

Anzanilufuno Munyai

Senior lecturer, African
Centre for Transnational
Criminal Justice,
University of the
Western Cape, Bellville,
South Africa
ORCID: <https://orcid.org/0000-0002-8832-2842>

DOI: <https://doi.org/10.38140/jjs.v49i2.7258>

ISSN 2415-0517 (Online)

Journal for
Juridical Science
2024:49(2):40-68

Date Published:
31 December 2024

CORRUPTION THROUGH BRIBERY: A NORM IN SOUTH AFRICA'S PUBLIC SECTOR?

SUMMARY

Corruption continues to be a pandemic. Over the centuries, it has managed to evolve in its perpetration, spreading worldwide and immersing itself within the daily lives of society. Its ability to evolve and take different forms has made it impossible to encapsulate into one watertight definition. Despite some sentiments that corruption may be acceptable for economic growth, it undermines the rule of law, the equal distribution of resources and services, and weakens the state institutions. No country is immune to corruption. Corruption manifests in many forms, bribery being one of them. Corruption and bribery are intertwined. In some instances, actions of bribery are referred to as corruption and vice versa. In South Africa, corruption perpetrated through bribery has become a way of life. Bribery in the public sector involves members of a society offering valuable and/or monetary gifts to public officials. Both members of society and public officials aggravate the continued prevalence of bribery in South Africa. This article uses a socio-legal perspective to examine selected sectors of the public service wherein bribery is prevalent. The identified sectors are selected due to their exploitation by public officials when citizens need service delivery from them. The article further delineates the overall effects and available anti-corruption mechanisms in South Africa. Lastly, it examines whether corruption, perpetrated through bribery, is a national norm. The article concludes by arguing that society and public officials are duty bearers in the fight against corruption.

Keywords: Accountability, bribery, corruption, economic growth, public service, public power, economic development

1. INTRODUCTION

There is no watertight definition of corruption.¹ Nonetheless, corruption is often understood as the abuse of entrusted public resources or power for private gain.² The analysis of various definitions of corruption generally include a combination of various components:

- The actor or perpetrator, often a public official or an association of officials.
- Public resources or goods that are being transferred or traded for private gains or benefit.

1 Ellis 2012:46.

2 Zhang & Vargas-Hernández 2015:xiii.



Published by the UFS
<http://journals.ufs.ac.za/index.php/jjs>

© Creative Commons With Attribution
(CC-BY)



- The perpetrated act(s) violates laws, decrees or institutional regulations.
- Affects or dispositions public interests.
- The perpetrated acts are done in secret or often concealed.³

It is submitted that the above factors and elements expose corruption as an octopus-like structure, a multifaceted giant of destruction. It takes different forms that range from bribery, money laundering, and embezzlement to fraud and obstruction of justice. Essentially, corruption undermines the state's outcomes relating to development, political stability, promotion of good governance, and the establishment of a corruption-free society and governance. The effect of corruption is extensive, as it "erodes trust, weakens democracy, hampers economic development and further exacerbates inequality, poverty, social division and the environment crisis".⁴

Considering the complexities in defining corruption, this article seeks to examine whether corruption is simply a national norm or a mark of hopelessness from those who are clothed in public power, namely the public officials. The article also seeks to interrogate whether there is progress in the fight against this invisible evil. The ensuing discussions outline various anti-corruption legislative frameworks together with the different offences related to the perpetration of corruption.

It is imperative to acknowledge that corruption is not purely a South African conundrum.⁵ This enigma has been in existence for many centuries globally. Its continuous existence is testament to its resilience. Corruption has systematically woven itself into societies and has become a way of life.⁶ Regrettably, the article provides a South African perspective to illustrate that corruption has integrated itself into the social fabric of everyday relations to the functioning of the public sector. The article acknowledges that not all public servants in the public sector are corrupt.

This article concurs with the notion that corruption has been embedded in the daily lives of society⁷ and that it does so effortlessly, mostly through acts of bribery. Thus, bribery cannot occur without the briber and the bribee. Contextualised in the public service delivery, it may imply that ordinary citizens of South Africa also contribute to its perpetration.⁸

Given the introductory remarks on the fundamental components of the topic under discussion, what follows is an attempt to provide a synopsis of corruption and its definitional elements, followed by the effects of corruption in South Africa. Thereafter, the article outlines domestic legislation to prevent and combat corruption in South Africa and anti-corruption institutions. A plunge into bribery and its role in the lives of South Africans will follow before the discussion concludes.

3 Zhang & Vargas-Hernández 2015:xiii.

4 Brockmann 2023:334.

5 Myint 2000:33.

6 Smith 2010:53.

7 Smith 2010:53.

8 Sundström 2019:725-735.

2. UNDERSTANDING CORRUPTION: AN OVERVIEW

As outlined above, there is no universally accepted definition of corruption. It is often defined in terms of individual actions abusing their entrusted public power for private or personal gain. This general understanding of corruption is captured by Nye's attempt to define corruption wherein he suggests that corruption is "behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) wealth or status gains; or violates rules against the exercise of certain types of private regarding influence".⁹

The common elements are often central in all corruption definitions. The first element is abuse, which involves a person, group of persons or an entity misusing their entrusted duties, position or power to engage in corrupt practices. For example, public officials using their power to authorise the appointment of their relatives. The second element often reflects private gain, wherein the consequence of the abuse/misuse of power or position results in the improper gain of a benefit or advantage for the specific individual, group or entity as opposed to the public good. For example, public officials, who use their power to authorise and manage public funds, siphon certain amounts to their personal financial account.

Corruption is often associated with the public sector. However, corruption also exists in the private sector where it often involves the abuse of power by organisations or corporations. For example, an organisation or corporation is involved in corporate fraud or commercial bribery.¹⁰ Such acts of corruption are often in association with public officials. Contrary to the private sector, public sector corruption specifically involves a public official or an association of public officials engaging in corrupt practices with persons in the public or private sector.¹¹

Corruption can be perpetrated on different levels, of which the most common is petty or grand corruption. The latter may be committed by both high level or senior public officials who exploit opportunities often in the course of their duties, or by those in the private sector. Grand corruption is also often associated with large amounts of misappropriated or expropriated funds. Petty corruption is often understood to involve subordinate or junior public administrators.¹² By contrast, petty corruption is understood as small-scale corruption. Some authors understand petty corruption to be synonymous with bureaucratic corruption,¹³ which occurs among junior public officials often in service delivery and law enforcement. According to Amundsen, bureaucratic corruption may be eradicated if the rulers or leaders have the will do so.¹⁴

9 Nye 1967:419.

10 Sartor & Beamish 2020:727.

11 Lynda *et al.* 2014:2.

12 Lynda *et al.* 2014:1-3.

13 Fombad 2020:18.

14 Amundsen 2019:1.

Bureaucratic corruption can be understood in two ways. It can be demand-induced and occurs when a beneficiary desires to be rewarded privately. It can be supply-induced and occurs when a corrupt agent offers a bribe to another agent, likely another public official.¹⁵

Political corruption is a type of grand corruption that often involves high-ranking or senior political officials and government agents entrusted with law enforcement. The fundamental characteristic of political corruption is that it occurs at the highest levels of government.¹⁶ An example of political corruption is state capture which may be understood as behaviour perpetrated by persons or a group of persons in the public and private sector, thus influencing the enactment of legislation, regulations, and any other government policies for their own benefit.¹⁷ State capture may occur as a result of, for instance, a person or a family having control of the state and the economy.¹⁸

Another level of corruption is systematic corruption which illustrates corruption being entrenched in society's dealings. It could include routine dealings between government and private individuals or businesses.¹⁹

The perpetration of corruption occurs in a variety of forms. The first prevailing form of corruption is bribery, which may be understood as a reward given to influence the judgement of a person.²⁰ According to Shuy, bribery includes the act of offering and giving a bribe together with extortion or demanding a bribe.²¹ For example, an illegal immigrant grants a home affairs official money, in order to be issued with an identity document. Overall, both the bribe giver and the bribe taker benefit from the transaction. According to Alschuler, bribery can be understood in two ways. It focuses "on making or offering a gift with an improper state of mind", and it involves "making or proposing an improper exchange".²²

The second commonly perpetrated act of corruption is fraud. Similar to corruption, fraud involves a variety of activities and may thus be difficult to define. Nonetheless, fraud may be understood as intentional deception to secure an unfair or unlawful gain or to deprive someone of a legal right.²³ Another definition of fraud contains the element of deception by the perpetrator. The *Oxford Dictionary* defines fraud as "the crime of deceiving someone to gain money or personal advantage".²⁴

15 Asea 2018:7.

16 Lynda *et al.* 2014:1.

17 Martin & Solomon 2016:22.

18 Martin & Solomon 2016:22.

19 Lynda *et al.* 2014:2.

20 Mangafic & Veselinovic 2020:2672.

21 Shuy 2013:14.

22 Alschuler 2015:466.

23 Melone 2021:67.

24 *Pocket Oxford English Dictionary* 2003.

Embezzlement and misappropriation are also viewed as common acts of corruption. Embezzlement is often understood as “the crime of secretly taking money that is in your care or that belongs to the organization or business you work for”.²⁵ Misappropriation of funds may be defined as “the act of stealing something that you have trusted to take care of and using it for yourself”.²⁶ It is important to note that, although embezzlement and misappropriation may seem similar, they are different. According to Munyai, “embezzlement involves the outright theft of funds or property, while misappropriation involves the misuse of property or funds”.²⁷ Nonetheless, they both signify that public officials, who have or obtain access to public funds and/or property, do so by deliberately diverting these in channels where it is easy to plunder.²⁸

Nepotism frequently occurs in our societies and is viewed as a form of corruption.²⁹ Nepotism may be understood as any form of favouritism or patronage shown or granted to relatives or associates.³⁰ Although the understanding of a relative or associate may differ, it is paramount in defining nepotism that someone acquires an advantage based on relation; often family-member relations. Nonetheless, irrespective of the definitional element(s) of ‘relations’, such a person is granted an advantage or favourable treatment.³¹

The other common acts of corruption are extortion and money-laundering. Extortion is defined as the act of getting something, for example money, by force or threat.³² For example, an individual demands money from a public official to avoid the publication of sensitive information of a public official. The Commonwealth Secretariat defines money-laundering as a process wherein “criminals attempt to hide and disguise the true origin and ownership of the proceeds of their criminal activities, thereby avoiding prosecution, conviction, and confiscation of the criminal funds”.³³

The above discussion yielded the following. First, the two elements consistent with defining corruption. The element that reflects the abuse of power and the element of private gain. Secondly, the perpetration of corruption can occur in both the public and the private sectors. Lastly, there are various scales and forms of corruption. The ensuing discussion seeks to provide an overview of the effects of corruption.

25 Kamwani *et al.* 2022:100.

26 Kamwani *et al.* 2022:100.

27 Munyai 2020:37.

28 Ibodullaevich & Kizi 2021:4.

29 Mulla 2023:Chapter 2.

30 Ololube 2016:19.

31 Johnson & Berry 2021:210.

32 *Cambridge Business English Dictionary.*

33 Commonwealth Secretariat 2006:6.

3. SYNOPSIS OF THE EFFECTS OF CORRUPTION

It is generally accepted that corruption has detrimental consequences for society, in that it alters income distributions, discourages investments, results in inefficiencies due to loss or theft of state resources, and jeopardises democratic principles.³⁴ Despite some scholars arguing that corruption may affect economic growth,³⁵ others hold the view that perhaps there is a possible tolerance relationship to corruption, and that the increase in the levels of corruption may not necessarily affect or hamper economic growth.³⁶ These views are supported by numerous studies illustrating that corruption may be beneficial. This is often illustrated using the 'greasing-of-the-wheels' analogy, that, for some, is indicative of corruption contributing towards a state's economic growth.

Similarly, whilst some support the view that corruption may increase social welfare through 'greasing-of-the-wheels',³⁷ or have positive influence in economic growth, others argue that corruption increases efficiency in the public sector.³⁸ Others hold the view that certain levels of corruption should be accepted in economies where contracts boost investments.³⁹ The arguments presented often reflect how "corruption can serve as an incentive payment to remove government[-]imposed inefficient rules, speeding up bureaucracy, and providing a chance to get permissions faster by paying for them".⁴⁰ Those who opine that corruption may be beneficial appreciate that it does so, by disregarding bureaucratic rules. Doing so can increase efficiency and, therefore, enhance growth.⁴¹ However, according to Basem and Saeh, such views fall short of realising that "usually heavy bureaucracy is created by the bureaucrats to be able to gain more bribes".⁴²

The measure of economic growth using Gross Domestic Product per capita can indicate a link between a country's economic development and its level of corruption. Moreover, these measures also suggest that a decline in corruption level can enhance economic development.⁴³ It must be noted that these correlations present refuting notions that "higher income per capita results in lower levels of corruption and stress that economic development is a result of low corruption levels".⁴⁴ Nonetheless, corruption may lead to a lower level of efficiency in government, thus affecting economic growth and social development.⁴⁵

34 Basem & Saeh 2013:3.

35 Ezzat & Farrag 2016:78-79.

36 Ibodullaevich and Kizi 2021:4.

37 Leff 1964:8-14.

38 Basem & Saeh 2013:4.

39 Basem & Saeh 2013:4.

40 Basem & Saeh 2013:3.

41 Basem & Saeh 2013:3.

42 Basem & Saeh 2013:3.

43 Basem & Saeh 2013:3.

44 Basem & Saeh 2013:3.

45 Basem & Saeh 2013:5.

Generally, corruption hinders economic, social, and political development. The arguments are subjective as to whether petty or grand corruption has the most effect. It may be said that petty corruption or day-to-day corruption has the most effect, as it is often characterised by small amounts of money,⁴⁶ and generally perpetrated by ordinary citizens, thus reflecting its integration in the social fabric. By contrast, some may perceive grand corruption as having the most effect, as it often involves large sums of money.⁴⁷ For some, grand corruption can hamper the effectiveness of foreign aid, due to officials siphoning large sums of public funds for private gains.⁴⁸ For instance, for foreign aid programmes to be effective, it requires effective institutions that implement policies. Therefore, it is assumed that, when a government system is corrupt, it will encounter difficulties in using the aid efficiently.⁴⁹

Irrespective of form, the existence of corruption in the public sector erodes trusts, as public officials create or seek opportunities to be bribed or to receive bribes, to misappropriate or launder illicit gains. At times, bribes are extorted at the expense of performing duties in the interest of the people. In light of this, the slightest corruption hinders the economy.⁵⁰ This is reflected on the root cause of corruption, which is greed. As indicated, corrupt behaviour may be embedded in social norms and political culture. Corruption has an individualistic trait, as it starts with an individual. A conscious decision to perpetrate, engage, aid or instigate to engage in corrupt practices is an individual decision. Although perpetrated as a collective at times, it requires an individual mindset first.

Acts of corruption that involve public officials affect the element of public trust that is centred on the public officials' commitment to uphold their duties. In addition, the actual perpetration of corruption signifies a deliberate conduct by public officials to intentionally violate their official duties. When government structures and processes do not uphold the rule of law, accountability or transparency, corruption will boundlessly thrive. This emphasises the importance of impartiality in state institutions and processes.

To understand the effects of corruption and its individualistic element, one ought to inquire as to what influences a person to engage in corrupt practices. In other words, what motivates a person to give out a bribe. According to an analysis of various studies consolidated by Mangafic and Veselinovic, determinants of micro-level corruption include age, which is considered a predictor of bribery in studies showing that individuals aged between 20 and 39 years are likely to engage in bribery. Moreover, individuals aged between 30 and 65 years are more likely to justify their corrupt practices than individuals aged 30 years or younger.⁵¹ Gender can be a determinant of corruption in that males or household with males as breadwinners are likely to engage in

46 Åkerström 2014:xiv.

47 Nicholls *et al.* 2011:327.

48 Basem & Saeh 2013:4.

49 Basem & Saeh 2013:4.

50 Basem & Saeh 2013:5.

51 Mangafic & Veselinovic 2020:2674-2675.

acts of bribery.⁵² However, it should be noted that women are equally capable of engaging in acts of corruption. Marital status can be a factor, as married individuals have a higher risk of engaging in corrupt practices.⁵³ Income is another factor that can contribute to the perpetration of corruption. Different studies have yielded different results. One study showed that individuals with a higher income including rich/affluent individuals are likely to engage in acts of bribery. Another study found that individuals who earn a lower income are likely to engage in bribes.⁵⁴

The private gains yielded by corruption affect the functioning of institutions; in other words, corruption may lead to institutional weakness. Institutions can contribute to social order, by providing stability and a framework in which transactions and cooperation should occur. Institutions can be classified as formal or informal.⁵⁵ Classified institutions set out rules to facilitate societies' acceptable exchanges and discourage less acceptable or discouraged exchanges. Formal institutions set out rules such as codes of conduct, norms of behaviours, and so on.⁵⁶ Informal institutions are embedded within the sociocultural fabric of society, thus gradually evolving. The interactions between formal or informal institutions contribute to the functioning of a society.⁵⁷ In the case of weak institutions, it becomes difficult to control or prevent behaviours of corruption. In addition, when a system of government and its processes or regulations are not transparent or officials are not held accountable, petty or grand corruption will thrive.⁵⁸

3.1 Corruption and administration of services

Acts of corruption often affect the administration of public services. When public officials embezzle, misappropriate or misuse public funds, this negatively impacts on service delivery. For example, in road construction, the quality of the road is affected and this may lead to constant repairs by the state, thus plundering the economy. Moreover, poorly constructed roads may lead to increased accident rates.⁵⁹ In another example, corruption has an adverse impact on education, resulting in an increase in poor quality education, which subsequently increases the skills gap and ultimately contributes to economic growth.⁶⁰

52 Mangafic & Veselinovic 2020:2675-2676.

53 Mangafic & Veselinovic 2020:2676.

54 Mangafic & Veselinovic 2020:2676-2677.

55 Ebben & De Vaal 2009:6.

56 Ebben & De Vaal 2009:6-7.

57 Ebben & De Vaal 2009:6-7.

58 Dimant & Tosato 2018:2.

59 Tshikalange "Pothole-related accident claims on the rise", <https://www.timeslive.co.za/news/south-africa/2022-12-01-pothole-related-accident-claims-on-the-rise/> (accessed on 3 April 2023).

60 Serfontein & De Waal 2015:3.

The impartial enforcement of the law is crucial for the maintenance of social order. Unfortunately, corruption has proven to be capable of undermining the enforcement and application of the law. Police corruption tampers with a society's safety and its need for justice.⁶¹ Moreover, corruption in the judiciary undermines the guaranteed protection of individual and collective rights.

Corruption has infiltrated and affected service delivery in the healthcare sector. Healthcare services are essential for the underprivileged members of society who do not have the necessary means for private healthcare services. Corruption in the public health sector pressurises poverty-stricken members of society to pay bribes, in order to receive or access treatment.⁶²

3.2 Corruption and economic growth

The preceding discussion shed light on the intertwined relations between corruption and the economy. Despite existing arguments that corruption may have a positive impact on economic growth, in general, it is accepted that corruption adversely impacts on economic and societal prospects of development.

According to Gründler and Potrafke, two theories attempt to explain how corruption influences economic growth. The 'grease-the-wheels' hypothesis theorises that corruption increases economic growth, due to its ability to find a way around inefficient regulation. For example, with tight regulations on starting a business, bribing politicians and bureaucrats may establish a business that will contribute economically.⁶³ Essentially, this theory suggests that corruption is beneficial for economic growth, as it facilitates the engine of economic growth and helps entrepreneurs avoid bureaucratic delays. However, is this theory sustainable, in other words, what would be the long-term effects of 'greasing-the-wheels'? Conversely, the 'greasing-the-wheels' theory is considered the most acceptable theory. It provides that corruption decreases economic growth, in that it prevents efficacy and innovation, particularly in countries with low investment rates and bad governance.⁶⁴ In essence, this theory suggests that corruption negatively affects economic growth, and increases uncertainty in decision-making processes.⁶⁵

The two theories on the nexus between corruption and economic growth demonstrate that corruption means different things to different people.⁶⁶ For example, some perceive the act of receiving a valuable item by a public official following the performance of an official duty as bribery, whereas others may

61 See Gottschalk 2012:169-182.

62 Mabuza "Elderly, women and children feel the brunt of health-sector corruption", <https://www.timeslive.co.za/news/south-africa/2020-07-22-elderly-women-and-children-feel-the-brunt-of-health-sector-corruption/> (accessed on 4 April 2023).

63 Gründler & Potrafke 2019:1.

64 Gründler & Potrafke 2019:1.

65 Anoruo & Braha 2005:44-45.

66 Fitzsimons 2007:42.

simply consider it as receiving a gift. For some, corruption may merely imply the power of public officials to extract money from people and businesses for services provided. This reflects the concept of rent seeking.⁶⁷

It is acknowledged that no society is immune to corruption. Some economic conditions enable corruption to flourish:

- Exploitable natural resources enable public officials to obtain illicit payments.
- Scarcity of public assets for service delivery may provide an opportunity for bribery, considering the high demand for public service delivery.
- Low wage or salary in the public sector.
- Transitioning economies.⁶⁸

Notwithstanding the above and differing perceptions on corruption and its impact on economic growth, corruption is a deterrent to economic growth when it is unrestrained and accompanied by conditions that enable it.

3.3 Corruption and societal interactions

Recognising that corruption continues to be integrated within societies, it affects the social norms and how people interact with each other, their actions, attitudes, and values. Hence, in societies where corruption is rife, it essentially becomes a way of life; hence, it may be believed that corruption gets things done.

Corruption may also have an influence on how members of a society interact with each other. Some scholars argue that ethnic division may increase corruption triggered by favouritism⁶⁹ and nepotism. Where a government system elects public officials from a particular ethnic group, such individuals are prone to maintain their positions and engage in corrupt behaviours as a result of being in a position to allocate resources to other individuals of the same ethnic group⁷⁰ to either help them retain or undertake the position.

Corruption is a behavioural response. In other words, a person chooses corruption instead of honesty. Do people choose corruption because of the economic cost and benefit or are there other intrinsic motivations? If the latter suffice, is it culturally determined?⁷¹ More often, social norms contribute to a person's social behaviour and beliefs because they are "enforced by internalised values."⁷²

67 Murphy *et al.* 1993:515.

68 Ahmad *et al.* 2012:282.

69 Dimant & Tosato 2018:3.

70 Dimant & Tosato 2018:3.

71 Barr & Serra 2010:862.

72 Posner & Rasmusen 2000:370.

Norms are a method of social control.⁷³ In other words, considering that a political party or government cannot claim social norms, the fight against corruption starts in society and the elimination of the corruption culture. This is paramount, because those who grow up in societies where corruption is rife and a way of life are likely to be corrupt or engage in corrupt acts in comparison to those who live in societies where corruption is rare. The culture of corruption is an indication of a society not having “internalized the anti-corruption norm and so the impact of intrinsic motivations on their decision to engage in or abstain from corruption is weak”.⁷⁴

3.4 Corruption and inequality

Corruption breeds and cradles inequality, because it affects the essence of social justice. In a society where corruption is rife, the gap between the impoverished and the wealthy continues to widen. For instance, there is a relationship between income inequality and corruption. The latter supports income inequality for various reasons. For example, bribes are not paid to the impoverished, but to the wealthy, because they have the power and the means to give something in return; it is thus profitable for them.⁷⁵ Another unfortunate reason is that illegal payments often occur in public sectors where free goods and services are offered by the state or at lower market value on the notion of benefiting all social classes.⁷⁶ When resources are scarce, a public official may either demand a bribe or a bribe is offered by those who have the means to offer it. This results in the diversion of resources to those who are able to pay the most.⁷⁷

4. EXISTING ANTI-CORRUPTION INSTRUMENTS IN SOUTH AFRICA

First, legislations ought to be grounded by the *Constitution of the Republic of South Africa, Act 106 of 1996* (hereafter, the *Constitution*) as the supreme law. In other words, any law or conduct that is not consistent with the *Constitution* is invalid.⁷⁸

The undertaking to write out corruption, as far as South Africa is concerned, is central to the South African constitutional transformation, and some fundamental elements of this process are centred on the protection of the Bill of Rights, promotion of the rule of law, equality and non-discrimination, and the establishment of Chapter 9 institutions to support constitutional democracy. Despite the *Constitution* not explicitly citing corruption, there are intrinsic links between the *Constitution* and the fight against corruption.

73 Posner & Rasmusen 2000:370.

74 Barr & Serra 2010:862.

75 Enste & Heldman 2017:30-31.

76 Enste & Heldman 2017:30-31.

77 Enste & Heldman 2017:30-31.

78 *The Constitution of the Republic of South Africa Act 108/1996:sec. 2.*

At the core of the *Constitution* is the need to promote and protect Chapter 2 of the Bill of Rights and the constitutional democracy. This requires adherence to the rule of law, accountability, and transparency, as well as the establishment of state institutions to exercise the oversight function to strengthen constitutional democracy.

The Bill of Rights is a collective of rights of all peoples.⁷⁹ Corruption devastates the realisation of these fundamental rights, thus contradicting sec. 7(2), which grants a duty to the State to respect, protect, and promote the fulfilment of the rights in the Bill of Rights. This duty encompasses the need to respond to corruption through effective anti-corruption mechanisms, including the enactment of statutes.⁸⁰

The *Constitution* promotes two components that are essential in a constitutional democracy and in the fight against corruption, namely accountability and transparency. Sec. 195 of the South African *Constitution* entrenches the need for transparency. Among many of its provisions, sec. 195(1) provides that public administration be governed in line with the democratic values and principles enshrined in the *Constitution*, including in keeping with professional ethics, providing services impartially, fairly, equitably, without bias, as well as promoting transparency and accountability. Moreover, sec. 217 provides for procurement. When dealing with contracts such as organs of State contracts for goods or services, it must be "fair, equitable, transparent, competitive and cost effective".

Furthermore, in an effort to ensure the promotion of transparency and accountability in conjunction with the fight against corruption, the *Constitution* establishes Chapter 9 institutions and empowers them to investigate corruption-related cases.

With these national constitutional entrenchments at hand, it was impossible for South Africa to not commit to international instruments such as the United Nations Convention against Corruption, the African Union Convention against Corruption, the Organisation for Economic Co-operation and Development Anti-Bribery Convention, and the Southern African Development Community Protocol against Corruption. Acknowledging these commitments, there are at least ten domestic anti-corruption instruments in South Africa. These national laws that encapsulate the anticorruption principles are discussed next.

4.1 *Public Service Act* 103 of 1994

Among many of its purposes, this *Act* provides for the organisation and administration of the public service in South Africa.⁸¹ Sec. 20 of the *Act* prohibits acts of misconduct by public officials to include disclosing information gained or conveyed during the course of employment in the public service or

79 The *Constitution of the Republic of South Africa Act 108/1996*:sec. 7(1).

80 *Glenister v President of the Republic of South Africa and Others* 2011(3) SA 347 (CC):par. 177.

81 *Public Service Act* 103/1994.

using such information for purposes other than their duties. Sec. 30 prohibits public officials from undertaking remunerative work outside their employment without permission.

The rationale of these provisions is to curb acts of corruption in the public sector which may include fraud, bribery, and misappropriation of funds. Unfortunately, as such acts persist, they indicate the ineffectiveness of the law and allegations of corruption in the public sector.⁸²

4.2 *Executive Members' Ethics Act 82 of 1998*

This *Act* was enacted to provide a code of ethics to members of the Cabinet, Deputy Ministers, and members of provincial Executive Councils. Sec. 2 provides for a code of ethics that includes acting in good faith and in the best interest of good governance.⁸³ The section further provides that these public officials refrain from putting themselves in a position wherein they are exposed to risk of conflict between their duties and their private interest.⁸⁴ In addition, the section prevents officials from "using their position or any information entrusted to them, to enrich themselves or improperly benefit any other person". Any breach of the code will be investigated by the Public Protector. This power is enshrined in sec. 3.⁸⁵

The essence of the *Act* lies in the promotion of transparency and accountability, by providing a framework of ethical considerations and codes of conduct for public officials including judiciary to prevent maladministration, abuse of power, conflict of interest, and influence in the performance of duties. Notwithstanding this, there have been numerous investigations on allegations of violations of ethics in the performance of public duties in the Office of the Public Protector.

4.3 *Prevention of Organised Crimes Act 121 of 1998*

The fundamental aims of this *Act* include providing for measures to combat organised crime, money laundering, and activities relating to racketeering. Chapter 2 deals with offences relating to racketeering activities, including prohibiting any person from receiving or retaining property derived directly or indirectly from a racketeering activity, among others. Chapter 3 provides for offences relating to proceeds of unlawful activities. It prohibits conducts such as entering into an agreement or engaging in a transaction with anyone in connection with a property that is or forms part of proceeds of an unlawful activity. This also includes concealing or disguising the nature, sources, location or movement of such property. Chapter 5 deals with the proceeds of unlawful activities. In this chapter, a gift is defined to include any gift received in connection with an offence committed.

82 For example, the establishment of the Investigating Directorate headed by Hermione Cronje.

83 *Executive Members' Ethics Act 82/1998*:sec. 2.

84 *Executive Members' Ethics Act*:sec. 2.

85 *Executive Members' Ethics Act*:sec. 3.

Notwithstanding the *Act*, there are syndicates of organised crime in the public sector. For example, in 2023, Adam Baadjies, a former employee of the Department of Forestry, Fisheries and the Environment, was a member of a syndicate sentenced on charges of racketeering, money laundering, corruption, and possession of abalone. Baadjies was sentenced under this *Act* for managing operations of the enterprise and in terms of sec. 2.⁸⁶

4.4 *Public Finance Management Act 1 of 1999*

The purpose of this *Act* is centred on regulating financial management at both national and provincial level and ensuring that the management of finances is done efficiently and effectively. The *Act* establishes the National Treasury, the National Revenue Fund, Provincial Treasuries, and Provincial Revenue Funds. Sec. 36 provides for the appointment of accounting officers in every department and constitutional institution, whereas sec. 49 provides that every public entity must have an authority that will be accountable. Sec. 50 provides for fiduciary duties of accounting authorities. Sec. 83 provides that an accounting authority of a public entity engaging in financial misconduct, wilfully or negligently, for example, makes or permits irregular expenditure or a fruitless and wasteful expenditure.

The *Act* promotes the efficient and effective management of revenue, expenditure, and assets of the state to prevent expropriation, fraud or misappropriation of funds. Unfortunately, there are numerous investigations on alleged acts of corruption by public officials mismanaging public funds.⁸⁷

4.5 *Protected Disclosure Act 26 of 2000*

This *Act* provides procedures on how employees disclose information concerning unlawful or irregular conduct by their employers or other employees. The *Act* assures protection of such employees from being prejudiced after having disclosed such information. The *Act* applies to both the private and the public sector.

It is imperative that the *Act* be adhered to, particularly in instances of contractual agreements or procurement with the state. For example, in 2022, former Department of Public Enterprises' director-general and whistle-blower Kgathatso Tlhakudi made a protected disclosure relating to the sale of South African Airways to Takatso Consortium, alleging that the sale was embroiled in gross irregularities.⁸⁸ To ensure the effectiveness of the *Act* in rooting out corruption, whistle-blowers ought to be protected and the procedures, as outlined in the *Act*, ought to be adhered to.

86 Francke "Western Cape abalone syndicate that included government officials sentenced", <https://bit.ly/4d7rkFO> (accessed on 30 November 2023).

87 In May 2023, Patience Mokhali, former Head of the Department for Roads and Public Works appeared in court for contravening the *Act*, fraud, corruption, and money laundering.

88 Khumalo "MPs to probe claims that SAA sale deal was 'corrupt'", <https://sundayworld.co.za/news/mps-to-probe-claims-that-saa-sale-deal-was-corrupt/> (accessed on 30 November 2023).

4.6 *Promotion of Access to Information Act 2 of 2000*

The establishment of this *Act* gives effect to the right to access information, as provided in sec. 32 of the *Constitution*. It is interesting to note that the *Act* is applicable to both public and private bodies. In other words, it applies to information by the State or any other entity.

Secs. 11 and 12 provide information that can be accessed by a requester to access records of public bodies, and records that the *Act* does not apply to, including records of Cabinet and its committees. Sec. 50 provides for access to records of private bodies.

The effectiveness of the *Act* is grounded on transparency and accountability, attributes that are essential in rooting out corruption. Following an investigation into alleged bribery for placement at the University of KwaZulu-Natal, in 2021, the Durban High Court ordered the University to release details.⁸⁹ The University released the information to comply with the court order.

4.7 *Promotion of Administrative Justice Act 3 of 2000*

In an attempt to promote good governance, efficient administration that is accountable, open, and transparent, this *Act* “gives effect to the right to administration action that is lawful, reasonable and procedurally fair”.⁹⁰ Having provided the definition of administrative action in sec. 1, the *Act* further provides that various factors must be considered in order for administration to be fair.⁹¹ Sec. 3 further provides that, in an attempt to ensure that administrative action is procedurally fair, an administrator ought to give persons the opportunity to get assistance or legal representation, present their arguments and information, and appear in person.⁹² Sec. 4 provides for instances where an administrative action affects the rights of the public and what an administrator ought to do in such instances,⁹³ whereas sec. 5 provides for reasons for administrative action.⁹⁴

It is evident that the *Act* is anchored on transparency and the promotion of just and fair administration. In the absence of these, the administration of the state becomes susceptible to corruption and bribery, in particular.

89 Mngadi “UKZN SRC calls for the release of ‘operation clever’ report”, <https://www.iol.co.za/sunday-tribune/news/ukzn-src-calls-for-the-release-of-operation-clever-report-425d9cb1-6407-468d-9241-7c99e4357996> (accessed on 30 November 2023).

90 *Promotion of Administrative Justice Act 3/2000*.

91 *Promotion of Administrative Justice Act*:sec. 1.

92 *Promotion of Administrative Justice Act*:sec. 3.

93 *Promotion of Administrative Justice Act*:sec. 4.

94 *Promotion of Administrative Justice Act*:sec. 5.

4.8 *Local Government: Municipal Finances Management Act 26 of 2003*

Local government has a significant role to play in service delivery. This *Act* ensures effective and efficient functioning and proper management of financial affairs in municipalities and other institutions. In addition to provisions on municipal accounts, Chapter 4 is dedicated to municipal budgets. This chapter includes provisions on publication of budgets and unspent funds.⁹⁵ Sec. 38 permits the National Treasury to stop funds to municipalities, upon breach of, for instance, sec. 216(1) of the *Constitution*.⁹⁶ Chapter 8 highlights the responsibilities of municipal officers. This includes provisions on accounting officers, financial management of funds, and budget reports, as well as any reportable matter.

A corrupt local government affects service delivery. The *Act* primarily calls for the sustainability of management of municipalities. Failure to adhere to the *Act* will result in the perpetuation of bribery. This is supported in a 2021 Corruption Watch report which revealed that bribery is the greatest form of corruption at local level.⁹⁷

4.9 *Prevention and Combating of Corrupt Activities Act 12 of 2004*

The aim of this *Act* is centred on preventing and combating corruption and its related activities. The *Act* lays out offences that amount to corrupt activities and measures to prevent and combat such activities. Chapter 2, part 2, contains sections on the corrupt activities perpetrated by specific persons, including public officials, judicial officers, agents, and foreign public officials. Part 3 of the said chapter provides for corruption activities that relate to receiving or offering unauthorised gratification. In its definition, gratification includes money, donation or gift, avoidance of a loss or any office or status. Part 4 of the said chapter prohibits the perpetration of corrupt activities in specific matters, including contracts, tenders, sports events, and auctions. Chapter 3 provides for instigations on possession of property relating to corrupt activities.

Notwithstanding the essence of the *Act*, numerous public officials in government offices are embroiled in giving or taking a bribe, thus hampering the effectiveness of the *Act*.

In light of the identified failures to effectively curb corruption, it is trite to explore the effects of corruption on the form of bribery in South Africa. As indicated earlier, bribery seems to be the main form of corruption. Corruption and bribery are inseparable and, therefore, inextricably of one identity. What follows is an overview delineating the conundrum of bribery in South Africa.

95 *Municipal Finances Management Act 26/2003*.

96 *Municipal Finances Management Act 26/2003*:sec. 38.

97 Corruption Watch "South Africa needs clean hands", <https://www.corruptionwatch.org.za/cw-report-reveals-that-most-local-government-corruption-occurs-in-municipal-managers-office/> (accessed on 30 November 2023).

5. BRIBERY IN SOUTH AFRICA: AN INJUSTICE OR A TOLERABLE CUSTOM

For the past ten years (2012-2022), South Africa's Corruption Perception Index scores have been in the ranges of 42-45/100.⁹⁸ Corruption in South Africa is often synonymous with bribery. The mention of cold drink or *tjo tjo* is an indication of bribery being requested or offered.⁹⁹ Whilst understanding that bribery involves directly or indirectly offering, giving, soliciting or receiving anything of value to influence someone's actions,¹⁰⁰ it involves two consenting individuals – 'you can't receive a bribe unless it is offered and you can't pay a bribe unless it is accepted'.¹⁰¹ Another fundamental consideration of bribery is that only those who have the means to bribe can offer a bribe. In essence, as observed earlier, where resources are scarce or where there are rigorous and necessary procedures to be followed, the privileged members of society are able to evade procedures or obtain resources at the expense of the poor. This highlights the impact of bribery on distributive and procedural justice.¹⁰² In other words, for benefits to be attained or service to be rendered, it is based on the financial muscle of an individual.¹⁰³

As explained earlier, the corrupt act of bribery has to be initiated by one of the parties involved. It is thus imperative to understand the difference between passive and active corruption. Demand-driven passive corruption implies that the initiative comes from the person who receives the payment.¹⁰⁴ Supply-driven active corruption and the initiative come from the person who pays it.¹⁰⁵ In other words, active corruption is the offence committed by the person promising or giving the bribe, whereas passive corruption is the offence committed by the person who receives the bribe.¹⁰⁶

Some have accepted that bribery is a victimless crime, because its negative consequences do not affect the parties involved, but instead, the general public bears the burden of its consequences.¹⁰⁷ This sentiment stems from the question as to whether a bribe giver can be considered a victim? According to Peters, if a person offers or initiates to bribe an official or receiver of a bribe, such a person cannot be considered a victim.¹⁰⁸ However, where there is an element of victimisation or coercion, which results in the bribe giver offering to give a bribe, such an individual is a victim.¹⁰⁹ Peters expands on this assertion, by giving an example of a public school graduate paying a bribe to receive a diploma or paying a teacher, in order to pass the examination.¹¹⁰

98 Corruption Watch, <https://www.transparency.org/en/cpi/2022/index/zaf> (accessed on 1 March 2023).

99 Van Vuuren 2004:12.

100 Sethna & Blythe 2019:121.

101 Moody-Stuart 1994:78.

102 Schnaudt *et al.* 2021:1-18.

103 Branson 2008:292.

104 Capasso & Santoro 2018:103-119.

105 Capasso & Santoro 2018:103-119.

106 Kubbe 2015:37.

107 Weigel 2013:152.

108 Peters 2018:29.

109 Peters 2018:29.

110 Peters 2018: 29.

Often, this can include learner drivers being told that a driver's licence will be obtained if they pay a bribe, irrespective of whether they pass or fail the driving test. In fact, in 2022, it was reported that bribe fees for those who need a driver's licence have increased from R1,700 to R2,000 per student.¹¹¹

The increase in bribery fees in sectors such as licensing illustrates the extent of the corruption culture. As asserted earlier, culture contributes to behavioural patterns and corruption continues to embed itself within the social fabric and to be accepted as a way of life. In South Africa, corruption "has become a culture among some political leaders, business people and the population".¹¹² The 2021 Corruption Watch annual report revealed that it received at least 3,248 whistle-blowers on corruption and other forms of misconduct mainly on maladministration, public procurement, abuse of authority, fraud, and misappropriation of resources.¹¹³ Corruption Watch is an independent civil society organisation that seeks to prevent, expose, report, and combat corruption.¹¹⁴ The report further revealed that the policing sector was the highest scoring sector at the time, with a score of 10 per cent. The report also illustrates the highest types of corruption reported, namely abuse of authority, dereliction of duty, and bribery or extortion.¹¹⁵

The Corruption Watch 2019 sectoral report on corruption in the South African Police Services is the first and latest report for the period 2012-2018. According to the report,

- 1,440 reports of corruption in Gauteng province received most cases with 52.8 per cent. It should be noted that, in its 2021 annual report, Gauteng maintained its lead as the most corrupt province in the police service sector, with 47 per cent and the traffic sector, with 83 per cent.
- Corruption Watch received 271 reports of allegations of police officials refusing to file cases, reluctant to act on a complaint against another officer, or soliciting bribes for a matter to be a priority or for a docket to disappear.
- Most of the accused identified included detectives, investigating officers, station commanders, and captains.
- The most popular type of corruption perpetrated was bribery, followed by abuse of power, and failure to act.¹¹⁶

111 Pheto "We can't afford bribe increase': Driving school operators shut Mbombela traffic department", <https://www.timeslive.co.za/news/south-africa/2022-11-04-we-cant-afford-bribe-increase-driving-school-operators-shut-mbombela-traffic-department/> (accessed on 24 March 2023).

112 Pillay "Decoding the culture of corruption", <https://www.corruptionwatch.org.za/decoding-the-culture-of-corruption/> (accessed on 24 March 2023).

113 Corruption Watch 2021a: 30-31.

114 Corruption Watch 2021a:25.

115 Corruption Watch 2021a:32.

116 Ncala "Corruption in uniform: When cops become criminals", <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.corruptionwatch.org.za/wp-content/uploads/2019/06/Police-sectoral-report-June2019.pdf> (accessed on 27 March 2023).

As outlined in the 2021 Corruption Watch annual report, the police and traffic sector held the highest level of corruption and the most common type of corruption, namely bribery.¹¹⁷ Within these sectors, the types of corruption found on the road, as outlined by Corruption Watch, include bribery to avoid a traffic fine/arrest, bribery to obtain certification of roadworthiness, where vehicles are not properly inspected, bribery to avoid arrests, bribery to obtain a driver's licence, abuse of power, where road users are detained for 48 hours without formal charges laid if they refuse to pay a bribe, and threat of violence, where traffic officers demand/are offered bribes or sexual favours, otherwise they are threatened with physical harm.¹¹⁸ The annual report also revealed that the licence sector accounted for 2.3 per cent, with the most common type of corruption reported being bribery and extortion, with 77 per cent, and fraud, with 13 per cent.¹¹⁹

The Corruption Watch 2021 Analysis of Corruption Trend reported that the police sector was the highest identified corruption hotspot, with 12 per cent. The report revealed that the highest form of corruption perpetrated in January-June 2021 was abuse of authority, with 37 per cent, followed by dereliction of duty, with 34 per cent, and bribery, with 22 per cent.¹²⁰ In addition, the province with the highest number of reported cases was Gauteng, with 46 per cent, followed by Western Cape, with 16 per cent.¹²¹

In the 2022 Analysis of Corruption Trends report, the trending areas of corruption were miscellaneous sources, with the highest at 8 per cent, followed by corruption police, with 8 per cent. With specific focus on the public sector, the police held the highest reported reports, with 11 per cent.¹²² The report further revealed that, between January and June 2022, the police sector was the second highest corruption hotspot.¹²³ Similar to the 2021 report, Gauteng remained the province with the highest number of police, traffic and licence corruption reported cases.¹²⁴ In addition, the highest types of corruption identified in the police sector were dereliction of duty, followed by bribery/extortion, and abuse of power. However, in traffic and licensing, the most reported types of corruption were bribery/extortion, followed by abuse of power and fraud.¹²⁵

117 Corruption Watch 2021a: 32-33.

118 Corruption Watch 2017, <https://www.corruptionwatch.org.za/download-share-new-brochures/> (accessed on 25 March 2023).

119 Corruption Watch 2021a:33.

120 Corruption Watch 2021a:33.

121 Corruption Watch 2021b, <https://www.corruptionwatch.org.za/more-police-visibility-more-police-corruption-says-act-report/> (accessed on 20 April 2023).

122 Ncala "Analysis of corruption trends", <https://www.corruptionwatch.org.za/reading-and-media-room/reports/> (accessed on 20 April 2023).

123 Ncala "Analysis of corruption trends", <https://www.corruptionwatch.org.za/reading-and-media-room/reports/> (accessed on 20 April 2023).

124 Corruption Watch 2021b, <https://www.corruptionwatch.org.za/more-police-visibility-more-police-corruption-says-act-report/> (accessed on 20 April 2023)

125 Ncala "Analysis of corruption trends", <https://www.corruptionwatch.org.za/wp-content/uploads/2022/09/corruption-watch-ACT-2022-digital-combined-agent-orange-design-20220907.pdf> (accessed on 27 March 2023).

The Corruption Watch 2021 Annual Report further revealed that the education sector counted for 5.8 per cent, with the most common types of corruption reported being abuse of authority, misappropriation of resources, employment corruption, and procurement.¹²⁶ COVID-19-related corruption accounted for 3.6 per cent, with the most common type of corruption being maladministration and procurement corruption.¹²⁷ This statistic was followed by the housing sector, with 3.1 per cent, and joint fifth was health and traffic, with 2.7 per cent. With the traffic sector, the most common types of corruption reported were bribery and extortion, with 67 per cent, and abuse of authority.¹²⁸

Principals and members of the school-governing body, also known as the SGB, often perpetrated corruption in schools.¹²⁹ According to Corruption Watch, corruption becomes rife where parents or guardians are unaware of their responsibility to demand transparency and accountability. Furthermore, the most common acts of corruption perpetrated in schools often include theft of funds and financial mismanagement; theft of goods, *i.e.* property and resources being taken by officials of the school; employment corruption; ghost learners and teachers where principals inflate the school toll to acquire additional funds, and demand for payment in no-fee schools.¹³⁰

The 2021 Analysis of Corruption Trends reported that, between January and June 2021, Gauteng, the Eastern Cape, and Limpopo received the highest reported cases of alleged corruption.¹³¹ The highest types of corruption identified included abuse of authority, with 21 per cent, followed by embezzlement of funds, corruption employment, and procurement corruption.¹³²

In the 2022 Analysis of Corruption Trends report, miscellaneous sources counted the highest with 8 per cent, followed by police and education.¹³³ The education sector was the second highest sector with the most reported cases, the third identified corruption hotspot. Gauteng had the highest level of corruption in basic education, with 51 per cent.¹³⁴ Slightly different from

126 Corruption Watch 2021a:32.

127 Corruption Watch 2021a:32-33 <https://issuu.com/agentorangedesign/docs/cw-2021-annual-report-10-years-20220331-single-pag/1> (accessed on 21 April 2023).

128 Corruption Watch 2021a:32-33 <https://issuu.com/agentorangedesign/docs/cw-2021-annual-report-10-years-20220331-single-pag/1> (accessed on 21 April 2023).

129 Corruption Watch 2017, <https://www.corruptionwatch.org.za/download-share-new-brochures/> (accessed on 25 March 2023).

130 Corruption Watch 2017, <https://www.corruptionwatch.org.za/download-share-new-brochures/> (accessed on 25 March 2023).

131 Corruption Watch 2021b, <https://www.corruptionwatch.org.za/more-police-visibility-more-police-corruption-says-act-report/> (accessed on 20 April 2023).

132 Corruption Watch 2021b, <https://www.corruptionwatch.org.za/more-police-visibility-more-police-corruption-says-act-report/> (accessed on 20 April 2023).

133 Ncala "Analysis of corruption trends", <https://www.corruptionwatch.org.za/wp-content/uploads/2022/09/corruption-watch-ACT-2022-digital-combined-agent-orange-design-20220907.pdf> (accessed on 27 March 2023).

134 Ncala "Analysis of corruption trends", <https://www.corruptionwatch.org.za/wp-content/uploads/2022/09/corruption-watch-ACT-2022-digital-combined-agent-orange-design-20220907.pdf> (accessed on 27 March 2023).

its 2021 report, misappropriation of funds was the highest type of corruption identified in schools, with 33 per cent, followed by dereliction of duty and abuse of power.¹³⁵

Municipalities play a fundamental role in service delivery. Unfortunately, corruption has infiltrated the local government municipalities. The Global Corruption Barometer is a survey wherein all individuals share their experiences with corruption. The survey is conducted on a global scale, *i.e.* in Africa, Asia Pacific, Europe and Central Asia, Middle East and North Africa, Latin America and the Caribbean.¹³⁶ The GCB for Africa was conducted in partnership with the Afrobarometer, a pan-African non-profit company that conducts surveys on democracy, governance, economy, and society.¹³⁷ The 2019 GCB-Africa was conducted, from 2016 to 2018, in 35 countries including South Africa. This report is the latest available report to date. In South Africa, the survey revealed that, among others,

- 64 per cent thought that corruption increased.
- 18 per cent of the people who use public services paid a bribe.
- 70 per cent viewed government as not doing a proper job fighting corruption.
- 64 per cent of South Africans indicated that corruption increased; 16 per cent indicated a decrease, 18 per cent indicated that corruption stayed the same.
- 49 per cent thought that government officials, local government officials, and police are corrupt.¹³⁸

The Afrobarometer 2021 survey found that South Africans believe that corruption has not only increased, but is also worsening, and that a growing number of public officials are involved in corrupt practices.¹³⁹ Of the South Africans, 53 per cent believed that “most” or “all” of the officials in the Presidency are involved in corruption; 51 per cent indicated that most or all of the local government councillors are involved in corruption; 50 per cent for members of Parliament; 42 per cent for judges, 36 per cent for magistrates, and 33 per cent for tax officials.¹⁴⁰ Of the participants, 81 per cent perceived Mpumalanga as the highest province on impunity for public officials, followed by KwaZulu-Natal (80 per cent), Western Cape (74 per cent), Gauteng (73 per cent), and Free State (47 per cent).¹⁴¹

135 Ncala “Analysis of corruption trends”, <https://www.corruptionwatch.org.za/wp-content/uploads/2022/09/corruption-watch-ACT-2022-digital-combined-agent-orange-design-20220907.pdf> (accessed on 27 March 2023).

136 Transparency International “Global corruption barometer”, <https://www.transparency.org/en/gcb> (accessed on 1 March 2023).

137 <https://www.afrobarometer.org/about/> (accessed on 1 March 2023).

138 Pring & Vrushu 2019:53.

139 Patel & Govindasamy 2021:2.

140 Patel & Govindasamy 2021:3.

141 Patel & Govindasamy 2021:8.

Municipal officials who engage in corruption do so through “informal consortiums and collaborating with service providers to siphon money from the public purse”.¹⁴² In 2021, seven senior Nelson Mandela Metropolitan Municipality officials and entrepreneurs appeared in court on fraud and corruption charges amounting to R25,6 million. The criminal enterprise was established to manipulate procurement processes. According to the NPA, the alleged Milogani Eco-Consulting CC received the said amount in a total of 43 payments. In July, an order was granted to the Asset Forfeiture Unit to seize the assets, estimated to be worth R11 million, of the accused, their spouses, and entities.¹⁴³ Officials who were convicted for corruption-related activities include Estelle Burgess, a 65-year-old convicted to 15 years' imprisonment for defrauding the Eastern Cape Training Centre of R13 million whilst working as a clerk for ten years.¹⁴⁴ In another case, a former municipal manager of Naledi Municipality in Vryburg, Eric Phukwana, was convicted of fraud and corruption. Eric awarded a R131,518 million tender for RDP houses to a company without following proper procurement procedures. Investigations revealed that R89 million was paid to the company, whereas the value on the ground was R29 million, thus implying that R60 million was paid for services not rendered. Eric received R350,000 gratification.¹⁴⁵

6. CONCLUSION

In light of the above, corruption can either be grand or petty. Irrespective of its classification and various forms, corruption was viewed as generally having a negative impact on society and the economy. It knows no boundaries and has negative effects. Against the entrenched socioeconomic rights, corruption was found to be increasing the inequality gap between the rich and the impoverished, as it undermines the rule of law, accountability, and transparency, by weakening judicial systems and state institutions.

142 Madolo “NPA’s municipal corruption crackdown in the Eastern Cape”, https://www.dailymaverick.co.za/article/2022-04-24-npas-municipal-corruption-crackdown-in-the-easterncape/?utm_source=newsletter&utm_medium=email&utm_campaign=reminder_invitation_webinar_on_the_prosecution_of_corruption_in_municipalities_with_advocate_barry_madolo_npa_14_june_2022&utm_term=2022-07-15 (accessed on 27 March 2023).

143 Ngcukana “Court hears how officials colluded in a ‘criminal enterprise’ to defraud Nelson Mandela Bay Metro”, <https://www.news24.com/citypress/news/court-hears-how-officials-colluded-in-a-criminal-enterprise-to-defraud-nelson-mandela-bay-metro-20210729> (accessed on 27 March 2023).

144 Madolo, “NPA’s municipal corruption crackdown in the Eastern Cape”, https://www.dailymaverick.co.za/article/2022-04-24-npas-municipal-corruption-crackdown-in-the-easterncape/?utm_source=newsletter&utm_medium=email&utm_campaign=reminder_invitation_webinar_on_the_prosecution_of_corruption_in_municipalities_with_advocate_barry_madolo_npa_14_june_2022&utm_term=2022-07-15 (accessed on 27 March 2023).

145 Mbadu “Vryburg municipal manager convicted of corruption”, <https://www.npa.gov.za/media/vryburg-municipal-manager-convicted-corruption> (accessed on 27 March 2023).

Against rights to administrative justice, access to information and transparency, the article found that, in South Africa, bribery has apparently become part of South Africans' (civilians and public officials) daily routines. Unfortunately, at times, paying a bribe may be motivated by the possibility of receiving proper public service delivery such as licences, healthcare, or water.¹⁴⁶ Several factors may contribute to the culture of corruption in South Africa, including poor salary or remuneration and benefits, scarce resources and, most importantly, the lack of political and societal will to combat corruption.

The article observed that, despite the numerous anti-corruption instruments in South Africa, corruption is still prevalent. This unfortunately establishes an eternal cycle of dilemmas. Simply put, it is generally accepted that corruption affects the economy. Although this is true, when bribes are paid for employment appointments, unqualified people would, for example, be employed; when bribes are paid in procurement processes, poor-quality outcomes will be evident; where there are bribes following traffic violations, safety is compromised and respect for the law is undermined. For every act of corruption, there are dire consequences that affect the general population.

Considering how corruption has infiltrated into the social fabric of South Africans, the fight against corruption requires more than political will. Social will is necessary and has a crucial role to play in the fight against corruption in South Africa. By virtue of being characterised as a collective acknowledgement of rights and duties, social will can complement political will.

Educating society on corruption can contribute to the fight against corruption. In other words, incorporating corruption in South African school curriculums would be a robust and necessary step towards rooting out corruption. The contribution of educating a society on corruption is invaluable, as it affords society the opportunity to understand the long-term effects of engaging in such practices. Most importantly, when society is conscious of its contribution to, and/or role in the prevalence of corruption, any act of corruption will be frowned upon.

The police and traffic, education, and local municipalities sectors are among those that are crucial and play a tremendous role in the daily lives of South Africans.

It would seem against all national and international efforts to curb corruption from a legal perspective. Corruption continues to exist in the daily lives of South Africans. It is only through acts of bribery that the public access amenities – from basic rights entrenched in the constitutional transformative demands.¹⁴⁷ The previously disadvantaged majorities, who cannot bribe, do not progress, due to their exclusion by those possessing power. Those in power, be it private or public, evade the enforcement of laws and do not adhere to legal processes.

146 Dimant & Tosato 2016:6.

147 Munyai 2020:67.

BIBLIOGRAPHY

AHMAD E, ULLAH MA & ARFEEN MI

2012. Does corruption affect economic growth? *Latin American Journal of Economics* 49(2):277-305. <https://doi.org/10.7764/LAJE.49.2.277>

ÅKERSTROM M

2014. *Suspicious gifts: Bribery, morality, and professional ethics*. 1st edition. Piscataway, NJ: Transaction Publishers.

ALSCHULER AW

2015. Criminal corruption: Why broad definitions of bribery make things worse. *Fordham Law Review* 84(2):463-492. <https://doi.org/10.2139/ssrn.2555912>

AMUNDSEN I (ED.)

2019. *Political corruption in Africa: Extraction and power preservation*. Cheltenham: Edward Elgar Publishing. <https://doi.org/10.4337/9781788972529>

ANORUO E & BRAHA H

2005. Corruption and economic growth: The African experience. *Journal of Sustainable Development in Africa* 7(1):43-55.

ASEA WB

2018. Combating political and bureaucratic corruption in Uganda: Colossal challenges for the church and the citizens. *HTS Teologiese Studies* 74(2):1-14. <https://doi.org/10.4102/hts.v74i2.4535>

BARR A & SERRA D

2010. Corruption and culture: An experimental analysis. *Journal of Public Economics* 94(11-12):862-869. <https://doi.org/10.1016/j.jpubeco.2010.07.006>

BASEM E & SAEH MA

2013. The impact of corruption on some aspects of the economy. *International Journal of Economics and Finance* 5(8):1-8. <https://doi.org/10.5539/ijef.v5n8p1>

BRACKING S (ED.)

2007. *Corruption and development: The anti-corruption campaigns*. New York: Palgrave Macmillan. <https://doi.org/10.1057/9780230590625>

BRANSON R

2008. *Business stripped bare: Adventures of a global entrepreneur*. London: Virgin Books.

BROCKMANN C

2023. *Construction microeconomics*. Hoboken: Wiley. <https://doi.org/10.1002/9781119831938>

COMBLEY R

2011: *Cambridge Business English Dictionary*. Cambridge University Press: Cambridge

CAPASSO S & SANTORO L

2018. Active and passive corruption: Theory and evidence. *European Journal of Political Economy* 52(C):103-119. <https://doi.org/10.1016/j.ejpoleco.2017.05.004>

COMMONWEALTH SECRETARIAT

2006. *Combating money-laundering and terrorist financing: A model of best practices for the financial sector, the professions and other designated businesses*. London: Commonwealth Secretariat.

CORRUPTION WATCH

2017. Corruption in our schools. <https://www.corruptionwatch.org.za/download-share-new-brochures/> (accessed on 25 March 2023).

2021a. 10 Years pushing for change (2021 Annual Report). <https://issuu.com/agentorangedesign/docs/cw-2021-annual-report-10-years-20220331-single-pag/1> (accessed on 16 April 2023).

2021b. Analysis of Corruption Trends (ACT). <https://www.corruptionwatch.org.za/more-police-visibility-more-police-corruption-says-act-report/> (accessed on 20 April 2023).

2021c. South Africa needs clean hands. <https://www.corruptionwatch.org.za/cw-report-reveals-that-most-local-government-corruption-occurs-in-municipal-managers-office/> (accessed on 30 November 2023).

DIMANT E & TOSATO G

2018. Causes and effects of corruption: What has past decade's empirical research taught us? A survey. *Journal of Economic Surveys* 32(2):335-356. <https://doi.org/10.1111/joes.12198>

EBBEN W & DE VAAL A

2009. Institutions and the relation between corruption and economic growth. Nijmegen Centre for Economics Working Paper 09-104.

ELLIS S

2012. *Seasons of rains: Africa in the world*. Chicago, IL: University of Chicago Press.

ENSTE DH & HELDMAN C

2017. *Causes and consequences of corruption: An overview of empirical results*. IW-Report No. 2/2017. Cologne: Institute for Economic Research. <https://doi.org/10.4337/9781786434753.00011>

ERDOĞDU MM & CHRISTIANSEN B (EDS)

2016. *Handbook of research on comparative economics development perspectives on Europe and the MENA region*. Hershey, PA: IGI Global. <https://doi.org/10.4018/978-1-4666-9548-1>

EZZAT AM & FARRAG NA

2016. The impact of corruption on economic growth: A comparative analysis between Europe and MENA countries. In MM Erdoğan & B Christiansen (eds) 2016: 74-97. <https://doi.org/10.4018/978-1-4666-9548-1.ch005>

FAHED-SREIH J (ED.)

2023. *Corruption – New insights*. London: IntechOpen. <https://doi.org/10.5772/intechopen.102118>

FITZSIMONS VG

2007. Economic models of corruption. In S Bracking (ed.) 2007:page numbers?. https://doi.org/10.1057/9780230590625_3

FOMBAD C

2020. *Corruption and constitutionalism in Africa: Revisiting control measures and strategies*. Oxford: Oxford University Press. <https://doi.org/10.47348/AJCL/2020/a5>

FRANCKE RL

2023. Western Cape abalone syndicate that included government officials sentenced. <https://www.iol.co.za/news/crime-and-courts/western-cape-abalone-syndicate-that-included-government-officials-sentenced-ce9ea69e-8747-4f22-9445-664f60373a99> (accessed on 30 November 2023).

GOTTSCHALK P

2012. White-collar crime and police crime: Rotten apples or rotten barrels? *Critical Criminology* 20:169-182. <https://doi.org/10.1007/s10612-011-9133-0>

GRÜNDLER K & POTRAFKE N

2019. Corruption and economic growth: New empirical evidence. *European Journal of Political Economy* 60:1-14. <https://doi.org/10.1016/j.ejpolco.2019.08.001>

IBODULLAEVICH KK & KIZI UGK

2021. Types, forms of corruption, causes and consequences. *Scientific progress* 1(4):4-9.

JOHNSON DK & BERRY MR

2021. *Exploring the Orville: Essays on Seth MacFarlane's space adventure*. Jefferson, NC: McFarland Inc. Publishers.

KAMWANI SS, VIEIRA ES, MADALENO M & AZEVEDO G

2022. *Handbook of research on the significance of forensic accounting techniques in corporate governance*. Hershey, PA: IGI Global. <https://doi.org/10.4018/978-1-7998-8754-6>

KHUMALO K

2022. MPs to probe claims that SAA sale deal was 'corrupt'. <https://sundayworld.co.za/news/mps-to-probe-claims-that-saa-sale-deal-was-corrupt/> (accessed on 30 November 2023).

KUBBE I

2015. *Corruption in Europe: Is it all about democracy?* Baden-Baden: Nomos Verlagsgesellschaft.

LEFF NH

1964. Economic development through bureaucratic corruption. *American Behavioral Scientist* 8:8-14. <https://doi.org/10.1177/000276426400800303>

LYNDA AM, DENT P & QURAIISHI OP.

2014. Corruption in Canada: Definitions and Enforcement. *Public Safety Canada:1-3*.

MABUZA E

2020. Elderly, women and children feel the brunt of health-sector corruption. <https://www.timeslive.co.za/news/south-africa/2020-07-22-elderly-women-and-children-feel-the-brunt-of-health-sector-corruption/> (accessed on 21 April 2023).

MADOLO B

2022. NPA's municipal corruption crackdown in the Eastern Cape. https://www.dailymaverick.co.za/article/2022-04-24-npas-municipal-corruption-crackdown-in-the-eastern-cape/?utm_source=newsletter&utm_medium=email&utm_campaign=reminder_invitation_webinar_on_the_prosecution_of_corruption_in_municipalities_with_advocate_barry_madolo_npa_14_june_2022&utm_term=2022-07-15 (accessed on 27 March 2023).

MANGAFIC J & VESELINOVIĆ L

2020. The determinants of corruption at the individual level: Evidence from Bosnia-Herzegovina. *Economic Research/Ekonomska istraživanja* 33(1):2670-2691. <https://doi.org/10.1080/1331677X.2020.1723426>

MARTIN ME & SOLOMON H

2016. Understanding the phenomenon of "state capture" in South Africa. *Southern African Peace and Security Studies* 5(1):21-34.

MBADU T

2019. Vryburg municipal manager convicted of corruption. <https://www.npa.gov.za/media/vryburg-municipal-manager-convicted-corruption> (accessed on 27 March 2023).

MELONE M

2021. *Designing secure systems*. 1st edition. London: Routledge. <https://doi.org/10.1201/9781003144182-1>

MNGADI S

2021. UKZN SRC calls for the release of 'operation clever' report. <https://www.iol.co.za/sunday-tribune/news/ukzn-src-calls-for-the-release-of-operation-clever-report-425d9cb1-6407-468d-9241-7c99e4357996> (accessed on 30 November 2023).

MOODY-STUART G

1994. *Corruption, democracy and human rights in West: Summary report of the seminar organised by the Africa Leadership Forum*. Berlin: Transparency International.

MULLA MAS

2023. *Nepotism and corruption: A descriptive and analytical study in the reality of Kuwaiti society*. In Fahed-Sreih J (ed) 2023: 111-121

MUNYAI A.

2020. *Overcoming the corruption conundrum in Africa: A socio-legal perspective*. NewCastle: Cambridge Scholars Publishing.

MURPHY KM, SHLEIFER A & VISHNY RW

1993. Why is rent-seeking so costly to growth? *The American Economic Review* 83(2):409-414.

MYINT U

2000. Corruption: Causes, consequences and cures. *Asia-Pacific Development Journal* 7:33-58.

NCALA M

2022. Analysis of Corruption Trends. <https://www.corruptionwatch.org.za/wp-content/uploads/2022/09/corruption-watch-ACT-2022-digital-combined-agent-orange-design-20220907> (accessed on 27 March 2023).

NGCUKANA L

2021. Court hears how officials colluded in a 'criminal enterprise' to defraud Nelson Mandela Bay Metro. <https://www.news24.com/citypress/news/court-hears-how-officials-colluded-in-a-criminal-enterprise-to-defraud-nelson-mandela-bay-metro-20210729> (accessed on 27 March 2023).

NICHOLLS CQC, DANIEL T, BACARESE A & HATCHARD J

2011. *Corruption and misuse of public office*. 2nd edition. Oxford: Oxford University Press.

NYE JS

1967. Corruption and political development: A cost-benefit analysis. *American Political Science Review* 61(2):417-427. <https://doi.org/10.2307/1953254>

OLOLUBE NP (ED.)

2016. *Handbook of research on organizational justice and culture in higher education institutions*. Hershey, PA: IGI Global. <https://doi.org/10.4018/978-1-4666-9850-5>

WAITE M (ED.)

2013. Pocket Oxford English University Press. Oxford University Press: Oxford

PATEL J & GOVINDASAMY P

2021. South Africans see corruption as worsening during President Ramaphosa's tenure. *Afrobarometer Dispatch* No. 476.

PETERS A

2018. Corruption as a violation of international human rights. *European Journal of International Law* 29(4):1251-1287. <https://doi.org/10.1093/ejil/chy070>

PHETO B

2022. 'We can't afford bribe increase': Driving school operators shut Mbombela traffic department. <https://www.timeslive.co.za/news/south-africa/2022-11-04-we-cant-afford-bribe-increase-driving-school-operators-shut-mbombela-traffic-department/> (accessed on 24 March 2023).

PILLAY K

2013. Decoding the culture of corruption. <https://www.corruptionwatch.org.za/decoding-the-culture-of-corruption/> (accessed on 21 April 2023).

POSNER RA & RASMUSEN EB

2000. Creating and enforcing norms, with special reference to sanctions. *Economics Working Paper* No. 96:359-382. [https://doi.org/10.1016/S0144-8188\(99\)00013-7](https://doi.org/10.1016/S0144-8188(99)00013-7)

PRING C & VRUSHI J

2019. *Global corruption barometer: Africa 2019*. Transparency International, International Secretariat.

SARTOR MA & BEAMISH PW

2020. Integration-oriented strategies, host market corruption and the likelihood of foreign subsidiary exit from emerging markets. *Journal of International Business Studies* 51:414-431. <https://doi.org/10.1057/s41267-019-00297-7>

SCHNAUDT, C, HAHN C & HEPPNER E

2021. Distributive and procedural justice and political trust in Europe. *Frontiers in Political Science* 3:1-18. <https://doi.org/10.3389/fpos.2021.642232>

SERFONTEIN E & DE WAAL E

2015. The corruption bogey in South Africa: Is public education safe? *South African Journal of Education* 35(1):1-12. <https://doi.org/10.15700/201503070020>

SETHNA Z & BLYTHE J

2019. *Consumer behaviour*. 4th edition. London: SAGE Publications.

SHUY RW

2013. *The language of bribery cases*. New York: Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199945139.001.0001>

SMITH DJ

2010. *A culture of corruption: Everyday deception and popular discontent in Nigeria*. Princeton, NJ: Princeton University Press.

SUNDSTRÖM A

2019. Why do people pay bribes? A survey experiment with resource users. *Social Science Quarterly* 100:725-735. <https://doi.org/10.1111/ssqu.12600>

TRANSPARENCY INTERNATIONAL

Date?. Global corruption barometer. <https://www.transparency.org/en/gcb> (accessed on 1 March 2023).

TSHIKALANGE S

2022. Potholes-related accidents claims on the rise. <https://www.timeslive.co.za/news/south-africa/2022-12-01-pothole-related-accident-claims-on-the-rise/> (accessed on 21 April 2023).

VAN VUUREN H

2004. Small bribes, big challenges: Extent and nature of petty corruption in South Africa. *SA Crime Quarterly* (9):11-16.

WEIGEL W

2013. *Economics of the law: A primer*. 1st edition. London: Routledge. <https://doi.org/10.4324/9780203930779>

ZHANG Y & LAVENA C

2015. Introduction: Corruption and government anti-corruption strategies. In Y Zhang & JG Vargas-Hernández 2015: xiii-xxv. <https://doi.org/10.1201/b18560>

ZHANG Y & VARGAS-HERNÁNDEZ JG

2015. *Government anti-corruption strategies: A cross-cultural perspective*. London: Routledge.