings, advisory opinions, *amicus curiae* briefs, public interest actions and communications before human rights bodies. Forum selection and litigation strategy must therefore be considered together: the appropriate forum depends on the claim, while the legal strategy must respond to the powers, procedures and limitations of the selected forum.

5.2
FORUM SELECTION

One of the most important strategic choices in litigation is selecting the right forum. This choice should not be made at random. It is determined by variables that may significantly affect the outcome and wider impact of a case.

For the purposes of this Guide, forum selection means the strategic process by which litigants identify and pursue the judicial or quasi-judicial forum best suited to adjudicate a claim. Forum shopping, by contrast, generally refers to choosing between two or more forums with concurrent or overlapping jurisdiction in the expectation that one will offer a more favourable legal or practical outcome.[103] The term is sometimes used negatively. However, in transnational corruption litigation, a careful and lawful comparison of available forums is part of competent litigation planning. It becomes problematic where it is abusive,

102. Prosper Maguchu, 'When to Push the Envelope? Corruption, Human Rights and the Request for an Advisory Opinion by SERAP to the African Court' (2020) 4 African Human Rights Yearbook 436, 436–456 <https:/doi.org/10.29053/2523-1367/2020/v4a21> accessed 16 August 2026; International Commission of Jurists, A Guide on Strategic Litigation for Lawyers and Civil Society Organisations (2026) <https:/www.icj.org/wp-content/uploads/2026/02/ICJ-Guide-on-strategic-litigation-for-lawyers-and-CSOs_February-2026.pdf> accessed 6 August 2026.

103. Franco Ferrari, 'Forum Shopping: A Plea for a Broad and Value-Neutral Definition' (2013) 1 NYU Lectures on Transnational Litigation, Arbitration and Commercial Law <https:/ssrn.com/abstract=2474181> accessed 6 August 2026.

oppressive, designed to obtain inconsistent decisions or contrary to rules against duplication of proceedings. This distinction is especially important before international human rights bodies. Some mechanisms prohibit the simultaneous or successive consideration of substantially the same matter, while others impose exhaustion, time-limit requirements.[104] Strategic litigators should therefore map all available forums before the first claim is filed. A premature filing in one forum may close the door to another.

Domestic courts will often provide the most immediate and appropriate forum, particularly where constitutional rights, administrative law, civil remedies or national anti-corruption legislation can be invoked. In other situations, weak enforcement, lack of judicial independence, institutional capture or restrictive procedural rules may support recourse to regional or international bodies. Transnational corruption may also justify coordinated proceedings in domestic and foreign jurisdictions to preserve assets, obtain evidence or enforce judgments. Such proceedings must be planned as a coherent strategy rather than as unrelated cases.

5.2.1
Why Forum Selection Matters

5.2.1.1
Jurisdictional and Procedural Advantage

Foreign jurisdictional advantage arises where a court outside the State in which corruption principally occurred has a lawful jurisdictional basis, greater institutional independence or more effective procedures for advancing accountability. The litigation concerning Manuel Chang demonstrates that this advantage may involve more than one foreign forum performing different but complementary functions. The South African High Court acted as a gateway forum by reviewing the executive decision determining where Chang should be extradited, while the United States subsequently provided the forum for his criminal prosecution.

Case Study: Manuel Chang

Background

Manuel Chang served as Mozambique's Minister of Finance between 2005 and 2015. He was accused of participating in the "Mozambican secret debt scandal", in which three Mozambican state-owned companies obtained more than US$2 billion in loans ostensibly intended for maritime security, tuna fishing and shipyard development. The loans were supported by sovereign guarantees authorised by Chang but were not disclosed to the Mozambican Parliament or the public. Substantial portions of the proceeds were allegedly diverted through bribes and kickbacks, leaving Mozambique responsible for debts that produced little public benefit.

The developmental consequences of the alleged corruption formed an important part of the context in which the South African High Court approached the case. Victor J opened the judgment by observing:

"The myth that corruption has no victim is a dangerous fantasy. Corruption causes disastrously inefficient economic, social and political outcomes. It diverts public resources from critical development projects thereby exacerbating job creation, growth and opportunity. It makes poor nations poorer."[105]

104. African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) art 56(7); Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) art 5(2)(a); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) art 35(2)(b).

105. Forum De Monitoria Do Orcamento v Chang and Others (40441/2021) [2021] ZAGPJHC 808; [2022] 2 All SA 157 (GJ), para 1, citing William Gumede, 'Combating

Chang was arrested in South Africa in December 2018 following a provisional arrest request from the United States. Both the United States and Mozambique subsequently sought his extradition. This created a contest between two possible prosecuting forums. The South African Minister of Justice initially decided that Chang should be extradited to the United States, but later changed his decision and directed that Chang be surrendered to Mozambique.[106]

The Strategic Litigation Approach

The Forum de Monitoria do Orçamento (FMO), an umbrella organisation representing Mozambican CSOs, challenged the Minister's decision before the High Court of South Africa. FMO argued that extraditing Chang to Mozambique would create a serious risk of impunity because his immunity from prosecution remained unresolved. It also questioned the legal sufficiency and consistency of the Mozambican indictment and arrest warrants.

FMO's intervention demonstrates how civil society may use strategic litigation to influence the forum in which accountability will be pursued. FMO did not prosecute Chang itself, nor did it ask the South African court to determine his criminal guilt. Instead, it used judicial review to challenge an executive decision that could determine whether the allegations against him would be effectively prosecuted. The litigation therefore targeted a procedural gateway to accountability.

The Helen Suzman Foundation, participating in the proceedings, further situated the case within South Africa's domestic and international obligations to combat transnational corruption. It referred to the Prevention and Combating of Corrupt Activities Act, the UNCAC, the AUCPCC, the OECD Anti-Bribery Convention and the SADC Protocol against Corruption.[107] These instruments reinforced the argument that the extradition decision had to be consistent with the purposes of combating corruption and preventing impunity.

The Court's Findings

The High Court held that the Minister's decision to extradite Chang to Mozambique was irrational. A central concern was the continuing uncertainty surrounding Chang's immunity. The evidence did not conclusively establish that he could be prosecuted in Mozambique for conduct allegedly committed while he was Minister of Finance. The accounts provided by Chang and the Mozambican Government were inconsistent, while legal opinions available to the Minister had warned that Chang might continue to enjoy immunity.[108]

The Court also found that the Minister had failed to consider material facts, including the uncertainty surrounding the Mozambican indictment and warrants, the absence of clear assurances that Chang would be prosecuted and the wconcerns raised by Mozambican civil society. These omissions were especially significant because the very purpose of extradition was to ensure that Chang faced prosecution rather than being returned to a jurisdiction in which accountability remained uncertain.

The Minister's reasons were another source of concern. He had not provided adequate contemporaneous reasons for reversing his earlier decision to extradite Chang to the United States. The additional reasons advanced after litigation had commenced were inconsistent with the record and lacked sufficient probative value to establish that the decision was rational.[109]

Corruption in South Africa' (Democracy Works Foundation, Policy Brief No 14, 3 March 2017). The judgment records the publication year as 2011, which appears to be a typographical error.

106. Forum De Monitoria Do Orcamento v Chang and Others, paras 2–10.

107. ibid, paras 11–26, particularly paras 25–26.

108. ibid, paras 49–61.

109. ibid, paras 43–48 and 80–89.

The Court therefore set aside the decision to extradite Chang to Mozambique. Rather than returning the matter to the Minister for further consideration, it substituted the decision and ordered that Chang be extradited to the United States. Victor J reasoned that remittal would serve little purpose because the Minister had already disregarded relevant facts and the advice concerning Chang's possible immunity. The magnitude of the alleged corruption and the need to ensure accountability constituted exceptional circumstances justifying substitution.[110]

Subsequent Proceedings in the United States

Following further legal proceedings, Chang was extradited to the United States in July 2023. In August 2024, a federal jury in the Eastern District of New York convicted him of conspiracy to commit wire fraud and conspiracy to commit money laundering. The prosecution established that Chang had received approximately US$7 million in bribes in exchange for approving government guarantees connected to the loans. On 17 January 2025, he was sentenced to 102 months' imprisonment and ordered to forfeit US$7 million.[111]

The United States exercised jurisdiction because the scheme victimised investors in the United States and involved financial transactions and communications connected to its financial system. The prosecution therefore demonstrates that a foreign forum must be supported by an identifiable jurisdictional connection; institutional strength alone cannot create jurisdiction.

Strategic Significance

The Chang litigation illustrates how forum selection may operate through several interconnected proceedings. The South African court was not the eventual trial forum, but its review jurisdiction was strategically decisive in determining whether Chang would be surrendered to a jurisdiction capable of prosecuting the charges against him. The case therefore demonstrates that strategic litigation may target the administrative and procedural decisions that enable or obstruct criminal accountability.

For SACHRLit practitioners, the case provides five principal lessons:

- CSOs may use judicial review to challenge executive decisions that create a risk of impunity;
- extradition proceedings may become an important point of intervention in transnational corruption cases;
- the suitability of a forum should be assessed by examining whether prosecution is legally and practically possible, rather than whether charges have been announced;
- international anti-corruption instruments can help interpret domestic powers consistently with the objective of effective accountability; and
- foreign jurisdiction must rest upon a clear legal connection to the alleged conduct, defendants, victims, financial transactions or assets.

The case does not establish that a foreign forum is invariably preferable to the courts of the affected State. Nor did the South African High Court determine that corruption itself constituted a separate human rights violation. Its strategic importance lies in recognising the affected population, questioning an executive decision that risked frustrating accountability and ensuring that the allegations would be adjudicated in a forum where effective prosecution was realistically possible.

110. ibid, paras 90–98 and the order of the Court.

111. United States v Manuel Chang, No 18-CR-681 (NGG) (EDNY); United States Department of Justice, 'Former Finance Minister of Mozambique Convicted of Fraud and Money Laundering in $2 Billion Scheme' (8 August 2024), available from the US Department of Justice; United States Department of Justice, 'Former Finance Minister of Mozambique Sentenced to 102 Months' Imprisonment for His Role in $2 Billion Fraud and Money Laundering Scheme' (17 January 2025), available from the US Department of Justice.

5.2.1.2

Enforcement of Judgments and Decisions

The practical enforceability of a judgment or decision is another central consideration. A favourable judgment that cannot be enforced may have little value. This is especially important in corruption cases involving hidden assets, offshore companies, nominees or cross-border transactions. Litigants may need to proceed where the defendant or assets are located, or where courts have effective freezing, disclosure and recovery powers.

Case Study: APDHE v Obiang Family and the Kokorev Proceedings (Spain)

Background

Transnational corruption frequently involves conduct, persons and assets located across several jurisdictions. In such cases, obtaining a favourable judgment is not enough. Practitioners must identify a court that has a lawful jurisdictional connection to the conduct and the practical power to trace, freeze and confiscate the relevant assets and enforce its decisions.

In July 2004, the Permanent Subcommittee on Investigations of the United States Senate published a report concerning the anti-money laundering failures of Riggs Bank. The report found that the bank maintained more than 60 accounts for the Government of Equatorial Guinea, senior officials and members of their families. These accounts reportedly contained between US$400 million and US$700 million, making Equatorial Guinea the bank's largest single relationship.[112]

The report identified a series of suspicious transactions in which approximately US$26.5 million was transferred between 2000 and 2003 from an official Equatoguinean oil-revenue account at Riggs Bank to an account held at Banco Santander in Spain in the name of Kalunga Company SA. Subsequent investigations identified connections between some of these transfers and the purchase of properties in Madrid, Gijón and Las Palmas de Gran Canaria for the alleged benefit of President Teodoro Obiang, members of his family and close associates.[113]

The Strategic Litigation Approach

In 2008, the Asociación Pro Derechos Humanos de España (APDHE) filed a querella, or criminal complaint, requesting the Spanish courts to investigate the alleged laundering of funds originating from Equatorial Guinea. APDHE was assisted by the Open Society Justice Initiative in investigating the transactions and preparing the legal arguments.[114]

The proceedings constitute a strong example of SACHRLit. Although the cause of action was money laundering rather than a direct human rights claim, the litigation was initiated and sustained by a human rights organisation seeking accountability for the alleged diversion of public wealth from a country in which large sections of the population continued to experience poverty and inadequate public services. APDHE therefore used criminal procedure as a vehicle for advancing the broader human rights objectives of accountability, protection of public resources and recovery of assets for the benefit of the affected population.

112. United States Senate Permanent Subcommittee on Investigations, Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the PATRIOT Act—Case Study Involving Riggs Bank (15 July 2004), reproduced in US Senate Hearing 108-633, 126–210 <https://www.govinfo.gov/content/pkg/CHRG-108shrg95501/html/CHRG-108shrg95501.htm> accessed 16 August 2026.
113. Open Society Justice Initiative, 'APDHE v Obiang Family', 'Facts' <https://www.justiceinitiative.org/litigation/apdhe-v-obiang-family> accessed 16 August 2026.
114. ibid. See also APDHE, 'Quiénes somos', describing APDHE as an independent organisation established for the defence and promotion of human rights <https://apdhe.org/quienes-somos/> accessed 16 August 2026.

The case also demonstrates the importance of civil society participation in criminal proceedings. APDHE did more than report the allegations: it filed the complaint that gave rise to the investigation, participated as a popular prosecutor and later requested the opening of the trial, criminal penalties, fines and the seizure of the defendants' property and bank accounts.[115] This approach is consistent with article 13 of the UNCAC, which recognises the importance of civil society participation in preventing and combating corruption.[116]

Choice of Forum and Enforcement

Spain was strategically significant because part of the alleged laundering occurred through a Spanish bank account, properties had been acquired in Spain and several persons and companies associated with the transactions had connections to the Canary Islands. The Spanish courts therefore had both a jurisdictional basis for investigating the alleged laundering and practical access to property, corporate and financial records.

Article 301 of the Spanish Penal Code criminalises the acquisition, possession, use, conversion or transfer of property with knowledge of its criminal origin, as well as conduct intended to conceal that origin.[117] The fact that the alleged underlying corruption or misappropriation occurred in Equatorial Guinea did not prevent Spain from prosecuting laundering activities carried out within its territory.

The proceedings ultimately involved companies, accounts and assets located in Panama, Seychelles, Switzerland, Denmark, the Netherlands Antilles, the United States and Spain. More than 30 requests for international judicial assistance were reportedly required. Cooperation coordinated through Eurojust with authorities from several countries helped investigators trace the movement of funds and identify assets available for confiscation.[118]

The case therefore illustrates that the appropriate forum is not necessarily the country in which the original corruption occurred. In transnational cases, practitioners should consider bringing proceedings in a jurisdiction in which:

- part of the laundering or concealment occurred;
- the defendants, intermediaries or companies are present;
- bank accounts or immovable property can be identified;
- courts possess effective freezing, disclosure and confiscation powers; and
- international cooperation mechanisms make enforcement against foreign assets reasonably possible.

Outcome and Current Status

The principal criminal proceedings are no longer pending. In May 2025, after approximately 16 years of investigation, the Sixth Section of the Provincial Court of Las Palmas concluded the case through an agreed judgment. Vladimir Kokorev and his wife, Yulia Maleeva, admitted laundering approximately €57 million arising from commercial dealings with Equatorial Guinea between 1999 and 2012. They received prison sentences that were treated as already served through pre-trial detention and fines of €20 million and €15 million respectively. The judgment also provided for the confiscation of property and accounts previously seized during the investigation.[119]

115. 'La acusación particular en el caso Kokorev pide hasta nueve años de cárcel por blanqueo de capitales' Canarias Ahora (15 June 2021) <https:/www.eldiario.es/canariasahora/tribunales/acusacion-particular-caso-kokorev-pide-nueve-anos-carcel-blanqueo-capitales-armas-guinea-ecuatorial_1_8041581.html> accessed 16 August 2026.
116. United Nations Convention against Corruption, art 13.
117. Spanish Criminal Code, Organic Law 10/1995 of 23 November, art 301 <https:/www.boe.es/buscar/act.php?id=BOE-A-1995-25444#a301> accessed 16 August 2026.
118. 'Caso Kokorev: el empresario y su esposa admiten el blanqueo de 58 millones y aceptan devolver 35 millones al Estado' Confilegal (20 May 2025) <https:/confilegal.com/20250520-caso-kokorev-el-empresario-y-su-esposa-admiten-el-blanqueo-de-58-millones-y-aceptan-devolver-35-millones-al-estado/> accessed 16 August 2026.

The court also convicted financial adviser Juan Arencibia and two of his sisters for their respective roles in the financial arrangements. The charges against Igor Kokorev were withdrawn because the prosecution accepted that he had not participated in the transactions covered by the final agreed statement of facts.[120]

The outcome was narrower than the allegations originally advanced. A significant part of the investigation concerning the alleged laundering of proceeds from unlawful arms transactions was excluded after a court ruled that the order extending the scope of the defendants' extradition from Panama had been made out of time. The convictions were therefore based on the earlier phase of laundering rather than the full value and range of transactions initially alleged. This procedural limitation demonstrates how extradition conditions, limitation periods and errors during an investigation may substantially restrict the scope of an otherwise strong transnational case.[121]

Nevertheless, the proceedings resulted in enforceable financial penalties amounting to approximately €35 million and the confiscation of assets and accounts located principally in Spain and Switzerland. The outcome illustrates the practical advantage of litigating in a jurisdiction in which assets have already been identified and secured.[122] It also shows, however, that enforcement of a judgment and return of assets to those harmed are separate stages. Available reports describe the funds as recovered by the Spanish State; they do not establish that the confiscated assets have been returned to Equatorial Guinea or applied for the direct benefit of its population.

Strategic Significance

The case demonstrates that forum selection in transnational SACHRLit must be informed by enforceability from the outset. Practitioners should identify not only where proceedings can legally be commenced, but also where evidence can be obtained, assets can be frozen and a final order can be implemented. They should further consider how confiscated property will ultimately be returned or used for the benefit of those harmed by the corruption.

Articles 51 and 57 of the UNCAC are particularly important in this regard because they recognise asset return as a fundamental principle and establish a framework for the disposal and return of confiscated property.[123]

The case therefore offers an important, although qualified, example of SACHRLit: a human rights organisation transformed information uncovered in one jurisdiction into criminal proceedings in another, maintained the litigation over many years and contributed to convictions and substantial asset recovery. At the same time, its length, procedural setbacks and uncertain reparative benefit demonstrate that successful enforcement must be measured not only by the value of assets confiscated, but also by whether those assets are ultimately restored to the people whose public resources were affected.

5.2.1.3

Efficiency and Urgency

Efficiency is particularly important because delay may permit the dissipation of assets, destruction of evidence, intimidation of witnesses or political interference. The relevant question is not simply which forum can deliver a final judgment most quickly, but which can provide effective interim measures while

119. 'Acuerdo en el caso Kokorev: el matrimonio ruso pagará 35 millones de euros y no volverá a pisar la cárcel' Canarias Ahora (19 May 2025) <https:/www.eldiario.es/canariasahora/tribunales/acuerdo-caso-kokorev-matrimonio-ruso-pagara-35-millones-euros-no-volvera-pisar-carcel_1_12310203.html> accessed 16 August 2026.
120. ibid.; 'Caso Kokorev' (n 118).
121. 'Acuerdo en el caso Kokorev' (n 119).
122. 'Caso Kokorev' (n 118).
123. United Nations Convention against Corruption, arts 51 and 57. See also United Nations Audiovisual Library of International Law, 'United Nations Convention against Corruption' <https:/legal.un.org/avl/ha/uncc/uncc.html> accessed 16 August 2026.

preserving due process.

Case Study: The Biens mal acquis Proceedings against Teodorin Obiang (France)

The French Biens mal acquis proceedings against Teodoro Nguema Obiang Mangue, commonly known as Teodorin Obiang, provide a strong illustration of the strategic importance of choosing a jurisdiction capable of preserving assets before they disappear. Although the French courts did not determine a separate violation of a human rights treaty, the proceedings have a clear SACHRLit dimension. They were initiated by CSOs seeking to prevent assets allegedly acquired through the diversion of African public resources from remaining beyond the reach of justice and to secure their eventual restitution for the benefit of the affected population.

In December 2008, Transparency International France filed a criminal complaint and constituted itself as a civil party in proceedings concerning substantial property allegedly acquired in France by foreign public officials and members of their families through the proceeds of corruption and misappropriation. In 2010, the French Court of Cassation recognised the organisation's standing and permitted the[124] criminal investigation to continue. This was particularly significant because the authorities of Equatorial Guinea had not commenced proceedings capable of preserving or recovering the property.

France was an appropriate and strategically useful forum because the alleged laundering had occurred within its territory and the assets were physically located there. The property included luxury vehicles, furniture, works of art and a substantial mansion at 42 Avenue Foch in Paris. French investigators therefore had direct access to the property and French courts possessed the legal authority to search, seize and ultimately confiscate it.

The importance of urgent interim action became evident during the investigation. In September 2011, French judges ordered the seizure of 11 luxury vehicles belonging to Obiang. In February 2012, authorities searched the Avenue Foch property and seized furniture, art and other valuable items over a period of several days. In July 2012, the investigating judges issued an order seizing the mansion itself.[125] These measures prevented the assets from being sold, transferred, concealed or removed from France while the investigation and subsequent proceedings continued.

The seizure of the Avenue Foch property was especially important because Equatorial Guinea subsequently claimed that the building formed part of its diplomatic mission and was therefore protected from French enforcement measures. The dispute eventually reached the International Court of Justice. In 2020, the Court rejected the argument that the building had acquired the status of diplomatic premises under the Vienna Convention on Diplomatic Relations.[126] The interim seizure therefore ensured that the property remained preserved while complex questions concerning ownership, immunity and jurisdiction were litigated.

In October 2017, the Paris Criminal Court convicted Obiang of laundering the proceeds of offences including misappropriation of public funds, abuse of corporate assets and breach of trust. It imposed a three-year suspended prison sentence, a €30 million fine and confiscation of the property seized in France. The Paris Court of Appeal substantially confirmed the conviction and confiscation in February

124. Cour de cassation, Criminal Chamber, 9 November 2010, No 09-88.272, declaring admissible the constitution of Transparency International France as a civil party, Légifrance.
125. Transparency International France, 'Examen du projet de loi Développement solidaire au Sénat' (14 April 2021), chronology of the Biens mal acquis proceedings.
126. Immunities and Criminal Proceedings (Equatorial Guinea v France) (Merits) Judgment of 11 December 2020, ICJ Reports 2020, 300, case materials.

2020. On 28 July 2021, the Court of Cassation dismissed Obiang's appeal, making the conviction and confiscation final.[127] The confiscated property was estimated to be worth approximately €150 million.[128]

As discussed in section 4.6 of this Guide, the proceedings took approximately 14 years to reach a final conclusion.[129] The case was therefore not efficient if efficiency is measured solely by the speed of final adjudication. It was nevertheless effective because the French courts preserved the property at an early stage. Without the seizures undertaken in 2011 and 2012, a favourable judgment delivered in 2021 might have been practically meaningless because the assets could have been transferred, sold or concealed during the intervening period.

The proceedings also preserved due process. The seizure orders did not amount to final confiscation or determine Obiang's guilt in advance. They maintained the availability of the property while he challenged the proceedings, raised immunity arguments and exercised rights of appeal through the French courts. Final confiscation followed only after conviction and appellate review.

The case further demonstrates that preserving assets and returning them to affected communities are separate stages. France subsequently adopted a statutory mechanism intended to ensure that proceeds from confiscated assets connected to foreign corruption benefit the populations of the States from which they were taken. However, the execution and restitution process concerning the Avenue Foch property has faced further diplomatic and legal challenges. In September 2025, the International Court of Justice rejected Equatorial Guinea's request for provisional measures intended to prevent France from disposing of the property. The merits of that separate inter-State dispute concerning the return of the property remain pending.[130]

> The *Biens mal acquis* proceedings demonstrate that the most suitable forum may be the jurisdiction in which the proceeds of corruption have been invested or concealed. When assessing efficiency and urgency, practitioners should therefore consider:
> - where the assets are physically located;
> - whether the court can issue immediate freezing, seizure or preservation orders;
> - whether property, banking and beneficial ownership information can be obtained;
> - whether CSOs or affected persons have standing to initiate or participate in proceedings;
> - whether the jurisdiction recognises foreign predicate offences for money laundering purposes;
> - whether interim orders can be enforced before assets are transferred elsewhere; and
> - whether the jurisdiction has mechanisms for the transparent return of confiscated property to affected populations.

The central strategic lesson is that speed should be assessed in relation to the preservation of the remedy, rather than the delivery of the final judgment. A lengthy case may still be effective where interim measures secure the assets from the outset. Conversely, even a strong final judgment may achieve little if the property has already vanished.

127. Cour de cassation, Criminal Chamber, 28 July 2021, No 20-81.553, ECLI:FR:CCASS:2021, Légifrance.
128. Transparency International France, 'Biens mal acquis: La Guinée équatoriale échoue à contester la confiscation définitive des biens de Teodorin Obiang' (8 June 2022).
129. ee section 4.6 of this Guide on litigation risks, delay and the Biens mal acquis proceedings.
130. Request Relating to the Return of Property Confiscated in Criminal Proceedings (Equatorial Guinea v France), Order on Provisional Measures of 12 September 2025, ICJ Case No 184.

Table 11 | Forum-selection factors

Forum-selection factor	Questions for the litigation team
Jurisdiction	What legal and factual connection gives the forum authority over the respondent, conduct, right or asset?
Admissibility	Are domestic remedies, time limits, duplication rules or prior procedures likely to bar the claim?
Standing and participation	Who may bring the case, and can victims, communities, CSOs or amici participate effectively?
Evidence	Where are the witnesses, financial records, public documents and beneficial ownership information?
Interim protection	Can the forum preserve assets, evidence and the safety of claimants and witnesses?
Remedies	Can the forum grant the declaration, compensation, restitution, investigation, structural order or asset recovery sought?
Enforcement	Where are the respondent and assets, and how will the final order be recognised and executed?
Time, cost and risk	Is the forum accessible, independent and sufficiently prompt, and what political, financial or security risks arise?

5.3
FORUM SELECTION AS A SACHRLit STRATEGY

Building on the corruption–human rights nexus established in Chapter 2 and the strategic litigation framework developed in Chapters 3 and 4, this section considers how SACHRLit informs the selection, sequencing and coordination of available forums.[131] SACHRLit does not create a new cause of action or a separate judicial forum. Rather, it situates the increasingly well-documented relationship between corruption and human rights within a litigation strategy capable of converting identified harm into an enforceable legal claim.

As discussed in sections 3.2 and 4.2, SACHRLit refers to litigation undertaken not only to resolve an individual dispute, but also to advance broader public-interest objectives beyond the immediate parties.[132] It overlaps with strategic, public-interest and impact litigation, while placing particular emphasis on corruption as a structural phenomenon with systemic human rights consequences. A case becomes strategic through its purpose, design and use: it may clarify the law, compel institutional action, expose hidden practices, protect affected groups, develop remedies or shift public debate.

Within this framework, forum selection forms part of the substantive litigation strategy. The relevant question is not simply which institution has jurisdiction, but which forum - or combination of forums—is most capable of advancing the immediate interests of those affected and the broader strategic objective.

131. See Chapter 2, particularly sections 2.4 and 2.5.1, on corruption typologies, the corruption–human rights relationship and the nature of State obligations.
132. See sections 3.2 and 4.2 on the meaning, objectives and design of strategic litigation and SACHRLit.

The considerations discussed in section 5.2, including jurisdiction, admissibility, standing, evidence, interim protection, remedies, enforcement, efficiency and risk, should therefore be assessed through the objectives of SACHRLit.[133]

Different forums may perform different but complementary functions. Domestic courts may provide constitutional remedies, disclosure orders or urgent measures preserving evidence and assets. Courts in foreign jurisdictions may be better placed to freeze and recover assets situated within their territories. Regional and international courts or human rights mechanisms may clarify State obligations and provide remedies where domestic institutions are unwilling or unable to act. The appropriate strategy may therefore involve using several forums sequentially or, where procedural rules permit, concurrently.

Non-judicial institutions may also support the litigation process. National Human Rights Institutions (NHRIs), anti-corruption commissions, parliamentary oversight mechanisms and ombuds institutions are not substitutes for courts. They may, however, receive complaints, investigate allegations, obtain information, make referrals, develop an evidential record and monitor compliance. Their contribution to SACHRLit should therefore be understood as part of the broader interventions beyond direct litigation discussed in Chapter 6.

Careful sequencing is particularly important. A complaint submitted to an anti-corruption commission or National Human Rights Institution may generate evidence needed for subsequent litigation. Domestic proceedings may establish facts or satisfy the requirement to exhaust local remedies before a regional petition is filed. Proceedings in a foreign jurisdiction may preserve assets while a human rights claim is determined elsewhere. Practitioners must nevertheless consider whether parallel or successive proceedings may raise questions of exhaustion, lis pendens, res judicata, conflicting findings, duplication of costs or abuse of process.

SACHRLit may also provide a route to accountability where traditional criminal enforcement is insufficient. Some harmful practices may not be clearly captured by a criminal offence, while others may be difficult to prosecute because of institutional capture, immunity, delay or evidentiary barriers. Human rights-based litigation may reframe the resulting harm as a breach of an existing and enforceable right, provided that the necessary relationship between the corrupt conduct, the State obligation and the rights violation can be established.[134] It does not treat human rights law as a substitute for criminal law, but as a complementary framework centred on harm, rights, duties and remedies.

Anti-corruption organisations already employ approaches that can support this process. Transparency International's Advocacy and Legal Advice Centres (ALACs), for example, assist people to report corruption, navigate administrative procedures, pursue complaints and prepare judicial cases.[135] Such initiatives can help identify appropriate claimants, recurring patterns of harm and cases with broader strategic potential, linking them to the questions of standing and claimant selection discussed in sections 3.3.1 and 4.4.1.[136] They can strengthen formal institutions by providing information, representation and pressure for action, but should complement rather than displace the public authorities responsible for investigation and enforcement.

The strategic value of a forum must ultimately be assessed by reference to the remedies it can provide and the likelihood that those remedies will be implemented. As discussed in Chapter 7, effective SACHRLit may require a combination of compensation, restitution, asset recovery, investigation, institutional reform,

133. See section 5.2, particularly sections 5.2.1.2 and 5.2.1.3 on enforcement, efficiency and urgency in forum selection.
134. See section 3.3.2 on linking corruption to a recognised right and section 2.5.1 on State obligations relating to civil, political, economic, social and cultural rights.
135. Transparency International, 'Advocacy and Legal Advice Centres' <https://www.transparency.org/en/alacs> accessed 16 August 2026.
136. See section 3.3.1 on litigating on behalf of victims of corruption and section 4.4.1 on the selection of appropriate plaintiffs.

publication, monitoring and guarantees of non-repetition.[137] Forum selection should therefore begin with the desired outcome and work backwards to identify the court, mechanism or combination of institutions best capable of delivering it.

5.4
LITIGATION BEFORE DOMESTIC COURTS

The principle of subsidiarity is central to forum selection in human rights litigation. States bear the primary responsibility to secure human rights and provide effective remedies within their own legal systems. Regional and international mechanisms generally exercise a supervisory or complementary role and commonly require domestic remedies to be exhausted, unless those remedies are unavailable, ineffective or unduly prolonged.[138]

Domestic courts are ordinarily better placed to determine facts, interpret national law, order public authorities to act and supervise enforcement within the State. They may also offer constitutional, administrative, civil and criminal remedies that an international body cannot grant. Domestic litigation can create a factual record, develop national precedent and demonstrate that the State has had a genuine opportunity to remedy the violation. This does not mean that domestic proceedings must be pursued regardless of the circumstances. Where courts are inaccessible, remedies are illusory, proceedings are unreasonably prolonged, or applicants face serious reprisals, a regional or international mechanism may accept that exhaustion is not required. The litigation team should document these obstacles carefully instead of asserting that the domestic system is weak.

Against this background, constitutional litigation before domestic courts may proceed along two related paths. The first relies on constitutional provisions that expressly address corruption, integrity and public accountability. The second draws upon broader constitutional guarantees—including fundamental rights, the rule of law, equality, human dignity and accountable government- to challenge corrupt conduct and its consequences. Sections 5.4.1 and 5.4.2 examine these two approaches in turn.

5.4.1
Specific Constitutional Provisions against Corruption

Constitutional design can strengthen or undermine the fight against corruption. A constitution may address corruption expressly, or indirectly through provisions on the rule of law, separation of powers, access to information, public finance, ethical leadership, independent oversight and judicial independence.[139] These provisions offer concrete entry points for SACHRLit.

Table 12 | Constitutional pathways for anti-corruption litigation

Litigation pathway	Type of constitutional provision	Strategic litigation approach
Integrity and accountability of public officials	Asset declarations, conflict-of-interest rules, ethical conduct, financial transparency and public audits.	Seek disclosure of assets, challenge conflicts of interest, enforce transparency duties or invalidate decisions made in breach of integrity requirements.

137. See Chapter 7 on remedies, enforcement, monitoring and compliance.
138. African Charter (n 4) art 56(5); Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 10 June 1998, entered into force 25 January 2004) art 6(2).
139. Transparency International, 'Anti-Corruption Clauses in Constitutions' (30 September 2013) <https:/knowledgehub.transparency.org/helpdesk/anti-corruption-clauses-in-constitutions> accessed 6 August 2026.

Protection of democratic integrity	Elections, political-party finance and safeguards against misuse of public resources.	Challenge illicit financing, state capture or the abuse of public resources as violations of political equality and democratic governance.
Primacy of the public interest	Clauses requiring public power and resources to serve the public interest.	Argue that the diversion of public resources for private enrichment breaches the constitutional duty to govern in the public interest.
Independent accountability institutions	Provisions establishing anti-corruption commissions, ombuds institutions, auditors-general or other oversight bodies.	Compel institutions to act, protect their independence or review an unreasonable failure to investigate.
Civic integrity and participation	Duties of integrity, access to information, public participation and protection of whistle-blowers.	Support broad standing, obtain information and protect citizens or CSOs who expose corruption.
Express duty to combat corruption	Clauses requiring the State to prevent, investigate or combat corruption.	Challenge governmental inaction or inadequate enforcement as a breach of an express constitutional obligation.

The doctrinal significance of these provisions is that, where anti-corruption is a constitutional purpose, that purpose deserves legal attention. Zephyr Teachout has argued in the United States context that an anti-corruption principle is embedded in the constitutional structure and should carry independent weight when difficult questions of government are decided.[140] The precise argument will differ from one constitution to another, but the broader point is useful: litigators should read constitutional structure, values and duties together rather than searching only for the word *"corruption."*

Case Study: South African Association of Personal Injury Lawyers v Heath - Constitutional Values and Anti-Corruption Institutions

The South African Constitutional Court's decision in South African Association of Personal Injury Lawyers v Heath provides an important constitutional bridge between anti-corruption, human rights and accountable government. The case is particularly useful in jurisdictions where the constitution does not expressly create a right to be free from corruption but protects broader values such as the rule of law, human dignity, equality, judicial independence and accountable government.

The case arose from the establishment of a Special Investigating Unit (SIU) under the Special Investigating Units and Special Tribunals Act. The SIU was empowered to investigate corruption, maladministration, the unlawful expenditure of public money and other conduct causing serious harm to the public interest. It could also institute civil proceedings to recover losses suffered by the State. The President appointed Justice Willem Heath, a serving High Court judge, as the head of the SIU. The immediate dispute arose after allegations concerning the handling of Road Accident Fund compensation by personal injury lawyers were referred to the Unit for investigation.[141]

140. Zephyr Teachout, 'The Anti-Corruption Principle' (2009) 94 Cornell Law Review 341, 342–345.
141. South African Association of Personal Injury Lawyers v Heath and Others [2000] ZACC 22; 2001 (1) SA 883 (CC); 2001 (1) BCLR 77 (CC), paras 1, 5–17; Special Investigating Units and Special Tribunals Act 74 of 1996. See the official Constitutional Court judgment.

The South African Association of Personal Injury Lawyers challenged both the referral and the legislative requirement that a serving judge should head the SIU. The principal constitutional question was therefore not whether corruption should be investigated, but whether the institutional arrangement created to undertake that investigation was compatible with the separation of powers and the independence of the judiciary.[142]

At the beginning of its judgment, the Constitutional Court forcefully situated corruption within South Africa's constitutional order:

"Corruption and maladministration are inconsistent with the rule of law and the fundamental values of our Constitution. They undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms. They are the antithesis of the open, accountable, democratic government required by the Constitution."[143]

The Court nevertheless emphasised that the importance of combating corruption did not permit the State to disregard constitutional safeguards. The functions performed by the head of the SIU were investigative, executive and, in some respects, partisan. They included supervising investigators, pursuing the recovery of public money and instituting litigation on behalf of the State. The investigations undertaken by the Unit were also determined through referrals made by the President. These functions were materially different from the judicial function of deciding disputes independently and impartially.[144]

The Court held that requiring a serving judge to head the SIU was incompatible with judicial office. Such an arrangement risked associating the judiciary with the executive and could undermine public confidence in the ability of courts to exercise independent control over executive power. The Court therefore declared section 3 (1) of the Act and the proclamation appointing Justice Heath constitutionally invalid.[145]

The remedy was carefully calibrated. Recognising that an immediate termination of the SIU's operations could undermine ongoing investigations and the recovery of public resources, the Court suspended the declarations of invalidity for one year. This allowed sufficient time for the legislation to be amended, a constitutionally appropriate head to be appointed and the responsibilities of the Unit to be transferred without unnecessarily disrupting its work.[146]

For SACHRLit practitioners, Heath offers four important lessons.

1. First, constitutional values may provide a legal foundation for challenging corruption even where the constitution contains no express anti-corruption right. The practitioner should identify the relevant constitutional provisions—such as dignity, equality, the rule of law, accountability or democratic government—and explain how corruption undermines them.

2. Secondly, the case should not be presented as authority that every corrupt act automatically constitutes a violation of a particular human right. Its importance lies in recognising corruption and maladministration as fundamentally inconsistent with the constitutional order.

142. Heath (n 141), paras 2, 10–11 and 20–31; Constitution of the Republic of South Africa, 1996, ss 1(c) and 165.
143. Heath (n 141), para 4.
144. Ibid, paras 29–31 and 36–48. The Court observed at para 40 that the recovery and litigation functions performed by the head of the SIU were, by their nature, partisan.
145. ibid, paras 40–48 and order, para 70.2.1–70.2.2.
146. ibid, paras 49 and 69–70. The declarations concerning section 3(1) of the Act and the proclamation appointing Justice Heath were suspended for one year.

3. Thirdly, anti-corruption objectives do not justify unconstitutional means: institutions established to fight corruption must themselves comply with judicial independence, legality and the separation of powers.

4. Finally, the suspended declaration of invalidity demonstrates how courts may design structural remedies that correct an institutional defect without unnecessarily weakening ongoing anti-corruption work.[147]

Heath therefore illustrates how SACHRLit may be used to challenge not only corruption itself, but also defects in the constitutional design of institutions established to combat it. The cases discussed immediately below build on this principle by considering how litigation may respond where the problem is institutional inaction or failure to discharge constitutional anti-corruption duties.

Case Study: Markham v Minister of Justice, Legal and Parliamentary Affairs - Compelling the Implementation of Constitutional Anti-Corruption Duties

Where South African Association of Personal Injury Lawyers v Heath concerned the unconstitutional design of an anti-corruption institution, the Zimbabwean case of Markham v Minister of Justice, Legal and Parliamentary Affairs addressed a different problem: the prolonged failure of the executive to establish an accountability mechanism expressly required by the Constitution.[148] The case demonstrates how SACHRLit may be used to challenge institutional inaction without proving the commission of a particular corrupt act.

Zimbabwe's 2013 Constitution established principles of public administration and leadership centred on transparency, accountability, integrity and responsible stewardship of public resources. Section 198 requires Parliament to enact legislation giving effect to those principles. Such legislation must include measures requiring public officers to make regular disclosures of their assets, establishing codes of conduct, specifying standards of good corporate governance for State-controlled entities and disciplining persons who contravene those standards. Section 324 further provides that all constitutional obligations must be performed "diligently and without delay".[149]

Seven years after the Constitution came into force, the legislation required by section 198 had still not been enacted. Allan Norman Markham therefore brought proceedings against the Minister of Justice, Legal and Parliamentary Affairs and the Attorney-General. He sought a declaration that the failure to formulate the legislation required by section 198(a) violated section 324 and a mandamus directing the responsible Minister to gazette the necessary Bill. The case did not require Markham to identify a particular official who had failed to disclose assets or to prove that undisclosed wealth represented the proceeds of corruption. His claim was based on the failure to implement an express constitutional safeguard intended to promote transparency and prevent corruption.[150]

The respondents did not dispute that section 198 created a constitutional obligation or that the required legislation had not been enacted. They argued, however, that the legislative process involved several institutions, including Cabinet, Parliament and the President, and that the Minister and Attorney-General should not be held individually responsible for the delay. They also raised the non-joinder of the other institutions involved in making legislation.

147. See Chapter 2 on the corruption–human rights nexus and Chapter 7 on remedies, enforcement, monitoring and compliance.
148. Markham v Minister of Justice, Legal and Parliamentary Affairs and Another HH 710-22, HC 7470/20, [2022] ZWHHC 710 (12 October 2022) (Manzunzu J). The judgment is available through ZimLII and in accessible text through SheriaHub.
149. Constitution of Zimbabwe Amendment (No 20) Act, 2013, ss 194, 198 and 324. See the Constitution published by the Parliament of Zimbabwe.
150. Markham (n 148) 1–3.

The High Court rejected these arguments. It relied on section 110(3)(c) of the Constitution, which makes Cabinet responsible for preparing, initiating and implementing national legislation. As the Minister responsible for justice, parliamentary affairs and the administration of constitutional matters, the first respondent had a direct responsibility to initiate the required legislation. The Attorney-General, as the Government's principal legal adviser, also had an important role in preparing legislative texts. The fact that other institutions would participate at later stages of the legislative process did not excuse the responsible executive officials from performing the functions falling within their authority.[151]

The Court further held that non-joinder could not be used to defeat the application. The order sought did not require the Minister personally to enact an Act of Parliament, which would have intruded upon Parliament's legislative authority. It required him to perform the preparatory and initiating function constitutionally assigned to the executive by formulating and gazetting a Bill. This distinction is important for practitioners: a mandamus should be directed at a clearly identified constitutional obligation and should require the respondent to perform only those steps that fall within that respondent's lawful authority.

On the question of delay, the Court found that seven years could not reasonably be regarded as diligent constitutional performance. Although the Government indicated that research had commenced, it provided no definite timetable for completing the process. Drawing upon the Constitutional Court's reasoning in *Chironga v Minister of Justice*, the High Court reiterated that public office-bearers who ignore constitutional obligations do so "at their own peril" and that State institutions cannot adopt a lackadaisical approach to implementing institutions and mechanisms commanded by the Constitution.[152]

Result and Subsequent Developments

The High Court declared that the Minister's failure to formulate, within a reasonable time, a Bill giving effect to section 198(a) breached section 324 of the Constitution. Markham had initially sought an order requiring the Bill to be gazetted within 45 days. The Court considered that period too short and emphasised that courts should make orders capable of realistic performance. It therefore issued a mandamus directing the Minister to gazette the Bill within three months and ordered him to pay the costs of the proceedings.[153]

Complete legislative implementation did not occur within the period contemplated by the order. A significant legislative development nevertheless followed through the Finance Act, 2024. Section 31 of that Act introduced an asset and financial interests disclosure framework for Members of Parliament. Section 32 inserted section 102A into the Money Laundering and Proceeds of Crime Act, establishing an interim framework for the disclosure of assets and interests by specified public officers, including members of the judicial service, public service, Attorney-General's Office, National Prosecuting Authority, defence forces, police, prisons service and revenue authority.[154]

> Importantly, section 102A expressly states that it applies "until such time as one or more Acts of Parliament are enacted in compliance with section 198 of the Constitution". The wording therefore acknowledges that the framework is provisional and that further legislation may still be required to give complete effect to section 198. The later approval and consideration of the Public Service Amendment Bill, 2025, which includes asset-disclosure requirements for parts of the public service, also indicates that implementation remains an evolving and fragmented process.[155]

151. ibid 3–5; Constitution of Zimbabwe, ss 110(3)(c), 114 and 198. See also Haruzivishe and Another v Minister of Justice and Others HH 76-20, cited in Markham.
152. Markham (n 148) 5; Chironga and Another v Minister of Justice, Legal and Parliamentary Affairs and Others CCZ 14-20, 16.
153. Markham (n 148) 5–6 and the final order.
154. Finance Act, 2024 (Act 2 of 2024), ss 31–32; Privileges, Immunities and Powers of Parliament Act [Chapter 2:08], s 34; Money Laundering and Proceeds of Crime Act [Chapter 9:24], s 102A.
155. Money Laundering and Proceeds of Crime Act [Chapter 9:24], s 102A(2); Public Service Amendment Bill, 2025 (HB 8, 2025). Cabinet approved the latter Bill on 17 June

The result of Markham is therefore significant but qualified. The litigation secured an authoritative declaration that prolonged executive inaction violated the Constitution and obtained a mandatory order requiring the initiation of legislation. Subsequent measures introduced asset-disclosure obligations for important categories of public officers. However, the delay and fragmented character of implementation demonstrate that a successful judgment does not, by itself, guarantee complete institutional reform.

1. First, an express constitutional duty may provide a cause of action even where no individual act of bribery, embezzlement or illicit enrichment has been proved.
2. Secondly, the claimant should identify the particular institution or office-bearer responsible for performing each stage of the constitutional obligation.
3. Thirdly, the remedy must respect the separation of powers by compelling the executive to initiate legislation without directing Parliament how it must exercise its legislative authority.
4. Finally, structural litigation requires post-judgment monitoring. Where an order is not implemented within the prescribed period, further proceedings—including applications for enforcement, declaratory relief or contempt—may be necessary.[156]

Markham thus demonstrates how SACHRLit can move beyond responding to completed acts of corruption. It can also be used preventively to compel the establishment of constitutional mechanisms intended to promote integrity, expose conflicts of interest and reduce the opportunities for corruption before individual harm occurs.

5.4.2
General Constitutional Provisions against Corruption

Not every constitution expressly mentions corruption or requires the establishment of particular anti-corruption mechanisms. Nevertheless, general constitutional provisions may provide a normative basis for challenging corruption and institutional failures that enable it. These may include the rule of law, equality before the law, human dignity, accountable government, administrative justice, access to information and the duties of public institutions to exercise their powers lawfully and in the public interest.

Practitioners should not invoke these principles only as broad constitutional aspirations. A SACHRLit claim must identify the particular constitutional right, value or duty relied upon; the corrupt conduct or institutional failure being challenged; the relationship between, that conduct and the constitutional violation; and the remedy that the court is legally competent to grant.[157] General constitutional provisions are most effective where they can be connected to an identifiable failure, such as selective investigation, political interference, discriminatory access to public services, failure to disclose information or refusal by a public institution to perform its statutory duties.

The comparative decision of the Supreme Court of India in *Vineet Narain v Union of India* demonstrates how general constitutional guarantees may be used to address institutional inertia and political interference in corruption investigations.

2025: Government of Zimbabwe, '17th Post-Cabinet Press Briefing' (17 June 2025).

156. See Chapter 7 on structural remedies, enforcement, monitoring and compliance.

157. See section 2.5.1 on State obligations relating to civil, political, economic, social and cultural rights and section 3.3.2 on linking corruption to a recognised right.

Comparative Case Study: Vineet Narain v Union of India – Continuing Mandamus and the Independence of Anti-Corruption Institutions

Although it is neither African nor binding on African courts, Vineet Narain v Union of India provides persuasive comparative authority on how general constitutional guarantees of equality and the rule of law may be used through public-interest litigation to address institutional inertia and political interference in corruption investigations.[158]

The case arose from what became known as the Jain Hawala scandal. Investigations had uncovered financial records suggesting that substantial payments had been made to senior politicians, public officials and other influential persons. Despite the seriousness of the allegations, the Central Bureau of Investigation (CBI), the Enforcement Directorate and other responsible agencies were accused of failing to undertake proper investigations. The petitioners approached the Supreme Court through public-interest proceedings under Article 32 of the Constitution of India, alleging that investigative agencies had failed to perform their statutory duties because the persons implicated occupied powerful political and administrative positions.[159]

The principal issue before the Supreme Court was not whether the persons named in the financial records were guilty of corruption. That question remained for the investigating agencies and, if charges were filed, the competent criminal courts. The constitutional question was whether judicial review could provide an effective remedy where executive-controlled agencies had failed to investigate credible allegations involving powerful individuals.

The Court considered this institutional inertia to be a threat to the rule of law. A system in which ordinary persons could be investigated while senior officials were protected because of their status was inconsistent with equality before the law. The Court explained that the need for equality in this context belonged to "the Indian polity and not merely [to] a few individuals". It held that the constitutional powers of the Court were sufficiently broad to remedy institutional defects that prevented the equal application of the law.[160]

Continuing Mandamus

The Court did not immediately dispose of the petitions by issuing a single final order. It kept the proceedings open and required the responsible agencies to provide periodic reports on the progress of their investigations. The procedure became known as a "continuing mandamus". Its purpose was to ensure that the CBI and other agencies performed their statutory responsibilities without requiring the Court to investigate the allegations itself.

The Court appointed counsel for the petitioners as *amicus curiae* and permitted relevant information to be submitted through the *amicus*. This arrangement enabled the Court to receive information and monitor institutional performance while reducing the risk that the proceedings would become an uncontrolled or politically motivated contest between multiple parties.

The Court was careful to distinguish supervision of the performance of a statutory duty from interference with the merits of an investigation. It emphasised that the judicial role was to ensure a fair, honest and expeditious investigation. The Court was not required to determine the truth of the allegations, direct investigators to reach a particular conclusion or express an opinion that could prejudice a subsequent

158. Vineet Narain v Union of India (1998) 1 SCC 226, judgment delivered on 18 December 1997. See the official Supreme Court of India judgment.
159. ibid, 226–235; Constitution of India, arts 14 and 32.
160. Vineet Narain (n 158), para 48; Constitution of India, arts 14, 32, 141, 142 and 144.

criminal trial.[161] This distinction is important for SACHRLit. A court may be asked to compel an investigative body to perform its legal duties without being asked to determine criminal responsibility. Properly framed, continuing mandamus is therefore directed towards institutional performance, legality and accountability rather than the conviction of particular persons.

The "Single Directive" and Equality Before the Law

One of the principal obstacles examined by the Court was the Government's "Single Directive". It required the CBI to obtain prior executive approval before initiating investigations against public officials holding positions at or above a specified level. The Government argued that the measure protected senior decision-makers against malicious investigations and allowed them to perform their duties without fear of harassment.

The Court rejected the Directive. It found that executive powers of supervision over the CBI could not lawfully be used to inhibit the investigation of cognisable offences. The Directive created a distinction between public officials based upon their seniority and effectively provided an additional layer of protection to those occupying the most powerful positions. The status of an alleged offender could not, by itself, justify a different investigative process. The Directive was therefore inconsistent with the equal application of the law and was quashed.[162]

For SACHRLit practitioners, this reasoning demonstrates how apparently neutral administrative arrangements may produce unconstitutional protection for powerful officials. A challenge need not be directed only at an individual failure to investigate. It may address the policy, directive, appointment process or institutional structure that permits selective enforcement.

Structural and Institutional Remedies

The Supreme Court concluded that monitoring individual investigations would not be sufficient to prevent a return to institutional inertia. It therefore issued structural directions intended to strengthen the independence, integrity and effectiveness of the principal investigative agencies.

Among other measures, the Court directed that:

- the Central Vigilance Commission should be given statutory status;
- the Commission should supervise the functioning of the CBI, particularly in corruption cases;
- the process for selecting the Central Vigilance Commissioner should involve the Prime Minister, the Home Minister and the Leader of the Opposition;
- recommendations for the appointment of the Director of the CBI should be made through a designated selection committee;
- the directors of the CBI and Enforcement Directorate should have a minimum tenure of two years;
- the premature transfer of the directors should be subject to institutional safeguards;
- the CBI should report to the Central Vigilance Commission on investigations, prosecutions and delays in obtaining authority to prosecute public officials;
- investigative and prosecution procedures should be strengthened; and
- the responsible agencies should publish information about their procedures and performance to promote transparency.[163]

The Court issued these directions under Articles 32 and 142 of the Indian Constitution. It explained that the directions would operate until they were replaced by appropriate legislation. The remedy therefore went

161. Vineet Narain (n 158), official judgment, 3, 11 and 23–24. The Court described continuing mandamus as a procedural tool developed to require the CBI and other agencies to perform their statutory duties while avoiding findings that could prejudice subsequent criminal proceedings.
162. ibid, 25–30. See also Subramanian Swamy v Director, Central Bureau of Investigation (2014) 8 SCC 682, paras 44, 59–60 and 71–72.
163. Vineet Narain (n 158), para 58.

beyond requiring the agencies to investigate the Jain Hawala allegations. It sought to correct the institutional conditions that had enabled political interference and selective inaction.

Results and Subsequent Developments

The judgment produced significant institutional and legislative consequences. Parliament subsequently enacted the Central Vigilance Commission Act 2003, giving the Commission statutory status and providing it with supervisory responsibilities relating to corruption investigations conducted by the CBI. Amendments to the Delhi Special Police Establishment Act also incorporated safeguards concerning the appointment and tenure of the CBI Director.[164]

Implementation was not without difficulty. In 2003, Parliament introduced section 6A into the Delhi Special Police Establishment Act, again requiring prior approval before the CBI could investigate certain senior public officials. In Subramanian Swamy v Director, Central Bureau of Investigation, the Supreme Court declared section 6A unconstitutional because differentiating between allegedly corrupt public officials based on their status violated Article 14. The Court held that seniority could not place a public officer beyond the ordinary process of investigation.[165]

These subsequent developments demonstrate both the potential and limitations of structural litigation. Vineet Narain produced legislative and institutional reform, but the principles established by the judgment required continued judicial and civic protection against later attempts to weaken them. Strategic litigation must therefore be understood as part of a longer process of institutional change rather than a single and final intervention.

Strategic Significance for SACHRLit

Vineet Narain is particularly relevant to SACHRLit for five reasons.

1. First, it demonstrates that general constitutional guarantees may provide a foundation for anti-corruption litigation even where the constitution contains no express right to be free from corruption. Selective failure to investigate corruption may be framed as a violation of equality before the law and the rule of law.
2. Secondly, the case shows that institutional inaction may itself be the subject of litigation. The claim did not depend on proving that each person named in the financial records was guilty. It was sufficient to demonstrate that the responsible institutions had failed to investigate credible allegations in accordance with their statutory duties.
3. Thirdly, continuing mandamus may provide an appropriate remedy where a declaration or once-off order is unlikely to overcome persistent institutional inertia. It allows a court to require progress reports, monitor compliance and maintain pressure for implementation while leaving the substance of the investigation to the responsible authorities.
4. Fourthly, the appointment of an amicus curiae demonstrates how courts may manage complex public-interest proceedings involving extensive information and significant political sensitivity. CSOs, legal practitioners and investigative journalists may support the process by collecting information and presenting it through a controlled judicial procedure.

164 Central Vigilance Commission Act 2003, particularly ss 4 and 8; Delhi Special Police Establishment Act 1946, ss 4A–4B. See also Common Cause (A Registered Society) v Union of India, Writ Petition (Civil) No 54 of 2019, judgment of 19 February 2019, paras 5–6.

165. Subramanian Swamy v Director, Central Bureau of Investigation (2014) 8 SCC 682, particularly paras 59–60 and 71–72.

5 Finally, the case illustrates how strategic litigation can move from correcting an individual failure to reforming the institutional structures that permit corruption. Appointment procedures, security of tenure, reporting requirements, transparency measures and protection from political interference may all become legitimate subjects of constitutional scrutiny.

The case must nevertheless be used with caution. It is persuasive rather than binding authority in African jurisdictions, and the remedial powers granted to the Indian Supreme Court under Articles 32 and 142 may be broader than those available to many African courts. Practitioners must therefore identify the equivalent constitutional or statutory basis for the remedy sought. Courts should also avoid determining criminal responsibility, directing investigators towards predetermined conclusions or compromising the rights of suspects to due process and a fair trial.

5.5
LITIGATION BEFORE REGIONAL AND INTERNATIONAL COURTS

Domestic systems may be unable or unwilling to address corruption effectively, particularly where corruption undermines their independence. Regional and international judicial or quasi-judicial mechanisms may then provide alternative or complementary forums. These forums may be used to present corruption-related claims grounded in regional or international human rights instruments; clarify treaty obligations through contentious proceedings or advisory opinions; obtain findings that strengthen domestic advocacy; and develop standards on prevention, investigation, remedies and institutional accountability. Their use remains subject to consent, jurisdiction, admissibility and the remedies provided by their constitutive instruments. Once a case has been selected using the framework developed in Chapter 4 and an appropriate forum identified under sections 5.2 and 5.3, the next question is whether the proposed application satisfies the procedural requirements of the relevant regional or international mechanism.[166] A strong claim on the merits cannot proceed if it fails at the admissibility stage. Practitioners should therefore examine the forum's jurisdiction and admissibility requirements before investing substantial resources in developing the substantive claim.[167]

5.5.1
Admissibility

Admissibility rules enable regional and international human rights bodies to determine whether a claim is suitable for international consideration. They give practical effect to subsidiarity and protect the integrity of the procedure. Depending on the forum, the rules may include exhaustion of domestic remedies, timely filing, victim status or standing, non-anonymity, sufficient substantiation and the absence of duplicative proceedings.

These requirements may be applied strictly. Before filing, litigators should prepare an admissibility memorandum addressing every condition under the applicable treaty, protocol and rules of procedure. Jurisdiction and admissibility must also be distinguished. As Yuval Shany explains, jurisdiction concerns the legal power of the court, while admissibility concerns whether that power should be exercised in the particular case.[168]

166. See Chapter 4 on case selection, including strategic objectives, claimant suitability, evidence, litigation risks and the remedies sought.
167. See sections 5.2 and 5.3 on selecting and sequencing appropriate domestic, foreign, regional and international forums.
168. Yuval Shany, Questions of Jurisdiction and Admissibility before International Courts (Cambridge University Press 2016) 1–9 and 47–53.

5.5.1.1
Standing

Standing, or locus standi, determines whether an individual or entity has legal capacity to bring a claim. It is particularly important in public interest litigation, where the applicant may seek to represent a wider community rather than assert a purely personal injury. The diffuse and structural harm caused by corruption can make it difficult to identify a direct victim under restrictive standing rules.

Private actors may nevertheless litigate corruption-related harm in several ways.
Depending on national law, they may:

- seek compensation or restitution;
- participate in criminal proceedings;
- challenge administrative decisions tainted by corruption;
- obtain access to information; or
- compel public authorities to investigate or enforce the law.

Article 35 UNCAC supports the availability of civil proceedings for persons and entities that have suffered damage.

Standing before African regional and subregional courts is neither uniform nor interchangeable. Some courts permit relatively broad access by individuals and CSOs, while others restrict access according to residence, victim status, subject-matter jurisdiction or State consent. Practitioners must therefore distinguish standing from jurisdiction and admissibility: an applicant may be entitled to institute proceedings but still fail because the respondent State has not accepted direct access, the claim falls outside the court's jurisdiction, domestic remedies have not been exhausted or the applicable time limit has expired. For SACHRLit, the assessment should also determine whether an organisation may act in the public interest, represent affected persons or communities, or must pursue an indirect route through another regional mechanism.

Table 13 | **Standing before African regional and subregional courts**

Forum	Strategic opening	Principal access or admissibility issue
African Court on Human and Peoples' Rights	Individuals and relevant NGOs may institute proceedings directly. The African Commission, States Parties and African intergovernmental organisations may also submit cases to the Court.[169]	Direct applications by individuals and NGOs are possible only where the respondent State has deposited a declaration under Article 34(6). An NGO must also have observer status before the African Commission. Where direct access is unavailable, a communication may instead be submitted to the African Commission, which may refer the matter to the Court.
ECOWAS Community Court of Justice	Individuals may bring applications alleging human rights violations. The Court's jurisprudence has also recognised the standing of legally constituted NGOs to pursue public-interest claims on behalf of	The application must allege a human rights violation attributable to an ECOWAS Member State. It must not be anonymous or concern the same matter already instituted before another international court. Exhaustion of

169. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, arts 5(1), 5(3) and 34(6).

	affected communities, including in SERAP v Nigeria.[170]	domestic remedies is not required.
East African Court of Justice	Article 30 of the EAC Treaty permits any natural or legal person resident in a Partner State to challenge the legality of an act, regulation, directive, decision or action of a Partner State or Community institution.[171]	The applicant must establish residence in a Partner State and frame the claim as a violation of the EAC Treaty. The Court does not possess a general human rights jurisdiction, although human rights concerns may be considered through Treaty principles such as good governance and the rule of law. The strict two-month time limit under Article 30(2) must also be observed.
SADC Tribunal	Under the 2000 Protocol, natural and legal persons could bring proceedings against a Member State after exhausting available domestic remedies or demonstrating that they were unable to proceed domestically.[172]	The Tribunal's operations were suspended in 2010, and the 2014 Protocol restricted its proposed jurisdiction to disputes between Member States. It therefore provides no reliable current route for direct SACHRLit by individuals or civil society organisations.
COMESA Court of Justice	Article 26 of the COMESA Treaty permits any person resident in a Member State to challenge the legality of an act, regulation, directive or decision of the COMESA Council or a Member State.[173]	The claim must concern the legality of conduct under the COMESA Treaty. Where the challenge concerns an act or decision of a Member State, the applicant must first exhaust domestic remedies. The Court does not provide a general procedure for freestanding human rights complaints.

Case Study: SERAP and Procedural Gateways before African Regional Bodies

Why the Proceedings Matter

The experience of the Socio-Economic Rights and Accountability Project (SERAP) demonstrates how different procedural rules can determine whether a strategic anti-corruption human rights claim is heard. SERAP pursued three separate proceedings before the African Commission, the ECOWAS Community Court of Justice and the African Court on Human and Peoples' Rights. Although the proceedings concerned different facts and legal questions, they collectively demonstrate that standing, exhaustion of domestic remedies and institutional recognition must be assessed separately in each forum.

African Commission: Exhaustion of Domestic Remedies

In SERAP v Nigeria, Communication 300/05, SERAP alleged that corruption involving officials of the Federal Ministry of Education and members of the National Assembly contributed to violations of the rights to education, equality, development and the disposal of natural resources.[174] SERAP had not

170. Supplementary Protocol A/SP.1/01/05 Amending the Protocol Relating to the ECOWAS Community Court of Justice, arts 9(4) and 10(d); Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria and Universal Basic Education Commission, Suit No ECW/CCJ/APP/08/08, ruling of 27 October 2009. See also SERAP v Nigeria and Others, Suit No ECW/CCJ/APP/08/09, Ruling No ECW/CCJ/APP/07/10, paras 52–60.

171. Treaty for the Establishment of the East African Community, arts 27 and 30.

172. Protocol on the Tribunal and Rules Thereof 2000, art 15(2). The Tribunal's operations were suspended in 2010; the 2014 Protocol limits its proposed material jurisdiction to disputes between Member States.

173. Treaty Establishing the Common Market for Eastern and Southern Africa, art 26.

174. Socio-Economic Rights and Accountability Project v Nigeria, Communication 300/05, African Commission on Human and Peoples' Rights, decision on admissibility adopted at the Fifth Extraordinary Session, 21–29 July 2008, particularly paras 47–69, available in the 25th Activity Report of the African Commission (accessed 11 August 2026).

pursued domestic proceedings. It argued that domestic remedies were unavailable or ineffective because Nigerian courts applied restrictive standing rules, socio-economic rights were generally considered non-justiciable and the number of affected students made individual litigation impracticable.

The African Commission rejected these arguments. At paragraphs 53–58, it observed that Nigerian law permitted representative and class proceedings where numerous persons shared the same interest and grievance. It therefore concluded that restrictive standing rules did not excuse SERAP from attempting to use domestic remedies. At paragraphs 62–69, the Commission further found that the domestication of the African Charter provided a possible legal foundation for pursuing socio-economic rights before Nigerian courts. The communication was accordingly declared inadmissible for failure to exhaust domestic remedies.



Strategic lesson

Broad standing before the African Commission does not remove the requirement to exhaust domestic remedies. A litigant seeking an exception must provide concrete evidence that the remedies are unavailable, ineffective or insufficient. General doubts about domestic courts will ordinarily be inadequate.

ECOWAS Court: Public-Interest Standing

SERAP subsequently pursued a separate case before the ECOWAS Community Court of Justice concerning the alleged embezzlement and mismanagement of funds allocated to Nigeria's Universal Basic Education Programme.[175] Nigeria challenged SERAP's standing, arguing that the organisation had not demonstrated that it had suffered personal injury.

The Court rejected a restrictive approach to standing. It accepted that an NGO could bring public-interest litigation to protect a public right and relied on the principle of actio popularis. Under this approach, an applicant pursuing a public-interest claim does not have to demonstrate personal injury, provided that it identifies a public right worthy of protection, alleges that the right has been violated and presents a justiciable claim.

The Court consequently permitted SERAP to proceed and confirmed that the right to education under Article 17 of the African Charter was justiciable before it. Unlike the African Commission, the ECOWAS Court did not require SERAP to exhaust domestic remedies. The subsequent merits judgment nevertheless distinguished allegations of corruption from sufficient proof of a human rights violation. This evidential and causal aspect of the judgment is discussed further in sections 5.5.2 and 5.5.3.



Strategic lesson

The ECOWAS Court provides comparatively broad standing for public-interest human rights litigation. Practitioners must nevertheless distinguish the relatively low threshold for accessing the Court from the evidence required to establish corruption, causation and a human rights violation on the merits.

175. Registered Trustees of the Socio-Economic Rights and Accountability Project v Federal Republic of Nigeria and Universal Basic Education Commission, preliminary ruling of 27 October 2009; merits judgment, Suit No ECW/CCJ/APP/12/07, Judgment No ECW/CCJ/JUD/07/10, 30 November 2010, available through the African Human Rights Case Law Analyser (accessed 11 August 2026).

African Court: Access to the Advisory Jurisdiction

SERAP also requested an advisory opinion from the African Court on the human rights implications of extreme poverty, underdevelopment and grand corruption.[176] Before considering the substantive questions, the Court had to determine whether SERAP qualified as an "African organisation recognised by the African Union" under Article 4(1) of the Court Protocol.

The Court accepted that SERAP was an African organisation. It nevertheless found that SERAP was not formally recognised by the African Union. SERAP's observer status before the African Commission did not amount to recognition by the African Union itself, and the organisation had neither observer status before the African Union nor a memorandum of understanding with it. The Court therefore concluded that it lacked personal jurisdiction and struck the request from its list without considering the substantive relationship between corruption, poverty and human rights.



Strategic lesson

Recognition by one African regional institution does not automatically provide access to another. Before filing, practitioners must identify the precise institutional status required by the applicable treaty and distinguish between observer status before the African Commission, recognition by the African Union, direct access to the African Court's contentious jurisdiction and access to its advisory jurisdiction.

Overall Strategic Lesson

These three proceedings demonstrate that procedural access cannot be assumed from the importance of the underlying claim or from previous success before another regional body. The same organisation may possess standing before one forum, face an exhaustion barrier before another and lack the institutional status required to approach a third. Effective SACHRLit therefore requires practitioners to map the standing, jurisdictional and admissibility requirements of each proposed forum before committing substantial resources to the merits of the case.

5.5.1.2

Jurisdiction

Before a court addresses the substance of a claim, it must be satisfied that it has authority to hear it. Strategic litigators should identify the complete jurisdictional basis, including the relevant treaty or statute, the consent of the State, any declaration or reservation, the identity of the respondent, the material scope, the relevant dates and the territorial connection. Jurisdiction is commonly analysed through four dimensions: *ratione temporis, ratione personae, ratione loci* and *ratione materiae.* These dimensions frequently overlap, but each should be addressed separately.

5.5.1.2.1

Jurisdiction ratione temporis

Jurisdiction ratione temporis concerns the period within which the relevant conduct must have occurred for the tribunal to decide whether an obligation was breached. It may depend on the date the treaty entered into force for the State, the date the State accepted the tribunal's jurisdiction, a limitation period or all three. It also raises difficult questions where conduct begins before the critical date but continues afterwards.[177]

176. Request for Advisory Opinion by the Socio-Economic Rights and Accountability Project, Request No 001/2013, African Court on Human and Peoples' Rights, decision of 26 May 2017, particularly paras 38–65, available from the African Court (accessed 11 August 2026). See also Prosper S Maguchu, 'When to push the envelope? Corruption, human rights and the request for an advisory opinion by SERAP to the African Court' (2020) 4 African Human Rights Yearbook 436.
177. Nick Gallus, The Temporal Jurisdiction of International Tribunals (Oxford University Press 2017) 1–12.

Strategic litigators must distinguish a continuing wrongful act from the continuing effects of a completed act. Article 14 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ILC Articles) provides that a non-continuing breach occurs when the act is performed, even if its effects continue. A continuing breach extends throughout the period in which the act remains inconsistent with the obligation.[178]

It is therefore inaccurate to describe corruption categorically as a continuing crime. A completed payment or acceptance of a bribe may be an instantaneous offence under the applicable law, even though its consequences persist. Separate conduct—such as concealment, laundering or continued possession of criminal proceeds—may constitute distinct or continuing offences. Likewise, an ongoing failure to provide healthcare, education or an effective investigation may amount to a continuing human rights violation if the relevant legal obligation and facts support that characterisation.

This distinction has practical importance. Framing cannot create temporal jurisdiction where none exists. The claimant must identify the precise post-critical-date act or omission and the obligation that remained in force. Earlier facts may provide context or evidence, but continuing harm alone does not necessarily transform a completed act into a continuing violation.

Case Study: SERAP's 2008 Petition to the International Criminal Court

In April 2008, SERAP petitioned the Prosecutor of the International Criminal Court to examine whether systemic grand corruption in Nigeria could amount to a crime against humanity within the Court's jurisdiction.[179] The petition illustrates the importance of establishing both subject-matter and temporal jurisdiction before approaching an international forum.

Corruption is not, by itself, a crime within the jurisdiction of the ICC. Article 5 of the Rome Statute limits the Court's jurisdiction to genocide, crimes against humanity, war crimes and aggression. Corrupt conduct could therefore fall within the Court's jurisdiction only if the evidence satisfied all the elements of one of these crimes, including the contextual elements of crimes against humanity under Article 7. Moreover, although SERAP requested consideration of allegations dating from 1985, Article 11 limits the Court's temporal jurisdiction to crimes committed after the Rome Statute entered into force on 1 July 2002. Earlier conduct could, at most, provide contextual evidence relevant to crimes committed within the Court's temporal jurisdiction.[180] The petition should therefore be treated as an advocacy initiative rather than a decided ICC case.

5.5.1.2.2

Jurisdiction ratione personae

Jurisdiction ratione personae concerns the persons or entities over whom the forum may exercise authority. In corruption litigation, the identity and official status of a respondent may raise questions of State consent, immunity and attribution.

178. International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries (2001) art 14 and commentary <https:/legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf> accessed 6 August 2026.
179. Innocent Anaba, 'Nigeria: SERAP Petitions International Criminal Court Over Corruption' Vanguard (Lagos, 10 April 2008). The author apologises that no official ICC record of the petition or any formal determination could be located in the Court's publicly accessible records. This account therefore relies on the contemporaneous newspaper report.
180. Rome Statute of the International Criminal Court, arts 5, 7 and 11.

Case Study: SERAP's 2008 Petition to the International Criminal Court

This case is relevant to jurisdiction ratione personae because it concerned France's exercise of criminal jurisdiction over a serving senior official of another State. It also demonstrates an important distinction: whether an official enjoys immunity from domestic criminal proceedings is separate from whether an international court has jurisdiction to determine that question.

Facts and Jurisdictional Issue

French authorities instituted criminal proceedings against Teodoro Nguema Obiang Mangue, then Vice-President of Equatorial Guinea, concerning the alleged laundering in France of proceeds derived from the misappropriation of public funds. The proceedings formed part of the *biens mal acquis* litigation concerning assets allegedly acquired in France by foreign public officials through corruption. French authorities also searched, attached and subsequently confiscated property at 42 Avenue Foch in Paris.[181]

Equatorial Guinea instituted proceedings before the International Court of Justice (ICJ), arguing that France had violated the personal immunity of its Vice-President and the inviolability of the building, which it claimed formed part of its diplomatic mission. It relied on Article 35(2) of the United Nations Convention against Transnational Organized Crime—the Palermo Convention—and the Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes.[182]

The Court's Approach to Jurisdiction

At the preliminary-objections stage, the ICJ distinguished the substantive claim of immunity from its own jurisdiction to decide that claim. Equatorial Guinea argued that France's failure to respect the Vice-President's alleged immunity violated the principles of sovereign equality and non-intervention referred to in Article 4 of the Palermo Convention. The Court rejected this jurisdictional route. It held that Article 4 did not incorporate the entire body of customary international law concerning the immunities of State officials into the Palermo Convention. Consequently, the alleged failure to respect the Vice-President's immunity did not constitute a dispute concerning the interpretation or application of that Convention.[183]

The ICJ therefore held that it lacked jurisdiction under Article 35(2) of the Palermo Convention to determine Equatorial Guinea's claims concerning the French criminal proceedings and the Vice-President's alleged immunity. Importantly, the Court did not decide whether Teodoro Nguema Obiang Mangue enjoyed immunity from French criminal jurisdiction. It decided only that the jurisdictional basis invoked by Equatorial Guinea did not empower it to answer that question.

The Court retained jurisdiction over a narrower and separate dispute under the Vienna Convention on Diplomatic Relations: whether the building at 42 Avenue Foch qualified as "premises of the mission." In its 2020 judgment on the merits, the Court held that the building had never acquired that status and that France had therefore not violated its obligations under the Vienna Convention.[184] The judgment did not determine the criminal guilt of the Vice-President or review the French corruption prosecution as such.

181. Immunities and Criminal Proceedings (Equatorial Guinea v France), Preliminary Objections, Judgment, [2018] ICJ Reports 292, paras 23–41.
182. United Nations Convention against Transnational Organized Crime, adopted 15 November 2000, 2225 UNTS 209, arts 4 and 35(2); Optional Protocol concerning the Compulsory Settlement of Disputes to the Vienna Convention on Diplomatic Relations, adopted 18 April 1961, 500 UNTS 241, art I.
183. Immunities and Criminal Proceedings (Equatorial Guinea v France), Preliminary Objections, Judgment, [2018] ICJ Reports 292, paras 91–118. See also the official ICJ case record.
184. Immunities and Criminal Proceedings (Equatorial Guinea v France), Merits, Judgment, [2020] ICJ Reports 300. The Court concluded that the building at 42 Avenue Foch had never acquired the status of "premises of the mission" within the meaning of Article 1(i) of the Vienna Convention on Diplomatic Relations.

Strategic Significance for SACHRLit

The case demonstrates that personal immunity, domestic criminal jurisdiction and the jurisdiction of an international court are separate legal questions. An official may raise immunity ratione personae as a procedural bar to proceedings before a domestic court, but the existence of that dispute does not itself confer jurisdiction on the ICJ. The State challenging the proceedings must still identify a valid jurisdictional basis that covers the precise subject matter of the dispute. For SACHRLit practitioners, the case provides four important lessons:

1. The legal status and official position of the person concerned must be assessed before proceedings are initiated;
2. Immunity should not be confused with an international court's jurisdiction to determine whether that immunity exists;
3. A compromissory clause cannot be extended to cover customary international law claims that fall outside the treaty containing it;
4. An international court may sever related claims and decide only the narrower dispute falling within its jurisdiction.

The case therefore reinforces the need to examine jurisdiction ratione personae together with jurisdiction ratione materiae. Even where the facts arise from the same alleged corruption scheme, the selected forum may have jurisdiction over only a limited part of the dispute.

Case Study: Domestic Constitutional Immunity and Foreign Criminal Jurisdiction - The James Ibori Proceedings

The James Ibori proceedings provide a useful illustration of the territorial and temporal limits of domestic constitutional immunity. The case is relevant to jurisdiction ratione personae because it demonstrates that immunity conferred upon a public official under the constitution of one State does not necessarily prevent another State from exercising criminal jurisdiction over that official.

Facts and Jurisdictional Issue

James Ibori served as Governor of Delta State, Nigeria, from 1999 to 2007. During his tenure, he was protected by section 308 of the Constitution of the Federal Republic of Nigeria. That provision prevents civil or criminal proceedings from being instituted or continued against a serving President, Vice-President, Governor or Deputy Governor. It also protects such office-holders from arrest, imprisonment and compulsory court process while they remain in office. Nigerian courts have interpreted this protection as providing extensive personal immunity during the office-holder's tenure.[185]

The immunity was nevertheless temporary and operated within Nigeria's constitutional and judicial system. It did not extinguish criminal responsibility, prevent investigations from being conducted or bind the courts of another State. Moreover, once Ibori ceased to be Governor in 2007, the constitutional protection under section 308 no longer applied to him.

185. Constitution of the Federal Republic of Nigeria 1999, s 308(1) and (3); Global Excellence Communication Ltd and Others v Duke (2007) 16 NWLR (Pt 1059) 22, in which the Supreme Court confirmed the extensive protection afforded to a serving governor under section 308. See the NigeriaLII judgment. R v Gohil and Preko [2018] EWCA Crim 140, paras 5–6;

British authorities investigated allegations that Ibori had defrauded Delta State and transferred the proceeds through companies, bank accounts, professional intermediaries and property transactions connected to the United Kingdom. He was arrested in Dubai and extradited to the United Kingdom in 2011. In February 2012, he pleaded guilty before the Crown Court at Southwark to ten offences, including money laundering, conspiracy to defraud and conspiracy to make false instruments. He was sentenced to a total of thirteen years' imprisonment.[186]

The United Kingdom's Exercise of Jurisdiction

The United Kingdom did not exercise jurisdiction solely because the alleged predicate corruption had occurred in Nigeria. Its jurisdiction was founded upon the use of the United Kingdom's financial system and professional services to receive, conceal and transfer the proceeds, together with acts of money laundering, fraud and conspiracy committed within or sufficiently connected to its territory. The - Court of Appeal subsequently observed that the offending involved sophisticated arrangements and numerous independent acts undertaken outside Nigeria, including transactions designed to conceal the proceeds of fraud committed against Delta State and its citizens.[187]

Section 308 of the Nigerian Constitution could not deprive the British courts of jurisdiction conferred by United Kingdom law. The protection was a domestic constitutional immunity attached to specified Nigerian offices; it did not constitute an internationally recognised immunity binding upon foreign courts. A Nigerian state governor does not, by virtue of that office alone, occupy the same position under customary international law as a Head of State, Head of Government or Minister for Foreign Affairs ordinarily entitled to personal immunity before foreign criminal courts.[188] In any event, Ibori was no longer a serving governor when he was extradited and prosecuted in the United Kingdom.

The reported British judgments do not indicate that a claim based upon section 308 was formally raised and rejected as an immunity defence. The case should therefore not be presented as judicial authority expressly determining the extraterritorial scope of section 308. Its significance lies in demonstrating that the domestic protection did not prevent foreign investigation, extradition and prosecution where an independent jurisdictional basis existed.

Outcome and Asset Recovery

The proceedings extended beyond Ibori's conviction and imprisonment. In July 2023, the Crown Court at Southwark made a confiscation order requiring him to pay £101,514,315.21, following findings concerning the benefit obtained from his offending and the assets available to satisfy the order.[189] The United Kingdom had previously returned £4.2 million recovered from Ibori's associates to Nigeria under an agreement requiring the funds to be used for identified public infrastructure projects.[190] The case therefore also illustrates how criminal jurisdiction may support confiscation, international enforcement and the eventual return of assets to the country and communities harmed by corruption.

Strategic Significance for SACHRLit

The Ibori proceedings demonstrate that domestic constitutional immunity should not automatically be treated as an insurmountable obstacle in transnational corruption cases. Practitioners should determine:

- the source and precise scope of the claimed immunity;

186. R v Ibori and Others [2018] EWCA Crim 2291, paras 7 and 12. The former judgment records that Ibori was alleged to have defrauded Delta State and intended to conceal the proceeds through offshore accounts and trust funds. See the official Court of Appeal judgment.
187. R v Ibori [2013] EWCA Crim 815, paras 1–5 and 56. The Court dismissed Ibori's appeal against his thirteen-year sentence.
188. Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium), Judgment, [2002] ICJ Reports 3, paras 51–55, concerning the personal immunity from foreign criminal jurisdiction ordinarily enjoyed by certain high-ranking State office-holders.
189. Crown Prosecution Service, 'Former Governor of Nigeria's Delta State has been ordered to pay over £100 million and his solicitor over £28 million' (24 July 2023). The confiscation order was made in the amount of £101,514,315.21, with an eight-year default sentence in the event of non-payment.
190. UK Government, 'UK to send millions of pounds recovered from corrupt officials back to Nigeria' (9 March 2021).

- whether it applies only before the courts of the official's own State;
- whether it is limited to the period during which the official remains in office;
- whether customary international law separately provides immunity before foreign courts;
- whether the foreign forum has a sufficient territorial, personal or transactional connection to the alleged offences; and
- whether assets, financial transactions, intermediaries or evidence are located within that forum.

The case also demonstrates the importance of distinguishing immunity from impunity. Although domestic proceedings may be temporarily restricted, the laundering of corruption proceeds through another jurisdiction may create an independent basis for investigation and prosecution. For SACHRLit practitioners, forum selection should therefore include an examination of every jurisdiction through which the proceeds, professional intermediaries or financial transactions passed. A foreign forum may be able to prosecute money laundering, preserve assets and enforce confiscation orders even where prosecution of the underlying corruption is delayed or obstructed in the official's home State.

5.5.1.2.3

Jurisdiction ratione loci

Jurisdiction ratione loci concerns the territorial connection between the forum and the conduct, respondent, victim or asset. Corruption and financial crime frequently involve cross-border transfers, offshore companies, foreign banks, electronic communications and assets acquired in several jurisdictions. Litigators should identify where each constituent element occurred and where the harmful effects were experienced.

Article 42 UNCAC requires jurisdiction over Convention offences committed within a State's territory or on vessels and aircraft registered by it, and permits additional bases including nationality and, in certain circumstances, the presence of an alleged offender who is not extradited.[191] The extent to which these bases can be used depends on domestic implementing legislation.

The United States has asserted jurisdiction in foreign bribery and financial crime cases where legally sufficient connections exist through issuers, domestic concerns, persons acting within United States territory, interstate commerce, victims, banks or transactions. The use of correspondent accounts or dollar-denominated transactions is not a universal jurisdictional formula; the precise statutory elements and facts must be proved.[192]

Extraterritorial jurisdiction offers opportunities but also presents risks. It may open a forum with stronger institutions and effective recovery powers, yet it may also produce conflicts of jurisdiction, duplication, sovereignty concerns and politically selective enforcement. The litigation team should assess coordination, double-jeopardy protections, information sharing and the interests of the affected population.

Magnitsky-style laws illustrate a related but distinct mechanism.[193] The United States, Canada, the United Kingdom and other jurisdictions have adopted targeted sanctions frameworks capable of imposing asset

191. UNCAC (n 11) art 42.

192. United States Department of Justice and Securities and Exchange Commission, A Resource Guide to the U.S. Foreign Corrupt Practices Act (2nd edn, July 2020) 9–12 and 32–36.

193. Official Magnitsky-related designation lists—including the United States Global Magnitsky Sanctions and Specially Designated Nationals List, the UK Sanctions List and Canada's Consolidated Autonomous Sanctions List—may provide a useful preliminary source for identifying persons and conduct that could warrant further investigation as potential corruption and human rights cases. Caution is nevertheless required. A designation represents an executive or administrative decision under the applicable sanctions regime, rather than a judicial finding of corruption or human rights responsibility. Designations may also be influenced by foreign-policy, national-security and diplomatic considerations, employ evidential standards different from those applied by courts, and subsequently be varied or revoked. Practitioners should therefore verify the underlying allegations independently and assess the associated legal, political, diplomatic, reputational and security risks before relying upon a designation in SACHRLit.

freezes or travel restrictions on foreign persons connected to serious corruption or human rights abuses.[194] These are executive or administrative measures rather than criminal convictions. They may support accountability and asset preservation, but ordinarily do not provide victims with a judicial finding of liability or compensation.

5.5.1.2.4

Jurisdiction ratione materiae

Jurisdiction *ratione materiae* is the authority of a court or tribunal to determine a dispute because of its subject matter. Even compelling evidence of corruption cannot confer jurisdiction where the claim falls outside the forum's constitutive mandate. Strategic litigators must therefore characterise the alleged conduct in legal terms that the selected forum is empowered to determine.

Many regional and international human rights bodies have no express jurisdiction over corruption as an independent offence. A litigant must therefore identify a recognised right or treaty obligation within the forum's mandate and demonstrate how the alleged corruption caused, contributed to or facilitated its violation. This jurisdictional requirement must be distinguished from the merits: establishing that a court has authority to hear a human rights claim does not prove that the alleged corruption caused the violation.

Case Study: Characterising Corruption as a Human Rights Claim – SERAP v Nigeria and UBEC

Facts and Jurisdictional Issue

The Socio-Economic Rights and Accountability Project (SERAP) brought proceedings against the Federal Republic of Nigeria and the Universal Basic Education Commission (UBEC) following investigations into the mismanagement and diversion of funds allocated for basic education in ten Nigerian states. An investigation by the Independent Corrupt Practices and Other Related Offences Commission reportedly identified hundreds of millions of naira that had been misappropriated and further substantial amounts that remained to be recovered.[195]

SERAP argued that the diversion of education funds and the failure of public authorities to address the resulting corruption contributed to the denial of access to quality primary education. Its application invoked Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples' Rights, including the right to education, the right of peoples to their wealth and natural resources, and the right to economic and social development.[196]

Nigeria objected to the Court's jurisdiction, arguing, among other matters, that education was a directive principle under the Nigerian Constitution and was not judicially enforceable. The jurisdictional question was therefore whether the application concerned corruption, over which the ECOWAS Court had no independent criminal jurisdiction, or an alleged violation of rights protected under the African Charter, over which it possessed human rights jurisdiction.

The Court's Approach to Subject-Matter Jurisdiction

The Court held that Article 9(4) of the 2005 Supplementary Protocol conferred jurisdiction over human rights violations occurring in ECOWAS Member States. Although SERAP relied factually upon Nigerian

194. Global Magnitsky Human Rights Accountability Act, 22 USC § 10101 et seq; Global Human Rights Sanctions Regulations 2020, SI 2020/680; Global Anti-Corruption Sanctions Regulations 2021, SI 2021/488.
195. The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria and Universal Basic Education Commission, Suit No ECW/CCJ/APP/12/07, Judgment No ECW/CCJ/JUD/07/10 (ECOWAS Court, 30 November 2010) paras 3–7. See the judgment.
196. SERAP v Nigeria and UBEC (n 195) paras 2 and 8–9.

education legislation and reports concerning corruption, the legal basis of its claim was the alleged violation of rights protected by the African Charter. The Court therefore held that the domestic constitutional status of education could not exclude its jurisdiction over the right guaranteed by Article 17 of the Charter.[197]

The Court's subject-matter jurisdiction arose because SERAP had translated the alleged corruption into a human rights claim within the Court's mandate. It was not exercising jurisdiction to determine corruption as an independent criminal offence or to prosecute the officials allegedly responsible for diverting the funds.

Decision on the Merits

Having accepted subject-matter jurisdiction, the Court applied a more demanding standard on the merits. It recognised that stealing, embezzling or mismanaging education funds would negatively affect the education sector. It nevertheless held that corruption did not, "without more," establish a denial of the right to education. A clear linkage had to be demonstrated between the corrupt conduct and the alleged rights violation.[198]

The Court also treated the anti-corruption investigation report as prima facie, rather than conclusive, evidence. It declined to accept a general allegation of systemic, high-level corruption without sufficient proof and refused to order the arrest or prosecution of the implicated officials. Such criminal enforcement decisions fell outside the Court's human rights function and within the responsibility of the competent domestic authorities.[199]

Nevertheless, the Court confirmed that every Nigerian child was entitled to free and compulsory basic education. It further required the Federal Government to take the necessary steps to provide funds covering the shortfall caused by the diversion, so that the education programme could continue and affected children would not be denied their right to education.[200]

Strategic Significance for SACHRLit

The case demonstrates that jurisdiction ratione materiae depends upon the legal characterisation of the claim rather than the seriousness of the underlying allegations. Corruption may supply the factual background, but the cause of action before a human rights court must ordinarily be framed through a recognised right and a corresponding State obligation.

For SACHRLit practitioners, the case provides four principal lessons:

1. Identify the specific human right falling within the selected forum's mandate;
2. Distinguish the corrupt conduct from the legally enforceable human rights violation;
3. Establish a clear evidential link between the conduct, the State's failure and the resulting harm;
4. Seek remedies that the selected forum has authority to grant.

197. SERAP v Federal Republic of Nigeria and Universal Basic Education Commission, Ruling No ECW/CCJ/RUL/08/09 (ECOWAS Court, 27 October 2009); Supplementary Protocol A/SP.1/01/05 Amending Protocol A/P.1/7/91 Relating to the Community Court of Justice, art 9(4).
198. SERAP v Nigeria and UBEC (n 195) paras 18–20. See also section 3.3.2 of this Guide on the causal and evidential connection between corruption and a recognised human right.
199. SERAP v Nigeria and UBEC (n 195) paras 21–24 and 27–30.
200. SERAP v Nigeria and UBEC (n 195) paras 26, 28 and 31. See also Prosper Simbarashe Maguchu, 'When to Push the Envelope? Corruption, Human Rights and the Request for an Advisory Opinion by SERAP to the African Court' (2020) 4 African Human Rights Yearbook 436, 445–447.

The case should therefore be read together with section 3.3.2 on linking corruption to a recognised right and Chapter 7 on the selection of remedies. It shows that a carefully characterised claim may cross the jurisdictional threshold while still failing, wholly or partly, if the necessary causal and evidential connection is not established.

Case Study: Good Governance and the Rule of Law as Treaty-Based Entry Points – Godfrey Magezi v Attorney General of Uganda

Facts and Jurisdictional Issue

In 2005, the Government of Uganda entered into a memorandum of understanding with Quality Chemical Industries Ltd (QCIL) concerning the establishment of a factory to manufacture medicines for the treatment of HIV/AIDS and malaria. The arrangement included a government commitment to purchase medicines from the company. Godfrey Magezi subsequently reported alleged irregularities in the procurement arrangements to the Inspector General of Government (IGG), claiming that medicines had been supplied at inflated prices and that the Government had suffered a loss of approximately US$17.8 million.[201]

Following an investigation, the IGG issued a report in December 2011 recommending, among other measures, that the Government consider recovering the alleged excessive payments. After receiving legal advice from the Attorney General, however, the IGG concluded in July 2013 that amendments made to the procurement arrangements adequately implemented the recommendations and that the matter should be closed. Magezi, who also expected to receive a statutory whistle-blower reward calculated as a percentage of any money recovered, challenged this decision before the East African Court of Justice (EACJ).[202]

Magezi argued that the failure to recover the alleged loss, together with the Attorney General's legal advice and the IGG's decision to close the matter, violated the principles of good governance, accountability, transparency and the rule of law contained in Articles 6(d), 7(2) and 8(1)(c) of the Treaty for the Establishment of the East African Community.[203]

The jurisdictional question was whether the reference genuinely concerned the interpretation and application of the EAC Treaty or was, in substance, an attempt to have the EACJ review a domestic procurement arrangement, determine the existence of a financial loss and overturn decisions made by Ugandan institutions.

The Court's Approach to Subject-Matter Jurisdiction

The First Instance Division distinguished between the existence of jurisdiction and the merits of Magezi's allegations. Under Article 27(1) of the EAC Treaty, the Court has jurisdiction over the interpretation and application of the Treaty. Article 30(1) permits a person resident in a Partner State to challenge the legality of an act, decision or action of that State on the ground that it infringes the Treaty.[204]

201. Godfrey Magezi v Attorney General of the Republic of Uganda, Reference No 5 of 2013, First Instance Division, Judgment of 14 May 2015, paras 1–10. See the First Instance judgment

202. Magezi v Attorney General of Uganda (n 201) paras 10–12. The alleged whistle-blower reward was dependent upon the recovery of money and did not, by itself, establish an entitlement to payment.

203. Treaty for the Establishment of the East African Community, arts 6(d), 7(2) and 8(1)(c). Article 6(d) identifies good governance, democracy, the rule of law, accountability, transparency and the recognition and protection of human and peoples' rights as fundamental principles of the Community.

204. EAC Treaty, arts 27(1) and 30(1).

Magezi was a resident of an EAC Partner State and challenged identified actions of Ugandan publicauthorities as being inconsistent with specific Treaty provisions. The Court therefore held that the reference satisfied the jurisdictional requirements and was properly before it. Whether the allegations were ultimately well founded was immaterial at the jurisdictional stage. The inclusion of matters drawn from the IGG's domestic investigation could not prevent the Court from exercising jurisdiction over the separate allegation that Uganda had violated the Treaty.[205]



This finding demonstrates that the governance principles contained in a regional integration treaty may provide a jurisdictional entry point for corruption-related litigation. The EACJ did not need express jurisdiction over corruption as a separate offence. Its jurisdiction arose from the claim that the conduct of Ugandan public institutions infringed binding Treaty principles of good governance, accountability, transparency and the rule of law.

Decision on the Merits

The acceptance of subject-matter jurisdiction did not mean that the Court could determine every issue arising from the alleged procurement irregularities. On the merits, the Court found that the Attorney General had acted within his constitutional mandate by providing legal advice and that the advice did not bind or improperly interfere with the institutional independence of the IGG. It also found that the IGG had acted within the discretion conferred by Ugandan law when reconsidering the recommendations and closing the matter. The applicant had therefore failed to establish a violation of Articles 6(d), 7(2) or 8(1)(c) of the Treaty.[206]

Crucially, the Court held that it had no jurisdiction to determine whether Uganda had actually suffered the alleged loss of US$17.8 million. That question concerned the underlying procurement transactions and could not be transformed into an independent Treaty dispute by referring to the principles of good governance and the rule of law. Since no Treaty violation had been established, the Court also declined to order the Government to recover the alleged loss. The reference was dismissed with costs.[207]

Magezi appealed, but the Appellate Division dismissed the appeal in May 2016. It confirmed that although the EACJ may examine domestic law when interpreting and applying the Treaty, its jurisdiction remains limited to determining whether a Partner State has complied with its Treaty obligations. The Appellate Division upheld the finding that the Attorney General and the IGG had acted within their respective legal mandates and had not violated the Treaty.[208]

Strategic Significance for SACHRLit

The case demonstrates both the potential and the limits of relying upon regional integration treaties in SACHRLit. Provisions relating to good governance, accountability, transparency and the rule of law may bring corruption-related conduct within the subject-matter jurisdiction of a regional court, even where that court has no express mandate to prosecute corruption or determine a freestanding human rights claim.

205. Magezi v Attorney General of Uganda (n 201) paras 23–37. The Court expressly observed at paragraph 30 that whether the reference was well or ill founded was immaterial when determining whether it possessed jurisdiction.
206. Magezi v Attorney General of Uganda (n 201) paras 62–88.
207. -Magezi v Attorney General of Uganda (n 201) paras 89–109. At paragraph 94, the Court held that it had no jurisdiction to determine whether the alleged financial loss had occurred.
208. Godfrey Magezi v Attorney General of the Republic of Uganda, Appeal No 3 of 2015, Appellate Division, Judgment of 26 May 2016. See the official EACJ case record and appellate summary.

Practitioners must nevertheless identify a concrete act or omission of a Partner State and explain precisely how it infringes the relevant Treaty provision. General allegations of corruption, financial loss or administrative impropriety will not be sufficient. Nor will the invocation of good governance convert the regional court into a domestic procurement tribunal, criminal court or asset-recovery forum. The case provides four principal lessons:

1. Regional integration treaties may provide an alternative entry point where corruption implicates binding principles of good governance, accountability, transparency or the rule of law;
2. Jurisdiction to interpret a treaty does not necessarily include jurisdiction to determine whether a procurement loss occurred or to adjudicate the liability of a private company;
3. Compliance with domestic law remains relevant when determining whether the conduct of State institutions violated regional rule-of-law obligations;
4. The relief sought must correspond to the selected court's jurisdiction and institutional mandate.

Unlike SERAP v Nigeria and UBEC, the applicant did not frame the alleged corruption as causing the violation of a specific human right. He relied primarily upon the governance principles of the EAC Treaty. The two cases therefore demonstrate complementary jurisdictional pathways: corruption may be connected either to a recognised human right or to an enforceable regional obligation concerning good governance and the rule of law. In both situations, however, crossing the jurisdictional threshold does not relieve the applicant of the obligation to prove the alleged breach on the merits.

5.5.2
Merits

The merits concern the substantive legal and factual arguments of the case. Although procedural rules differ between domestic, regional and international forums, the core merits questions frequently remain the same: what corrupt conduct occurred, what right or obligation was engaged, who was harmed, how is the conduct connected to that harm, and what remedy follows?[209]

A human rights analysis places emphasis on the harm corruption causes to individuals and communities.[210] The discussion below is illustrative rather than exhaustive. Litigators should apply its reasoning to other forms of corruption while avoiding the assumption that every corrupt act automatically constitutes a human rights violation.[211]

5.5.2.1
Cause of Action

A cause of action is the combination of material facts and law that entitles a claimant to judicial relief. It must be identified before litigation begins. The claim may arise from an act or omission, a failure to perform a public duty, a breach of a constitutional or treaty obligation, an unlawful administrative decision, a civil wrong or a statutory offence. Although the terminology and doctrinal formulation differ across legal traditions, the common-law concept of a cause of action provides a useful framework for identifying the factual basis upon which a claim may succeed. In Cooke v Gill, the Court described the cause of action as

209. For the conceptual linking exercise and initial case assessment, see sections 2.5.2 and 3.3.2–3.3.3 above.
210. See sections 2.4.1 and 4.3.1 on the harm-based approach to the corruption–human rights nexus and the distinction between individual, collective and systemic harm.
211. See section 3.3.2 on linking corruption to a recognised right and section 5.5.1.2.4 on jurisdiction ratione materiae, particularly the discussion of SERAP v Nigeria and UBEC.

the essential facts that a claimant must prove to obtain judgment.[212]

In corruption-related litigation, identifying the correct cause of action is critical. Human rights law may provide an important avenue, but it is not enough to plead corruption in general terms. The claimant must connect the conduct to a recognised legal duty and an available remedy. Two important entry points are treaty-based obligations and non-discrimination.

5.5.2.1.1

Treaty Obligations

States must comply with obligations imposed by treaties binding upon them. State responsibility may arise where an act or omission is attributable to the State and is inconsistent with an international obligation in force. The litigation team should identify whether the relevant duty derives from domestic law, a regional or international treaty, customary international law or general principles.

Human rights duties are commonly described through the obligations to respect, protect and fulfil. Within the African human rights system, the African Commission has also recognised the obligation to promote human rights. In *SERAC and CESR v Nigeria,* discussed more fully in section 2.5.1, the Commission explained that the African Charter imposes four levels of obligation upon States: to respect, protect, promote and fulfil protected rights.[213]

Corruption may engage these duties in different ways. A public official who demands a bribe for treatment may directly obstruct access to healthcare. A State that fails to regulate corrupt private providers may breach a protective duty. The diversion of public resources and a failure to investigate credible evidence may be relevant to duties to fulfil rights and provide an effective remedy. The precise claim depends on the wording of the right, the applicable standard of review and the evidence.

5.5.2.1.2

Non-Discrimination

Non-discrimination provides another important entry point. Article 2(1) ICCPR and article 2(2) ICESCR prohibit discrimination in the enjoyment of the rights protected by the respective Covenants. Their operation is ancillary: the alleged discrimination must relate to a right within the particular treaty. Other instruments and national constitutions may provide freestanding equality guarantees.[214]

Corruption may produce direct discrimination where a person is treated less favourably because of a protected characteristic. A neutral rule or practice may also create indirect discrimination where it disproportionately disadvantages a protected group. Discrimination may arise through an omission where a State fails to take reasonable measures against a discriminatory barrier.

The category of "other status" may be relevant to economic and social disadvantage. In General Comment No 20, the Committee on Economic, Social and Cultural Rights stated that economic and social situation may be a prohibited ground and that individuals must not be arbitrarily treated because they belong to a particular economic or social group.[215] Anne Peters has argued that inability or unwillingness to pay a bribe may, in an appropriate case, be analysed through "other status." This is a persuasive possibility,

212. Cooke v Gill (1873) LR 8 CP 107, 116; Bryan A Garner (ed), Black's Law Dictionary (12th edn, Thomson Reuters 2024) 'cause of action'.
213. Social and Economic Rights Action Centre (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria, Communication 155/96, African Commission on Human and Peoples' Rights, decision adopted 27 October 2001, paras 44–48. See section 2.5.1 of this Guide for the fuller discussion of the case and the nature of State obligations.
214. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 2(1) and 26; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 2(2); African Charter (n 4) arts 2 and 3.
215. Committee on Economic, Social and Cultural Rights, General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights, UN Doc E/C.12/GC/20 (2 July 2009) paras 10 and 35.

not an automatic rule: the claimant must still establish differential treatment, the protected ground,[216] disadvantage and the absence of an objective and reasonable justification.

The Tanzanian Takrima case illustrates the strategic use of equality and political-participation rights. In Legal and Human Rights Centre and Others v Attorney General, CSOs challenged statutory provisions permitting specified forms of "traditional hospitality" during election campaigns. The High Court held that the provisions discriminated between wealthy and less wealthy candidates and undermined free and fair elections, contrary to articles 13 and 21 of the Constitution.[217] The case provides three practical lessons:

1. **Constitutional violation:** a challenge to corruption may be grounded in enforceable equality and participation rights.
2. **Economic discrimination:** rules permitting material inducements may favour wealthier candidates and distort equal political competition.
3. **Corruption risk:** legalised "hospitality" may create a loophole for vote-buying and undermine electoral integrity.

Non-discrimination can therefore provide an effective cause of action where corruption excludes, disadvantages or marginalises individuals or groups. Petty bribery may also produce discriminatory barriers where access to a public service depends on ability or willingness to pay. The legal argument must, however, be supported by evidence of differential impact rather than assumption.

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5.5.3
Causal Link

Establishing how corruption caused or contributed to a human rights violation is one of the principal challenges in SACHRLit. Regional and international courts have not developed a single comprehensive test for corruption-related causation. The claimant must therefore present evidence connecting the corrupt conduct, the resulting institutional or material harm, and the denial of a recognised right.

Case Study: Establishing Causation in SERAP v Nigeria

In *SERAP v Nigeria,* SERAP relied on an investigative report concerning the alleged diversion and mismanagement of funds allocated to basic education. It argued that the loss of these resources contributed to the denial of the right to education guaranteed under article 17 of the African Charter. The ECOWAS Court accepted that embezzlement, theft or mismanagement of education funds would reduce the resources available and negatively affect the provision of education. However, it held that evidence of corruption did not, without more, establish a violation of the right to education. There had to be a "clear linkage" between the particular acts of corruption and the alleged denial of the right.[218]

216. Anne Peters, 'Corruption as a Violation of International Human Rights' (2018) 29(4) European Journal of International Law 1251, 1266–1268 <https://doi.org/10.1093/ejil/chy070>.
217. Legal and Human Rights Centre and Others v Attorney General (Miscellaneous Civil Cause No 77 of 2005) (High Court of Tanzania, 24 April 2006).
218. The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria and Universal Basic Education Commission, Suit No ECW/CCJ/APP/12/07, Judgment No ECW/CCJ/JUD/07/10 (ECOWAS Community Court of Justice, 30 November 2010), paras 18–21. The judgment is available through IHRDA's African Human Rights Case Law database. See also sections 3.3.2 and 5.5.1.2.4 of this Guide for the related discussions of linking corruption to a recognised right and jurisdiction ratione materiae.

The Court considered the investigative report to constitute prima facie rather than conclusive evidence and rejected the broader allegation that it demonstrated systemic high-level corruption in the education sector. Such a serious allegation required strict proof. The judgment therefore demonstrates that litigators cannot rely only on general evidence of corruption or assume that the diversion of resources automatically proves a human rights violation.

Nevertheless, the Court recognised the practical relationship between the diversion of resources and the enjoyment of the right to education. It observed that the resulting financial shortfall could disable the education sector from carrying out its mandate. The Court therefore directed the Government to provide sufficient funds to cover the shortfall while steps were taken to recover the diverted funds or prosecute those responsible, so that affected communities would not be denied access to education.[219]
For SACHRLit, the case demonstrates the importance of tracing the complete causal chain:

- the allocation of public resources;
- the specific corrupt conduct;
- the amount or resources lost;
- the resulting institutional shortfall;
- its effect on the availability, accessibility or quality of the relevant service; and
- the individuals or communities whose rights were consequently affected.[220]

Table 14 | **Forms of causal connection**

Type of connection	Explanation	Litigation focus
Direct violation	Corruption is used as the means of violating a right, or an official act or omission immediately blocks access to it.	Identify the official decision, demand or omission and the right directly denied, for example, detention after refusal to pay a bribe.
Indirect violation	Corruption is a necessary or substantial factor in a chain of events that leads to the violation.	Prove each link in the chain, for example, diversion of procurement funds, absence of essential medicines and resulting denial of healthcare.
Remote connection	Corruption is one of several background factors contributing to the harm.	Explain its material contribution, but assess whether the connection is too remote to support legal responsibility or a particular remedy.

The categories are analytical tools rather than substitutes for the applicable legal test. The litigation team should ask:

- Would the violation probably have occurred without the corrupt act or omission?
- Was the human rights harm a natural, foreseeable or sufficiently proximate consequence?
- Did intervening acts break or weaken the chain of causation?
- What evidence distinguishes causation from general correlation?

219. SERAP v Nigeria, para 28 and the Court's conclusions at para 31.
220. See Chapter 2 on the corruption–human rights nexus and section 3.3.2 on the evidential relationship between corrupt conduct, State responsibility and the violation of a recognised right.

- Does the applicable forum require proof of individual damage, collective harm, risk or a failure to take reasonable measures?

Corrupt acts or omissions should be treated as a legal cause of violations such as denial of food, housing, education or healthcare only where the harm is sufficiently foreseeable and not too remote from the responsible conduct. This discipline strengthens rather than weakens the human rights argument.

5.5.4
Attribution

Attribution concerns whether the conduct complained of is legally treated as an act of the State. It is distinct from breach and causation. A claimant must ordinarily establish both that the conduct is attributable to the State and that it breached an applicable international obligation.

Under article 4 of the ILC Articles, the conduct of any State organ is attributable to the State, whatever function or position the organ holds. Article 7 further provides that the conduct of a State organ or an entity empowered to exercise governmental authority remains attributable when it acts in that capacity, even if it exceeds its authority or contravenes instructions.[221] The commentary expressly gives the example of a State official accepting a bribe to perform an act or conclude a transaction.

The central question is whether the official acted in an official capacity or under colour of public authority, rather than as a purely private person. Human rights jurisprudence likewise recognises that a State may be responsible for agents acting ultra vires or contrary to instructions.[222] This is especially relevant where an official uses public powers such as arrest, licensing, procurement, taxation or allocation of services – to extract a bribe or confer an unlawful benefit. State responsibility may also arise from omissions. Legislative, executive or judicial organs may fail to prevent, regulate, investigate or remedy corruption despite a binding duty to do so. In such cases, the attributable conduct is the State's own failure, rather than the private corrupt act.

World Duty Free Company Ltd v Republic of Kenya requires careful treatment. The investor admitted paying a bribe to President Daniel arap Moi to obtain an investment agreement. Applying English and Kenyan law, the ICSID tribunal declined to attribute the President's knowledge of the bribe to Kenya as the "otherwise innocent principal" and held that the agreement was unenforceable becausee bribery violated international public policy.[223]

The award addressed the enforceability of a corruption-tainted contract and the claimant's attempt to benefit from its own illegality. It should not be read as a general rule that bribery by a State official can never be attributed to the State under international law. Article 7 of the ILC Articles points in the opposite direction where an official acts in an official capacity, even while exceeding authority. The relevant distinctions include whether the issue concerns attribution of internationally wrongful conduct, attribution of knowledge, or the validity and enforceability of a contract under domestic law.

For SACHRLit, the practical approach is therefore:

- identify the official, institution or private actor involved;
- establish the legal source and nature of the power exercised;
- determine whether the person acted in an official capacity or under colour of office;

221. International Law Commission (n 178) arts 4 and 7 and commentary to art 7 para 8.
222. European Court of Human Rights, Guide on Article 1 of the European Convention on Human Rights: Obligation to Respect Human Rights (updated 28 February 2026) para 19 <https://ks.echr.coe.int/documents/d/echr-ks/guide-on-article-1-obligation-to-respect-human-rights> accessed 6 August 2026.
223. World Duty Free Company Ltd v Republic of Kenya ICSID Case No ARB/00/7, Award (4 October 2006) paras 157–188 <https://www.italaw.com/sites/default/files/case-documents/italaw15005.pdf> accessed 6 August 2026.

- plead any State omission to prevent, investigate or remedy the conduct separately;
- distinguish attribution of conduct from attribution of knowledge and contractual authority; and
- connect the attributable conduct to the specific human rights obligation breached.

5.6
CONCLUSION

Forum selection is not a preliminary administrative choice; it is an integral part of the legal theory of a SACHRLit case. The forum determines who may bring the claim, the legal language in which corruption must be framed, the evidence that can be obtained, the remedies available and whether the eventual order can be enforced.

The strategic litigator should begin by mapping the domestic, foreign, regional and international options, while treating domestic litigation as the ordinary starting point under the principle of subsidiarity. The team must then test standing, jurisdiction, admissibility, urgency, evidence, remedies and enforcement before filing. Parallel proceedings should be coordinated carefully and duplication rules respected. On the merits, corruption must be linked to a recognised cause of action, an applicable human rights obligation, a sufficiently clear causal connection and conduct attributable to the State. The strongest cases do not rely on the moral force of corruption allegations alone. They combine precise legal framing with credible evidence, the participation of affected people and remedies capable of addressing both the immediate violation and the institutional conditions that allowed it to occur.

06 STRATEGIC INTERVENTIONS BEYOND DIRECT LITIGATION

6.1 INTRODUCTION

SACHRLit is not limited to instituting direct court proceedings. Complementary mechanisms and procedural interventions can advance accountability, influence jurisprudence, shape public discourse and strengthen protection of human rights affected by corruption. They are particularly important where direct litigation is unavailable, where broader legal clarification is required or where an organisation seeks to contribute to proceedings brought by others.

These mechanisms include requests for advisory opinions, *amicus curiae* briefs and participation in criminal proceedings as victims or civil parties. They operate differently across jurisdictions and must be used within the powers and procedures of the relevant forum.

6.2 REQUESTS FOR ADVISORY OPINIONS

Regional and international courts may issue advisory opinions clarifying the content and scope of State obligations under international law.

Advisory proceedings have acquired renewed prominence through climate litigation and may similarly provide a mechanism for developing the relationship between corruption and human rights.[224] Unlike contentious proceedings, they do not ordinarily determine liability between opposing parties. Their principal value lies in clarifying unsettled legal questions and guiding States, courts, institutions and civil society.

Subject to the relevant constitutive instrument, an authorised entity may ask a court to clarify whether, and under what conditions, corrupt acts or omissions engage international human rights obligations. An opinion might address State duties relating to transparency, accountability, participation, access to information, protection of human rights defenders, access to justice or remedies for communities affected by corruption. It might also clarify the circumstances in which the diversion of public resources, institutional capture or failure to investigate corruption contributes to a violation of a recognised right.

Case Study: SERAP's Request for an Advisory Opinion before the African Court

Background

In 2013, the SERAP submitted a request for an advisory opinion to the African Court on Human and Peoples' Rights.[225] Although this proceeding is referred to briefly in section 5.5.1.1 in relation to standing, it is examined here to demonstrate both the potential and procedural limitations of advisory proceedings.

224. See, for example, International Tribunal for the Law of the Sea, Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Case No 31, Advisory Opinion of 21 May 2024; Inter-American Court of Human Rights, Climate Emergency and Human Rights, Advisory Opinion OC-32/25 of 29 May 2025; and International Court of Justice, Obligations of States in Respect of Climate Change, Advisory Opinion of 23 July 2025.
225. Request for Advisory Opinion by the Socio-Economic Rights and Accountability Project (SERAP), Request No 001/2013, African Court on Human and Peoples' Rights, Advisory Opinion of 26 May 2017. The decision is available through IHRDA's African Human Rights Case Law database.

Questions presented

SERAP asked the Court to determine, first, whether it qualified as an "African organisation recognised by the African Union" for the purposes of article 4(1) of the Protocol establishing the African Court. Second, it asked whether extreme, systemic and widespread poverty violated provisions of the African Charter, particularly the prohibition of discrimination under article 2.[226] The substantive question was relevant to the corruption–human rights nexus because SERAP sought to connect poverty and underdevelopment to acts and omissions that deprive people of the resources, opportunities and services necessary to enjoy their rights.

The Court's decision

The Court did not determine the substantive relationship between poverty and human rights. It first considered whether SERAP was an entity authorised to request an advisory opinion under article 4(1) of the Protocol. SERAP argued that it was registered in Nigeria and enjoyed observer status before the African Commission on Human and Peoples' Rights. It maintained that recognition by the Commission, an organ of the African Union, should satisfy the requirement of recognition by the African Union.

The Court rejected this argument. It distinguished observer status before the African Commission from recognition by the African Union itself, holding that the two forms of recognition were not interchangeable. An NGO was required to have observer status before the African Union or a memorandum of understanding with it. Because SERAP had neither, the Court unanimously declared that it lacked personal jurisdiction to give the requested opinion.[227] The substantive human rights question was therefore left unanswered.

Significance for SACHRLit

The case demonstrates that a powerful substantive question cannot overcome a failure to satisfy the jurisdictional requirements governing advisory proceedings. Before preparing a request, practitioners must identify an entity expressly authorised to approach the relevant court. Where a civil society organisation lacks the required status, it may consider working with an eligible African Union organ, Member State or recognised African organisation capable of submitting the request.

The proceeding also illustrates the broader participatory value of advisory opinions. The African Court circulated SERAP's request to African Union Member States and the African Commission and permitted the Centre for Human Rights at the University of Pretoria to participate as *amicus curiae*.[228] Advisory proceedings may therefore create space for States, institutions, experts and CSOs to contribute evidence and legal argument to the progressive development of the law.

The legal effect of an advisory opinion varies between systems. Although it is generally not binding in the same manner as a contentious judgment between parties, it may carry substantial legal, interpretive and political authority. In SACHRLit, an advisory opinion may clarify State obligations, influence domestic and regional jurisprudence, support future litigation and provide a common legal framework for advocacy.

Before pursuing this mechanism, the litigation team should therefore confirm:

- who is authorised to request the advisory opinion;
- whether the requesting entity possesses the necessary recognition or institutional status;
- whether the proposed question falls within the court's subject-matter jurisdiction;
- whether the question is sufficiently precise to receive a useful legal answer;
- whether the matter overlaps with pending contentious proceedings; and

226. SERAP Request for Advisory Opinion, paras 3–12.

227. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, art 4(1); SERAP Request for Advisory Opinion, paras 38–41 and 59–65. See also section 5.5.1.1 of this Guide on standing and access to African regional courts.

228. SERAP Request for Advisory Opinion, paras 13–19.

- how civil society, experts and affected communities may participate in the proceedings.

The central lesson from the SERAP request is that advisory proceedings must be designed from the jurisdictional requirements backwards. The team should first secure an eligible requesting entity and only then develop the substantive question, supporting evidence and wider advocacy strategy.

6.3
AMICUS CURIAE BRIEFS

An amicus curiae intervention can contribute to the development of legal reasoning, strengthen protection of rights and support lasting precedent. In corruption and human rights cases, an amicus may clarify complex legal questions, provide comparative law or specialist evidence, identify wider public-interest implications and situate an individual dispute within a pattern of systemic harm.

An organisation considering an intervention should examine the court's rules, obtain permission where required and ask whether its submission adds something not already provided by the parties. Poorly prepared, duplicative or late interventions can delay proceedings, burden the court or further politicise a sensitive case. The amicus should remain independent, avoid introducing disputed facts through improper means and respect the claimant's litigation strategy.

An effective brief ordinarily:
- identifies the amicus, its expertise and any relevant interest or funding;
- states the precise question on which assistance is offered;
- provides accurate and properly sourced legal or factual material;
- explains comparative or international standards relevant to the court;
- avoids repeating the parties' submissions; and
- proposes a clear legal approach within the court's jurisdiction.

Coalition briefs may demonstrate broad concern and combine expertise, but the signatories should agree on governance, drafting authority, confidentiality and the final position before filing.

Case Study: SERAP's Request for an Advisory Opinion before the African Court

In *Request for Advisory Opinion by the Socio-Economic Rights and Accountability Project (SERAP)*, SERAP asked the African Court to determine whether it was an "African organisation recognised by the African Union" and whether extreme, systemic and widespread poverty violated provisions of the African Charter.[229] The proceedings raised an important preliminary question: whether an NGO with observer status before the African Commission was entitled to request an advisory opinion under article 4(1) of the Court's Protocol. The Centre for Human Rights at the University of Pretoria sought and obtained leave to participate as *amicus curiae*.[230] Its submissions focused on the Court's personal jurisdiction. Drawing on the ordinary meaning, context and purpose of article 4(1), as well as the *travaux préparatoires* of the Protocol, the Centre argued that the expression "any African organisation" included NGOs and that SERAP's observer status before the African Commission constituted recognition by the African Union.[231]

229. Request for Advisory Opinion by the Socio-Economic Rights and Accountability Project (SERAP), Request No 001/2013, Advisory Opinion (African Court on Human and Peoples' Rights, 26 May 2017) paras 1–5.
230. ibid para 17; Centre for Human Rights, 'Litigation' (University of Pretoria) <https://www.chr.up.ac.za/units/about-liu/30-units/litigation-and-implementation/2778-litigation> accessed 16 August 2026.
231. SERAP Advisory Opinion (n 229) paras 33–36.

The Court accepted an important part of the Centre's reasoning. It held that "African organisation" was not limited to intergovernmental organisations, that the provision was deliberately formulated to give African organisations wider access to the Court, and that SERAP qualified as an African organisation.[232] The Court nevertheless rejected the argument that observer status before the African Commission amounted to recognition by the African Union. Because SERAP had neither observer status before the Union itself nor a memorandum of understanding with it, the Court concluded that it lacked personal jurisdiction and did not consider the substantive question concerning systemic poverty.[233]

The case demonstrates that an amicus intervention may influence the development of precedent even where the initiating organisation ultimately fails on jurisdiction. For SACHRLit, it also shows how a civil society organisation that is not a party may contribute specialist treaty interpretation, identify the implications of restrictive standing rules and argue for broader access to regional justice. The intervention further illustrates the importance of addressing jurisdictional gateway questions at an early stage: an amicus can strengthen the legal reasoning before the Court, but it cannot cure a party's failure to satisfy an express jurisdictional requirement.

Lessons for SACHRLit

1. Civil society organisations without standing to initiate proceedings may still influence regional jurisprudence through *amicus curiae* interventions.
2. An effective brief should address preliminary questions of jurisdiction and standing where these may prevent consideration of the substantive human rights claim.
3. Treaty text, context, purpose and *travaux préparatoires* can support a principled argument for wider access to justice.
4. A partially accepted argument may still establish useful precedent, even where the Court ultimately declines jurisdiction.
5. Organisations contemplating an advisory request should verify that they possess the precise form of recognition required by the Court's constitutive instrument.

6.4
CRIMINAL LITIGATION AND VICTIM PARTICIPATION

Criminal proceedings are generally conducted by public prosecutors on behalf of the State. In some jurisdictions, however, victims and qualified CSOs may participate as civil parties, submit evidence, challenge procedural decisions and seek compensation or other forms of reparation. Such participation may strengthen accountability where corruption is transnational, politically sensitive or likely to be resolved without adequate consideration of the harm caused to affected communities.

The precise rights of a civil party depend on the applicable criminal procedure. Participation may range from supporting an existing prosecution to initiating a judicial investigation following prosecutorial inaction. Practitioners must therefore establish the proposed participant's standing, the nature of the harm alleged and the procedural rights attached to civil-party status.[234]

232. ibid paras 43–51.
233. ibid paras 52–65.
234. See sections 3.3.1 and 4.4.1 of this Guide on litigating on behalf of victims and selecting appropriate plaintiffs, and section 5.5.1.1 on standing.

Case Study: Civil-Party Participation in the Bolloré–Togo Criminal Proceedings

Background

The Bolloré–Togo proceedings concern allegations of transnational corruption connected to the concession for the management of the Port of Lomé. French investigating authorities allege that, during the 2009–2010 period, Havas, a communications company then controlled by the Bolloré Group, provided electoral consultancy services to Faure Gnassingbé during his campaign for re-election as President of Togo at prices substantially below their market value. It is alleged that, in return, the Bolloré Group received favourable terms relating to the management of the Port of Lomé through Bolloré Africa Logistics.

A preliminary investigation began in France in 2013 following information received by the French financial intelligence unit, TRACFIN. Vincent Bolloré and two executives, Gilles Alix and Jean-Philippe Dorent, were placed under formal investigation in 2018 in relation to alleged corruption of a foreign public official and complicity in breach of trust and related offences.

Negotiated resolution and the demand for a public trial

In February 2021, Bolloré SE and Financière de l'Odet SE concluded a *convention judiciaire d'intérêt public* (CJIP) with the French National Financial Prosecutor's Office. Under the agreement, Bolloré SE agreed to pay a public-interest fine of €12 million. The Paris Judicial Court validated the agreement, bringing the criminal proceedings against the companies to an end without a criminal conviction.[235]

A separate negotiated procedure, known as *comparution sur reconnaissance préalable de culpabilité* (CRPC), was proposed in relation to Vincent Bolloré and two other executives. The Paris Judicial Court declined to approve that procedure, considering that the seriousness of the alleged conduct required examination through a public criminal trial. The distinction between the corporate settlement and the proceedings against the individuals demonstrates that a negotiated resolution involving a legal person does not necessarily determine or terminate the criminal responsibility of its directors or officers.

Participation by CSOs

In 2022, Sherpa and Anticor joined the proceedings as civil parties. Their participation sought to preserve public scrutiny of the alleged transnational corruption and to advance recognition of the Togolese citizens whose democratic and economic interests may have been affected.[236] The organisations have argued that corruption surrounding an election and the allocation of an important public concession may cause harm extending beyond the immediate financial transaction. It may affect political participation, the integrity of of public decision-making, the management of national resources and public confidence in democratic institutions. The case therefore demonstrates how civil-party participation may bring the wider social and human rights consequences of corruption into criminal proceedings. Civil parties may also challenge an approach that treats a financial penalty paid by a company as sufficient resolution of conduct allegedly affecting an entire population.

Current status

In November 2023, the French Court of Cassation rejected applications seeking the annulment of the proceedings, allowing the judicial investigation to continue. In March 2026, Vincent Bolloré, Gilles Alix and Jean-Philippe Dorent were referred to the Paris Criminal Court to stand trial in connection with the alleged corruption surrounding the Lomé port concession. The trial is scheduled for December 2026.

235. Convention judiciaire d'intérêt public entre le procureur de la République financier près le Tribunal judiciaire de Paris et les sociétés Bolloré SE et Financière de l'Odet SE, validated by the Paris Judicial Court on 26 February 2021. The agreement and validation order are available through the French Ministry of Economy and Finance.
236. Sherpa and Anticor joined the proceedings as civil parties on 15 February 2022. See Sherpa, 'Bolloré Case in Togo'.

At the time of writing,[237] the proceedings remain pending and no final determination of the individual defendants' criminal responsibility has been made. They remain entitled to the presumption of innocence. The allegations and the civil parties' characterisation of the resulting harm should not therefore be presented as established judicial findings.

Significance for SACHRLit

The Bolloré–Togo proceedings demonstrate that participation in criminal litigation can form part of SACHRLit even where civil society did not initiate the original investigation. By joining as civil parties, anti-corruption organisations may introduce evidence and argument concerning the collective consequences of corruption, maintain pressure for a public hearing and seek recognition of the interests of affected communities.

The case also raises an important question about negotiated justice. Settlements may provide speed, financial penalties and corporate compliance measures. They may, however, limit public examination of the facts, provide insufficient recognition of victims and offer limited opportunities for affected communities to seek reparation. Civil-party participation may help ensure that efficiency is balanced against transparency, individual accountability and the public interest in understanding how the alleged corruption occurred.

The case should nevertheless be distinguished from proceedings in which the affected individuals or communities participate directly. Sherpa and Anticor are anti-corruption organisations seeking to advance collective interests; they are not themselves the Togolese citizens allegedly affected by the conduct. Practitioners must therefore consider whether civil society participation adequately represents the affected population or whether direct participation, testimony or representation of victims is also required.

For SACHRLit, the litigation team should examine whether the applicable criminal procedure permits civil parties to:

- join an existing investigation or prosecution;
- submit evidence and request investigative measures;
- challenge decisions to discontinue, restrict or settle proceedings;
- present the broader human rights consequences of the alleged corruption;
- seek compensation or other forms of reparation; and
- participate in the design and monitoring of any remedy benefiting affected communities.

Comparative Note: The Obiang Proceedings

The Teodorin Obiang Biens mal acquis proceedings provide a complementary and more developed example. In 2010, the French Court of Cassation recognised the admissibility of Transparency International France's civil-party complaint, enabling an investigation into assets allegedly derived from the misappropriation of foreign public funds.

The proceedings ultimately resulted in a final criminal conviction and the confiscation of assets in France in 2021.[238] While the Bolloré–Togo proceedings illustrate ongoing civil-party participation and the demand for a public trial, the Obiang case demonstrates the potential longer-term outcomes of such participation, including conviction and confiscation.

237. Sherpa and Anticor, 'Bolloré Case in Togo: Vincent Bolloré and Two Former Executives Referred to the Criminal Court on Corruption Charges' (19 March 2026). See also Cour de cassation, Chambre criminelle, decision of 29 November 2023, rejecting the applications to annul the proceedings.

238. Cour de cassation, Chambre criminelle, 9 November 2010, No 09-88.272; Tribunal correctionnel de Paris, judgment of 27 October 2017; Cour d'appel de Paris, judgment of 10 February 2020; and Cour de cassation, Chambre criminelle, judgment of 28 July 2021. See also sections 4.6 and 5.5.1.2.2 of this Guide concerning the duration of the proceedings and questions of immunity.

6.5
COALITION BUILDING

Coalition building is a vital strategy in public-interest litigation. A coalition brings individuals, organisations and other stakeholders together around a shared goal. In SACHRLit, it may connect lawyers, affected communities, investigators, journalists, researchers, human rights organisations, anti-corruption bodies, professional associations and technical experts.

6.5.1
Unity in Diversity

One of the greatest strengths of a coalition is its ability to unite diverse perspectives and interests. A corruption case may affect groups differently and require knowledge of public finance, procurement, human rights, criminal law, asset recovery, security and communications. Pooling that expertise can produce a more complete and well-informed strategy while ensuring that affected communities are not excluded from decisions made in their name.

Unity does not require every member to take the same role or assume the same risk. Some organisations may appear in court; others may conduct research, support claimants, monitor implementation or communicate with the public. Roles should be agreed in writing, with clear decision-making and accountability arrangements.

6.5.2
Amplifying Advocacy and Resources

Individual efforts may not attract the attention or support required to produce change. A diverse coalition can reach a wider audience, mobilise volunteers, attract responsible media coverage and place sustained pressure on decision-makers. It can also pool financial and non-financial resources, reducing the burden on individual members.

The coalition should identify which resources are genuinely available over the likely life of the case. Short-term enthusiasm cannot substitute for long-term funding, legal representation, claimant support and implementation work.

6.5.3
Building Consensus and Managing Difference

Coalition members must find common ground while acknowledging different mandates, constituencies and risk tolerances. This requires dialogue, compromise and an agreed process for resolving disputes. The coalition should decide:

- the shared objective and non-negotiable principles;
- who gives instructions to the legal team;
- how the claimant's interests will be protected;
- who owns and may publish research and evidence;
- how confidential information will be handled;
- who speaks publicly and approves communications;
- how funding and expenditure will be governed; and
- how members may join, withdraw or respond to disagreement.

These arrangements protect the case from avoidable disputes and help prevent the most powerful coalition members from dominating affected communities.

6.5.4
Long-Term Networks and Implementation

Coalitions can outlast a particular case. The relationships developed through litigation may support future initiatives, faster responses to emerging problems and long-term monitoring of reforms. This is especially important because a judgment is rarely self-executing. Implementation may require continued advocacy, budget monitoring, parliamentary engagement, community education and further proceedings.[239]

Coalition building therefore stands as a powerful tool in strategic anti-corruption litigation. Through unity, collaboration and a commitment to common goals, it can amplify legal action and enable citizens to participate in shaping their collective future. Its legitimacy, however, depends on transparent governance and meaningful leadership by the people most affected.

6.6
CONCLUSION

Strategic interventions beyond direct litigation enable SACHRLit to influence legal development, support existing proceedings and strengthen accountability where initiating a new case is unavailable, unnecessary or strategically unwise.

Advisory opinions may clarify the law; amicus curiae briefs can provide specialist assistance; victim and civil-party participation can connect criminal proceedings to the interests of affected people; and coalitions can sustain expertise, advocacy and implementation.

These mechanisms nevertheless require the same procedural discipline as direct litigation. Practitioners must confirm standing and institutional competence, comply with the rules of the forum, protect the independence of proceedings and ensure that every intervention adds genuine legal or evidentiary value. Coalition arrangements should also define authority, confidentiality, resources, communications and responsibility for long-term follow-up.

Above all, complementary interventions must remain anchored in the dignity, agency and safety of affected people. SACHRLit is strategic when it uses the most appropriate combination of direct proceedings and supporting mechanisms to secure meaningful remedies, strengthen accountability and contribute to lasting change.

239. For judicial supervision and broader monitoring of implementation, see section 7.10 below.

07 REMEDIES

7.1 INTRODUCTION

The recovery of losses caused by corruption can be approached through two related frameworks: the anti-corruption approach and the human rights-based approach. The anti-corruption approach traditionally concentrates on investigating and punishing offenders, confiscating criminal proceeds and returning stolen assets. The human rights-based approach begins with the people and communities harmed by corruption and asks what remedy is required to restore their rights, dignity and agency.[240]

The UNCAC, the only legally binding universal anti-corruption instrument, brings these approaches closer together. Chapter V treats asset recovery as a fundamental principle of the Convention and provides a framework for tracing, freezing, confiscating and returning the proceeds of corruption. UNCAC also requires States Parties to enable persons and entities damaged by corruption to initiate proceedings for compensation, and it recognises a role for victims in criminal proceedings.[241]

The challenge is that the impact of corruption is often difficult to measure. Corruption is usually hidden, its effects may be dispersed across a large population, and the people affected may not know that a corrupt decision caused the denial of a service or opportunity. The state may be treated as the immediate victim because public money was stolen, while individuals and communities who lost healthcare, education, housing, water or other public services remain legally invisible. Identifying the victim, the harm and the causal connection is therefore central to the design of an effective remedy.[242]

Reparation is a well-established legal principle. The classic formulation of *restitutio in integrum* seeks, so far as possible, to wipe out the consequences of the wrongful act and restore the situation that would probably have existed had the act not occurred.[243] In human rights law, full and effective reparation may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. These measures may be combined because financial payment alone will rarely repair every consequence of corruption.[244]

Terms such as recovery, restitution, reparation, compensation, remedy and redress are sometimes used inter-changeably, but they do not always have the same legal meaning. This chapter treats reparation as the wider idea and examines the principal remedies that may be pursued through SACHRLit. The purpose is to show how human rights defenders and anti-corruption practitioners can work together to move beyond a judgment that declares a wrong and towards remedies that repair harm, recover public resources and prevent repetition.

240. For identifying victims and analysing individual and collective harm, see sections 3.3.1 and 4.4.1 above.
241. United Nations Convention against Corruption, adopted 31 October 2003, entered into force 14 December 2005, 2349 UNTS 41, arts 31–35 and ch V, especially arts 51–57 <https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf> accessed 6 August 2026.
242. United Nations Office on Drugs and Crime, 'Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation', Note by the Secretariat, UN Doc CAC/COSP/WG.2/2016/4 (4 August 2016) <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf> accessed 6 August 2026. 243. Factory at Chorzów (Germany v Poland) (Merits) PCIJ Rep Series A No 17 (1928) 47.
244. UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res 60/147 (16 December 2005), principles 18–23 <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> accessed 6 August 2026.

Table 15 | Principal forms of reparation and remedy

Form of remedy	Principal purpose	Typical result
Compensation	Address financially assessable harm.	Payment for material or moral harm proved by the claimant.
Restitution	Restore the position that existed before the violation.	Return of property, restoration of access, reinstatement or reversal of an unlawful decision.
Asset recovery	Deprive wrongdoers of corrupt proceeds and return assets.	Tracing, freezing, confiscation, return and accountable use of assets.
Satisfaction	Recognise the wrong and restore dignity and truth.	Public acknowledgment, apology, disclosure or correction of the public record.
Investigation and prosecution-related orders	Address unlawful inaction and impunity.	Lawful investigation, reconsideration or review by the competent authority.
Structural remedies	Correct legal or institutional causes.	Legislative or institutional reform, safeguards and guarantees of non-repetition.
Monitoring and compliance	Secure implementation.	Reporting, deadlines, independent oversight or continuing judicial supervision.

7.2
COMPENSATION

Compensation is a monetary remedy intended to address loss or injury suffered by a victim. It must be distinguished from a fine, which punishes unlawful conduct; confiscation, which deprives a wrongdoer of criminal proceeds; and restitution or asset return, which seeks to restore property to its lawful owner. Compensation focuses on the harm suffered by the victim. In SACHRLit, it may be awarded to individuals, communities, organisations or States, depending on the nature of the harm and the applicable rules on standing, causation and remedies.

Although corruption is frequently described as not being a victimless crime, victims remain largely absent from corruption investigations, enforcement proceedings and settlements.[245] This absence can produce an enforcement model in which substantial penalties are imposed and assets are confiscated without identifying the people or communities that suffered the consequences of the corrupt conduct. Recognising and compensating victims places the human impact of corruption at the centre of the proceedings, helps ensure that monetary consequences correspond to the harm caused and gives affected communities a meaningful stake in the enforcement process.

Identifying the victim is nevertheless difficult. A bribe may directly cause an individual to be denied medical treatment, education, employment, housing or access to justice. In other cases, inflated

245. Sue Hawley, 'Compensation for Victims of Corruption: Why Does It Matter?' (UNCAC Coalition, 3 December 2016).

procurement contracts, diverted public funds or corrupt concessions may affect an entire community. The resulting harm may include unavailable or defective public services, environmental degradation, displacement, increased user costs, lost livelihoods or the weakening of public institutions. Such harm is often dispersed, cumulative and experienced differently by particular groups. It may therefore be difficult to satisfy legal rules requiring proof of direct, individual and quantifiable loss.

The UNODC has consequently cautioned against an unduly narrow conception of victims and damage. Its study on identifying victims of corruption recognises that victims may include natural persons, legal persons and States, and that some jurisdictions also recognise collective or social harm, including damage to the environment, public institutions and collective rights relating to health, education, safety and good governance.[246] The litigation team should therefore identify both the immediate victim and the wider group affected by the corrupt conduct. The fact that harm is shared among many people should not, by itself, make it legally invisible.

The UNCAC provides several entry points for a victim-centred approach. Article 32(5) requires States Parties, subject to domestic law, to enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings. Article 35 requires States Parties to ensure that persons or entities that have suffered damage as a result of corruption have the right to initiate proceedings against those responsible to obtain compensation. Article 53(b) requires measures permitting domestic courts to order persons who have committed corruption offences to compensate another State Party harmed by those offences. Article 57(3)(c) further requires priority consideration, in the circumstances covered by that provision, to returning confiscated property to a requesting State Party, returning it to prior legitimate owners or compensating victims.[247] These provisions should be read together: participation enables victims to present the nature of their harm, while compensation and asset-return mechanisms provide possible means of addressing it.

Compensation may cover pecuniary and non-pecuniary harm where permitted by the applicable law. Relevant losses may include:

- money or property taken from the victim;
- the additional cost of obtaining a public service that should have been provided lawfully;
- loss of income, employment, livelihood or economic opportunity;
- the cost of repairing defective infrastructure or environmental damage;
- physical or mental harm resulting from corruption-related conduct;
- lost educational, health or developmental opportunities;
- moral damage, including humiliation, stigma or damage to reputation; and
- reasonable legal, expert and other costs incurred in establishing the claim.

Where corruption produces a human rights violation, the United Nations Basic Principles on Remedy and Reparation may provide useful guidance by identifying compensation for economically assessable damage, including physical or mental harm, lost opportunities, material damage, loss of earnings, moral damage and the costs of legal, medical and other assistance.[248] Their application must, however, reflect the particular legal basis of the claim and the nature and gravity of the violation.

The amount claimed should ordinarily be related to the victim's loss rather than to the amount of the bribe, the value of the property confiscated or the profit obtained by the wrongdoer. Research on bribery-

246. United Nations Office on Drugs and Crime, Good Practices in Identifying the Victims of Corruption and Parameters for Their Compensation, UN Doc CAC/COSP/WG.2/2016/CRP.1 (August 2016), particularly paras 12 and 15–16.
247. United Nations Convention against Corruption, arts 32(5), 35, 53(b) and 57(3)(c). See also UNODC, Good Practices in Identifying the Victims of Corruption and Parameters for Their Compensation, UN Doc CAC/COSP/WG.2/2016/CRP.1.
248. United Nations General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res 60/147 (16 December 2005), annex, paras 19–20.

related compensation in the United States demonstrates that the benefit obtained by the defendant may sometimes provide a reasonable proxy for the victim's loss, but it should not replace evidence of the actual harm simply because quantification is difficult.[249] The litigation team should therefore develop a clear evidential account showing the position of the victim before the corrupt conduct, the harm that followed and, as far as possible, the monetary value of that harm. This analysis should be linked to the questions of standing and causation discussed in sections 5.5.1.1 and 5.5.3. Collective harm may require collective forms of compensation. Depending on the applicable legal system, these may include representative or class proceedings, compensation funds, court-supervised trusts or programmes directed towards restoring the service or community affected. Any collective arrangement should identify the intended beneficiaries, include their meaningful participation and establish transparent rules for administration, distribution, monitoring and reporting. Payment to a State should not automatically be treated as compensation to its population, particularly where State institutions or senior officials participated in the corruption or where there is a material risk that the funds will be diverted again.

When seeking compensation, practitioners should therefore:

- identify individual, institutional and collective victims at the earliest possible stage;
- consult affected people about the harm suffered and the form of compensation sought;
- examine whether victims may participate in criminal proceedings or bring a separate civil, constitutional or human rights claim;
- collect financial, statistical, medical, environmental and testimonial evidence capable of demonstrating and valuing the harm;
- distinguish compensation from fines, confiscation and the return of stolen assets;
- seek safeguards preventing compensation from being returned through institutions implicated in the corruption;
- avoid double recovery while ensuring that each distinct form of harm is addressed; and
- request transparent arrangements for distributing, administering and monitoring any collective award.

Compensation is a means of recognising victims as rights-holders and of connecting corruption proceedings to the people and communities whose rights, resources and opportunities were impaired. As international and regional bodies have increasingly recognised, corruption enforcement will remain incomplete if it penalises offenders or recovers assets without identifying the victims, hearing their concerns and addressing the harm they suffered.[250]

Comparative Case Study from the Inter-American Human Rights System: Ramirez Escobar and Others v Guatemala

The Inter-American Court of Human Rights' judgment in *Ramírez Escobar and Others v Guatemala* illustrates how strategic human rights litigation may secure compensation for persons harmed within a corrupt institutional system. The case concerned the unlawful separation of two children from their biological family and their subsequent international adoption. The Court found that international adoptions in Guatemala had operated within a framework of corruption in which public and private actors exploited institutional weaknesses and the vulnerability of families living in poverty for financial gain. Although corruption was not adjudicated as an autonomous violation, it formed an important part of the context in which the rights of the children and their biological parents were violated.

249. Richard E Messick, Legal Remedies for Victims of Bribery under U.S. Law (Open Society Foundations 2016) 8–9. Messick distinguishes victim compensation, which addresses the victim's loss, from disgorgement of the benefit obtained by the wrongdoer.

250. Inter-American Juridical Committee, Final Report: Participation of Victims in Criminal Prosecutions of Acts of Corruption, OAS Doc CJI/doc 740/24 (2024), particularly 3–5 and 9–10; see also section 6.4 on criminal litigation and victim participation.

The Court awarded each of the three victims USD 5,000 for material damage arising from expenses incurred in seeking justice and attempting to reunite the family. It also awarded each victim USD 100,000 for non-material damage arising from the arbitrary family separation, suffering, denial of justice and resulting changes to their lives. The compensation was payable directly to the victims. The case demonstrates that compensation for corruption-related harm becomes possible where litigants identify the affected persons, connect the corrupt institutional practice to recognised rights and establish a sufficient causal relationship between the violation and the material or non-material harm claimed.[251]

7.3
RESTITUTION

Restitution seeks to restore the victim, so far as possible, to the position that existed before the wrongful conduct. It is different from compensation because it aims at restoration rather than a financial substitute. Human rights principles identify restitution as including restoration of liberty, identity, family life, citizenship, employment and property, and return to one's place of residence, where these measures are appropriate and lawful.[252]



In SACHRLit, restitution may include:

- returning land or property acquired through a corrupt allocation;
- restoring access to a public service or benefit unlawfully denied;
- reinstating a person dismissed after resisting corruption or reporting wrongdoing;
- cancelling or reconsidering a corrupt administrative decision;
- restoring public property or funds to the institution from which they were taken; or
- requiring the performance of the public project for which money had been allocated.

Restitution is not always possible or desirable. Property may have been transferred to an innocent third party, public money may have been dissipated, or restoring the former position may reproduce inequality or expose a victim to danger. The court must also respect the rights of third parties and the requirements of due process. Where full restitution is impossible, it may be combined with compensation, rehabilitation, satisfaction or institutional reform. Practitioners should identify precisely what is to be restored, to whom, by which authority, within what period and under what safeguards. A broad prayer that the court should "restore justice" is unlikely to be enforceable. A remedy directing an identified authority to reverse an unlawful allocation, reinstate access to a service or deliver a defined public project is more capable of supervision.

Comparative Case Study from the Inter-American Human Rights System: Restitution in Ramirez Escobar and Others v Guatemala

As discussed in section 7.2, Ramírez Escobar and Others v Guatemala concerned human rights violations arising within a system of international adoption affected by corruption. In addition to awarding compensation, the Inter-American Court ordered Guatemala to facilitate the restoration of the victims' family relationships and to amend Osmín Tobar Ramírez's birth record so as to restore his legal family ties, name and other aspects of his identity. These measures illustrate the distinctive purpose of restitution: to restore, as far as possible, the legal and personal position that existed before the corruption-related violation.[253]

251. Ramírez Escobar and Others v Guatemala, Merits, Reparations and Costs, Judgment of 9 March 2018, Series C No 351, paras 240–242 and 415–420. The Court awarded each victim USD 5,000 for material damage and USD 100,000 for non-material damage.
252. UN Basic Principles (n 244), principle 19.
253. Ramírez Escobar and Others v Guatemala, Merits, Reparations and Costs, Judgment of 9 March 2018, Series C No 351, paras 379–390 and operative paragraphs 11–12.

7.4
ASSET RECOVERY

7.4.1
Asset Recovery under UNCAC

Asset recovery is the process of identifying, tracing, freezing, seizing, confiscating, managing and returning the proceeds and instrumentalities of crime. It is not identical to compensation or restitution, although recovered assets may ultimately be used to support either remedy. Its immediate objectives are to deprive wrongdoers of their gains, restore stolen public wealth and prevent safe havens for corrupt proceeds.

Chapter V of UNCAC establishes the return of assets as a fundamental principle. It provides for prevention and detection of transfers, direct recovery of property, international cooperation in confiscation, special cooperation, and return and disposal of assets. Article 57 contains different return rules depending on the offence and the legal basis established by the requesting state. It also permits States Parties to conclude agreements or mutually acceptable arrangements for the final disposal of confiscated property.[254]

Recent United Nations guidance strengthens the human rights dimension of this framework. In Resolution 58/7, the Human Rights Council linked the repatriation of illicit funds to the realization of economic, social and cultural rights and the right to development. It called upon requested States to facilitate the prompt return of illicit funds and upon requesting States to apply the principles of accountability, transparency and participation when deciding how returned assets will be allocated.[255]

For strategic litigators, the resolution supports the argument that asset recovery should not end with confiscation or a transfer between States: the return process should identify the affected population, protect due-process rights and ensure that recovered assets are used transparently to advance human rights and provide effective remedies. As a Human Rights Council resolution, however, it should be relied upon as persuasive interpretive and policy authority rather than as an independently binding cause of action. See also section 7.4.2 on asset recovery, transitional justice and the use of recovered assets for public benefit.

Strategic litigation may support asset recovery by compelling lawful consideration of a request, preserving assets, recognising ownership, challenging an unlawful disposal, securing disclosure, or protecting the interests of victims and legitimate owners. Practitioners must nevertheless distinguish the stages. An asset that has been frozen has not yet been confiscated; an asset that has been confiscated has not necessarily been returned; and a returned asset has not necessarily reached the people harmed.

The return process should therefore be transparent, accountable, participatory and centred on victims and other legitimate beneficiaries. The 2017 Global Forum on Asset Recovery (GFAR) Principles call for partnership, mutual interests, early dialogue, transparency and accountability, identification of beneficiaries, support for anti-corruption and development, case-specific arrangements, use of agreements under article 57(5) of UNCAC, prevention of benefit to offenders and inclusion of non-governmental stakeholders.[256] The Civil Society Principles for Accountable Asset Return, developed by the Civil Forum for Asset Recovery (CiFAR) and its partners, complement the GFAR Principles by

254. UNCAC (n 241), arts 51–57; Jean-Pierre Brun and others, Asset Recovery Handbook: A Guide for Practitioners (2nd edn, World Bank 2021) <https://documents1.worldbank.org/curated/en/502771607689049444/pdf/Asset-Recovery-Handbook-A-Guide-for-Practitioners-Second-Edition.pdf> accessed 6 August 2026.

255. UN Human Rights Council, 'The Negative Impact of the Non-Repatriation of Funds of Illicit Origin to the Countries of Origin on the Enjoyment of Human Rights, and the Importance of Improving International Cooperation', Resolution 58/7, UN Doc A/HRC/RES/58/7 (2 April 2025), paras 7–11, 16–17 and 23–25, especially para 24.

256. Global Forum on Asset Recovery, GFAR Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases (2017), principles 1–10.

placing particular emphasis on transparency and public participation, integrity, accountability, victim restitution and the interests of other beneficiaries.[257] The OHCHR Recommended Principles on Human Rights and Asset Recovery further emphasise that human rights should guide every stage of asset recovery and return.[258] Taken together, these non-binding standards provide useful safeguards against diversion, re-corruption and politically controlled allocation, particularly where the receiving State remains vulnerable to the same corruption that caused the loss.

7.4.2
Asset Recovery and Transitional Justice

Transitions from authoritarian rule or conflict frequently reveal that large-scale corruption and serious human rights violations formed part of the same system. Illicit wealth may finance repression, sustain patronage networks and enable former rulers to preserve political influence, while coercive institutions may conceal corruption and obstruct accountability. Asset recovery therefore provides an emerging point of connection between anti-corruption enforcement and transitional justice.[259]

In this limited context, transitional justice may operate as a specialised, context-sensitive lex specialis. It does not displace UNCAC, domestic asset-recovery legislation or ordinary civil and criminal proceedings. Rather, its concern with truth, accountability, reparations and guarantees of non-repetition helps determine why assets should be recovered, whose harm should be addressed and how recovered property should be used. Tracing assets may reveal how repression was financed; freezing and confiscation may prevent perpetrators from retaining the benefits of abuse; and recovered assets may contribute to reparations. Comparative practice includes the Philippines, where part of the assets recovered from the Marcos family was used to finance reparations and memorialisation, and the Gambia, where the possible use of assets linked to former President Yahya Jammeh for reparations was considered within the transitional justice process.[260]

For SACHRLit, this relationship supports litigation to preserve assets, obtain disclosure, coordinate civil and criminal proceedings with truth-seeking bodies, and prevent the diversion of recovered property. Civil society and victims should participate in identifying harm, determining beneficiaries and monitoring the use of returned assets. Recovery does not, however, automatically constitute reparation: allocation must have a lawful basis, respond to victims' needs and remain transparent and accountable. Nor should the State make fulfilment of its reparation obligations entirely dependent upon the successful recovery of stolen assets.

The United States civil-forfeiture proceedings concerning Teodoro Nguema Obiang Mangue illustrate both the potential and complexity of translating confiscation into public benefit. The proceedings, brought against assets allegedly acquired through corruption and money laundering, were resolved through a 2014 settlement lodged with the United States District Court for the Central District of California. Under the settlement, Nguema Obiang relinquished assets worth more than US$30 million, with the proceeds designated for the benefit of the people of Equatorial Guinea. In 2021, the United States arranged for approximately US$26.6 million to support COVID-19 vaccination and other medical needs through independent implementing organisations intended to prevent the funds from returning to the control of Nguema Obiang or the government he served. Although this was not a judicial award of reparations, it demonstrates how civil asset-recovery litigation and a negotiated settlement may

257. Civil Forum for Asset Recovery (CiFAR), Civil Society Principles for Accountable Asset Return (2020).
258. Office of the United Nations High Commissioner for Human Rights, Recommended Principles on Human Rights and Asset Recovery (2022).
259. Ruben Carranza, Truth, Accountability, and Asset Recovery: How Transitional Justice Can Fight Corruption (International Center for Transitional Justice 2020) 1–8; Ruben Carranza, 'Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?' (2008) 2(3) International Journal of Transitional Justice 310. See also Prosper Maguchu, 'Borders and Boundaries: Importing Asset Recovery "Duty Free" in Transitional Justice Processes' (2020) 17(2) Indonesian Journal of International Law 181.
260. Carranza, Truth, Accountability, and Asset Recovery (n 259) 21–24.

produce a public-benefit outcome with a reparative character.

Civil society played an important role despite not participating as claimants in the US civil-forfeiture proceedings. Organisations including EG Justice, the Open Society Justice Initiative, Sherpa and the Asociación Pro Derechos Humanos de España made representations to the United States Attorney General concerning the proposed settlement, while the UNCAC Coalition separately advocated for comprehensive confiscation, judicial oversight, transparency and safeguards ensuring that returned assets benefited the people of Equatorial Guinea without reverting to the control of the ruling authorities. Their participation illustrates how organisations that lack the proprietary interest ordinarily required to contest a civil-forfeiture action may nevertheless support strategic litigation through documentation, advocacy, representation of beneficiary interests and monitoring of the eventual remedy.

7.5
PUBLIC ACKNOWLEDGEMENT AND APOLOGIES

A public acknowledgement or apology is a form of satisfaction. It may restore dignity, recognise the truth, accept responsibility and correct an official narrative that denied or concealed the harm. The United Nations Basic Principles on Remedy and Reparation identify a public apology, including acknowledgement of the facts and acceptance of responsibility—as one possible form of satisfaction.[261]

An apology must be more than a public-relations exercise. It should:

- identify the conduct and harm in clear terms;
- acknowledge the people and communities affected;
- accept institutional or individual responsibility where legally established;
- avoid excuses that minimise or shift blame;
- be delivered by an authority capable of speaking for the responsible institution;
- be accessible in appropriate languages and formats; and
- be connected to practical measures of repair and non-repetition.

In corruption cases, an apology may be appropriate where officials denied a community a service, concealed a corrupt allocation, retaliated against whistleblowers or damaged the integrity of a public institution. It may accompany compensation, restitution, publication of information or institutional reform. An apology should not replace an investigation or financial remedy where those measures are required. Nor should a court compel a statement so vague or insincere that it deepens the injury.

Case Study: Kiobel and Others v Shell (Netherlands)

The Dutch Kiobel litigation illustrates the use of a public apology as a distinct form of satisfaction. Esther Kiobel and three other widows of members of the Ogoni Nine sought a public apology from Shell for its alleged role in the unlawful arrest, detention and execution of their husbands. The requested apology was intended to secure public acknowledgement of the alleged wrongdoing, recognise the harm suffered by the widows and challenge the narrative surrounding their husbands' executions. Although the District Court of The Hague dismissed the claims and no apology was ordered, the case demonstrates how strategic litigation may seek a public apology as a remedy aimed at restoring dignity and securing acknowledgement of harm.[262]

261. UN Basic Principles (n 244), principle 22(e).
262. Amnesty International, 'Nigeria/Netherlands: Shell ruling "a vital step towards justice"' (1 May 2019); Kiobel and Others v Shell Petroleum NV and Others, District Court of The Hague, 23 March 2022, ECLI:NL:RBDHA:2022:2448.

7.6
ORDERS FOR INVESTIGATION

An order concerning investigation may be appropriate where competent authorities have unlawfully refused or failed to act. Prosecutors are central to a functioning criminal justice system and play an essential role in ensuring that corruption does not go unpunished. Their powers commonly include decisions on whether to initiate or continue a prosecution, conduct proceedings and appeal decisions; in some jurisdictions they also supervise investigations or assist victims.

There is no single international model for judicial review of a decision not to investigate or prosecute. The scope of review depends on the constitution, legislation, criminal procedure and separation of powers in the relevant jurisdiction. International guidance nevertheless stresses prosecutorial independence together with accountability, reasoned decision-making and appropriate mechanisms for review of decisions not to prosecute.[263]

The court's role should be pleaded carefully. In many systems, a court may declare that a refusal was unlawful, irrational, discriminatory, procedurally unfair or inconsistent with a constitutional duty; set the decision aside; compel the authority to decide; or remit the matter for lawful reconsideration. It will not normally be appropriate for a court to declare a person guilty or dictate the prosecutorial outcome before a lawful investigation and trial.

Before seeking an order, the litigation team should establish:

- which institution has the legal duty to investigate or decide;
- whether a complaint and supporting evidence were properly submitted;
- what reasons, if any, were given for inaction;
- whether internal review or another remedy must first be exhausted;
- the legal standard governing judicial review;
- whether delay threatens evidence, assets or personal safety; and
- what form of order respects prosecutorial independence while remedying unlawful inaction.

The remedy should also protect witnesses, complainants and evidence. An order to reconsider a complaint may have little practical value if whistleblowers face retaliation, the file has been compromised or assets can be dissipated during the review.

7.7
LEGISLATIVE REFORM

Strategic litigation may expose legislation that permits corruption, weakens accountability institutions or fails to protect constitutional rights. A court may declare the law invalid, interpret it consistently with constitutional obligations, suspend invalidity to permit correction, or direct the legislature or executive to remedy the defect, depending on the powers of the forum.

The Zimbabwean High Court's decision in *Markham v Minister of Justice, Legal and Parliamentary Affairs and Another*, discussed in section 5.4.1, illustrates how litigation may respond to legislative inertia.[264] Section 198(a) of the Constitution requires measures for the regular disclosure of assets by public officers, while

263. United Nations Office on Drugs and Crime and International Association of Prosecutors, The Status and Role of Prosecutors: A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide (UNODC 2014) 45–52 <https://www.unodc.org/documents/justice-and-prison-reform/14-07304_ebook.pdf> accessed 6 August 2026; Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990, principles 13–17.

264. Markham v Minister of Justice, Legal and Parliamentary Affairs and Another (710 of 2022) [2022] ZWHHC 710 (12 October 2022). See section 5.4.1 on specific constitutional provisions against corruption.

section 324 requires constitutional obligations to be performed diligently and without delay. The Court held that the failure to formulate the required legislation within a reasonable period violated section 324 and ordered the responsible Minister to gazette a Bill within three months. The decision did not prescribe the content of the legislation or displace Parliament's legislative function. Rather, it converted an unfulfilled constitutional commitment to public integrity into a time-bound and enforceable duty to initiate legislative reform.

For SACHRLit, legislative reform should therefore be formulated with sufficient precision. Practitioners should identify the defective provision or omission, the constitutional or international obligation requiring reform, the institution responsible and the remedy that the court is legally competent to order. Where the court cannot prescribe the substance of legislation, it may nevertheless require the responsible authorities to commence the legislative process within a specified period and retain supervisory jurisdiction where permitted.

7.8
INSTITUTIONAL REFORM

Institutional reform aims to change the structures, procedures and incentives that permitted corruption and the resulting human rights harm. It may include independent appointment processes, transparent procurement, conflict-of-interest rules, secure tenure, adequate resources, protected reporting channels, public participation, improved record keeping or independent oversight.

Courts differ in their willingness and capacity to supervise institutional design. A remedy should therefore be connected to a proved legal violation and be sufficiently clear to enforce without turning the court into the daily manager of an institution. Useful orders may require the responsible authority to prepare a compliant plan, consult affected groups, establish safeguards by a deadline and report on implementation.

The South African litigation arising from the dissolution of the Directorate of Special Operations, commonly known as the Scorpions, provides an important example. In *Glenister v President of the Republic of South Africa* (Glenister II), the Constitutional Court held that the legislative framework establishing the Hawks did not provide adequate independence for an anti-corruption body and was constitutionally invalid. The majority derived the obligation from the Constitution, understood in the light of South Africa's international law commitments.[265]

The case did not require one particular institutional model. It required legislation that provided adequate structural and operational safeguards against political interference. Subsequent Constitutional Court jurisprudence reinforced factors relevant to effective anti-corruption institutions, often summarised as specialisation, training, independence, resources and security of tenure—the STIRS criteria.[266]

The litigation contributed to a continuing process of institutional and legislative reform rather than a single final solution. Following later state-capture investigations and reform efforts, the National Prosecuting Authority Amendment Act 10 of 2024 established the Investigating Directorate Against Corruption (IDAC) as a permanent investigating directorate within the National Prosecuting Authority. Most of the Act commenced on 19 August 2024; section 8 commenced on 1 March 2026.[267]

265. Glenister v President of the Republic of South Africa and Others [2011] ZACC 6, 2011 (3) SA 347 (CC), especially paras 175–189 and 207–208 <https://www.saflii.org/za/cases/ZACC/2011/6.html> accessed 6 August 2026.

266. Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others [2014] ZACC 32, 2015 (2) SA 1 (CC), especially paras 33–39 and 125–134 <https://www.saflii.org/za/cases/ZACC/2014/32.html> accessed 6 August 2026.

267. National Prosecuting Authority Amendment Act 10 of 2024, ss 1–8; Government of South Africa, 'National Prosecuting Authority Amendment Act 10 of 2024' <https://www.gov.za/documents/acts/national-prosecuting-authority-amendment-act-10-2024-english-afrikaans-27-may-2024> accessed 6 August 2026.

The lesson for SACHRLit is that legislative reform requires precision. The claimant should identify the constitutional or human rights defect, the minimum safeguards required and the institutional result sought, while leaving lawful policy choices to the competent branches where appropriate. A declaration of invalidity should be accompanied by an implementation strategy because new legislation may preserve the same weakness under a different name.[268]

7.9
PUBLICATION OF INFORMATION

Publication can be both a remedy and a condition for other remedies to work. Corruption depends on secrecy. A judgment, audit, inquiry report, contract, asset-return agreement or implementation plan may reveal how the violation occurred, identify the institutions responsible and enable affected people to claim further relief. Publication can also correct the public record and constitute a form of satisfaction.

The order should specify what must be published, by whom, where, in which languages and formats, and within what period. Publication on an obscure website may not reach the affected community. The court should also protect legitimate interests, including the safety and privacy of victims, witnesses and whistleblowers; the rights of children; ongoing investigations; and properly protected personal data.

Truth commissions may contribute where corruption formed part of the background or machinery of conflict, dictatorship or systemic human rights abuse. Commissions in different countries have examined economic crimes, grand corruption, land grabbing and discriminatory distribution of public services, although the depth of that engagement has varied. During the preparatory stage, the mandate, staffing and investigative plan should expressly address these issues. Financial investigators and forensic accountants may be necessary, while statement-takers and victim-support teams should be trained to recognise information revealing corrupt systems.[269]

National commissions of inquiry can perform a related function by investigating institutional corruption and systemic failure, creating a public record and recommending prosecution or reform. They are not substitutes for courts. Their legal powers, independence, evidentiary rules and the status of their findings depend on the establishing law. Strategic litigators should therefore consider how information produced by an inquiry can lawfully support proceedings and how recommendations will be implemented.

Case Study: Protecting Publication of the State of Capture Report – South Africa

The proceedings surrounding the Public Protector's State of Capture report demonstrate how litigation may protect corruption-related information from suppression. In 2016, President Jacob Zuma and Minister Des van Rooyen brought urgent applications seeking to prevent publication of the report, which examined alleged improper relationships between public officials and the Gupta family and the possible manipulation of ministerial appointments and public contracts. Opposition parties and other public-interest actors intervened or opposed the applications. After President Zuma withdrew his application, the Pretoria High Court ordered the report's immediate release on 2 November 2016.[270]

Publication transformed information gathered by an oversight institution into an accessible public record.

268. For the earlier Glenister case study and its constitutional reasoning, see section 3.2.2 above.
269. International Center for Transitional Justice, Truth Seeking (n 243) 7–8; Ruben Carranza, Truth, Accountability, and Asset Recovery: How Transitional Justice Can Fight Corruption (International Center for Transitional Justice 2020).
270. President of the Republic of South Africa v Office of the Public Protector and Another, Gauteng Division, Pretoria, Case No 79808/16; see also Safura Abdool Karim, 'State Capture Report Explained', GroundUp, 3 November 2016.

The report stimulated further investigation, parliamentary and public scrutiny, and litigation concerning the implementation of the Public Protector's remedial action. In President of the Republic of South Africa v Office of the Public Protector and Others, the High Court subsequently dismissed the President's challenge to that remedial action and directed him to establish a commission of inquiry, which became the Zondo Commission.[271]

The case demonstrates that publication may itself constitute an important strategic outcome. Litigation need not originate as an application demanding disclosure: it may also involve resisting proceedings intended to suppress an investigative report. For SACHRLit, protecting publication can preserve evidence, enable affected communities and civil society to participate in accountability processes and provide a foundation for subsequent litigation and institutional reform. Practitioners should nevertheless distinguish allegations and preliminary investigative findings from facts finally established through judicial proceedings.

7.10
MONITORING AND COMPLIANCE MECHANISMS

7.10.1
Judicial Supervision

A favourable judgment is not the end of strategic litigation. Remedies involving repayment, publication, investigation or structural reform may require deadlines, reports, independent verification and further directions. The appropriate level of supervision depends on the complexity of the order, the respondent's previous conduct and the court's remedial powers.[272]

The South African Constitutional Court's decision in *Economic Freedom Fighters v Speaker of the National Assembly* — the Nkandla case, illustrates the importance of binding remedial action and institutional accountability. The Public Protector found that President Jacob Zuma had unduly benefited from non-security upgrades to his private residence and directed him to pay a reasonable portion of the cost. The President did not challenge that remedial action in court but pursued parallel processes, while the National Assembly adopted resolutions purporting to absolve him. The Constitutional Court held that the Public Protector's remedial action had legal effect unless set aside by a court, and that both the President and the National Assembly had failed to fulfil constitutional obligations.[273] The case should not be confused with the later Judicial Commission of Inquiry into Allegations of State Capture, known as the Zondo Commission. Both concern accountability in South Africa, but they are different processes. The Nkandla judgment establishes a legal principle about constitutional compliance and the Public Protector's remedial action. The Zondo Commission investigated a broad pattern of state capture and produced findings and recommendations whose implementation requires continuing institutional, legislative and public scrutiny.[274]

When seeking continuing supervision, practitioners should propose measures that are clear and proportionate. These may include a compliance timetable, periodic affidavits, publication of progress, an independent monitor, indicators for assessing implementation, and liberty to return to court. The order should identify responsibility so that institutions cannot avoid compliance by passing the task from one office to another.

271. President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP).
272. For the role of long-term coalitions and networks in implementation, see section 6.5.4 above.
273. Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11, 2016 (3) SA 580 (CC), especially paras 73–76, 95–105 and 119 <https://www.saflii.org/za/cases/ZACC/2016/11.html> accessed 6 August 2026.
274. Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, Reports (2022) <https://www.statecapture.org.za/site/information/reports> accessed 6 August 2026.

7.10.2

Trial and Legal-System Monitoring

The prosecution and adjudication of grand and political corruption present particular challenges because the cases are legally and factually complex and may attract undue political pressure. Independent trial monitoring can strengthen public and external scrutiny without dictating the outcome of proceedings. It uses direct observation and a defined methodology to assess whether proceedings comply with applicable standards of impartiality, competence, fairness and efficiency.[275]

Monitoring is different from campaigning for conviction. It must respect judicial independence, the presumption of innocence, fair-trial rights and restrictions on reporting. A sound methodology combines qualitative and quantitative information, explains its legal standards, trains monitors, verifies observations and distinguishes delay caused by complexity from delay caused by dysfunction or interference. Legal-system monitoring is broader than trial monitoring. The Office of the United Nations High Commissioner for Human Rights describes it as extending beyond courts and prosecutors to law-enforcement bodies, detention facilities and judicial governance institutions. This wider approach may be useful where a corruption case reveals failures across the justice chain rather than in one proceeding alone.[276] Nigeria's Corruption Cases Database, developed by TransparencIT, provides a practical example of civil society monitoring. The project tracks corruption cases and presents information on offences, location, duration, status and compliance with criminal justice requirements. Its stated purpose includes reducing delay, improving efficiency, promoting judicial accountability and making proceedings accessible to citizens.[277]

7.10.3

Compliance Framework

The litigation team should establish a monitoring framework before judgment where possible. The framework should connect each remedy to a responsible actor, deadline, indicator and source of verification.

Table 16 | Monitoring and compliance framework

Remedy	Indicator	Evidence	Review point
Compensation	Eligible claimants paid in full.	Payment records and independent audit.	On each payment deadline.
Asset return	Funds received and used for agreed beneficiaries.	Published agreement, expenditure records and beneficiary feedback.	Quarterly or project milestone.
Investigation	Lawful decision taken without unreasonable delay.	Case registration, reasoned decision and protected status updates.	Court-ordered reporting date.
Publication	Required information is accessible and complete.	Public link, copies and accessibility check.	Shortly after deadline.

275. Francesco De Sanctis, 'Trial Monitoring of Corruption Cases: An Innovative Answer to the Quest for Evaluation Tools' (U4 Practice Insight 2020:1) <https://www.u4.no/publications/trial-monitoring-of-corruption-cases-an-innovative-answer-to-the-quest-for-evaluation-tools> accessed 6 August 2026.
276. Office of the United Nations High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict States: Monitoring Legal Systems (United Nations 2006) UN Doc HR/PUB/06/3 <https://www.ohchr.org/sites/default/files/Documents/Publications/RuleoflawMonitoringen.pdf> accessed 6 August 2026.
277. TransparencIT, 'Justice and Rule of Law' <https://transparencit.com/projects/justice-and-rule-of-law/> accessed 6 August 2026; TransparencIT, 'Corruption Cases Database: About' <https://v1.corruptioncases.ng/about> accessed 6 August 2026.

Institutional reform	Required safeguards are operational	Regulations, appointments, budget, policies and practice data.	Periodic implementation report.

Monitoring should include the experience of affected people, not only institutional paperwork. An authority may adopt a policy without changing practice, publish a report that no one can access, or return assets through a project that does not benefit the intended community. Compliance must therefore be measured by both formal steps and real outcomes.

7.11
SELECTING AND FRAMING THE REMEDY

The remedy should follow from the right, duty, harm and strategic objective pleaded in the case. A court cannot grant every desirable reform solely because corruption is serious. The litigation team should identify the legal basis for each remedy and explain why it is appropriate, effective and within the powers of the selected forum.

Before finalising the prayers for relief, ask:

- What concrete harm must be repaired, and who experienced it?
- Does the claimant seek restoration, payment, truth, accountability, reform or a combination?
- Can the court grant the remedy under the applicable constitution, statute or procedure?
- Is the remedy sufficiently precise to enforce?
- Are third-party rights and due-process requirements protected?
- Could the remedy create a renewed corruption risk or unintended harm?
- Have affected people participated in defining the remedy?
- What institution will implement the order, and does it have the capacity and resources?
- What information, deadlines and indicators are required for monitoring?
- What complementary advocacy, administrative or legislative action will be necessary?

The litigation team should plead primary and alternative relief where appropriate. If return of specific property is impossible, compensation may be required. If an institution cannot be created directly by the court, declaratory relief and a time-bound duty to adopt a compliant framework may be available. If the precise number of victims is not yet known, the court may be asked to establish a lawful claims process rather than make an arbitrary global award.

7.12
CONCLUSION

The remedial question in SACHRLit is not simply whether corruption occurred. It is what must be done for the people and institutions harmed by it. Compensation, restitution and asset recovery address different aspects of loss. Public acknowledgement and publication restore truth and dignity. Orders for investigation confront unlawful inaction. Legislative and institutional reform seek to prevent repetition. Monitoring ensures that a judgment produces change beyond the courtroom.

No single remedy will be suitable in every case. The strongest approach is often a carefully designed combination that repairs individual and collective harm, deprives wrongdoers of corrupt gains, protects affected communities and corrects the structures that allowed the violation to occur. A strategic case reaches its real purpose only when the remedy is lawful, practical, enforceable and capable of improving the lives of those in whose name the litigation was brought.

08 CONCLUSION: FROM LITIGATION TO LASTING ACCOUNTABILITY AND CHANGE

8.1
THE EMERGING CASE FOR SACHRLit

Corruption may, in many contexts, provide one of the clearest pathways for demonstrating violations of human rights, particularly socio-economic rights that depend on the availability, allocation and proper use of public resources. Where corruption diverts resources intended for healthcare, education, housing, social protection or access to justice, the human rights consequences may be direct and severe. Corruption may also weaken the institutions responsible for protecting civil and political rights, restrict access to information and participation, and undermine equality before the law.

The relationship is increasingly recognised within international and regional anti-corruption and human rights frameworks. The United Nations Human Rights Council Advisory Committee has explained that corruption may affect human rights directly, indirectly or remotely, depending on the causal connection between the corrupt conduct and the resulting harm.[278] The UNCAC provides important entry points through participation, victim protection, compensation and asset recovery, while the AUCPCC connects the fight against corruption to human and peoples' rights, access to information, civil society participation and accountable public affairs.[279] Yet neither domestic nor international courts have comprehensively developed binding jurisprudence articulating the full extent of this relationship or establishing consistent standards for accountability. The existing cases remain fragmented across constitutional, administrative, criminal, civil and human rights law. Courts have not adopted one uniform test for determining when corruption becomes a human rights violation, how causation should be established, who has standing, or which remedies should follow. This uncertainty should not be treated as a reason to abandon litigation. It identifies a developing legal field in which carefully selected cases can clarify rights and duties, test legal arguments and build precedent. At the same time, practitioners must avoid asserting that every act of corruption automatically constitutes a human rights violation. A credible claim must identify the corrupt act or omission, the applicable legal duty, the right affected, the individual or collective harm, and a sufficiently close causal connection between them.

8.2
SACHRLit AS A COMPLEMENTARY STRATEGY

This Guide has explored emerging cases, mechanisms and strategies that seek to bridge the gap between anti-corruption and human rights law. It has examined how SACHRLit may be pursued through domestic courts, regional and international human rights mechanisms, *amicus curiae* interventions, advisory opinions, and participation by victims and affected communities in criminal proceedings. It has equally highlighted conceptual uncertainty, procedural barriers, evidentiary challenges, security risks and the still limited body of jurisprudence directly connecting corruption to enforceable human rights obligations. SACHRLit should not be viewed as a substitute for criminal investigation and prosecution. Criminal law remains essential for determining individual responsibility and depriving offenders of the proceeds of crime. SACHRLit is a complementary strategy capable of addressing the rights of affected people, institutional responsibility, restoration of public services, compensation, reform and guarantees of non-

278. United Nations Human Rights Council Advisory Committee, Final Report on the Issue of the Negative Impact of Corruption on the Enjoyment of Human Rights (5 January 2015) UN Doc A/HRC/28/73, paras 17–28 <https:/ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/28/73> accessed 6 August 2026.
279. United Nations Convention against Corruption, adopted 31 October 2003, entered into force 14 December 2005, 2349 UNTS 41, arts 13, 32(5), 35 and 51–57

repetition. The strategic value of a case lies in its capacity to connect the immediate claim with wider accountability. Practitioners should therefore continue to ask:

- Does the case identify a concrete human rights harm caused or contributed to by corruption?
- Can the available evidence establish the corrupt conduct, the violation and the causal connection?
- Is the selected forum able to grant a lawful, effective and enforceable remedy?
- Will the litigation expose a systemic failure or create a precedent capable of assisting others?
- How will the judgment be implemented, monitored and communicated?

These questions ensure that the language of human rights is not used to reframe an ordinary corruption allegation. They also ensure that the strategic objective does not displace the interests, instructions and dignity of the people affected.

8.3
FROM JUDGMENT TO LASTING CHANGE

The development of SACHRLit requires cooperation between anti-corruption practitioners and human rights defenders. The former bring expertise in financial investigation, beneficial ownership, procurement, asset tracing and criminal procedure. The latter contribute experience in standing, victim participation, public-interest litigation, structural remedies and monitoring state compliance. Working together, they can develop cases that are legally sound, evidentially credible and responsive to the harm suffered.

Courts, lawyers, CSOs, anti-corruption bodies, prosecutors, journalists, academics and affected communities all have a role in advancing this field. Courts can develop principled jurisprudence; practitioners can identify suitable cases, preserve evidence and formulate precise remedies; and academics and legal clinics can document emerging practice. Affected communities must participate in defining the harm, the litigation objective and the remedy sought. The remedy remains central. A declaration that corruption occurred will have limited strategic value if resources are not recovered, services are not restored, institutions remain unchanged and affected people receive no meaningful reparation. Effective remedies may combine compensation, restitution, asset recovery, publication, acknowledgement, investigation, reform and continuing supervision. They should be adequate, effective and prompt, while asset recovery should be transparent, accountable and directed towards the people harmed.[280]

Implementation must therefore form part of the litigation strategy from the beginning. Practitioners should identify who is responsible for compliance, the applicable deadlines and the indicators by which progress will be assessed. Where appropriate, a judgment should be supported by independent monitoring, public reporting and continuing engagement with affected communities. Ultimately, strategic litigation offers an opportunity not only to remedy individual harm, but also to challenge entrenched systems of corruption that undermine democracy, the rule of law and the effective enjoyment of human rights. The task ahead is to transform the increasingly recognised connection between corruption and human rights into careful pleadings, persuasive evidence, principled jurisprudence and enforceable remedies. SACHRLit will reach its full potential when it moves beyond isolated cases and becomes part of a coordinated practice of accountability. Its success will not be measured only by the number of cases filed or judgments won, but by whether litigation restores rights, empowers affected communities, protects public resources, strengthens institutions and prevents repetition. That is the movement from litigation to lasting accountability and change.

280. UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res 60/147 (16 December 2005), principles 15–23 <https:/www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> accessed 6 August

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