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PROFESSIONALISING THE FIGHT AGAINST POLICE CORRUPTION IN SOUTH AFRICA: TOWARDS A PROACTIVE ANTI- CORRUPTION REGIME

SUMMARY

The South African Police Service (SAPS) should play an integral role in maintaining law and order in a country as violent as South Africa. Unfortunately, some members of the SAPS have also contributed to this violence physically, such as police brutality, as well as non-violently, by way of corrupt practices. Police corruption in South Africa is rife. Police officers involved in large-scale bribes, firearm trafficking and other crimes are common. This has inevitably led to the demise of public trust in the SAPS. Several governing regimes have attempted to combat the scourge of police corruption since 1994 but have failed. The establishment of Anti-Corruption Agencies that combated police corruption effectively were abolished and replaced with less effective units. This article challenges the current regime and proposes a regime that will not only react to corruption within SAPS but also examine ways to prevent corruption by professionalising the police system. This is important because distrust in the police, due to corruption, negatively affects citizens on a daily basis. A professional police service requires a firm ethical foundation. Without it, corruption in SAPS will persist. The paper will, therefore, also examine ways to strengthen ethics within SAPS. First, the article explores the conceptual aspects related to corruption and police corruption. Secondly, it analyses the causes of police corruption. It is important to know why police decide to be corrupt, in order to act proactively against the problem of police corruption. The article then analyses the former and current anti-corruption units combating police corruption, in order to identify the strengths and weaknesses of the fight against police corruption. Next, the paper discusses several measures that will contribute to the



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professionalisation of SAPS. Finally, the paper concludes by recommending various initiatives aimed at sustaining the fight against police corruption in the long term.

Keywords: South African Police Service, corruption, abuse of power, bribery, anti-corruption unit, professionalisation, ethics

1. INTRODUCTION

Corruption in South Africa affects everyone and “intersects at points of social, political, economic and ethical discourse with no end in sight and thus remains an elusive malignancy slowly eroding our hard-won democracy”.¹ The South African Police Service (SAPS) is part of the problem. In 2022, a national investigation was launched to determine whether numerous police recruits allegedly paid undisclosed amounts of money to SAPS College as a dubious and unlawful prerequisite for enrolment.² In February 2023, an affidavit deposed to by a senior police official, exposed severe police corruption, including abuse of power and the disappearance of over 100 state vehicles.³ At the same time, two Limpopo police officers were arraigned for allegedly accepting a R15 000 bribe to cancel a docket.⁴ After receiving an initial payment of R10 000, the officers insisted on the balance before being arrested.⁵ On 16 March 2023, it was reported that a crime intelligence head, Major General Dumisani Khumalo, was allegedly appointed to protect senior officers within SAPS from criminal investigation, including the incumbent Police Minister Bheki Cele.⁶ Police corruption in South Africa is a grave matter and undoubtedly rife.⁷

SAPS is the most corrupt institution in South Africa, overtaking the education sector in 2019.⁸ Between 2012 and 2019, over 1 440 cases of police corruption were reported to Corruption Watch, a non-profit organisation fighting corruption in South Africa.⁹ In November 2020, the National Assembly’s Standing Committee on Public Accounts held that 257 police officers were arrested in connection with 175 corruption cases, while law enforcement agencies were investigating 357 cases involving police officers.¹⁰ Corruption Watch further received 1 037 reports of corruption between January and September 2022 and the police accounted for eight per cent of those cases, slightly down from twelve per cent in 2021.¹¹ Of these cases, 35 per cent were as a result of dereliction of duty, 28 per cent for bribery, corruption, and

1 *National Director of Public Prosecutions v Botha N.O. and Another* 2020 (1) SACR 599 (CC):par. 1.

2 Cruywagen 2022.

3 Mashego 2023a.

4 Masweneng 2023.

5 Masweneng 2023.

6 Mashego 2023b.

7 Mashego 2023c. See also Murphy 1995:66.

8 Corruption Watch 2019b:12.

9 Corruption Watch 2019a:3.

10 Gerber 2020.

11 Corruption Watch 2022. See also Corruption Watch 2021.

extortion, and 23 per cent due to the abuse of power.¹² The Independent Police Investigative Directorate (IPID) reported 177 active corruption cases against police officers in the 2022/2023 reporting year.¹³ More than half of these cases occurred in the Gauteng Province.¹⁴ These numbers make for exhausting reading but clearly illustrate a major problem of police corruption in South Africa.

Ironically, Police Minister Cele, allegedly implicated in corrupt practices himself,¹⁵ stated that:

police officers who engage in corruption are even worse than criminals on the streets, because they betray the very people who have entrusted them with the power to deal with criminals and erode the hope and trust that our people have in government.¹⁶

This is not the SAPS that South Africa deserves, especially after years of police torture and criminality during apartheid.¹⁷ Sec. 199 of the *Constitution of the Republic of South Africa*, 1996 provides for the establishment of a single police force.¹⁸ The objects of the SAPS include, *inter alia*, to combat, prevent, and investigate crime, to protect and secure its citizens, to maintain public order, and to enforce the law.¹⁹ Sec. 7(2) of the *Constitution* holds that “the state must respect, protect, promote and fulfil the rights in the Bill of Rights”, which includes the duty of the police to protect and serve. These duties are hampered when police officers engage in corrupt practices themselves.

Various anti-corruption agencies have been mandated over the past few decades to address the scourge of police corruption, yet it continues to thrive. This paper seeks to give an overview of corruption within SAPS and make recommendations to combat this evil. This is important, as police corruption often leads to an increase in crime rates and lower crime clearance rates.²⁰ Indeed, “criminals are often aided by the complicity of corrupt public officials, police officers, prosecutors and judges, which allows them to operate with impunity”.²¹

Research conducted in this field has focused on the establishment of a truly independent anti-corruption unit free from any undue influence.²² This article does not oppose this view but goes further by examining how the entire anti-corruption regime combating police corruption can be professionalised through a proactive approach and the development and enforcement of ethics. This paper analyses essentially how the fight against police corruption can be improved because the current regime is proving to be ineffective. First, the article examines the conceptual aspects relating to corruption and police

12 Corruption Watch 2022.

13 Independent Police Investigative Directorate 2022b:13.

14 Independent Police Investigative Directorate 2022b:13.

15 Mashego 2023b.

16 South African Government 2018.

17 See generally Zondi & Ukpere 2014.

18 The words ‘SAPS’ and ‘the police’ will be used interchangeably.

19 *Constitution of the Republic of South Africa*, 1996:sec. 205(2).

20 Kukutschka 2023.

21 Transparency International 2023:10.

22 See generally Faull 2007; Basdeo 2010; Burger & Grobler 2017.

corruption. Secondly, it analyses the causes of police corruption. It is important to know why police members decide to be corrupt, in order to act proactively against the problem of police corruption. The article then analyses the former and current anti-corruption units combating police corruption, in order to identify the strengths and weaknesses of the fight against police corruption. Next, the paper discusses several measures that will contribute to the professionalisation of SAPS. Finally, the paper concludes by recommending various initiatives aimed at sustaining the fight against police corruption in the long term.

2. CONTEXTUALISING POLICE CORRUPTION IN SOUTH AFRICA

Corruption is a covert and clandestine crime.²³ However, the effects of corruption are visible and devastating. It is a global problem which runs counter to the development of a country and its people, negatively impacts on investment, negates the rule of law, and affects a government's ability to provide basic services, especially to the poor.²⁴ The Corruption Perception Index (CPI), published annually by Transparency International, measures corruption in territories and countries by their perceived levels of public sector corruption, according to business people and experts.²⁵ It uses a scale (0-100) to measure corruption with a score closer to 100 being 'very clean' and a score closer to zero being 'highly corrupt'.²⁶ South Africa received a score of 43 in 2022, Somalia was perceived as the most corrupt at twelve, and Denmark the least corrupt with a score of 90.²⁷ South Africa's score was 44 in 2019,²⁸ 2020²⁹ and 2021.³⁰ Twelve African countries feature among the top twenty most corrupt states.³¹ While the CPI remains only a perception of corruption,³² it nevertheless provides a damning overview of how pervasive corruption is within the public sector in South Africa. This is not surprising, as the former South African Head of State, Jacob Zuma, and the current Head of State, President Cyril Ramaphosa have both been implicated in alleged corrupt practices.³³ If corruption is endemic within the executive branch of a country, it becomes difficult to eradicate or control. Corruption within the executive becomes even more problematic when the police, who fall under the direct control of the executive, participate in such corrupt activities.

23 See, for example, Stojanovski 2005:122.

24 Babu 2006:1.

25 See generally Transparency International 2023.

26 Transparency International 2023:2.

27 Transparency International 2023:2-3.

28 Transparency International 2020.

29 Transparency International 2021.

30 Transparency International 2022:2-3.

31 Transparency International 2023:3.

32 Transparency International (2023:15) explains its methodology by providing that "the Corruption Perceptions Index (CPI) aggregates data from a number of different sources that provide perceptions of businesspeople and country experts of the level of corruption in the public sector".

33 Zuma is currently standing trial at the KwaZulu-Natal High Court for several corruption charges. See generally *S v Zuma and Another* 2022 (1) SACR 575 (KZP).

2.1 Defining police corruption

Corruption does not have a single universal definition and is also not defined in the United Nations Convention against Corruption (UNCAC).³⁴ The word ‘corruption’ originates from the Latin ‘*corruptus*’, meaning to break, disrupt, contaminate, or spoil.³⁵ “Corruption is usually defined as the transgression of formal rules governing the allocation of public resources by officials in response to offers of financial gain or political support.”³⁶ Corruption is a form of social behaviour based on private use and private accumulation.³⁷ It “is an intentional act with the public official knowing what his/her duties are but preferring to neglect or misperform them in order to obtain some personal gain”.³⁸ Moreover, corruption is generally defined as the use of public funds for private gain.³⁹ Corruption is not exclusive to the public sector, but also features in the private sector.

Corruption is a major threat to any state and, if left unexposed, may cause long-lasting damage and ultimate destruction of the economy. This threat is intensified if the police is also implicated in corrupt activities. Police corruption is persistent and has an impact on the way in which the public view the police.⁴⁰ Historically, police organisations have persistently struggled with corruption.⁴¹ In Ghana, corruption within the police has cast serious doubt over the public trust in the police force.⁴² In Bangladesh, 80 per cent of the people hold that the police is the most corrupt institution.⁴³ Police corruption is clearly universal and one of the most corrupt divisions in the public sector.⁴⁴

Police corruption has been defined as “any illegal conduct or misconduct involving the use of occupational power for personal, group or organisational gain”.⁴⁵ Police corruption must involve either the organisational or legal powers of the police, including the powers to arrest and seize. The police officer must use some form of power or knowledge to commit the corrupt act, in order to achieve an identifiable organisational, group, or personal benefit or reward.⁴⁶ The conduct of police officers, who are sexually promiscuous, drink, drive recklessly or use drugs, falls within the technical definition of corruption if these acts result in some form of personal gain.⁴⁷ Police corruption is committed by participating in certain forms of corruption.

34 Carr 2007:232.

35 Nicholls *et al.* 2006:1; Singh 2022:2.

36 Ampratwum 2008:76.

37 Ninsin 2000:451.

38 Bauer 2007:125.

39 Chihamo & Shumba 2007:2.

40 Basdeo 2010:386.

41 Faull 2007:1.

42 Frimpong *et al.* 2019:143.

43 Kashem 2005:237.

44 For a comprehensive discussion of police corruption in domestic jurisdictions, see generally Sarre *et al.* 2005. This paper focuses only on public corruption, under which the police fall, and not private corruption.

45 Sayed & Bruce 1998:12.

46 Sayed & Bruce 1998:12.

47 Faull 2007:3.

Various underlying crimes or forms of corruption form part of the charge of corruption. UNCAC, of which South Africa is a member state, criminalises embezzlement, trading in influence, bribery, abuse of function, illicit enrichment, and money laundering under the auspices of corruption.⁴⁸ As mentioned earlier, dereliction of duty, bribery as well as extortion and abuse of power are the most prevalent forms of police corruption in South Africa.⁴⁹ It is of particular concern that police collude with organised criminals.⁵⁰ For example, in 2006, two police officers, Colonels Christiaan Prinsloo and David Naidoo, managed to sell over 2 000 firearms to illegal syndicates in Cape Town.⁵¹ Prinsloo was charged with several offences, including corruption, money laundering, racketeering, and theft. Prinsloo accepted a plea deal in terms of sec. 105A of the *Criminal Procedure Act* 51 of 1977 and the case against Naidoo is still ongoing.⁵²

2.2 Regulating and prosecuting corruption in South Africa

Corruption is both a statutory and a common law crime in South Africa. For example, bribery is a common law crime.⁵³ The Supreme Court of Appeal held the following in terms of corruption in the form of bribery:

At common law, it is a crime for a person to offer or give to an official of the State, or for any such official to receive from any person, an unauthorised consideration in respect of such official doing, or abstaining from, or having done or abstain from, any act and exercise of his or her official capacity.⁵⁴

Corruption is regulated by the *Prevention and Combating of Corrupt Activities Act* 12 of 2004 (PACCA).⁵⁵ Sec. 3 of the *Act* provides for the offence of corruption. The elements of corruption can generally be filtered down to (1) the acceptance (2) of a gratification (3) to act in a certain manner (4) to act unlawfully, and (5) to act with intent.⁵⁶ A police officer will be guilty of an offence in terms of the *Act* "if he directly or indirectly accepts or offers to accept a gratification (as defined) from another person, or gives or agrees to give a gratification to any other person for his benefit, or that of another".⁵⁷ Part II of the *Act* relates to offences in respect of corruption relating to specific persons

48 See United Nations Convention against Corruption:Ch. III. South Africa signed the Convention on 9 December 2003 and ratified it on 22 November 2004.

49 Corruption Watch 2022.

50 Kukutschka 2023.

51 See *Raves v Director of Public Prosecutions, Western Cape and Another* 2021 (2) SACR 140 (WCC):paras. 4-7.

52 *Raves v Director of Public Prosecutions, Western Cape and Another*:par. 9.

53 See, for example, Burchell 2016:804.

54 *Scholtz and Others v S* 2018 (2) SACR 526 (SCA):par. 119. See also generally *R v Chorle* 1945 AD 487.

55 The current 2004 *Act* repealed the *Corruption Act* 94/1992. For a comprehensive analysis of the history of the corrupt legislation in South Africa dating back as far as 1918, see *Scholtz and Others v S*:paras. 120-128.

56 *Motau v S* (A02/2019, SH 01/2016) [2020] ZALMPPHC 16 (23 April 2020):par. 14.

57 Loxton 2013:168.

including (a) public officers,⁵⁸ (b) foreign public officials,⁵⁹ (c) agents,⁶⁰ (d) members of the legislative authority,⁶¹ (e) judicial officers,⁶² and (f) members of the prosecuting authority.⁶³ Police officers fall under public officers. However, it is submitted that all police officers, including senior officials, should be designated as a 'specific person' under Part II of the *Act*. Police corruption is a concerning phenomenon and should be regulated as such.

The *Prevention of Organised Crime Act* 121 of 1998 plays an important role in combating organised crime in South Africa. Police officers are often lured in by organised criminals or voluntarily join these criminals to profit from illegal and corrupt practices.⁶⁴ The *Act* criminalises several organised crime offences, including money laundering, racketeering, gang activities, and other serious offences. These crimes can only be prosecuted if a dedicated investigating team takes control of the case, but the assistance of insiders or criminals turning state witnesses are important to build a *prima facie* case considering the clandestine nature of corruption in general.

The *Protected Disclosures Act* 26 of 2000 (*PDA*) protects the rights of whistle-blowers and promotes "the eradication of criminal and other irregular conduct in organs of state and private bodies".⁶⁵ Whistle-blowers could include police officers reporting corruption of fellow officers. The *PDA* importantly creates a culture which encourages the disclosure of information by employees relating to corrupt practices.⁶⁶ A successful whistle-blowing culture within the police is pivotal in combating the underreporting of police corruption. The *Financial Intelligence Centre Act* 38 of 2001 provides for the criminalisation of the proceeds of suspicious transactions, with an emphasis on anti-money laundering and terrorism finance. The Financial Intelligence Centre has no investigative powers but it provides information it collected available to the Intelligence Service and other investigative bodies.⁶⁷

The judiciary also had to become accustomed, over the past few decades, to hearing economic crimes cases. Judges have not been loath to impose severe sentences on corrupt offenders. The High Court held that courts "need to send a strong and clear message that corruption is intolerable and that severe sanctions will be a necessary consequence of convictions in such cases".⁶⁸ Similarly, the Supreme Court of Appeal posited that "courts must send out an unequivocal message that corruption will not be tolerated and that punishment will be appropriately severe".⁶⁹ The laws, however, are futile

58 *Prevention and Combating of Corrupt Activities Act* 12/2004:sec. 4.

59 *Prevention and Combating of Corrupt Activities Act* 12/2004:sec. 5.

60 *Prevention and Combating of Corrupt Activities Act* 12/2004:sec. 6.

61 *Prevention and Combating of Corrupt Activities Act* 12/2004:sec. 7.

62 *Prevention and Combating of Corrupt Activities Act* 12/2004:sec. 8.

63 *Prevention and Combating of Corrupt Activities Act* 12/2004:sec. 9.

64 Ngqakamba 2018. See also Venter 2015:21.

65 *Protected Disclosures Act* 26/2000:preamble.

66 *Protected Disclosures Act* 26/2000:preamble.

67 Loxton 2013:170.

68 *Nakedi v S* (A173/2016) [2018] ZAFSHC 36 (29 March 2018):par. 29.

69 *S v Shaik and Others* 2007 (1) SA 240 (SCA):par. 223.

if the police, who are tasked to enforce these laws, are involved in corrupt practices. The question then arises: Why are police officers drawn towards corrupt practices?

3. THE ROOT CAUSES OF POLICE CORRUPTION

In general, “researcher and policy makers agree that corruption thrives in environments plagued by institutional deficiencies and untransparent regulations”.⁷⁰ The middle class finds it difficult to freely accumulate “legal profits”, as the majority of the profit goes to the owners of the capitalist property.⁷¹ As a result, the middle class tends to indulge in illegal accumulation.⁷² Policing “tends to attract lower class individuals who do not have the financial means to maintain a coveted middle class lifestyle”.⁷³ Some police officers develop a cynical and authoritarian personality that is attracted to corruption, which is an easy way to achieve financial security.⁷⁴ South African police officers, at the lowest skill level, earn approximately R19 000 per month.⁷⁵ It is, therefore, not surprising that they are susceptible to large cash bribes from desperate criminals. It is important to bear in mind that police officers not only receive bribes, but also request bribes.⁷⁶

Police members act with authority and this makes them powerful and willing to take extraordinary risks juxtaposing the corrupt activity and their duty to serve and protect society. Police officers also enjoy a wide discretion, which facilitates corruption.⁷⁷ For example, they have the discretion to arrest a suspect or not. This discretion can be abused by the police officer and also manipulated by a suspect. It is important to note that the vast majority of police officers receive limited training and may find it difficult, in the beginning, to handle pressure situations involving bribes and related activities. A number of organisational factors also contribute to police corruption, including the stress of the job, a mandate to engage with criminals on a daily basis, low managerial and public visibility of front-line officers, and peer group secrecy.⁷⁸

“A distinct ethic and code of behaviour distinguishes the insulated world of police culture and they differ significantly from those outside the police world.”⁷⁹ This unwritten code, also known as the ‘code of secrecy’ or the ‘blue code of silence’ helps protect corrupt police officials from legal consequences.⁸⁰ “In policing, this code refers to a shared understanding among officers that they will neither report fellow officer transgressions nor cooperate in investigations

70 Kumar 2005:174.

71 Ninsin 2000:452.

72 Ninsin 2000:452.

73 Basdeo 2010:392.

74 Basdeo 2010:392.

75 South African Police Service 2022.

76 See, for example, Grobler 2020.

77 Basdeo 2010:392.

78 Faull 2007:7.

79 Williams 2002:86.

80 Basdeo 2010:392; Skolnick 2005:301; Levenson 2001:15.

against them".⁸¹ These codes are firmly embedded in police subculture.⁸² It generally includes a refusal to report misconduct of fellow police officers to authorities as well as providing false testimony.⁸³ It fosters corrupt activities and makes it difficult to trace and prosecute police officers involved. The paramilitary structure as well as the nature of their occupation leads some police officers to turn a blind eye to the misconduct of their peers.⁸⁴ For example, in 2019, Corruption Watch reported that a whistle-blower informed them that a group of police officers were suspended after reporting the corrupt activities of another officer highly favoured by management.⁸⁵ The other fear of reporting colleagues is that the entire police station might then be subjected to investigation.⁸⁶ The code of silence insulates criminality and becomes a breeding ground for future corruption in SAPS.⁸⁷

The abovementioned factors are only some of the reasons why police officers are drawn towards corruption and why they might not report it. Each jurisdiction will have its own unique factors that contribute to police corruption. Between 2010 and 2011, Ivkovic and Sauerman conducted a countrywide survey of 771 SAPS officers.⁸⁸ They found that at least 25 per cent of the respondents would protect a fellow officer who covered up a police accident, who verbally abused citizens, and who accepted gratuities.⁸⁹ One out of eight respondents showed willingness to cover up a false report on drug possession, striking a prisoner, a kickback, and internal corruption.⁹⁰ According to the survey, one of the main reasons why police officers commit corruption or do not report other colleagues is that they are not afraid that they will get caught.⁹¹

It is, therefore, important to identify all of these factors, in order to combat police corruption effectively and at its roots. It is submitted that these causes or factors should be discussed within police circles and included in anti-corruption materials provided to police officers. This will enable all police officials to be weary of the danger signs of police corruption and report any colleagues who display any of the risk factors. The fight to combat police corruption lies not only with the anti-corruption units, but also within the police force itself.⁹² In the next section, this paper examines which anti-corruption units have been at the forefront of combating police corruption in South Africa.

81 Ivkovic *et al.* 2020.

82 See Skolnick 2005:301. See generally Westmarland & Conway 2020.

83 Skolnick 2005:302.

84 Ivkovic 2003:598.

85 Corruption Watch 2019b:12.

86 Ivkovic & Sauerman 2012:15.

87 See Ivkovic *et al.* 2020.

88 See generally Ivkovic & Sauerman 2012; Ivkovic & Sauerman 2020.

89 Ivkovic & Sauerman 2012:23.

90 Ivkovic & Sauerman 2012:23.

91 Ivkovic & Sauerman 2012:23.

92 See generally Ivkovic *et al.* 2020.

4. AN OVERVIEW OF ANTI-CORRUPTION UNITS FIGHTING POLICE CORRUPTION IN SOUTH AFRICA

Prior to 1994, police corruption also existed but was viewed as isolated in occurrence, and incidents were investigated, like any other crime.⁹³ This culture of not recognising police corruption can also be traced back to colonial times, when colonial rulers were free to exploit the natural resources of the country without facing any backlash from the local authorities whom they controlled.⁹⁴ Post-1994, police corruption has grown increasingly problematic and underreported.⁹⁵ The problem also lies with the fact that the police are tasked with investigating other police officers. Reports of criminality within the police often result in police leadership attempting to distract the public or to downplay the problem in an effort to manage the image of the organisation.⁹⁶ The need to establish independent anti-corruption units in the new democracy became apparent.

Since 1994, government has implemented several reforms to address police corruption. Some have been successful and others were clearly designed to absolve high-ranking government officials from prosecution. This has contributed to the culture of corruption in South Africa and has filtered down to the police. Nevertheless, low-ranked police officers have been prosecuted for corruption over the past two decades, while the prosecution of senior officials has been lacking.⁹⁷ Since the rise of democracy in South Africa, a number of anti-corruption agencies have been formed and disbanded. Indeed, South Africa is one of the few countries in the world that has adopted a multi-agency approach in its fight against corruption, as opposed to the single agency approach found in Brazil and Hong Kong.⁹⁸ A major problem of multiple agency corruption regimes lies within an institutional anti-corruption framework that suffers from overlapping and conflicting mandates between institutions and a lack of coordination.⁹⁹ The Anti-Corruption Unit (ACU), the Special Investigating Unit (SIU), the Directorate of Special Operations (Scorpions), the Hawks, the Organised Crime Unit, and IPID have all been established to combat corruption. The next section focuses mostly on those agencies mandated to combat police corruption.

93 Faull 2007:8-9.

94 See Kratcoski 2002:75-76.

95 For a comprehensive study about civilian perceptions about the police since 1994, see generally Faull 2010.

96 Burger 2011:13.

97 For some cases, including the high-profile case of former National Commissioner of the Police, Jackie Selebi, see generally *Selebi v S* 2012 (1) SA 487 (SCA); *Ngoqo and Others v S* (CA&R 103/2017;1/2017) [2019] ZAECGHC 111 (14 November 2019); *Monyane v S* (A225/2018) [2019] ZAFSHC 91 (30 May 2019); *Ramphele v S* (A03/2020) [2022] ZALMPPHC 47; 2022 (2) SACR 560 (LP) (1 September 2022).

98 Majila *et al.* 2017:88-89. See also Pillay 2017:1.

99 Chetty & Pillay 2017:117.

4.1 The Anti-Corruption Unit

The ACU was established in 1996 to assist SAPS in combating corruption. Its mandate was to investigate serious offences, as determined by the provincial and national anti-corruption commanders.¹⁰⁰ The ACU was also tasked to coordinate all anti-corruption investigations in the organisation, to develop an information system to support its work, and to create an anti-corruption awareness programme in SAPS.¹⁰¹ In 2000, the ACU arrested and charged 1 048 police officers.¹⁰² In 2002, the ACU was mysteriously shut down by the then National Police Commissioner, Jackie Selebi, and replaced by the Organised Crime Unit, which was far less effective. The Commissioner asserted that it was disbanded because the investigation of corruption in SAPS was the responsibility of the entire police service and not of one specific unit.¹⁰³ In a major blow to SAPS at the time, Jackie Selebi was himself found guilty of corruption in 2012.¹⁰⁴ It was clear from that time that agencies such as the ACU would be targeted if they came too close to corrupt senior police officials. The ACU will nevertheless be remembered for its stellar work in combating police corruption, by investigating over 6 000 police officers for corruption in six years and securing over 700 convictions.¹⁰⁵

4.2 Organised Crime Unit

The Organised Crime Unit was already active when the ACU was shut down. The Organised Crime Unit also impressed with its investigation into police corruption. In 2003, 347 officers were suspended for corruption-related activities, 413 in 2004, and 529 in 2005.¹⁰⁶ However, there is a disclaimer. The number of corruption convictions amounted only to ten officers in 2003, 77 in 2004, and 33 in 2005. This is much less than the ACU, where 193 officers were convicted in 2000, and 138 in 2001. Again, there was no need to close the ACU if it was effective. At the same time, the Scorpions was formed in 1999 to combat priority crime as well as to act as the primary agency enforcing the provisions of POCA.¹⁰⁷ It was a force to be reckoned with. It investigated multiple cases of grand corruption involving high-ranking politicians, including the then Deputy President Jacob Zuma. This Unit was subsequently disbanded in 2008 after delegates at the 2007 African National Congress National Conference voted for the dissolution of the Scorpions.¹⁰⁸ It was replaced with the Directorate for Priority Crime Investigation (Hawks) that is still operational. The closure of the ACU and the Scorpions raises some

100 Faull 2007:9.

101 Faull 2007:9.

102 Basdeo 2010:394.

103 Basdeo 2010:394-5. See also Faull 2007:9.

104 See generally *Selebi v S* 2012 (1) SA 487 (SCA).

105 Faull 2007:9.

106 Faull 2007:10.

107 Berning & Montesh 2012:3-4.

108 *Glenister v President of the Republic of South Africa and Others* 2011 (7) BCLR 651 (CC):par. 8; Bruce 2008:12.

serious red flags about the independence of these units.¹⁰⁹ The independence of anti-corruption agencies was one of the matters facing the Constitutional Court in *Glenister v President of the Republic of South Africa and Others*.¹¹⁰ It affirmed the importance of ensuring that anti-corruption agencies should be independent, and reaffirmed South Africa's international obligations to combat corruption effectively.¹¹¹

4.3 Independent Police Investigative Directorate

The Organised Crime Unit handed over the duty to investigate police corruption to IPID, which was formed in 2011. Its vision is to be an independent investigative oversight body that ensures SAPS is committed to promoting respect for human dignity and the rule of law.¹¹² Its mission is to conduct impartial and independent investigations allegedly committed by members of SAPS and the Municipal Police Services.¹¹³ IPID is mandated to conduct investigations into police corruption as well as general police criminality, including serious offences such as murder, rape, gender-based violence, and other offences.¹¹⁴

In the entire *Independent Police Investigative Directorate Act 1 of 2011*, the word 'corruption' only appears twice, and only in sec. 28. It is disappointing that police corruption is not given more attention in the *Act*. Sec. 28(1)(g) of the *Act* provides that IPID must investigate police corruption either at the behest of the Executive Director or after a complaint has been received by a member of the public or referred to IPID by a Member of the Executive Council, the Secretary or the Minister. Sec. 28(1)(g) limits the IPID's ability to initiate corruption investigations to those parties mentioned in the wording of the *Act*.¹¹⁵ Corruption is very rarely reported, given that it is committed between two parties unlikely to report themselves.¹¹⁶ However, IPID can investigate systemic corruption within SAPS in terms of sec. 28(2). The interpretation of secs. 28(1)(g) and 28(2), however, differs, since there is an obligation on IPID to investigate complaints of police corruption, by including the word 'must' in sec. 28(1)(g), whereas the word 'may' is used in relation to the investigation of systemic corruption in sec. 28(2).¹¹⁷ The reason for this disparity is unclear. However, it is clear that IPID is not as effective as the ACU. While the ACU investigated thousands of police officers for corruption over a period of six years, IPID merely investigated 177 cases between 1 April 2021 and

109 See generally Burger & Grobler 2017.

110 See generally *Glenister v President of the Republic of South Africa and Others*.

111 See *Glenister v President of the Republic of South Africa and Others*: paras. 119, 241.

112 See Preamble of the *Independent Police Investigative Directorate Act 1/2011*; Independent Police Investigative Directorate 2022b:3.

113 *Independent Police Investigative Directorate Act 1/2011*:sec. 2(d).

114 See *Independent Police Investigative Directorate Act 1/2011*:sec. 28(1).

115 Burger & Grobler 2017:7.

116 Burger & Grobler 2017:7.

117 Burger & Grobler 2017:7.

14 March 2022.¹¹⁸ In its 2022/2023 Annual Performance Plan, IPID affirms its commitment to develop an anti-corruption strategy to improve its collaboration with relevant law-enforcement agencies and to enhance internal capacity.¹¹⁹ It is hoped that this strategy will provide innovative methods to prevent police corruption and provide a comprehensive plan to better coordinate its duties with other stakeholders combating police corruption. This is not the first time that an anti-corruption strategy has been mentioned, as SAPS has established its own anti-corruption strategy in the past few years.

4.4 SAPS Anti-Corruption Strategy

The SAPS Anti-Corruption Strategy, first approved in 2010, was eventually launched on 29 June 2018. The strategy is in line with the National Anti-Corruption Strategy, which was adopted in November 2020.¹²⁰ At the launch, Minister Cele noted that practical efforts to reduce corruption with SAPS were already in place, including vetting through financial disclosures and integrity assessments, as well as lifestyle audits.¹²¹ The SAPS Anti-Corruption Strategy is based on five broad pillars, including leadership, detection of corruption, investigation of corruption, prevention of corruption, and the resolution of corrupt activities.¹²² That being said, the strategy, simply part of a SAPS news article, is unavailable online or downloadable as a document. At the time of writing this article, SAPS confirmed that they were still working on the document and that it would be published in due course. This means that, since 2010, the SAPS Anti-Corruption Strategy has yet to be officially published. Further, the SAPS website does not include a section dedicated specifically to anti-corruption. More should be done to show the public that SAPS is committed and willing to combat police corruption. Similarly, the South African Government failed to mention the scourge of police corruption in its National Anti-Corruption Strategy. It only refers once to police corruption in one of the appendices of the Strategy in reference to the duties of IPID.¹²³

5. PROFESSIONALISING THE FIGHT AGAINST POLICE CORRUPTION: SOME THOUGHTS

There is a comprehensive legal framework in South Africa to combat corruption within the SAPS, but this does not mean that there is no room for reform.¹²⁴ The problem is that corruption cases within the SAPS are widespread. There are many reported cases involving police officers but only a handful of prosecutions.¹²⁵ Corruption cases are difficult to prosecute and take extensive periods of time, but the National Prosecuting Authority can do more in order to

118 Independent Police Investigative Directorate 2022b:16; Burger & Grobler 2017:7.

119 Independent Police Investigative Directorate 2022b:29.

120 See South African Government 2020.

121 Bateman 2018.

122 South African Police Service 2018.

123 See South African Government 2020:70.

124 See Chetty & Pillay 2017:117.

125 Jonck & Swanepoel 2016:161.

ensure that these cases see the light of day. The root problem, according to this research, is based more on internal factors within SAPS and a dire need to professionalise, not only SAPS itself, but also the fight against corruption. This research suggests that the following aspects of the fight against police corruption be addressed and strengthened, in order to professionalise the anti-corruption regime: the need to be more proactive; the introduction of ethics, and the implementation of accountability procedures.

5.1 The need to be more proactive

Most of South Africa's anti-corruption efforts are reactive.¹²⁶ Internal audits and whistle-blowing hotlines are relied upon to expose corrupt activities, but the data collected by these bodies is not synthesised.¹²⁷ In its 2022/2023 Annual Performance Plan, the SIU provided that "the current measures utilized to deal with corruption are more reactive than proactive. Adopting a proactive approach can significantly reduce corruption and the impact of corruption."¹²⁸ This will promote awareness, early detection, and prevent reoccurrences.¹²⁹ A proactive anti-corruption regime would be preventive in its nature. What does this exactly mean and how should SAPS go about making its anti-corruption regime more proactive? In 1999, the ACU was already advocating for a proactive unit. In its 1999 report to Parliament as part of the Safety and Security Portfolio Committee, the ACU held that "proactive measures are preventative in that they seek to deal with the problem before it occurs or develops".¹³⁰ Some of the measures that the ACU recommended in 1999 include: early warnings, risk assessment, and effective vetting; training; reward systems; awareness campaigns; having a code of conduct, as well as adequate policies and controls.¹³¹ It is submitted that all of the measures have mostly been adopted in SAPS over the years except for rewards systems and awareness campaigns.

SAPS should consider instituting a reward system for police officers who expose corruption within the police. Unfortunately, SAPS stated previously that it is the duty of police officers to report corruption and that there would be no incentives or rewards for them.¹³² It is argued that such an argument misses the point and ignores a proactive approach to police corruption. There is a higher possibility to combat the code of silence within the SAPS if incentives or rewards were given to those police officers who report corruption among its members.¹³³ The reward can be a cash bonus at the end of the year or even an expedited promotion. The author believes that the introduction of such a rewards system can be an effective tool to combat police corruption and to motivate police officers to expose corruption, especially with the

126 Budhram 2015:50.

127 Budhram 2015:50.

128 Special Investigating Unit 2022:24.

129 Special Investigating Unit 2022:24.

130 Parliamentary Monitoring Group 1999.

131 Parliamentary Monitoring Group 1999.

132 Faull 2011:13.

133 See generally Kroukamp 2006:213.

financial reward in mind. As mentioned earlier, police officers at the lowest skill level are not paid that well, making such a rewards system highly attractive and reasonable.

In terms of anti-corruption awareness campaigns, SAPS has not done enough. To reiterate the point made earlier, anti-corruption measures or policies are not even visible on the SAPS website. Anti-corruption messages are not visible on highway billboards or on television. It is submitted that civil society would be willing or should be approached to work with SAPS, in order to improve its media visibility, but more importantly, its stance against anti-corruption within the police. Awareness also includes training or educating police members in how to detect and prevent corruption at an early stage, which would encourage breaking the code of silence.¹³⁴ Early detection and real prevention require a deeper understanding of the causes of police corruption. It is imperative that awareness raising and training programmes be undertaken with police members to respond to corruption more pro-actively and systematically.¹³⁵ Such programmes should include detailed modules on the root causes of police corruption and the code of silence. The programmes could be offered by retired police commissioners with a track record of anti-corruption. These programmes should be rolled out at every police station across the country and should be compulsory.

5.2 Ethics

The Constitutional Court in *Glenister* posited that endemic corruption threatens the injunction that public administration and government must be held to account and governed by the highest standards of ethics.¹³⁶ A corrupt police officer is not ethical. An unethical police officer often forms part of the slippery slope analogy, where police officers start off by accepting minor gratuities such as a free meal but only to gradually engage in more serious forms of police corruption and unethical behaviour down the line.¹³⁷ The proactive departure point is to introduce new police recruits to rigorous ethical standards and to ensure that all police members, including the Minister, attend quarterly ethics refresher courses.

The SAPS Code of Conduct does not mention the word 'ethics' in its Code but does refer to various other important values and duties such as integrity, honesty, respect, transparency, reconciliation, and others.¹³⁸ In an effort to be more proactive, SAPS established an Integrity Management Service as well as an Ethics Committee in 2016.¹³⁹ In 2019, SAPS also noted that it was in

134 See Special Investigating Unit 2022:24.

135 Pereira *et al.* 2012:92.

136 *Glenister v President of the Republic of South Africa and Others*:par.176.

137 Singh 2022:4.

138 South African Police Service 2023. IPID's values include transparency and openness, equity and fairness, courtesy and commitment, independence and impartiality, mutual respect and trust and integrity and honesty. See Independent Police Investigative Directorate 2022a:16.

139 South African Police Service 2019:269.

the process of establishing an ethics hotline to disclose corrupt activities.¹⁴⁰ To date, only the Gauteng Ethics Hotline has been established, but the Anti-Corruption Hotline and the Whistle-blower Hotline are operational.¹⁴¹ SAPS reported that ethics advocacy programmes were introduced in high-risk environments such as priority police stations and ports of entry.¹⁴² However, in the year 2021/2022 reporting cycle, only 30 advocacy sessions were conducted throughout South Africa, which is insufficient.¹⁴³ On a positive note, 10 200 specific occupational police members, 2 168 middle management police members, and all 789 senior management officials submitted their financial disclosures.¹⁴⁴ Various other SAPS ethics programmes, including Integrity at Work, anti-corruption awareness, leadership skills, and work ethics were mentioned by SAPS in their annual report.¹⁴⁵ While these efforts must be applauded, more must be done to ensure that all police stations are reached to ensure ethical standards of the highest calibre, of which South African citizens will be proud. These efforts will ultimately improve the proactive nature of the fight against police corruption, but also contribute greatly to professionalising SAPS. However, training on its own cannot solve the problem of ethics in SAPS. It is suggested that training be supplemented with follow-up processes and strict disciplinary measures for those officers not adhering to the ethical standards of SAPS. All the efforts will be in vain if officers, who receive the training, continue to make unethical choices and decisions that jeopardise the fight against police corruption.

5.3 Accountability

SAPS should be accountable to the people of South Africa and any acts of corruption within SAPS should be exposed and rooted out. SAPS should also draw inspiration from the United Nations Sustainable Development Goals, and specifically Goal 16 which deals with peace, justice, and strong institutions.¹⁴⁶ Goal 16 promotes the establishment of accountable and inclusive institutions at all levels.¹⁴⁷ United Nations Secretary-General, António Guterres, mentioned that it is important for governments to fight corruption from the top down.¹⁴⁸ Indeed, accountability starts at the top, and, as commander-in-chief, President Ramaphosa must set the example to the SAPS members. If members, and especially senior members are found guilty of misconduct and, in particular, corruption, a wrong message is sent to its junior members as well as the public. The pride in the badge is at an all-time low and strong leadership and accountability are fundamental.

140 South African Police Service 2019:270.

141 See South African Government 2023a.

142 South African Police Service 2022:106.

143 South African Police Service 2022:106.

144 South African Police Service 2022:106.

145 South African Police Service 2022:106.

146 See United Nations 2023.

147 See United Nations 2023.

148 United Nations 2018.

Leadership at all levels is essential to curb corruption.¹⁴⁹ The prosecution of former Police Commissioner Jackie Selebi and recent allegations against Minister Cele are damning but should not prevent future SAPS leaders from continuing to fight police corruption. It is submitted, however, that the top leadership of SAPS should set the example to other members, by publishing their lifestyle audits and regularly attending ethics and leadership programmes. The time has come for the police “to shake off its image as a ‘job creation factory’ and mould itself into an organisation that attracts and develops ‘elite professionals’ rather than simply provides jobs for its members”.¹⁵⁰ This will be a SAPS that serves its communities with passion and accountability.

6. CONCLUSIONS AND RECOMMENDATIONS

Corruption is a “pervasive and insidious evil, and the interests of a democratic people and their government require at least its rigorous suppression, even if total eradication is something of a dream”.¹⁵¹ Suppressing, let alone eradicating, police corruption in South Africa has proven to be a major challenge. It is argued that South Africa needs to establish a culture of anti-corruption within the SAPS.¹⁵² This can only be achieved if the executive sets the example. In 2009, former president Zuma held that corruption charges, due to his involvement in the arms deal, should be dropped. His reason was that he believed that corruption was not a crime in African culture but only a crime in the West. He also stated that there were no victims of his conduct.¹⁵³ This reasoning by the then Head of State was dangerous and creates a breeding ground for corrupt police officials.

A lack of independent anti-corruption agencies coupled with an unwillingness to implement the provisions of the anti-corruption laws has left South Africa with more problems than solutions. Authors in the field have submitted that an internal anti-corruption unit within SAPS should be re-established. Burger and Grobler, for example, argue that all allegations against SAPS members should be investigated by a single anti-corruption unit that is not attached to other police units and, hence, objective.¹⁵⁴ They further argue that such a unit should have its own infrastructure and management capabilities.¹⁵⁵ This research does not oppose the idea of a single unit, but after decades of lobbying and academic discussion, it seems that a multiple agency anti-corruption regime is here to stay. Better coordination between the various units is, however, required for such an approach. In fact, the National Anti-Corruption Strategy 2020-2030 holds that a lack of coordination between units has hampered the realisation of the objective to have a whole-of-society approach in fighting corruption.¹⁵⁶

149 Basdeo 2010:396.

150 Faull 2011:18.

151 *S v Shaik and Others*:par. 223.

152 See Department of National Treasury 2023.

153 Lukhele 2015:69.

154 Burger & Grobler 2017:5.

155 Burger & Grobler 2017:5.

156 South African Government 2020:22.

Coordination can be strengthened by overhauling and synchronising the various laws, codes, and strategies currently in place to improve the fight against police corruption. It is also crucial that the police be aware of these strategies and codes and that they apply them in their day-to-day conduct as members of SAPS. In fact, the coordination of anti-corruption agencies is the work of the Anti-Corruption Task Team, which is a collective of fourteen agencies including SAPS, the SIU, the National Prosecuting Authority, and others.¹⁵⁷ The Task Team is responsible for implementing the government's anti-corruption agenda as well as for drafting new laws and policies related to anti-corruption.¹⁵⁸ Given the slow pace at which SAPS is developing its own Anti-Corruption Strategy, more should be done to coordinate the work between the various agencies in the Task Team. This is imperative to justify a multiple agency approach to anti-corruption.

Additional training and refresher courses must be compulsory for all SAPS members. The public will undoubtedly repose confidence in the SAPS "if the police align with the ethos of their profession and carry out their statutory responsibility in a manner that will foster and strengthen healthy police-public relationship".¹⁵⁹ It is submitted that police officers will also show more pride for the badge if the public shows confidence in the police. Initiatives to ensure that only the most honest and dedicated people are recruited to become SAPS members will go a long way to improving policing.¹⁶⁰ Instead of being feared and disrespected by the public, SAPS should engage with communities, rebuild relationships, and serve its people with honesty and integrity, thereby re-establishing a police service free from corruption.

Senior police officials implicated in corruption should not be allowed to use state resources during criminal trials. Robert McBride, former IPID head, maintained that it is unacceptable that police members, who participated in corrupt practices for their personal gain, use their official capacity to gain state-resourced legal representation.¹⁶¹ Indeed, the taxpayer should not be held responsible for the personal gratification of SAPS members. The message needs to be clear that corruption within SAPS is deplorable and any official, who is accused of corruption, will face the might of the law at his/her own expense. This can be regarded as a proactive measure to fight corruption if this is widely disseminated and communicated to all members as well as strictly implemented.

157 South African Government 2023b. The other agencies part of the Anti-Corruption Task Team include the Hawks, the Department of Justice and Constitutional Development, the Department of Public Service and Administration, the Department of Cooperative Governance and Traditional Affairs, the Government Communication and Information System, the Investigating Directorate of the National Prosecuting Authority, the Asset Forfeiture Unit, SAPS Crime Intelligence, the State Security Agency, the Financial Intelligence Centre and the National Intelligence Coordinating Committee.

158 South African Government 2023b.

159 Bello 2021:155.

160 Burger & Grobler 2017:10.

161 Roodt 2018:3.

Selecting competent and fearless people for the various anti-corruption agencies is crucial.¹⁶² Regular psychological and integrity tests should be conducted to ensure that not only members of anti-corruption agencies but also all members of SAPS are fit and proper and fully skilled to perform their duties.¹⁶³ Each and every member of SAPS must be aware of the important duty imposed upon them to uphold the *Constitution* and to refrain from any misconduct, especially corruption. “Corruption has deleterious effects on the foundations of our constitutional democracy and on the full enjoyment of fundamental rights and freedoms.”¹⁶⁴ It disenables the state as well as SAPS from promoting, respecting, and fulfilling these rights in accordance with sec. 7(2) of the *Constitution*.¹⁶⁵ It is time for SAPS to comprehend fully that police corruption not only violates the constitutional rights of the people of South Africa, but also continues to further drive the wedge between the remaining trust that South Africa has in her police service. SAPS needs to act proactively and professionalise its fight against corruption, in order to win back the trust of the Republic of South Africa and to foster a culture of anti-corruption.

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162 Burger & Grobler 2017:2.

163 See Burger & Grobler 2017:2.

164 *Glenister v President of the Republic of South Africa and Others*:par. 175.

165 See *Glenister v President of the Republic of South Africa and Others*:par. 175.

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