

DEMOCRACY WORKS | CONFERENCE PAPER | 2014

South Africa: Democracy, Corruption and Conflict Management

by Hennie van Vuuren



Voices FROM THE *South*

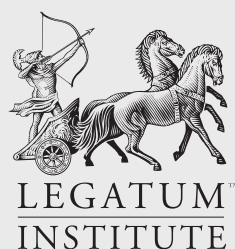
A PROJECT OF



CENTRE FOR
DEVELOPMENT
AND ENTERPRISE

Informing South African Policy

CDE is an independent policy research and advocacy organisation. It is one of South Africa's leading development think tanks, focusing on critical development issues and their relationship to economic growth and democratic consolidation. Through examining South African realities and international experience, CDE formulates practical policy proposals outlining ways in which South Africa can tackle major social and economic challenges. CDE has a special focus on the role of business and markets in development.



Based in London, the Legatum Institute (LI) is an independent non-partisan public policy organisation whose research, publications, and programmes advance ideas and policies in support of free and prosperous societies around the world. LI's signature annual publication is the *Legatum Prosperity Index*[™], a unique global assessment of national prosperity based on both wealth and wellbeing. LI is the co-publisher of *Democracy Lab*, a journalistic joint-venture with *Foreign Policy Magazine* dedicated to covering political and economic transitions around the world.

SUPPORTED BY:



CENTRE FOR POLICY RESEARCH
Premier Think Tank Shaping Policy Debates Since 1973

Centre for Policy Research, India
www.cprindia.org



Instituto de Estudos do Trabalho
e Sociedade, Brazil

www.iets.org.br

*The views expressed in this paper are those of the author(s) and not necessarily those of the Legatum Institute (LI)
or the Centre for Development and Enterprise (CDE).*

Executive Summary

This working paper was prepared in April 2013 for presentation at the Democracy Works Project seminar at CDE.

ABOUT THE AUTHOR:

Hennie van Vuuren¹

Fellow, Open Society Foundation
of South Africa

The way that South Africa has responded to the issue of corruption is evidence that the country exists as a functioning democracy. South Africa has successfully developed laws and institutions that have formulated a response to instances of corruption at a national level. It is not a fundamentally corrupted state, nor does it use heavy-handed means to fight corruption. The rule of law generally prevails. However, digging deeper reveals a country that is grappling with measures to counter corruption and the abuse of power. The law is applied inconsistently and corruption fuels already high levels of economic inequality.

Two trends are emerging in South African society that deserve far more attention than they have thus far received. Firstly, levels of corruption are peaking, and are perhaps at the highest level they have been since the final years of apartheid. The last five years in particular have seen political corruption that was seemingly isolated to the multi-billion arms deal spill over into the rest of the society. While to a large degree it is a symptom of the problems that the arms deal created, it is equally a hangover from apartheid. Secondly, elite networks within government and business are deeply compromised, and this appears to be shaping and destabilising current anti-corruption efforts. This culture indicates a return to apartheid-style secrecy and the use of security agencies to deal with political conflict and intervene in high-level corruption investigations.

The nature and degree of corruption in South Africa may be unknown to the populace, but it reflects problems of the past that were not resolved and are now coming to bear in contemporary society, albeit to a much milder degree. The past, an uncomfortable space for the older generation of South Africa, holds the key to some of the solutions to how corruption can be dealt with effectively. This should not be seen as a phenomenon of individual scandals but rather the outcome of corrupted networks that have morphed and changed over three decades and four unique periods of governance.

South Africa is, therefore, a state with a functioning democracy but with elements of the political elite that have anti-democratic tendencies. These elements do not launch a direct attack on democratic institutions, but rather seek to undermine them by ensuring that the rule of law is applied inconsistently and a climate of uncertainty exists within management of public institutions.

The worrying trends that suggest a sharp increase in the level of corruption within the public sector at present are not a problem of the public sector alone. It is not only the state that has been complicit in corruption; recent revelations of collusion and cartel behaviour suggest that the problem is equally acute in the private sphere of the economy. The private sector provides little by the way of leadership and leverage in the debate around corruption, suggesting that it is retreating to the comfort zone that it occupied during apartheid.

The rising culture of secrecy and the re-emergence of securocrats within South African politics are of particular concern. There is evidence to suggest that the securocrats are playing a key role in politics as they work hand in glove with politically compromised politicians. Many of the recommendations for reforming the security and intelligence sector have been ignored and there has been a resurgence of national security laws that limit the public's access to sensitive information, a situation that requires close monitoring.

However, South Africa is also an open society with a robust media and a revitalised civil society. Civil society organisations employ different methods to tackle corruption, such as using the courts (benefitting from an independent judiciary), public advocacy, and protest. If anything, civil society has taken a bigger role in actively criticising corruption over the past five years. This is a crucial counter-point to the lack of leadership in tackling corruption within the public and private sector. However, this has also brought civil society in direct conflict with the often heavy-handed security services at a community level. Emboldened by support from political principals, the police are increasingly using force as a response to protest—another symptom of the rise in prominence of the securocrats within government.

South Africa remains a society that possesses the tools of a liberal democracy necessary to tackle corruption within state and non-state institutions. However, it is also a society held back by an elite that is compromised and inconsistent in its support for the rule of law. The answers to South Africa's problems do not lie in institutions alone—they can only succeed if society remains open, and if corrupted elite networks are challenged. To succeed in this endeavour requires a

thorough understanding of the links between the country's democratic present and authoritarian past. It also requires a willingness to challenge the complex network of contemporary corrupt power elites. Failure to do so will only serve to deepen inequality and allow anti-democratic tendencies to prosper.

Follow The Money—Corruption Trends in South Africa

CURRENT TRENDS AND FUTURE PROSPECTS

"...18 years later the national project appeared to have been replaced by the self-interest of the new political elites"—Njabulo Ndebele²

A fact often lost on politicians who are not in power is that corruption is a phenomenon that was, is, and possibly always will make its presence felt. It is impossible to imagine that corruption will ever be fully eradicated. At very best, attempts can be made to control its pervasiveness. Therefore, trends are crucial indicators of success in this regard. When trends are constant or reversed it does not necessarily indicate less venality but suggests effective action has been taken. Equally, corruption trends only give insight into the scale of the problem. Corruption is a crime that is difficult to measure, complex in nature, and almost always subject to concealment by perpetrators.

What has emerged in South Africa over the past half a decade is an upswing in reported corrupt activity at a national, provincial, and local government level. This is not merely due to a higher frequency of media reports but because of the commitment of various democratic institutions to take seriously a responsibility to oversee performance.

NATIONAL AND PROVINCIAL GOVERNMENT

Financial misconduct by public officials

Financial misconduct by public officials is highlighted by recent data reported to parliament by the Public Service Commission (PSC) in November 2012 (see Table 1). Over a ten year period the number of reported cases of financial misconduct has almost doubled from 434 in 2001-02 to 1,035 in 2010-2011. The amount of money involved hit a high point of almost R1 billion in 2010-11. The previous highest figure was approximately one third of that amount, R331.2 million, and recorded nearly ten years ago. Throughout the period for which data is available the amount of money (of that identified) that was failed to be recovered is relatively high, peaking at over 90 percent in two of the financial years.

This data represent a staggering increase in reported money-crimes taking place in the public service. When presenting the data Richard Levin, director general in the PSC, noted that "while the cost of financial misconduct has spiralled up, the government's performance at holding its officials accountable has become worse."³

TABLE 1: THE PUBLIC SERVICE COMMISSION REPORTS:

TRENDS IN FINANCIAL MISCONDUCT IN THE PUBLIC SERVICE 2001–2011 (MEASURED IN MILLIONS)

FINANCIAL MISCONDUCT CASES IN THE PUBLIC SERVICE (2001-2011)				
YEAR	CASES REPORTED	AMOUNT	NOT RECOVERED	PERCENT OF AMOUNT NOT RECOVERED
2001-02 ⁴	434	4.1	Not reported	–
2002-03 ⁵	849	331.2	Not reported	–
2003-04 ⁶	582	20.3	Not reported	–
2004-05 ⁷	513	120.4	23.3	19%
2005-06 ⁸	771	45.6	42.3	93%
2006-07 ⁹	1042	130.6	109.7	84%
2007-08 ¹⁰	868	21.7	12.9	59%
2008-09 ¹¹	1204	100.1	90.1	90%
2009-10 ¹²	1135	346	Not available	–
2010-11 ¹³	1035	932	Not available	–

One possible response to financial misconduct in public services is to ban public officials from owning private business interests. While not a silver bullet response it will go some way to dealing with the prevalence of conflicts of interest in the public sector—currently an easy entry point for financial misconduct. This call has been supported by the PSC, the Congress of South African Trade Unions (COSATU), and civil society leaders. The minister of public service and administration, Lindiwe Sisulu, confirmed in early 2013 that she will support this initiative as part of efforts to implement recommendations of the National Development Plan.⁵

Crucially, while the figures are disheartening this initiative is an indication of how civic pressure and pressure from the PSC will hopefully result in sanctions for individuals who use the public service for rent seeking behaviour and to service their own patronage networks. It is an encouraging response to what the PSC director general calls a “culture of no consequence” within the public service.¹⁵

Disclosing conflicts of interest

The PSC has great difficulty in enforcing existing measures that require the top managers within the public service to disclose their assets and interests on an annual basis. According to the *City Press* in 2011, 3,726 managers (of a total of 12,405) at both national and provincial levels did not submit financial disclosure forms.¹⁶ This represents almost 30 percent of senior managers. Alarming, the PSC also revealed that 30 percent of senior managers dealing with key service delivery portfolios such as local government, housing, public works, and transport, were doing business with their own department.¹⁷

A critical observation made by the PSC is that “the perpetrators of corruption are increasingly at a more senior level and this highlights the need for better, more ethical leadership.”¹⁸ This suggests involvement in corruption by those whose positions grant them an oversight function and responsibility to detect and prevent corruption within their departments.

The Auditor-General quantifies financial malfeasance

A more general overview of trends in financial irregularities in the public service is provided by the independent office of the Auditor-General (see Table 2). Reviewing data for the period 2007–2011 shows that the amount of spending identified as irregular is deserving of attention. These irregularities are serious transgressions of law—in particular the Public Finance Management Act (PFMA)—and warrant additional scrutiny due to the clear potential for criminal penalties.

Irregular expenditure at a national level has increased from R228 million in 2007 to a current figure of over R2.2 billion (a ten-fold increase). Provincial government, where the majority of government expenditure is recorded, shows an increase from over R4 billion in 2007 to R16.7 billion in 2010 (a four-fold increase).

The impact of such practice is best reflected in the opportunities that are lost: namely a human cost carried to the main part by the poor. By way of example the total reported irregular, fruitless, and wasteful expenditure by provincial and national government as identified by the Auditor-General (AG) and the Special Investigating Unit (SIU) in 2010-11 (totalling R26 billion) could have been used to effectively double the income of the seven to ten million poorest South Africans (those who live on less than one US\$1 a day).¹⁹

TABLE 2: THE AUDITOR-GENERALS REPORTS:

A SUMMARY OF UNAUTHORISED, IRREGULAR AND WASTEFUL EXPENDITURE FROM 2007 TO 2011²⁰
(MEASURED IN MILLIONS)

YEAR	UNAUTHORISED			IRREGULAR			WASTEFUL		
	NATIONAL	PROVINCIAL	PUBLIC ENTITIES*	NATIONAL	PROVINCIAL	PUBLIC ENTITIES*	NATIONAL	PROVINCIAL	PUBLIC ENTITIES*
2007-08	Not specified	Not available	1.0	228.0	Not available	343.0	2.8	Not available	48.5
2008-09	1400.0	8086.7	2.4	530.0	4038.0	750.0	35.2	120.8	52.7
2009-10	362.4	8415.6	Not specified	2305.0	7344.6	1589.0	27.6	160.3	116.0
2010-11	802.3	2948.6	9.1	2286.7	16790.1	2226.3	428.8	849.6	164.0

Note: *Figures here represent public entities audited in the national audit only. Audits of provincial public entities have not provided enough detail to quantify here.

LOCAL GOVERNMENT

Governance in distress

Local government should, in theory, provide an opportunity for full democratic participation where local communities, elected representatives, and appointed officials decide on development priorities on a participatory basis. It is also the tier of government largely responsible (albeit sharing some of these functions with provinces) for what is commonly referred to as 'service delivery'. This refers to the provision of basic yet essential services, such as housing, sewage facilities, waste management, roads, water sanitation, and key public security functions, among many others.²¹

There is no doubt that many of the country's municipalities are failing to deliver on their mandate because they are burdened by mismanagement, lack of accountability, and corruption.²² These factors often work in tandem because corruption is not always the driving force for failure but rather the outcome of a weak unaccountable government. Over the past few years the office of the AG has observed the following trends which support this view:

- According to the AG's 2009-2010 report only seven of the 237 municipalities (in five provinces) received a clean audit. This included only one city (Cape Town).²³
- In 2010-11 the AG reported that just 13 municipalities received a clean audit. The amount of unauthorised, irregular, and wasteful expenditure increased from R6 billion in 2009-10 to nearly R11 billion in 2010-11: a near 100 percent increase.²⁴
- In the latest report of 2011-12, the AG found that 18 percent of municipalities received a clean audit.²⁵

While this data suggests a trend towards improvement, it is off a very low base. Government is also missing its targets to address financial management at local government level. In 2009 the late minister of co-operative governance, Sicelo Shiceka, launched Operation Clean-Audit, which set the goal that "by 2011, no municipality or provincial government department will have a disclaimer or an adverse audit opinion, and by 2014 none should have those or a qualified audit".²⁶ It is, therefore, no surprise that the AG found that local government audit results had stagnated, with 167 of 278 municipalities receiving audits that were qualified or worse.²⁷ In addition ten municipalities are under currently provincial administration—effectively representing a take-over of administration by provincial government.²⁸

These problems plague local government across the board, from large cities to mid-level towns and the smallest villages alike. A consequence of this problem is looting of state coffers, with the AG reporting that in 2010-11 almost R800 million was awarded in tenders to municipal officials and their families.²⁹ This is a recurrent problem that has been raised by Nombembe in the past and the report suggests this irregular expenditure "could have been prevented and detected by implementing basic controls, including declarations of interest by the parties".³⁰ It is probably an understatement to describe the state of local government as being "in distress", as the department of cooperative governance and traditional affairs

(CoGTA) has done.³¹ However, while the malady is evident the roots of the troubles run deep and point to systemic problems that will not be resolved in neat five-year government plans.

The systemic weakness—shaky ground and a shady legacy

According to the researcher Shireen Mukhadam, CoGTA describes the underlying causes of this situation to include “a plethora of interrelated factors such as poor financial management, a lack of control measures, susceptibility to political interference, a lack of political leadership, insufficient municipal capacity and poor human resource management, as well as huge variables between municipalities in terms of spatial location, skills base and socio-economic conditions.”³²

However, to grasp the nature of the problem it is crucial to understand the deep legacy of apartheid-era administration, which meant that local governance was constructed on shaky ground with a shady legacy of abuse of power. As Ivor Chipkin and Sarah Meny-Gilbert point out:

“Many apartheid-era administrations, for example, especially in the former Bantustans, had weak administrative and technical capacity and were deeply implicated in patrimonial relations. As the apartheid state progressively ceded power to the homelands so the bantu authority system provided more opportunities to traditional elites, senior bureaucrats and South African companies for the accumulation of wealth.”³³

The response from the state was to fix these problems through a focus on managerialism and the neo-liberal programme of new public management, much-loved by public administration reformers in the World Bank and elsewhere.³⁴ While this has translated into a class of well-paid managers, it does not necessarily mean that these individuals are any less opportunistic or display greater levels of integrity.

Compounding this is the fact that for many people local government is seen as the primary point to access state patronage. This often results in fierce conflict within branch structures of political parties, as the political control of a party structure can translate into control of a local council, and ultimately the ability to dispense patronage at a local level. This has a devastating impact on local government and local political culture. While political parties bemoan this dynamic, they also directly fuel it through the process of unregulated private funding of political parties—an attempt to add a layer of respectability to patronage. In July 2012 the ANC Progressive Business Forum extended an invitation to a Local Government Business Forum in Johannesburg.³⁵ Given the lack of effective oversight and high levels of corruption related to public procurement by local government it is highly irresponsible for the governing party to hold a meeting that may have the consequence of further deepening the problem.

The patronage networks have widespread and deep historical roots, making it difficult to confront the problem of corrupt political procurement without challenging the foundations of political corruption in South Africa. The very real

risk of touching a nerve represents a network of power and influence that runs from small town and large city, all the way through provincial capital to the all-important party headquarters, and possibly the executive itself. While corruption can purchase political influence, conversely political influence can be wielded to protect the corrupt.

There remains an appetite for reform, and in 2013 CoGTA minister, Richard Baloyi, suggested greater oversight and intervention into local government in order to deal with corruption.³⁶ In addition public service and administration minister, Lindiwe Sisulu, announced a Single Public Service Bill with the aim “to set national standards and systems for the public service”.³⁷ While this won’t deliver a clean audit by 2014, it is hoped that it might go some way to addressing aspects of the problem. However, for there to be real action this needs to start at the top of the governance and political hierarchy. If this does not happen the impact of corruption on voters will only increase.

The impact—deepening inequality

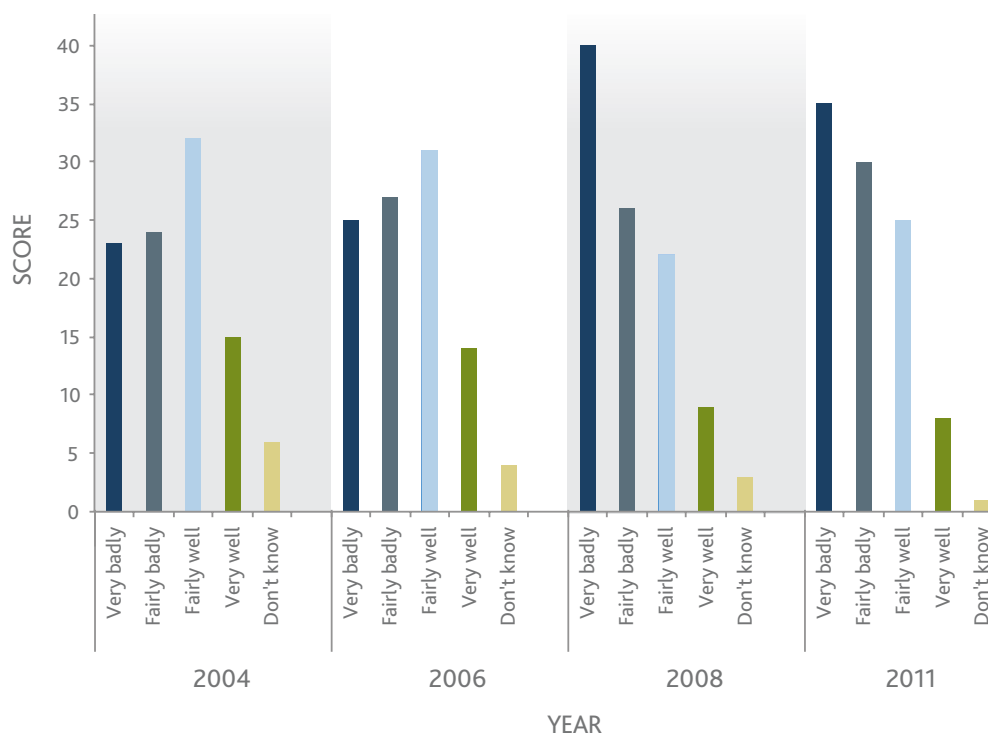
Put simply, the public response to this trend in corruption increased mistrust in the government’s commitment to fighting corruption. It has a potentially alienating impact on a public who see the issue of so-called ‘political will’ through a cynical lens. This is problematic for democratic consolidation in the long run. The data suggest that the state lacks the capacity and consistent political leadership to ensure that existing anti-corruption measures are vigorously enforced. While recent commitments are an indication of a possible shift, it will become increasingly difficult to disempower the patronage networks that extend throughout the public service and have complex inter-personal and party-political links.

However, the public and those who gain limited tangible benefit from democracy are becoming restless with the slow pace of reform (see Section 3 for a detailed discussion). It is also reflected in data from the Afrobarometer survey for the period 2004 to 2011. The results of the surveys show that over time there has been an increase in the number of people who view government as handling the fight against corruption as ‘Very badly’ and ‘Fairly badly’. In contrast there is a visible decline in the number of respondents who believe government is acting ‘Fairly well’ and ‘Very well’. What is clear is that almost none of the respondents are without an opinion on this matter.

Given greater access to information, increased awareness and higher expectations for accountable governance, there are probably very few citizenries in the world who regard their government as doing ‘Very well’ in tackling corruption. However, the data suggests a public that wants to see more than just the promise of action, as demonstrated in the table below.

TABLE 3: AFROBAROMETER DATA:

HOW WELL OR BADLY WOULD YOU SAY THE CURRENT GOVERNMENT IS HANDLING THE FIGHT AGAINST CORRUPTION? (2004–2011)³⁸



The majority of South Africans (65 percent in 2011) are becoming sceptical of government's willingness to fight corruption. This is concurrent with the increases in scale and pervasiveness of corruption and is mirrored in increasing mistrust of the country's elite who operate within government. Their legitimate wealth has already created an immeasurable distance between the poor and the rich—further division caused by corruption may create a bridge that is simply too far to cross and have troubling consequences.

CAPITAL AND CORRUPTION

Private capital has always played a key role in South African politics. It fanned the fires of colonial warmongering and drew great profit from apartheid. It internalised the criminality required to prop-up an unjust regime, and recognised the need for negotiation to ensure its speedy end. Private capital is an engine for growth and job creation—protected by a democratic constitution—and therefore must be both shielded from corruption and actively policed to ensure that bribery and financial malfeasance is kept in check. However, there is little to suggest that the private sector is making use of the leverage provided by a functioning democracy and doing either effectively.

Economic crime

The conflicting interest of public officials and politicians is often seen as a problem that the public sector alone should solve. However, this stance fails to take into account the fact that these are essentially private sector entities that have links to public officials. This suggests that while some answers can be found within the public sector, it is also a practice that private companies must actively eschew. As Peter Goss, head of PricewaterhouseCoopers Forensic Investigations in Government and Public Services, notes “although [corporate] South Africa has well-documented legal and regulatory standards in anti-corruption, it has faced a significant increase recently in levels of corruption. This is largely due to an array of business scams and collusive tendering.”³⁹

While fraudulent scams are no doubt a problem the real issue is collusive tendering related to public procurement and cartel-like behaviour among well-established industries. Perhaps the biggest corruption scandal to be exposed in a democratic South Africa, aside from the arms deal, was the revelation of price-fixing and collusion by the country’s biggest construction companies over the past decade.⁴⁰ This follows almost two years of investigation by the Competition Commission and the Police Service’s Directorate for Priority Crime Investigation (the Hawks). They have found evidence of illegality in almost R30 billion worth of construction tenders.⁴¹ An extraordinary aspect of these revelations is the very low level of outrage it created amongst the country’s business and political elite. This lack of response is remarkable at a time that the public sector is gearing up to spend almost R1 trillion on infrastructure that is likely to be tendered out to the companies implicated, due to their skills and experience.

Cartel-like behaviour is also present in cases of bread and cement price-fixing. Most concerning is the manner in which large corporations were involved in bread price-fixing—a practice that had the effect of robbing the poorest people of access to basic sustenance and which is best chronicled by David Lewis in his book *Thieves at the Dinner Table*.⁴²

To combat these dubious undertakings an overhaul of the state procurement system is required, and would ensure total public transparency in terms of public procurement. This would allow civil society, competitive business, and state agencies to adequately police this practice.

A voiceless giant?

Business played an important role in steering the negotiation process towards the end of apartheid. The outcome of these negotiations and the dominance of a system of market capitalism are, to some extent, reflective of this process. It is however, deeply worrying that the private sector has ceased to voice concerns about the need to crackdown on graft. Most business lobby groups prefer to concur with ministers for fear that a failure to do so will mean that they as individuals or the groups they represent will suffer punitive action, such as exclusion from a lucrative government contract. Given the enormous power and influence of business within the democratic system, it appears that they are choosing a set of default positions

favoured during apartheid. These positions include moving money and interests offshore, keeping a low profile, or simply profiting from corruption while it is possible. Through inaction the private sector not only misses an opportunity to force a new conversation around the need for real equitable ownership of the economy and greater fairness in society but also becomes complicit in the demise. The problem of leadership is not one of the public sector alone. Until the South African plutocrats are prepared to call for a discussion on these issues it inevitably raises questions about how committed they are to a prosperous future for all of the country's people, or indeed the future of South Africa.

Money politics

While democratic gains have included a host of institutions and practices to deal with corruption, the issue of money in politics has been notoriously resistant to any restriction. The lack of regulation of private funding sources for political parties (no disclosure is required) has created a channel for corruption to flourish. It entrenches the hold of party interests over the state. This in turn creates distortion within political parties as the influence of the individuals controlling these money flows grows.

One obvious consequence of unregulated party funding is that the voices of those who are wealthy, well connected, and willing to donate large sums of money to keep the party machinery oiled in the run-up to an election, develop disproportionate influence. They effectively outbid the electorate with money that may influence the awarding of tenders (at whatever level of government) and help to steer the policy directions of political parties. To understand the possibility of influence it is important to understand the magnitude of cash involved. On the one hand political parties rely on transparent donations made from the public purse through the Independent Electoral Commission (IEC), a contribution that has increased from R53 million in 1998-1999 to R92.9 million in 2009, on the other hand during the same period the undisclosed private funding of political parties grew from R350 million to R550 million.⁴³

The influence of private capital is clearly disproportionate to public funding. The source of this funding includes controversial avenues such as foreign governments and corporations; domestic corporations; and individuals engaged in organised crime, who use this as a conduit to buy influence. There is sufficient evidence to suggest that the contracts awarded in the arms deal were also influenced by this pernicious practice.⁴⁴ These are all elements of potentially anti-competitive behaviour which corporate South Africa invests too little energy in challenging, given that when it does not pay it runs the risk of suffering a potential loss of opportunity and access. No example is clearer than the creation of party owned corporations—notably the ANC front-company Chancellor House, which on a number of occasions has either undertaken direct business with state entities or benefitted from state licences for mining exploitation.

There is cause for hope in the upswing of civil society organisations starting to make the connection between party funding and service delivery linked corruption scandals, and also the commitment from the ANC at its December 2012 Mangaung conference to explore a process of comprehensive review of party funding. While only a promise, it is the most positive sign to date that there could be a shift in policy which may partially unlock the grip that private interests have over politics—and curtail the extortionate relationship this represents for honest players within the private sector.⁴⁵

INSTITUTIONAL CONFLICT AND THE 'SHADOW STATE'

Two pivotal trends have emerged from South African politics over the past ten years. The first is an increasing tendency for those with vested interests to impede state agencies in their attempts to effectively tackle corruption. This has led to intra-state institutional conflict and tension. The second is a greater reliance on the use of secrecy and the security apparatus to settle political scores, including allegations of corruption. If anything should give cause for concern amongst democrats it is not the amount of money lost to corruption but the possibility that corrupt networks will be entrenched through the political re-ascendancy of the securocrats. Where corrupt networks become entrenched within the elite, they prove to have staying power. Both of these factors, which dominated politics in apartheid-era South Africa, are showing slow but certain signs of acceleration under the current administration.

STATE INSTITUTIONS—UNCERTAINTY AND INCONSISTENCY

Despite good reason for despair there are numerous examples of institutions within the state that are committed to fighting corruption and do so effectively. They do not do this because they wish to settle political scores or draw private or professional profit. Rather, these examples represent the public officials who exist at all levels of government who are committed to the values of the constitution. They are rightly proud of the enormous achievement made in setting up a complex set of laws and the institutions that are equipped to fight corruption.

Anti-corruption agencies

South Africa has chosen a multi-agency approach to tackle the issue of corruption. Many argue that a fundamental weakness is that the elite crime-fighting unit—the Directorate for Priority Crime Investigation, known as the Hawks—lacks the investigative and prosecutorial independence enjoyed by its predecessor that is crucial to fighting high-level political corruption. Despite its failings, this assembly of almost a dozen government units represents the democratic notion that single anti-corruption agencies are far more vulnerable to political machinations than the so-called 'multi-headed beast'. For this reason, the National Development Plan also continues to support this vision.

However, over the past five years it has become far harder for integrity within anti-corruption agencies to be maintained. One frequent barrier to integrity is the inconsistent manner in which the law is applied. This is often dependent on the political connections of those involved. Another important factor is the uncertainty created by not making permanent appointments in key positions. Two significant examples are the National Prosecuting Authority, which has been without a permanent head since October 2011 since the suspension of the controversial former national director of public prosecutions, Menzi Simelane. The second is the Special Investigating Unit which has been without a permanent head since late 2011. In February 2013 the Executive set new deadlines for filling these positions that have again not been met.

This failure does not seem to simply be put down to tardiness. It seems apparent that the non-appointment of such senior people is designed to create a climate of uncertainty. Where this persists officials in junior positions are far less likely to take bold decisions that would bring them into conflict with political principals, for the simple reason that they do not have a political shield to protect them (in the form of a high-level manager).

Contrast this with the Public Protector's office, headed by the apparently fearless Advocate Thuli Madonsela. She has set ambitious investigative targets for her staff and has been at the receiving end of smear campaigns. However, she appears to be confident in her appointment to office. Madonsela continues to work with some of the same investigators who served the previous Public Protector Advocate Mbedle Lawrence Mushwana—a man who was described as at best a lacklustre performer in the position. Under Madonsela's leadership the investigators who formerly drafted responses on why their previous boss was not pursuing politically contentious cases are now engaged in some of the country's most important corruption investigations, involving the criminal and political elite. This is a remarkable turnaround and proof of the value of consistent application of the law and certainty in the leadership of public institutions.

The judiciary

Of all the democratic institutions in South Africa the judiciary, while somewhat bruised, has by no means been battered by institutional conflict. It had the unenviable job of having to arbitrate controversial court cases including the legality of corruption charges against President Zuma, his trial on a charge of rape, and the prosecution of his financial advisor Schabir Shaik. The political pushback in these cases has been hard and courts have been subject to vicious criticism. However, while the role of the courts in the affairs of the executive may be up for debate the judiciary has emerged relatively unscathed and has retained the necessary independence to prosecute cases of political corruption.

The multi-party forum, which selects judges and dictates the transparent manner in which the Judicial Service Commission conducts its affairs, ensures that judicial appointments are the subject of intense scrutiny. No other appointment to office has been subjected to as much attention as the appointment of constitutional Court Chief Justice Mogoeng Mogoeng in 2011. His appointment clearly enjoyed

the favour of the executive to the detriment of the candidature of the far more experienced and accomplished Deputy Chief Justice Dikgang Moseneke. While Justice Mogoeng's appointment was deemed acceptable, despite the vocal criticism from civil society for his perspective on gender issues, there can be no doubt that such processes benefit from rigorous public engagement. It does mean that judges who may wish to provide an overtly conservative interpretation of the constitution are aware of the scrutiny such decisions will face.

NETWORKS OF CORRUPTION AND THE ASCENDANCE OF SECUROCRATS

South Africa's intelligence structures have long been a key channel through which politicians fight for ownership of the country's political hegemony. Compounding this are the extreme levels of secrecy which governed the operations of apartheid security structures—giving rise to a culture of corruption and criminality. Huge amounts of covert funding and oversight mechanisms that were patchy at best provided ample opportunity for a culture of impunity and self-enrichment to flourish in elements of the South African Police (SAP) and South African Defence Force (SADF). Moreover, the campaign of gross human rights violations—including surveillance, harassment, detentions, and assassinations—exact on the opponents of apartheid bred a climate of cynicism from which some element of corruption was an almost inevitable by-product. While such corruption is well documented in the cases of a few middle managers, these examples are believed to be part of a much wider unsoundness that may have included key political and military leaders of the apartheid government.

More recently, a number of critical histories have looked at corresponding experiences among the ANC's security structures in exile. Although the idea of corruption and criminality within the ANC's exile operations was for a long time enthusiastically produced by the apartheid propaganda machine,⁴⁶ in recent years, several scholars have taken a serious look at how the liberation struggle grappled with the spectre of criminality among some opportunists among its ranks.

The ANC's security apparatus in exile was forged in the crucible of real and extreme security risks. However, as security threats to the liberation movement increased, so did the paranoia of its security structures and the brutality of its tactics in dealing with those suspected of being spies and informers. Eventually the ANC and MK's internal intelligence structures were even treating dissent and ideological difference in the camps as a security threat, and employed the same brutal methods as had been reserved for actual treason and sedition.⁴⁷ Some have argued that this led to the emergence of powerful elites with huge sway over the movement: "A large grouping of individuals with deeply anti-democratic attitudes, almost entirely located within the organisation's security structures."⁴⁸

In this climate, nepotism and corruption within elements of the ANC/MK leadership appears to have been a concern. Internal ANC documents suggest that key leaders were involved in smuggling of drugs, cars, and diamonds,⁴⁹ as certain individuals tasked with moving operatives and intelligence across southern Africa borders began a profitable collaboration with the criminal networks that controlled these routes.

A kind of symmetry can be observed in the criminalisation of key elements in the security apparatus of each side in the armed struggle to end apartheid: apartheid-era military, police, and intelligence structures on one hand, and in the ANC's internal security apparatus and external military wing on the other. The sheer scale of the apartheid military and intelligence machine, and the enormity of its funds and operations, makes any kind of equal comparison a futile and ultimately misleading exercise. Yet, the failure in both cases to dismantle criminal networks structure has contributed to governance challenges both during and after the transition in ways that we may only be starting to comprehend.

The Democratic National Security loophole and securocratic creep

Following the transition to democracy, policymakers sought to create a new paradigm for national security that would be in line with the progressive values envisaged in the constitution. This new paradigm re-imagined national security through a human security lens, moving away from a state-centric approach that focussed narrowly on law and order and territorial integrity.⁵⁰ Instead, the 1996 Constitution of South Africa states that national security "must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life"—putting human rights and freedoms at the centre of national security policy and practice.

An unforeseen consequence of this expansive definition—created specifically to discourage militarised approaches to social instability—is that it has given rise to an over-broad mandate for the state security services.⁵¹ Though its mandate has never been subject to public input, by the late 1990s South Africa's domestic intelligence service was mandated to include gathering political intelligence and monitoring lawful political activities—essentially requiring state security structures to act as a watchdog of all aspects of the nation's political, economic, and social life.

In 2008, a scathing ministerial review of South Africa's intelligence service raised serious concerns that this framework may lead to politicisation of state security structures and infringements on constitutional rights.⁵² The report also identified existing abuses of constitutional rights as part of ongoing intelligence operations—particularly unlawful monitoring of communications. A key problem is that many aspects of the intelligence services' activities are unregulated by law, and even the monitoring of communications is poorly regulated.⁵³

In tandem with elastic or absent regulations, South Africa's state security bodies have been roundly criticised for lacking basic transparency measures: their budget, annual reports, operational policies, and budgets are not open to public scrutiny even in a redacted form, making effective public oversight almost impossible. So serious are concerns around lack of transparency that a measured academic study of this question suggested that:

'A more pessimistic analysis would be that the way in which the intelligence services have retreated into justifications of secrecy even when greater openness and public disclosure would not have threatened national security, displays a significant continuity with the apartheid past.'⁵⁴

Thus, it could be argued that, despite clear gains in efforts to transform the state security apparatus, the combination of inadequate internal controls, an overbroad mandate, and a lack of public guardianship has created an environment that is dangerously open to abuse. As a result, despite the framework of a constitutional democracy that seeks to regulate, the state intelligence networks continue to occupy an anti-democratic space to wage political contests. During the years that South Africa's ruling party was divided in the leadership contest between President Thabo Mbeki and his former deputy, Jacob Zuma, there is significant evidence of abuses of state security powers and resources in order to tip the scales one way or the other.

As one example, in 2005 several senior spies lost their jobs when it was discovered that the National Intelligence Agency (NIA) was spying on a prominent ANC leader and businessman, Saki Macozoma, who was seen to be part of a faction vying for the presidency.⁵⁵ In an apparent disinformation campaign, someone within the state security structures also circulated doctored intelligence in the form of clearly fabricated emails that sought to implicate a supposed ethnically based faction of the ANC which was conspiring to undermine Zuma's political career.⁵⁶ In 2007, an infamous intelligence memo (enigmatically titled 'Browse Mole') leaked from the ranks of the directorate of special operations, (known as the Scorpions) which contained a series of wild and evidently fantastical allegations about Zuma, including hazy details of an alleged coup plot.⁵⁷

Securocrats—manipulating the fight against corruption

It is clear that elements of the state security apparatus became involved in political factionalism at several key junctures in the past ten years—particularly when senior politicians appeared to be the target of corruption investigations. One political power struggle that played out in South Africa's justice system, in media headlines, and in the corridors of power themselves—and into which shadowy factions of the state-security apparatus were inextricably drawn—resulted from corruption charges against Jacob Zuma, now the president of South Africa, for bribes allegedly paid during the controversial arms deal. Now seared into the public consciousness as having been hopelessly corrupt, South Africa's arms deal was a series of multi-billion-rand defence contracts between international arms companies and the South African government. The signing of the deal in 1999 was followed by widespread allegations of collusion between political leaders and lobbyists for the defence corporations that had been vying for the lucrative contracts.

A number of these allegations fell on Schabir Shaik, a businessman with close ties to the ANC's pre-1994 intelligence networks. In 2005, a judge found that Shaik was guilty of soliciting a bribe from the French arms manufacturer Thomson-CSF (one of several defence companies bidding for contracts with the South African government) on behalf of Jacob Zuma, then deputy president of South Africa. Although Zuma was not a defendant in the case, the court decision had effectively implicated the deputy president of the country for corruption. As a result, President Thabo Mbeki fired Zuma as deputy president of the country and state prosecutors announced they would bring corruption charges against him. In other words, they would attempt to prosecute the second-most powerful man in the country.

It should be noted that Zuma had significant political backing in his party. Though he had been expelled from office as deputy president of the country he was still deputy president of the ruling political party, and Zuma supporters believed Mbeki had used the charges as an excuse to dismiss him because of political rivalry between the two men; indeed, many supporters saw the corruption charges as part of a conspiracy to tip internal power struggles in Mbeki's favour and to undermine Zuma's political ambitions. Despite the charges looming over his head Zuma toppled Mbeki at the ANC's 2007 elective conference, becoming head of the party and the party's presumptive candidate for the presidency in the next national elections.

However, the prosecutors' case against Zuma appeared solid, and after several false starts it began to gather steam. Yet, at the moment when his prosecution seemed almost inevitable, an extraordinary intervention from some elements of South Africa's state security structures gave Zuma's team the leverage they needed to make the case go away. The details of the case emerged in light of evidence that state security structures were being used to monitor the phone of the chief investigator in Zuma's case.⁵⁸ In 2009, with the case being built against Zuma all but finalised and a court date appeared inevitable, an unknown source leaked recordings of the chief investigators calls—featuring conversations between investigators, prosecutors, and senior political figures involved in Zuma's case—to Zuma's legal team. Though the full tapes have never been made public, Zuma's lawyers were able to use excerpts of the recordings to argue that there was evidence of procedural flaws in the attempted prosecution.⁵⁹ Although it was clear that there was still a prima facie case against Zuma, the head of South Africa's prosecuting body seemed only too happy to drop the charges—just weeks before the national elections.⁶⁰

The collapse of the case against Zuma is telling for several reasons:

- Unknown persons with access to state security infrastructure appear to have abused that access in order to monitor the phone calls of investigators in another branch of government. Indeed, intelligence sources have claimed that this was part of a much wider surveillance effort.⁶¹ If there has been an investigation into this potentially illegal use of monitoring facilities, its findings have never been made public.
- Even if the phone tap were legal, unknown persons in the state security structures broke the law by leaking classified material to the defendants' lawyers. If there has been an investigation into the source of this leak, its findings have never been made public.
- Irrespective of the illegality of the methods, it is extraordinary to think that members or a faction in state security were willing and able to use political intelligence of any kind to sway to the course of justice. Essentially, those entrusted with protecting national security played kingmaker.
- This was not the first time political intelligence had been used to sway the prosecution process. In 2003, after initial charges against Schabir Shaik were announced, several prominent members of the ANC's exile intelligence network—lead by Mo Shaik, Schabir's brother—publicly claimed that the head of the prosecution team had been an apartheid spy. Though this claim was shown to

be false, it showed that political intelligence could, and would, be used to fuel political factionalism. Also notably, the individuals behind this effort achieved senior positions in the executive and security cluster under Zuma's presidency.⁶²

Inter-agency conflict and damage to democracy

The Scorpions' investigators stirred up dust in many different kraals, not least through a series of high-profile probes into the links between politics and organised crime, including investigation of the business interests of Brett Kebble, a mining magnate with close links to the ANC and connections to criminal networks.

But one of the greatest tests for South Africa's rule of law came about in the mid-2000s when one law enforcement agency began investigating the head of another. The Scorpions investigated the national commissioner of police, Jackie Selebi, for his links to organised crime. The substance of the charges was that a businessman named Glenn Agliotti had made repeated payments and gifts to Commissioner Selebi in exchange for political protection for Agliotti and for his network of associates, who ranged from crooked captain of industry Brett Kebble to members of Johannesburg's criminal underworld.

There was already long-running acrimony between the two crime-fighting organisations,⁶³ fuelled by the intense unpopularity of the Scorpions among many in South Africa's political elite. In addition, at the time that charges were brought against him in 2007, Selebi was a close friend of then-President Mbeki. The head of the prosecuting authority was suspended, and eventually dismissed, for pursuing Selebi's prosecution.⁶⁴

That political contestation between two crime-fighting organisations could lead to instability and criminality certainly appears to have occurred to the President. When learning that Selebi was to be arrested, President Mbeki allegedly said:

"Do you know how angry the police are? Do you know that the police officers are prepared to defy any court order?"⁶⁵

Certainly, as key Selebi allies in the police force and intelligence agencies launched a 'fight-back' strategy through media leaks and a strong counter-intelligence operation, the veil that hid South Africa's patronage networks began to slip. The most senior 'spy bosses' in the country—the head and deputy head of the NIA and the head of police's Crime Intelligence Division—almost derailed the entire prosecution by tampering with the state's key witness: hopelessly corrupt businessman Glenn Agliotti. In a series of secret interviews with these intelligence chiefs, Agliotti tried to withdraw sworn testimony that he had made against the police commissioner, alleging that the charges and investigation were a political conspiracy into which he had been co-opted.⁶⁶ Though the material did not stand up in court (it was clear that the witness had tried to withdraw testimony to avoid implicating himself), it seems that this and other intelligence⁶⁷ gathered by senior security officials was leaked to Selebi's legal team⁶⁸—a curious symmetry with the intelligence leaks that derailed the Zuma prosecution.

This led to a startling development. One morning police arrested and detained the chief prosecutor on trumped-up charges.⁶⁹ Unbeknown at the time a much

more sophisticated operation was actually in progress. As early as 2000, police had launched a massive surveillance operation against Scorpions' investigators, which had the compelling title: 'Operation Destroy Lucifer'.⁷⁰ So while Scorpions' investigators were prosecuting the head of police, his men were spying on them.

It is hard to overstate the destabilising effect these controversies had on public confidence in the justice system. Seemingly, it was decided that a state investigative unit tasked with dealing with corruption had at last gone too far. The Scorpions had exposed the link between senior politicians, including the country's future president, Jacob Zuma, in the arms deal. They had also implicated other senior political figures including former minister of transport Mac Maharaj, now the Presidential spokesperson; former chief whip Tony Yengeni; and dozens of members of parliament, many of whom continue to hold high public office and were involved in a fraudulent parliamentary travel scheme known as Travelgate. In short the Scorpions, an imperfect crime-fighting unit, had made too many enemies within all political camps. The unit was ultimately dismantled by parliament and replaced by the severely flawed and less independent 'Hawks'.

These revelations show the extent to which corruption and justice have been at the centre of turmoil in South Africa's political establishment and behind the bitter leadership battles in the ruling party. Corruption is no longer merely a crime which needs to be curbed but has become a crucial area of contestation in the criminalisation of politics.

A legacy of manipulation—the rise of the securocrats

Based on the South African experience it could be concluded that when state-security structures are drawn into political contestation, the result is lasting damage and deformation.

Zuma's presidency has been marked by the presence of an increasingly powerful, increasingly unaccountable security cluster—leading some to remark on the 'rise of the securocrats'.⁷¹ After the President took office in 2009, a raft of his key political allies were appointed to the most senior positions in the security cluster, many with links to the ANC's underground intelligence network.⁷² Soon after, two major legislative developments introduced an even more powerful role for the security cluster. Firstly, a new national security law was introduced to parliament in 2010, the Protection of State Information Bill. It has been severely criticised for its broadness and harshness, and has been characterised as an attempt by the ministry of state security to bolster the security cluster's control of the flow of information across government, even while it seeks to repeal an unconstitutional apartheid-era secrecy law.⁷³ Secondly, in 2012, another draft law was introduced, the General Intelligence Laws Amendment Bill, and has been similarly criticised for seeking to entrench in law a number of the most problematic aspects of operational policy of the state-security agency, from its overbroad mandate to shaky regulations for the monitoring of communications.⁷⁴

A renewed public focus on an apartheid-era national security law, the National Key Points Act, is one indication of the potential use of national security laws to close

down democratic spaces. The act attracted controversy in the past year as it was used by the executive as a reason to avoid answering questions regarding the use of over R200 million in public funds to upgrade security at President Zuma's private residential compound in Nkandla. The act not only provides additional security to a list of National Key Points' but also ensures that information regarding activities that affect these installations can be classified as secret. According to the South African Police Service (SAPS) Annual Performance Plan, the number of designated National Key Points has risen from 118 in 2007 to 182 in 2012. This represents an extraordinary 54 percent increase in the number of National Key Points in the past five years.⁷⁵

A series of scandals in the Crime Intelligence Division has further fuelled concerns that a culture of political factionalism continues to plague the security cluster. Several of the most senior officials in the Crime Intelligence Division face fraud charges relating to the abuse of operational funds⁷⁶ including former head of crime intelligence Richard Mdluli. Efforts to prosecute Mdluli on a range of charges, including fraud and corruption as well as an unrelated murder charge, have resulted in the suspension of his prosecutor,⁷⁷ suggesting that Mdluli enjoys a degree of political protection. This has been linked to the improper role he is alleged to have played in monitoring potential political threats to the President, including a former police commissioner.⁷⁸

What little information has come to light suggests that these developments speak to a growing concern—part paranoia, part practical reality—of the continued encroachment of state-security forces on the democratic political process. For example, intelligence sources are quoted in the media as claiming that Crime Intelligence Division monitoring operations—primarily intended to target organised crime networks—had been suspended in the lead-up to the ANC's 2012 elective conference, allegedly due to fears that monitoring operations might be used against contenders for the leadership race.⁷⁹ In the week of the elective conference, police confirmed reports that 40 crime intelligence agents would travel to the conference on an unspecified operation.⁸⁰ Even if concerns about potential meddling in the democratic processes were unfounded, it was a perverse allocation of crime-fighting resources.

Corruption, Conflict and a Responsive Civil Society

NON-STATE DEMOCRATIC ACTORS

An important feature of South Africa's democratic landscape is an active civil society and media.

The media

The South African print media landscape is dominated by a small group of powerful corporations that are often criticised for sensationalism, particularly when it comes

to reporting the struggles of poor people. However, a number of the newspapers have excellent investigative teams that report to their readers on stories of the abuse of power involving elites. Commercial factors inhibit investigative journalism in South Africa as they do globally—owners are reluctant to invest in lengthy, expensive investigations. Yet media outlets such as the *Mail & Guardian*, *City Press*, and *news24*, and *Sunday Times* have proven effective in exposing cases of corruption that would otherwise most probably not have been revealed. The reporters rely on a mix of observed trends, information leaked by legitimate whistleblowers, and information leaked by competing factions within political parties and within the security sector.

News sources are a crucial tool for accessing information which is otherwise difficult to obtain, despite South Africa's legislation on freedom of information. Requests can often drag on for many months and in some instances journalists fought legal battles for years in order to access information (embodied by one newspaper's legal battle, four years and ongoing, to get hold of an observer report on the 2002 Zimbabwe elections).⁸¹ However, the issue of accessing information and the impact of the proposed Protection of State Information Bill—known as the 'Secrecy Bill' by its detractors—is a concern to most media bodies. This fear is shared by civil society groups and, as discussed in the next section, it has forced a much broader debate on access to information issues, which for too long have been seen as only a media issue.

In addition to print and electronic media and commercial television stations (which undertake limited investigative journalism), the South African Broadcasting Corporation (SABC) has a crucial role to play as public broadcaster. Unfortunately, what started as elements of interference in political content during the Mbeki Presidency is now becoming a far larger problem—particularly in the run-up to moments of political contestation, such as the ANC's elective conference in Mangaung in December 2012. The SABC, similarly to some of the anti-corruption agencies, has faced prolonged periods of leadership uncertainty. Successive CEOs have been sacked and many changes have been made at a board level, which has weakened management oversight. The element of uncertainty makes the political manipulation of the public broadcaster far easier than it if it had stable management that could provide a vision for content focus and financial management.

Civil society

Civil society in South Africa is loud, often disorganised, and spread across a very large country. By far the vast majority of civil society organisations are service oriented and many of them work closely with government in providing social services such as access to medication or home-based healthcare. In the immediate post-apartheid period many urban-based NGOs were stuck in a funk, and so only a small group of social movements were highly critical of the manner in which power was exercised (such as the Anti-Privatisation Forum or think-tanks aligned with opposition parties such as the South African Institute for Race Relations, and the Helen Suzman Foundation). Criticism of corruption issues meant a confrontation with the business and political establishment. The former was a donor to some but the latter (and in particular the ANC) was—and remains—a movement to which many activists felt a deep allegiance.

The anti-corruption space was, therefore, dominated by think-tanks and specialised NGOs who had been working on these issues for many years. They were the source of research, awareness-raising, and often sound bites to the media. However, over the past three years—just as reported cases of corruption have become most pronounced—we have seen important trends emerge among civil society organisations working on corruption issues:

- **Blue chip NGOs:** These largely well-resourced civil society organisations are on the decline. Many of these organisations (such as Idasa and the Institute for Security Studies) had been formerly at the forefront of corruption work but are now closed or have dramatically streamlined work on corruption issues. This can be blamed, in part, on the impact of the global financial crisis leading to a decrease in foreign donors. Blue chip NGOs were forced to diversify their work beyond South Africa as many donors argued that South Africa had corruption under control. Other organisations that continue to work on aspects of corruption are the Council for the Advancement of the South African Constitution (CASAC), the Helen Suzman Foundation and the Institute for Accountability in Southern Africa.
- **Blue/Red chip NGOs:** Emerging new organisations such as Corruption Watch (with backing from the labour federation, COSATU) aim to engage the public in their work while retaining a largely urban base, which allows them to fill part of the space left by the declining blue chips. These organisations continue to attract considerable donor interest but have far more sophisticated dissemination channels (particularly through social media) for their research and advocacy material than the blue chips. Other examples include the public interest law NGO SECTION27 and Ndifuna Ukwazi.
- **Red Chip—Trade Unions:** Under the leadership of Zwelinzima Vavi, COSATU has become far more active in confronting corruption issues. This has ranged from diverse issues such as private sector corruption, criticism of public servants who use their office to set-up business interests which they realise after leaving office (so-called 'javelin-throwing'), funding of political parties, and the Protection of State Information Bill (known as the Secrecy Bill). Their sharp criticism of corruption within the state has put them in direct conflict with some of the beneficiaries of such corruption. Ten years ago, this would have been virtually unimaginable.
- **Red Chip—Social Movements/Campaigns:** Largely to the left of the dominant political discourse, a number of important social movements have emerged that tackle issues of poor governance, corruption, and structural inequality and that have provided the basis for broad-based social activism. Their organisation and activism is the envy of most opposition political parties. They work with limited funding and build strategic alliances with other organisations such as COSATU and a mix of community organisations, urban NGOs, and academics. These are largely single-issue led initiatives. One example is the Right2Know Campaign, a campaign of over 400 civil society organisations which has ensured that the odious Secrecy Bill is held back for a period of two years. This is significant because while the campaign has now broadened its focus to tackle the broader climate of secrecy in South Africa, including issues such as whistleblower protection and the free flow of access to information, it built a movement out

of what is essentially a political demand. Other examples include: Abahlali baseMjondolo (the 'shack-dwellers movement'), Equal Education (working for equal access to education), Social Justice Coalition (campaigning for safer communities and universal access to sanitation), and the Treatment Action Campaign (a model on which many of the later campaigns were based given its groundbreaking work on improved access to medicines and quality health care).

- Red Chip—Community Organisations: These are community organisations that are most active in advocacy around issues of corruption, mismanagement, and the abuse of power at a local level. Victim to a discourse which identifies them as 'violent in nature' they are a significant indication of citizens who are using the tools of a functioning democracy, such as popular protest and freedom of expression, to demand greater accountability and equitable access to resources.

POPULAR PROTEST AND STATE RESPONSE

At the same time that these institutional responses took shape, the emergence of post-apartheid social movements has created a new generation of civic activism responding to the conditions and experiences of communities on the ground. The theatre of public protest has been the primary means through which these movements articulate themselves.⁸² Though these actions have taken many different forms, and are driven by many different needs and motivations, they have been given the catch-all phrase of 'service delivery protests'.

The varied nature of such protests makes them inherently difficult to measure,⁸³ and any attempt to quantify popular protest should be treated with circumspection. For example, widely quoted statistics provided by data agency Municipal IQ record roughly 410 major service delivery protests from January 2009 to January 2012—more than two every week. However, these figures appear to be drawn largely from news coverage, and therefore may reflect obvious shortcomings in media reporting of service delivery protests. (Conversely, it is likely that the use of media analysis to quantify protests has led to an over-estimation of the violent nature of public protest in South Africa, since an element of violence increases the 'news value' of any protest and therefore creates a bias in reporting). A more likely measure—though one without its limitations—comes from internal police records of public gatherings, published by the *Media24* Investigations Unit,⁸⁴ which record 3288 service delivery protests during the same three-year period⁸⁵—almost 22 protests every week across the country.

While attempts to determine the motivations behind such protest action are similarly plagued, an analysis of related police data showed stated reasons as various as 'demand wage increase', 'solidarity', 'dissatisfied with high crime rate', 'resistance to government policy', 'mobilising of the masses', 'in sympathy with oppressed', and 'service charges'.⁸⁶ In the words of one academic, popular protest is a means through which people seek "the material benefits of full social inclusion ... as well as the right to be taken seriously when thinking and speaking through community organisations."⁸⁷

The encroachment of state-security surveillance and intrusion on legitimate political activity has already been noted. However, while entire books have been written about state-security involvement in high-level political scandals, state-security agents have allegedly harassed community activists and social movement leaders who have been critical of the political elite. Reports of these allegations go back to as early as the World Conference Against Racism in 2002 and the World Summit on Sustainable Development in 2003.⁸⁸ More recently, in the lead-up to the 2011 COP17 climate change conference, environmental-justice activists complained they were being monitored by South Africa's State Security Agency (SSA), a claim that the SSA did not deny.⁸⁹

There is a broader pattern of police harassment of community activists who are seen to act as catalysts for popular protest, embodied by arbitrary arrest, detainment, as well as violence, that has dogged activists of the prominent Unemployed Peoples' Movement in Umlazi⁹⁰ and Grahamstown⁹¹ and Abahlali baseMjondolo in Durban.⁹² In its most dramatic form, 12 members of Abahlali baseMjondolo were charged in 2009 with the murder of two people in the Kennedy Road settlement. More than two years later, when it emerged that police may well have manufactured the evidence against them, a magistrate acquitted them.⁹³

Many encroachments on the right to protest take on a much more prosaic form. The law that governs gatherings in South Africa⁹⁴ was only ever meant as a transitory law to protect the right to assemble in the lead-up to South Africa's democratic transition.⁹⁵ It has been criticised for ambiguities in the legislation and for inconsistent implementation of the law that has led to denials of the constitutional right to protest.⁹⁷ For example, in the lead-up to the 2010 World Cup a number of municipalities hosting World Cup events evidently issued de facto 'blanket bans' on gatherings during the World Cup—essentially a unilateral restriction on the right to assemble.⁹⁸

While these quiet encroachments on the right to protest have been a regular feature for civic organisations and social movements in South Africa's many townships and informal settlements, their relevance has long been liminal to the elite and intelligentsia who set the terms of public debate.

Arguably, this changed in 2011 when police shot Andries Tatane, a respected community leader, during a protest in the Free State town of Ficksburg. When footage of the fatal attack was televised, it highlighted an increasingly ugly element of state-violence in response to popular protest. Policing experts pointed out that Tatane's death had come months after a shift in operational policy that provided a more militarised response to 'public order policing'—prompting a dramatic spike in police killings during protest action, from no more than 3 per year reported nationally, to 11 killed in protests within the first six months of 2011.⁹⁹ That year saw the highest rate of police violence in more than a decade, with 1667 recorded acts of assault meted out by police officers.¹⁰⁰

However, it would be more than a year before the grotesque fruits of that policy were truly borne, in the shape of the Marikana massacre, in which police opened fire on striking miners at Marikana on 16 August 2012, killing 34 people and wounding at

least 78 others. In a written submission to the subsequent Commission of Inquiry into the cause of the shooting, the constitutionalist NGO CASAC characterised the police's fatal response as the culmination of a shift in the attitude and approach to policing that has encouraged greater use of force by the police.¹⁰¹ Drawing on repeated public statements by the President, ministers, and police commissioners in support of a 'maximum force' doctrine, as well as the deliberate militarisation of certain operational approaches to public order policing, the submission highlights a trend towards forceful responses that ultimately threaten to stifle legitimate political activity and exacerbate conflict.

However, if this view contained a warning of the dangers of a heavy-handed response it has not yet been heard. While the Commission of Inquiry continues to sit, in his 2013 State of the Nation Address President Zuma promised a more hard-line approach to violent protest, in the form of priority prosecutions to ensure incidents of violent protest are prosecuted upon.¹⁰²

That popular protest carries the potential for public violence is undeniably a challenge for policing. However, on balance there is an emergence of policy and praxis that restricts and represses the means and opportunity for ordinary people to speak to power. It is axiomatic that repressive responses to legitimate grievances—articulated through popular protest—can have the effective of prompting a more militant articulation of these grievances, leading to further conflict. In other words, the solution creates the problem.

Corruption: An Impediment to Democratic Consolidation

THREE DECADES AND FOUR PHASES OF CORRUPTION

"Stealing has carved a special place for itself in South Africa. It joined lying as a co-mediator between the powerful and the powerless: the rich who have and the poor who do not have. Stealing and lying together become a principle of social and political interaction whenever lying is used for something beyond itself: to justify stealing as a necessary component of social and political activism."—Njabulo Ndebele¹⁰³

It is often suggested that corruption is the necessary manifestation of the messy process of democracy. To some, it is an inevitable product of a seemingly unjust dominant economic system. To others it symbolises the rogue capitalism (such as in the US in the early 20th century) that will supposedly be neutralised once a society and its elites have completed a process of messy transition and agree on a shared set of values.

Common to these assumptions is the fact that corruption is largely viewed from above, and not understood as something that can impede more than just elite mobility. It is a fertiliser that enables renewed abuse of power and stolen opportunities. As a phenomenon it is largely cyclical, and as such it greatly impedes democratic

consolidation by deepening inequalities of power in a society. Simply put, it ensures that the people with guns and the people with money remain a dominant force within society. These are the loose networks of individuals who move with stealth between legality and lawlessness, having the effect of ensuring that a struggling democracy remains a chimera for many and an opportunity for unjust accumulation by a few.

It is therefore helpful, above all, to understand corruption in South Africa within a historical context. It is said that 'South Africa cannot hope to tackle corruption without understanding its origins'.¹⁰⁴ One way to resolve this would be to ensure that economic crimes are not seen as victimless acts to be measured in hard currency. They should rather be viewed as a gross violation of human rights due to the social damage caused on the lives of poor people in particular by political corruption. In some instances far more lives are negatively affected by the impact of corruption than can be measured by the individual human rights violations that are the focus of most transitional justice processes. This is not to diminish the importance of focusing on political acts of violence, but it is important to understand that in some instances it may prove more prudent to limit the scope of truth commissions. Where these are expanded to include the extent of the impact of corruption one is confronted with issues such as the involvement of large international corporations in paying bribes to corrupt regimes; the role played by tax havens and international centres in facilitating corruption; and potentially, the complicity of international financial institutions (both public and private) who at times turn a blind eye to corruption.

It is often argued that South Africa is moving with deft speed towards a point beyond which corruption in the state and the private sector will be endemic. These are views that are now expressed with greater frequency and increasingly sombre tone than in the first years of democratic governance. One only needs to review the annual State of the Nation speeches by the country's successive presidents; the annual budget addresses by the ministers of finance; and public addresses from the country's political and economic elite over past few years, to recognise a growing acknowledgement of the urgent need to deal with the phenomenon. The National Development Plan goes as far to say that:

"South Africa suffers from high levels of corruption that undermine the rule of law and hinder the state's ability to effect development and socio-economic transformation".¹⁰⁵

Looking back almost twenty years, those who raised the issue of corruption were aligned with three groups. First, there were groups seen to be to the right of the democratically elected ANC, made unbelievable largely by their shrill tone and links with apartheid-era political or economic power. Second, government technocrats, assisted by civil society think-tanks and urban NGOs, were working on an impressive system of rules, institutions, and mechanisms which were thought to provide an adequate response of checks and balances to this universal scourge. The country's anti-corruption model drew positive attention from across the globe and no anti-corruption gathering was complete without the 'South Africa perspective'. For many outsiders South Africa represented what the cynics had deemed impossible in the rest of Africa—a modernising state with a system of functioning laws and

institutions and the political will to keep corruption in check. Third, towards the left of the political spectrum there existed a small band of investigative journalists; writers; intellectuals; and activists, including individuals within the trade union movement, who worked at exposing corruption involving the elite. This was viewed as contributing toward public accountability. Others regarded corruption as a symptom of an economic system that was designed to exclude the majority, and entrench apartheid-era inequality.

Fast-forward to 2013 and it is clear that the prevalence of corruption within the public and private sector extends into almost all state entities and economic sectors, and has brought urgency to the debate. It is no longer an issue contested on the periphery but has moved to the centre of the struggle for power in South Africa. It represents a fundamental threat to democratic consolidation.

There is sufficient evidence to suggest that the country's politics have been more significantly corrupted since the inception of democratic rule nearly two decades ago. Corruption is not the country's defining problem but rather the phenomenon accentuates already high levels of poverty, unemployment, and inequality. It threatens to become one of the primary reasons that South Africa will continue to fail in achieving social justice. Instead, the current trend is towards a culture of enriching an elite in politics and business with largely conservative views which stand in stark contrast to the country's constitutional vision of an open, accountable society.

The issue of corruption is often treated in a rather a historical manner, focusing on emerging scandals. Far too little time is spent trying to understand the drivers of corruption and examining long-term trends. Examples include the multi-billion arms deal, the R200 million plus of public funds spent on security upgrades for President Zuma's private residence at Nkandla, and collusive behaviour amongst the country's biggest bread-producers or its construction industry.

Corruption is a phenomenon that can only be understood if we also appreciate the deep roots it has in the country's undemocratic past and how this in turn links to current problems. It should therefore be viewed as a trend characterised by four periods, distinct but interlinked phases which straddle three decades.

The final phase of apartheid power (late 1970s–1990)

A racist stereotype persists that African governments are corrupt but the truth is more complex. South Africa has long struggled with a culture of corruption as evident in the final years of the apartheid regime from the mid 1970s—early 1990s. At the same time that the state was waging a war against its people it was also engaged in systemic economic crime to break international oil and arms embargoes. While these practices effectively criminalised the activities of large parts of the public and private sector, there is little doubt that many individuals used the cloak of secrecy to steal vast amounts of money and move this abroad. If this had not happened it would have made South Africa a historical anomaly amongst states where autocratic regimes are losing a grip on power. It is a potent mix of state secrecy, a monopoly on insider knowledge by tightly networked elites, and the uncertain future created by a new regime that engenders the environment in which this flourishes.

Despite repeated calls from civil society, little has been done to address this issue.¹⁰⁶ Most recently the public protector Thuli Madonsela has initiated investigations into apartheid-era embezzlement by the country's largest banks.¹⁰⁷ This was as a result of a leaked report¹⁰⁸ (commissioned by the South African government in 1999) which identified almost US\$2.9 billion that could be uncovered from three large corporations (two of which are South Africa) and a further US\$3.1 billion in questionable payments made in Luxembourg to purchase weapons.¹⁰⁹ Several notable South African corporations have been implicated by the report, which also suggests criminal collusion involving individuals within the South African Reserve Bank in the late 1980s. It is important to note that the apartheid-era auditor general had severely limited powers of oversight over the military's special defence account, which was used to transfer over US\$20 billion (more than R400 billion in current ZAR value) abroad between the late 1970s and early 1990s in order to purchase weapons and wage international propaganda campaigns.

Allegations of financial crimes, including those involving the Bantustan 'puppet regimes', were never probed by the country's well-documented Truth and Reconciliation Commission which focussed instead on gross violations of human rights. The reasons are complex and are linked in part to a newly democratic country grappling with a traumatic and violent past, and yet aspiring to a future non-racial society that promised a 'better life for all'.¹¹⁰

This situation suited elements of the corrupt white elite (and their cronies in the Bantustans) who had much to hide. No evidence exists of an elite pact that shielded economic crimes from investigation. However, post-apartheid leaders may have agreed to turn a blind eye to such investigations in the interest of 'national unity'. This phenomenon is not unusual and is one that many new democracies grapple with. The choices are largely to prosecute for a handful of economic crimes (which can sometimes be for dubious political reasons) or to simply sweep these issues under the carpet.

The reason for this inaction is not only a desire to forget. Such behaviour is influenced by attempts by the old elite to corrupt elements of the new elite. An example of this is the multi-billion dollar arms deal, when in the mid-1990s a corrupt group of apartheid-era securocrats attempted to forge a relationship with a group of ANC military leaders who themselves were involved in corruption and organised crime during the struggle against apartheid. This corrupt network formed the basis South Africa's biggest post-apartheid political scandal which may have lost the country as many as one million jobs.¹¹¹

One way to avoid this cycle would have been for South Africa to have 'unsettled' corrupt elites immediately after the country's first elections, ensuring that old corrupt elite networks could not immediately co-opt or align themselves with the new rulers or become part of the ruling political establishment. Because this nullification did not take place individuals enjoyed virtual immunity from prosecution, security of assets (even if they are the proceeds of crime) and a model for continued profit-making. In this manner South Africa's past impacts on contemporary politics, bedevilling democratic consolidation.

The optimism of transition (1994–1999)

While the 1990s represented a period of negotiation and settlement, it was also a time of great instability. The negotiations process and subsequent political violence created inevitable uncertainty and increased opportunity for the plunder of wealth in the run-up to the country's first democratic elections.

However, the period immediately following the elections, as a newly elected government took office under President Mandela, represented an opportunity for renewal. This took the form of drafting a new constitution, the basis for a robust anti-corruption framework. Within a few years a raft of new legislation empowered the independent auditor generals' office, Public Protector and NPA and affirmed the independence of the judiciary, freedom of speech, and the right to access information. While it was a period of tremendous change, it was also characterised by a sense of new opportunity that is hard to quantify. Many bureaucrats and political leaders refer to it as a time when extraordinary positive change was possible. In many ways the period, with a new commitment to a common set of values to govern the country, was a time of much instability amongst elites, as they jostled for power and influence.

While it was during this period that bids were being received for South Africa's strategic arms procurement package, most real corruption scandal at the time was linked to apartheid-era hangovers or relatively isolated instances of corruption involving the emerging political elite. An example is the Moerane Commission which addressed maladministration and fraud in the government department, lead by Gauteng MEC Jessie Duarte (who was forced to resign).¹¹² Others, while seemingly trivial, still constituted lapses in governance, such as a driver's licence that was fraudulently obtained by Deputy Speaker of Parliament Baleka Mbete.¹¹³ Though both examples are serious, they pale in comparison with what would follow.

The seeds of transformation (1997–2008)

From December 1997 when Thabo Mbeki was elected leader of the ANC through to his resignation as president of the country in 2008 was a period in which the seeds of transformation were sown. It was equally aspirational as the period post-1994 but this was a vision of a successful African state, with an emergent and influential bourgeoisie that would contribute towards an African renaissance. During this period the shine of liberation started to wear thin, as the country moved from low economic growth and high levels of poverty to relatively high growth and increasing inequality.

It was during this period that the Mbeki technocrats started to add muscle to the anti-corruption armoury, creating specialised new anti-corruption laws and a set of specialised anti-corruption institutions, such as the directorate of special operations (also known as the Scorpions), a unit within the NPA tasked with investigating and prosecuting high-level corruption and organised crime. The Asset Forfeit Unit (AFU), responsible for seizing the profits of organised crime, was established within the NPA, as well as the SIU, which was tasked with rooting out corruption and mal-administration in national and provincial government and benefitted from

a presidential proclamation—and often investigated allegations at the request of the government department concerned.

The period of the Mbeki presidency not only saw the culmination of the arms deal but also the first signs of the corruption evident in the deal, exposing its destructive economic and political impact. This was also the beginning of a period in which anti-corruption issues are increasingly politicised (as a result of political contestation within the ruling party).

The Mbeki presidency also set out to transform the patterns of ownership and opportunity inherited during apartheid. However, BEE was manipulated by elites for narrow gain. This included white business people engaged in 'fronting' exercises (fraudulent abuse of BEE) and the rise of a new power elite in business, with political connections that could rival some of the wealthiest members of the white establishment. This is not to suggest that this wealth was the product of corruption. Rather, it saw the duplication of the pattern of ownership (in the hands of the few) which was not dissimilar to the manner in which the then exclusively white power elite had controlled and manipulated the economy during apartheid. Such tight networks of power and influence undermined efforts to transform the economy and promote a model of broad based black economic empowerment.

During this period the issue of political party funding came into much sharper focus, with the creation of party-owned enterprises such as the ANC's Chancellor House that was set to benefit directly from state contracting and awarding of licences (first exposed in 2006).¹¹⁴ The influence that money has over politics became increasingly evident.

Finally new patronage networks started to emerge, with the culture of cadre deployment. This was an attempt by ANC leadership in Luthuli House to ensure that personnel loyal to the ruling party received key positions in government. The unintended consequence of this was the establishment of patronage networks that were loyal to the party and not the state. Equally, individuals such as the notoriously corrupt mining magnate and businessmen Brett Kebble, developed their own patronage networks in politics. Kebble cultivated this in part by allegedly providing cash and lines of credit for members of the political elite including the ANC Youth League—thereby securing influence within the ANC and shoring up support amongst an emerging generation of new leaders.¹¹⁵

By the end of Mbeki's presidency the country started to see two distinct patterns emerge at local government level. Firstly, that incessant internal political strife within the ruling party is duplicated in a scramble for resources at a local level, largely in the form of positions of office. When this happens it is inevitable that systemic corruption within local government pursues. Secondly, the so-called waves of 'service delivery protest' which started to trend in the winter of 2005, have not stopped, as ordinary people dissatisfied with relative deprivation, poor consultation, corruption, and mismanagement of resources and expectations, take to the streets which results at times in violent clashes with heavy-handed police.

The ascendancy of the 'shadow state' (2009–2013)

The ascendancy of the Zuma administration held promise of a new openness and commitment to fight corruption—this despite the President being personally implicated (but not found guilty) of corruption in the arms deal. However, it is evident from the data presented in this paper that South Africa is now in a state of accelerated corruption.

In part, this is related to the criminalisation of factions within the ruling party who have relied on patronage, party funding, and the threat of the use of force to secure greater power and influence. While the state is not criminalised it is apparent that there is a growing 'shadow state'—a fluid network of politicians, business people, and securocrats within the intelligence sector and police. This new permutation of the power elite plays a significant role in making decisions on how resources are allocated, and may be subverting public procurement processes for narrow gain.¹¹⁶

Conclusion

The daily narrative of venality, scandal, and theft of public resources is seldom understood as something bigger than a single event. It has become part of a system. To blame is not a model of accountable democratic governance. At its core the problem is one of inequalities of power and money. It is a system of elite enrichment that was at the core of the undemocratic apartheid state.

While it is now essential to confront the corrupt network that represents the emergence of the shadow state it is equally vital that opposition to the long shadow cast by the undemocratic, corrupt apartheid state is voiced. This runs contrary to either the Beijing or the Washington consensus model—it requires far less concentration of political and economic power in the hands of the few. This is regardless of whether the few are the plutocrats in old white families or new black business elites—both groups seemingly harbour ambitions of inequality. Equally it demands a far more accountable elected political class that stretches from local councilor all the way to the presidency—something contrary to the appetite for a Beijing type model of central committee dominance.

To achieve this there are no quick fixes. An economic truth commission, which forms part of a public dialogue on how to grow the economy while narrowing inequality, may present opportunities, as will a comprehensive public dialogue that calls for the greater exchange of ideas, as opposed to the piecemeal technocratic responses which will continue to fail the people of South Africa in a climate of a the 'shadow state' and in the shadow of corrupt apartheid era networks.

Success demands a new democratic consensus, which is not Beijing or Washington but a unique South African vision of how to break the impasse and allow a constitutional democracy that represents the interests of all of its people to flourish: a consensus that both breaks the constrictive power networks and builds a culture of equal opportunity and mutual accountability.

A South African democratic consensus is possible.

REFERENCES

1. Special thanks to Murray Hunter (a researcher with the Open Secrets project) who contributed research to this paper. The author can be contacted at: hennievuuren@gmail.com
2. Ndebele, Njabulo. Onwards with INTEGRITY. *City Press*. Johannesburg. 10 February 2013.
3. Levin, R. The wicked problem of corruption. *The Sunday Independent*. 18 November 2012.
4. Public Service Commission. 2005. *State of the Public Service*. Public Service Commission, 2010; Public Service Commission. Report on Financial Misconduct. Public Service Commission.
5. Ibid. Public Service Commission.
6. Ibid. Public Service Commission.
7. Ibid. Public Service Commission.
8. Public Service Commission. 2006. *State of the Public Service*. Public Service Commission, 2010; Public Service Commission. Report on Financial Misconduct. Public Service Commission.
9. Public Service Commission. 2007. *State of the Public Service*. Public Service Commission, 2010; Public Service Commission. Report on Financial Misconduct. Public Service Commission.
10. Public Service Commission. 2008. *State of the Public Service*. Public Service Commission, 2010; Public Service Commission. Report on Financial Misconduct. Public Service Commission.
11. Public Service Commission. 2008. *State of the Public Service*. Public Service Commission. 2010; Public Service Commission. Report on Financial Misconduct. Public Service Commission.
12. Ensor, Linda. 'Call for ban as public service graft nears R1bn.' *Business Day*. Johannesburg. 08 November 2012.
13. Ibid.
14. Paton. C. 'Axe hovers over officials in "capable state" drive'. *Business Day*. Johannesburg. 20 February 2013.
15. Ensor, Linda. 'Call for ban as public service graft nears R1bn.' *Business Day*. Johannesburg. 08 November 2012.
16. van der Merwe. J. 'How SA's servants bend the rules.' *City Press*. Johannesburg. 2 December 2012.
17. Ibid.
18. Ensor, Linda. 'Call for ban as public service graft nears R1bn.' *Business Day*. Johannesburg. 08 November 2012.
19. Open Society Foundation for South Africa. The Cost of Public Corruption in a Democratic South Africa. Money and Politics Project. Policy Brief. OSF-SA. Cape Town. December 2011.
20. All 'National' and 'Public Entity' figures are drawn from the AG's *general report on National Audit Outcomes*, 2008-09/2009-10/2010-11. The 'Provincial' figures are drawn from AG's *General report on the provincial audit outcomes*, 2008-09 /2009-10/2010-11.
21. Corruption Watch, 'Local government gets the 'zero' treatment.' 27 July 2012, www.corruptionwatch.org.za
22. Ibid.
23. Mukhadam, S., 'Holding Local Government Accountable, Institute for Security Studies', *ISS Today*, Cape Town. Institute for Security Studies, 14 July 2011 www.issafrica.org
24. Levett. S. 'Something is rotten in the State' *Finweek*. Johannesburg. 10 January 2013.
25. Fin24, 'Government losing grip on finances' *Fin24/SAPA*. 12 February 2013 www.fin24.com.
26. Shiceka, S. Statement by Minister of Cooperative Governance and Traditional Affairs, Sicele Shiceka on operation Clean Audit 2014 to Parliament of South Africa, *South African Government Information*, 22 September 2009, www.info.gov.za
27. Heese, K. and Allan, K, 'Bringing errant officials up to standard', *Business Day*, 06 June 2013, www.businessday.co.za
28. Ibid.
29. Nhlathi, Hlengiwe, 'Officials get R800m from tenders', *The Sowetan*, 25 July 2012, www.sowetanlive.co.za
30. Ibid.
31. Ibid.
32. Ibid.
33. Chipkin, I & Meny-Gilbert, S. 'Public Sector Manages to Fail' *Mail & Guardian*, 22-27 March 2013.
34. Ibid.
35. ANC Progress Business Forum, Events, <http://www.pbf.org.za/events.php?t=Upcoming%20Events>
36. Heese, K. and Allan, K, 'Bringing errant officials up to standard', *Business Day*, 06 June 2013, www.businessday.co.za
37. Ibid.
38. Source Afrobarometer Round 2 (2004), Afrobarometer Round 3 (2006), Afrobarometer Round 4 (2008), Afrobarometer Round 5 (2011).
39. Levett. S. 'Something is rotten in the State' *Finweek*. Johannesburg. 10 January 2013.

40. Pauw, J. Hawks Probe Building Cartel. *City Press*. Johannesburg. 03 February 2013.
41. Ibid.
42. Lewis, D. 2012. *Thieves at the Dinner Table: Enforcing the Competition Act—A Personal Account*. Johannesburg, Jacana.
43. Open Society Foundation for South Africa. *Money and Politics in South Africa: The party funding challenge*. Money and Politics Project. Policy Brief. OSF-SA. Cape Town. December 2011.
44. Holden, P. and van Vuuren, H. 2011. "Three Unturned Stones: Helicopters, Submarines and Party Funding" in *The Devil in the Detail—How the Arms Deal Changed Everything*. Chapter 5. Cape Town, Jonathan Ball.
45. Mangaung, *African National Congress*, 53rd National Conference Resolutions. p.80. 31 January 2013.
46. See for example Williamson, C., 1989. 'ANC Clandestine Operations,' in Venter, AJ (ed.), *Challenge: Southern Africa within the Africa Revolutionary Context*, Johannesburg, Ashanti Publishing.
47. Ellis, S., 2012. *External Mission: The ANC in Exile*, pp.151–204, Johannesburg, Jonathan Ball Publishers.
48. Holden, P. & van Vuuren, H., 2011. *Devil in the Detail: How the Arms Deal Changed Everything*, p.63, Johannesburg, Jonathan Ball Publishers.
49. Ellis, S., 2012. *External Mission: The ANC in Exile*, p.261, Johannesburg, Jonathan Ball Publishers.
50. 'Intelligence in a Constitutional Democracy', Ministerial Review Commission on Intelligence, 10 September 2008, pp 71.
51. Duncan, J. 'How Deep Is the Rot in South Africa's Intelligence Services?' www.sacsis.org.za, 23 October 2011.
52. 'Intelligence in a Constitutional Democracy', Ministerial Review Commission on Intelligence, 10 September 2008.
53. P de Wet, *Mail & Guardian*, "Spy Wars: South Africa is not innocent," 21 June 2013, available online at: <http://mg.co.za/article/2013-06-21-00-spy-wars-south-africa-is-not-innocent>.
54. Africa, S., *Well-kept Secrets: the Right of Access to Information and the South African Intelligence Services*. Johannesburg: Institute for Global Dialogue and the Friedrich Ebert Stiftung. pp.17.
55. Monare, M. "The rise and fall of spy chief Billy Masetlha", *The Star*. 24 March 2006.
56. 'Executive Summary of the Final Report on the Findings of an Investigation into the Legality of the Surveillance Operations Carried Out by the NIA on Mr S Macozoma', Inspector-General of Intelligence, 23 March 2006.
57. Staff reporter, 'Inside the Browse 'Mole' row', *Mail & Guardian*, 3 August 2007.
58. Staff reporter, 'Zuma's legal team "has Mbeki, McCarthy on tape"', *Mail & Guardian*, 26 March 2009.
59. Sole, S., 'Zuma's Decade of Destruction', *Mail & Guardian*, 2 November 2011.
60. Ibid.
61. Ibid.
62. Holden, P., van Vuuren, H., *Devil in the Detail*, pp.438.
63. See Report on the Khampepe Commission of Inquiry, 29 June 2006.
64. Staff reporter, 'The Desperate Bid To Shield Selebi,' *Mail & Guardian*, 5 October 2007.
65. Pikoli, V., Testimony before the Ginwala Commission, quoted in Basson A. *Finish and Klaar*, 2010, pp. 128.
66. Staff reporter, 'Spy Boss's Dodgy Business,' *Mail & Guardian*, 21 November 2008.
67. Staff reporter, 'Kebble's Voice from the Grave', *Mail & Guardian*, 4 June 2010.
68. Adrian Basson, *Finish & Klaar: Jackie Selebi's Fall from Interpol to the Underworld*. pp.176, Johannesburg, Jonathan Ball Publishers, 2006.
69. Staff reporter, 'Charges against Gerrie Nel withdraw,' *Mail & Guardian*, 14 January 2008.
70. Staff Report, 'Inside Operation Destroy Lucifer,' *Mail & Guardian*, 19 June 2009.
71. 'A Clique Too Many for Constitutional Democracy', *Mail & Guardian*, 11 May 2012.
72. Gordin, J., 'The Zuma Alumni', www.Politicsweb.co.za, 12 June 2009.
73. The Protection of State Information Bill, having undergone significant progressive amendments in the past two years under sustained public pressure, is likely to pass through the legislature in the first half of 2013—thus far with a number of problematic provisions intact.
74. Staff Reporter, 'Spooks Bid for New Powers,' *Mail & Guardian*, 3 Feb 2012.
75. Right2Know Campaign. 'Secret State of the Nation 2013.' Cape Town, Right2Know Campaign. 18 February 2013.
76. Potgieter, DW, 'The Spy Wars Continued: Crime Intelligence in Mdluli turmoil', *The Daily Maverick*, 12 December 2012.
77. Staff reporter, 'Mdluli's Startling Comeback', *City Press*, 4 February 2012.
78. AmaBhungane Reporters, "Mdluli cops bugged Cele': Security chiefs slug it out', *Mail & Guardian*, 13 April 2012.
79. Potgieter, DW, 'SAPS Crime Intelligence: Frozen in the political winter of Mangaung', *Daily Maverick*, 29 November 2012.
80. Staff reporter, 'Zuma crack spy unit descends on Mangaung,' *City Press*, 9 December 2012.

81. de Wet, P., 'Presidency determined to hold back Khampepe', *Mail & Guardian*, 01 March 2013.
82. McKinley, D., and Veriava, A., 2005. 'Arresting Dissent: State Repression and Post Apartheid Social Movements', *Violence and Transition Series*.
83. Alexander, P., 2010. 'Rebellion of the poor: South Africa's service delivery protests—a preliminary analysis', pp.26, *Review of African Political Economy*, 37.
84. Saba, A., & van der Merwe, J., 'Revealed—the true scale of SA service delivery protests [with original official data]', Media24 Investigations, 22 January 2013.
85. The data released by SAPS reflects the total number of recorded public gatherings related to service delivery grievances between 1 January 2009 to 30 November 2011.
86. Vally, N., 2009. *National trends around protest action: mapping protest action in South Africa*, Study by the CSR and the Freedom of Expression Institute.
87. Pithouse, R., 2010. The University of Abahlali baseMjondolo *Voices of resistance from occupied London*, 2 (October 2007), quoted in Alexander, P., Rebellion of the poor: *South Africa's service delivery protests—a preliminary analysis*, pp.25–40 *Review of African Political Economy*, 37.
88. Duncan, J., 'Media underplaying police, state brutality', *Sunday Independent*, 26 August 2012.
89. 'Spies snoop on greens', *City Press*, 12 November 2011.
90. Asmal-Motala, F., 'Umlazi uprising faces bullets, arrests', *Mail & Guardian*, 29 June 2012.
91. Parker, F., Grahamstown activist arrested for book theft, *Mail & Guardian*, 13 January 2012.
92. Tolsi, N., 'I was punched, beaten', *Mail & Guardian*, 16 September 2006.
93. Socio-Economic Rights Institute of South Africa (SERI), *State had no case against Kennedy 12*, www.Politicsweb.co.za, 19 July 2011.
94. The Regulation of Gatherings Act, 205 of 1993.
95. Memeza, M., 2006. *A critical review of the implementation of the Regulation of Gatherings Act 205 of 1993: A local government and civil society perspective*, Freedom of Expression Institute: 12.
96. Ibid., p.48.
97. See for example press statements of the KZN-based social movement Abahlali baseMjondolo on attempts to prohibit protests in contravention of the Regulation of Gatherings Act: www.abahlali.org/taxonomy/term/3369
98. Duncan, J., *The Return of State Repression*, www.SACSIS.org.za, 31 May 2010.
99. Bruce, D., *The Road to Marikana: Abuses of Force During Public Order Policing Operations*, www.SACSIS.org.za, 12 October 2012.
100. Rawoot, I., 'Police violence highest in a decade', *Mail & Guardian*, 27 May 2011.
101. Council for the Advancement of the South African Constitution, CASAC Submission to the Marikana Commission of Inquiry. 23 January 2013.
102. Zuma, J., "State of the Nation Address by His Excellency Jacob G Zuma", 14 February 2013.
103. Ndebele, Njabulo. 'Lying to be human'. *City Press*. Johannesburg. 27 January 2013.
104. National Planning Commission. *National Development Plan—Vision for 2030*. p.410. Pretoria, National Planning Commission. 11 November 2013.
105. Ibid., pp.410.
106. van Vuuren, H., 2006. *Apartheid Grand Corruption—Assessing the scale of crimes of profit in South Africa 1976-1994*, Pretoria, Institute for Security Studies.
107. Hawker, D. 'Apartheid-era plunder to be probed after all.' *Sunday Independent*. 10 July 2011.
108. The report is an outcome of a Memorandum of Agreement signed by the Director-General of the South African Secret Service, Mr Billy Masetla and the head of UK based private intelligence firm CIEX.
109. CIEX Report—Operations on behalf of the South African Government August 1997-December 1999, Unpublished.
110. To date the focus of transitional justice has been on human rights violations. Only three Truth Commissions (out of a total of 34) have expressly dealt with acts of corruption, economic crimes and socioeconomic rights violations. See: Ruben Carranza, 2008. 'Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes', pp.310–330. *The International Journal of Transitional Justice*, Vol. 2.
111. Holden, P. and van Vuuren, H., 2011. 'The Bottom Line: The Cost and Macroeconomic Impact of the Arms Deal' in *The Devil in the Detail—How the Arms Deal Changed Everything*. Cape Town, Jonathan Ball.
112. Radebe, Hopewell. 'Duarte affair now closed, says Shilowa'. *Sunday Independent*. 07 September 1999.
113. 'Time to surrender suspect licence.' *Financial Mail*. Johannesburg. 09 May 1997.
114. Robinson, V., Brummer, S. SA Democracy Incorporated—Corporate Fronts and Political Party Funding. Paper 129. Pretoria, Institute for Security Studies. November 2006.
115. 'Fat of the Land.' *Noseweek*. Issue 55. Cape Town. April 2004.
116. See: 1.3 *Networks of corruption and the ascendance of securocrats*.

ADDITIONAL FUNDING:

The John Templeton Foundation

Smith Richardson Foundation

The Lynde and Harry Bradley Foundation

Center for International Private Enterprise (CIPE)



JOHN TEMPLETON FOUNDATION
SUPPORTING SCIENCE—INVESTING IN THE BIG QUESTIONS

SmithRichardson
FOUNDATION

BUILDING A MORE PROSPEROUS WORLD THROUGH LIBERTY AND RESPONSIBILITY

978-1-907409-45-5



9 781907 409455



www.li.com
www.prosperity.com

LEGATUM INSTITUTE

11 Charles Street
Mayfair
London W1J 5DW
United Kingdom

t: +44 (0) 20 7148 5400

<http://twitter.com/LegatumInst>



**CENTRE FOR
DEVELOPMENT
AND ENTERPRISE**
Informing South African Policy

www.cde.org.za

CENTRE FOR DEVELOPMENT AND ENTERPRISE

5 Eton Road, Parktown,
Johannesburg, 2193
South Africa

PO Box 1936, Johannesburg, 2000

t: +27 (0) 11 482 5140
e: info@cde.org.za