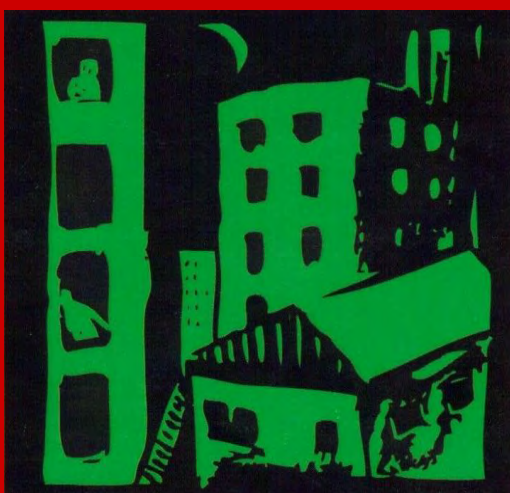
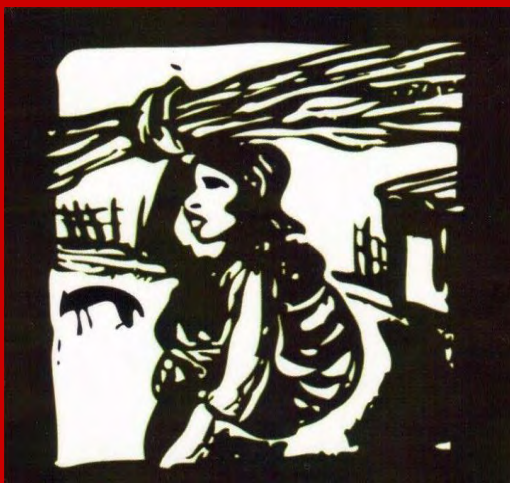


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The political economy of
political corruption in 21st
century Africa: Perspectives
from Cameroon and South
Africa

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ABSTRACT

From ancient to modern times, corruption has plagued human civilisation. Its existence confirms that it has been integrated into the social fabric of global society and become a vice of governance. Corruption has dual implications: the direct financial benefit for the perpetrators due to the misuse of entrusted power, which raises the issue of accountability; and the deprivation to society of the allocation of resources. Political corruption results in large amounts of public funds being systematically siphoned off at the expense of society, and against the dictates of the constitutional values of transparency and accountability. For South Africa and Cameroon, political corruption continues to impede growth and development, despite the prevalence of anti-corruption mechanisms in these countries. From a

comparative perspective, we investigate the scale and consequence of political corruption in South Africa and Cameroon to analyse the existing anti-corruption mechanisms, strategies and regimes in the two countries in combatting political corruption. We further analyse how and to what extent courts, particularly the Special Crime Court in Cameroon, have been able to address the issue. Furthermore, we demonstrate the similarities between high-level abuse of power in South Africa and Cameroon, notwithstanding existing anti-corruption mechanisms. We conclude that a proactive system of checks and balances is urgently required to quench the growing cancerous phenomenon of political corruption in Africa, specifically in Cameroon and South Africa.

Keywords: Cameroon; governance; transparency; accountability; political corruption; anti-corruption; South Africa

1 INTRODUCTION

Political corruption generally involves a public official who violates public trust by engaging in conduct which exploits his or her public office for private gain.¹ This type of corruption is not contemporary. It can be traced back to ancient times through the writings of Aristotle and Plato. These philosophers stated that a corrupt regime leads to a ruler governing in his interest as opposed to the interest of the society.² The existence of political corruption has proven throughout history that no society is immune from it. This is because political corruption remains prevalent at a national and global level, and continues to be a conundrum for individuals, regimes, and organisations.³ Due to its ability to exist in all levels of society and in different forms, political corruption has integrated itself within the social fabric,⁴ thus making it difficult to isolate it and develop a watertight definition of it. As a consequence, there are numerous definitions of political corruption. An analysis of these definitions demonstrates three fundamental characteristics that distinguish political corruption from other forms. Political corruption involves the misuse or abuse of power by those in the higher levels of government; it involves large amounts of funds; and it has a large-scale impact on society.

According to Uddoh, political officials often engage in state capture and exploit their positions to extract bribes from either national or transnational corporations, thus gaining significantly from pay-offs, often from government or state contracts, and embezzling large sums of money from the public treasury into their private or offshore bank accounts.⁵ The perpetuation of political corruption, however, is not limited to public officials. For Waring, it includes politicians and their networks (together with

¹ See Johnston M *Political corruption: Concepts and contexts* New York: Taylor & Francis (2017).

² Bora ZM "Introduction" in Bora ZM & Sivaramakrishnan M (eds) *Narrative of environmental challenges in Brazil and India: Losing nature* Lanham: Lexington Books (2018) at 7.

³ Ayodeji GI "Grand corruption in sub-Saharan Africa and the feasibility of establishing international anti-corruption court" (2019) 11(1) *Acta Universitatis Danubius. Administratio* 5 at 5.

⁴ See Lewis J "Social impacts of corruption upon community resilience and poverty" (2017) 9(1) *Jambá: Journal of Disaster Risk Studies* 1-8.

⁵ See Uddoh J *Corruption and Nigerian foreign policy (1999-2007)* Bloomington: Author House (2016).

those of other public officials) engaging in illegitimate practices for private gain.⁶ In 2019, Ayodeji stated that more than six billion people live in countries with immense political corruption problems, essentially due to corrupt leaders living luxurious lives at the expense of the general public.⁷

Political corruption is perceived as devouring more than 5 per cent of the global gross domestic product (GDP), and “illicit financial flows out of developing countries are ten times larger than the foreign assistance those countries receive – losses that have direct human consequences”.⁸ Due to its nature, political corruption negatively affects the socio-political and economic development of a state by its infiltration into all government institutions.⁹ As Africa is considered the poorest continent, the impact of political corruption in the socio-economic context is crucial to consider, as misappropriated, misused, laundered or stolen funds intended for economic development bring about economic deficits and perpetuate poverty.¹⁰

Political corruption involving high-level public officials is often synonymous with a lack of political accountability, abuse of property rights, and of any other component that may be essential for economic growth.¹¹ Additionally, in the absence of criminal liability or selective prosecution, the rule of law is eroded. This often results in economic instability and a decline in confidence in good governance and the judicial system.¹² It is from this perspective that political corruption has been perceived as a rejection of laws¹³ and a major obstacle to development, particularly because it damages low-income societies.¹⁴ Millions of Africans continue to experience poverty, hunger, incessant war, insufficient health care, disease and lack of access to clean water, in one of the poorest regions in the world.

A plausible reason for these problems is the prevailing problem of political corruption. It is a truism that corruption in general, and political corruption in particular, have significant negative implications for organised society. It needs to be controlled, contained, and minimised. Indeed, it is argued that “grand corruption has remained persistent in sub-Saharan Africa and continues to be a major socio-political and economic stumbling block to its stunted development, permeating all government institutions”.¹⁵ With much effort being spent on the fight against political corruption in

⁶ Waring A *The new authoritarianism* Stuttgart: Ibidem-Verlag (2021) at 195.

⁷ Ayodeji (2019) at 6.

⁸ Ayodeji (2019) at 5.

⁹ Ayodeji (2019) at 6.

¹⁰ Ayodeji (2019) at 11.

¹¹ Aidt TS “Corruption, institutions and economic development” (2009) 25(2) *Oxford Review of Economic Policy* 271 at 272.

¹² Ayodeji (2019) at 7.

¹³ Aidt (2009) at 271.

¹⁴ Aidt (2009) at 271.

¹⁵ Ayodeji (2019) at 11.

Africa and globally, the strategies and mechanisms deployed to this end vary between states, with correspondingly varied degrees of success.

It is against this background that we contextualise political corruption and critically analyse the existing anti-corruption mechanisms, strategies and regimes in Cameroon and South Africa to combat political corruption. The rationale is that the characteristics of political corruption, as outlined above, are shared by Cameroon and South Africa. The focus on political corruption is due to its centrality to other forms of corruption associated with political and economic terrains, and the processes and capacity of the state to affect socio-economic development. Furthermore, we locate political corruption within the context of the political-economy-of-corruption discourse, identify the challenges facing anti-corruption strategies, regimes and mechanisms in Cameroon and South Africa, and gauge their potential for success.

We commence this analysis with an overview of the prevalence of political corruption in Africa. Next, we examine how political corruption is perpetrated in Cameroon and South Africa. We then move to an examination of the relevant international and African regional instruments on corruption to determine their relevance in the fight against political corruption in the focused countries. This is followed by a comparative examination of anti-corruption mechanisms in Cameroon and South Africa, to determine how they have been used to suppress this problem. Lastly, we examine the role of Cameroon's Special Criminal Court (SCC) in this regard, to suggest possible recommendations for South Africa.

2 PREVALENCE OF POLITICAL CORRUPTION IN AFRICA: A SYNOPSIS

As relationships between individuals and states have changed, so have understandings of "the state", "the office-bearer" or "the individual".¹⁶ It was customary under a monarchy or a feudal system that the individual had few rights. Under this system, the state was supposed to define individuals' rights and the code of behaviour for everyone – citizens and public functionaries. Corruption, and by extension political corruption, in that context implied failure to comply with the defined moral code.¹⁷ Unlike in a feudal system, under a modern democratic system individuals choose their values and their rulers in conformity with those values.¹⁸ Understandably, the rulers reflect the morality of the rule. The definition of (political) corruption, in this context, relates principally to the behaviour of the individual who has been chosen to rule or govern. This ruler is in principle not expected to define morality – other than in designing the requisite legal framework. Instead, the general expectation is that he or she conforms to the established norms.¹⁹ The contemporary discussion on political corruption is about the behaviour of politicians or bureaucrats. Politics is however, arguably important. Political values, institutions, and parties are important role-players in defining the

¹⁶ Jain AK "Power, politics and corruption" in Jain AK (ed) *The political economy of corruption* New York: Routledge (2001) at 4.

¹⁷ Jain (2001) at 4.

¹⁸ Jain (2001) at 4.

¹⁹ Jain (2001) at 4.

values of society and the norms that individuals in positions of power have to follow, and in designing the control systems to determine the limits of the behaviour of disgruntled political elites.²⁰

The upsurge of the discourse on political corruption has gained global recognition and traction in the last two decades or so.²¹ In Africa, as elsewhere, corruption and indeed political corruption are, unfortunately, the inevitable challenge to economic growth and development.²² The impacts are not confined by boundaries. They affect all levels of society and the governance system of a country. Indeed, research has shown that political corruption is one of the greatest threats to governance (including good governance), as it continues to undermine the democratic governance systems in Africa and elsewhere in the world.²³ Beyond the impact on governance, political corruption also brings international disrepute to country. Many African countries have received low rankings on the Transparency International Corruption Index – an issue that highlights the extent of the pervasiveness of political corruption in Africa.

This is notwithstanding Rose-Ackerman's view of the current lack of a reliable database on the magnitude and extent of political corruption across and within countries.²⁴ Although it is assumed that corruption takes place at the interface of public and private sectors, Rose-Ackerman argues that "sometimes there is no distinction between public and private purses, and government officials simply 'appropriate' state assets".²⁵ The impacts of corruption are particularly concerning when orchestrated by ruling political elites as political corruption, which we posit occurs at the highest echelon of a state's political system.²⁶ This suggests that political corruption is used to comprehensively define corruption amongst the top political elite in a country. Put differently, our understanding of political corruption is, therefore, that it is used to exemplify corruption perpetrated by a country's top political ruling elites. But what is political corruption?

Before engaging in this definitional clarification, it is important to differentiate political corruption from bureaucratic corruption – although this distinction is, however,

²⁰ Jain (2001) at 4.

²¹ Adejumobi S "The political economy of corruption in Africa: A theoretical discourse" in Adejumobi S (ed) *Democratic renewal in Africa* New York: Palgrave Macmillan (2015) at 153.

²² See also Idoniboye-Obu SA & Uzodike UO "Curbing bureaucratic corruption in Africa" (2013) 2(1&2) *Ubuntu: Journal of Conflict and Social Transformation* 21 at 21.

²³ For detail, see Jain AK *The political economy of corruption* London: Routledge (2011); Adejumobi (2015) at 153–176; Rose-Ackerman S "The political economy of corruption – causes and consequences" (Viewpoint World Bank 1996) at 1–4 available at https://openknowledge.worldbank.org/bitstream/handle/10986/11629/multi_page.pdf?sequence=1&isAllowed=y (accessed 13 December 2022).

²⁴ Rose-Ackerman (1996) at 1–4.

²⁵ Rose-Ackerman (1996) at 33.

²⁶ Amundsen I "Political corruption: An introduction to the issues" CMI Working Paper 7, (1999) at 3 available at <https://www.cmi.no/publications/file/1040-political-coiTuption.pdf> (accessed 12 December 2022).

considered ambiguous.²⁷ The former, according to Amundsen, refers to corruption at the top of the state involving the influence of political decision-making processes and the overall functioning of the governance system, premised on the amount of power and authority the ruling political elites have or are able to exert on the governed. This suggests that political corruption has serious political repercussions for governance and the functioning of a state's governance apparatus. For Heywood, political corruption "is now as likely to take the form of conflicts of interests, abuse of office, lobbying and inappropriate use of public information as it is to take more traditional forms such as bribery and embezzlement".²⁸ The Transparency International *Global Corruption Report* of 2004 defined political corruption as "the abuse of entrusted power by political leaders for private gain".²⁹ The Conference of the Parties to the United Nations Convention to Combat Corruption considers "political corruption" as:

[a]n expression used to describe corruption that pervades the highest levels of government, engendering major abuses of power. A broad erosion of the rule of law, economic stability and confidence in good governance quickly follow. Sometimes it is referred to as state capture, which is where external interests illegally distort the highest levels of a political system to private ends.³⁰

It is important to mention at the outset that political corruption goes beyond greed and personal gain to encapsulate the influence of decision-making bodies and the protection of private rather than national interests that help to fundamentally "keep the regime together and afloat",³¹ so that the status quo is maintained together with leaders' positions in power. The idea of maintaining the status quo stems from the fact that "political corruption not only gives the incentives for controlling the state, but it is also a means to maintain control of the state".³² Political corruption is further postulated as entailing the "manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision-makers, who abuse their position to sustain their power, status and wealth".³³

²⁷ Amundsen (1999) at 3. For example, Heidenheimer & Johnston use the term "political corruption" as a synonym for corruption – although within the political realm. See Heidenheimer AJ & Johnson M (eds) *Political corruption: Concepts and contests* New York: Routledge (2002) at 12.

²⁸ Heywood P *Routledge handbook of political corruption* London: Routledge (2015) at 4.

²⁹ Hodess R et al (eds) *Global Corruption Report 2004 (Special Focus Political Corruption)* 1 London/Sterling VA: Pluto Press, Transparency International available at https://issuu.com/transparencyminternational/docs/2004_gcr_politicalcorruption_en (accessed 15 December 2022).

³⁰ Ayodeyi (2019) at 11. Also see Bond P "Who really 'state-captured' South Africa? Revealing silences in poverty, inequality and structurally-corrupt capitalism" in Durojaye E & Mirugi-Mukundi G (eds) *Exploring the link between poverty and human rights in Africa* Pretoria: Pretoria University Press (2020) at 59–82.

³¹ Amundsen I "Extractive and power-preserving political corruption" in Amundsen I (ed) *Political corruption in Africa: Extraction and power preservation* Cheltenham: Edward Elgar (2019) at 1.

³² Amundsen (2019) at 1.

³³ Amundsen (2019) at 2 citing Transparency International at footnote 1. Emphasis added.

By contrast, bureaucratic corruption is corruption occurring “in the public administration, at the implementation end of politics”.³⁴ However, in either bureaucratic or political corruption, there is the wanton appropriation of state resources for private gain by the ruling political elites, to the extent that they have increasingly become richer than businessmen –resulting in a situation “whereby leaders with notoriously corrupt records continue to enjoy lives of luxury at the expense of people living in grinding poverty”.³⁵ Evidence of political corruption in Africa is everywhere, and it would be disingenuous not to acknowledge that Africa is the citadel of political corruption.

Indeed, the performance of African countries in global corruption surveys, and in development and governance assessment indices such as Transparency International’s Corruption Perception Indices (CPI), has been inauspicious.³⁶ In the past one and a half decades, more than 90 per cent of African countries have scored less than 50 per cent on CPI charts, indicating ubiquitous (political) corruption. It is reported that, in 2015, 40 African countries showed a serious problem of corruption, with no improvement for Nigeria and South Africa – the continent’s powerhouses.³⁷ Many African countries have unceasingly been rated low by the Transparency International 2021 report owing to the prevalence of political corruption, and the nations of Africa are perceived as housing the world’s most corrupt governments.

Political corruption perpetrated through illicit financial flows costs the continent huge financial losses annually because the funds are stashed in foreign banks (notably Swiss banks) for fear of accountability.³⁸ A 2021 African Union report estimated that Africa has lost approximately \$1 trillion in the last 50 years, or over 50 billion annually.³⁹ The Global Financial Integrity reported that between 2000 and 2008 illicit financial flows from Africa amounted to \$358 billion. According to Human Rights Watch, more than \$4.22 billion of Angola’s government funds, about 9.25 per cent of its annual GDP, disappeared between 1997 and 2002.⁴⁰ In 2012, the International Monetary Fund (IMF) further reported that \$41.8 billion was unaccounted for in Angola between 2007 and 2011. As far as the authors could establish, there are no recent statistics by Human Rights Watch and the IMF on this issue. Nevertheless, the foregoing situation is no different in Cameroon, where billions of state funds have been looted by unscrupulous

³⁴ Amundsen (1999) at 3.

³⁵ See Ayodeyi (2019) at 9.

³⁶ Ayodeyi (2019) at 9.

³⁷ Ayodeyi (2019) at 10. Also see Imeira PP “Corruption race in Africa: Nigeria versus South Africa, who cleans the mess first?” (2020) *De Jure* 70 at 82.

³⁸ Kamga SD “The Special Criminal Court in the fight against illicit flow of wealth and the realization of the right to development in Cameroon: Prospect and challenges” (2020) 45(1) *Journal of Juridical Sciences* 141 at 142.

³⁹ African Union “Illicit financial flows: Report from the high-level panel on illicit financial flows from Africa (2021) at 13 available at https://au.int/sites/default/files/documents/40545-doc-IFFs_REPORT.pdf (accessed 4 April 2023).

⁴⁰ Ayodeyi (2019) at 9.

government officials. In 2018, Cameroon's former minister of Water and Energy, Basile Atangana Kouna, was arrested in Nigeria with more than 1 billion in different foreign currencies and 10 credit cards.⁴¹ It is concerning that an individual could amass such an amount of money for himself.

The devastating phenomenon of political corruption is manifested on all fronts. On the socio-economic front, studies have shown that the misappropriation or misallocation of resources for economic development through political corruption is the major driver of economic deficits and the perpetuation of poverty in Africa. Furthermore, the prevalence of political corruption has distorted the functioning of the political process. A common observation in African politics is that public officials seek re-election because it gives them access to the state's coffers, as well as immunity from prosecution. The urge to remain in the office makes it more likely for these officials to rig elections through government institutions that have the sole mandate to officially declare the winner.⁴²

3 THE PERPETRATION OF POLITICAL CORRUPTION IN CAMEROON AND SOUTH AFRICA

3.1 Cameroonian perspective

Cameroon has been ranked twice by the Transparency International Global Corruption Perception Index as one of the most corrupt countries in the world. The 2022 Transparency Report ranked Cameroon 142 out of 148, with a score of 26 out of 100.⁴³ In Cameroon, political corruption has been normalised as a daily way of life.⁴⁴ Indeed, Cameroon's political system has for a long time been nourished by political corruption through the frequent embezzlement of public funds by top government officials: empirical observations by Bechem attest to this fact.⁴⁵ President Paul Biya on several occasions has expressed his firm desire to effectively combat the endemic problem. In 2022, on the occasion of his traditional end-of-year speech on national television,

⁴¹ See 237 online "Cameroon – Operation Sparrowhawk: Atangana Kouna arrested with nearly a billion CFA francs" available at <https://www.237online.com/en/cameroun-operation-epervier-atangana-kouna-interpelle-avec-pres-dun-milliard-fcfa/> (accessed 2 February 2023)

⁴² This concerns, for example, the recent Nigerian presidential elections, in which the ruling party was accused of rigging the election through the INEC – the national election commission of Nigeria. At the time writing, the case is in court and the public eager to see how the court will address the problem.

⁴³ See Transparency International "Corruption Perception Index – Cameroon" available at <https://www.transparency.org/en/countries/cameroon> (accessed 9 April 2023).

⁴⁴ Mbofung OB "Assessing the challenges of the fight against corruption in Cameroon" available at <https://nkafu.org/assessing-the-challenges-of-the-fight-against-corruption-in-cameroon> (accessed 17 January 2023).

⁴⁵ See Bechem EE "Corruption in Cameroon: Public perception of the role of different anti-corruption agencies" (2018) 6(1) *Review of Public Administration and Management* 1 at 1–6.

President Biya emphasised that “all those who enrich themselves illegally by embezzling state funds, at any level, will be held accountable”.⁴⁶

Despite the declaration, political corruption through the embezzlement of public funds continues to be a huge problem in Cameroon. Recently, Martinez Zogo, a whistle-blower journalist on political corruption and a human rights defender, was murdered for disclosing classified government information on state budget Line 94, involving the wanton embezzlement of public funds.⁴⁷ Furthermore, an astronomical amount of 85 million FCFA was stolen at the residence of the Speaker of the National Assembly, Cavaye Yeguie Djibril, and his wife was implicated.⁴⁸ Although it may be possible that more money was in the house, it is, however, concerning that such an amount of money could be kept in the house of a law-maker. But in Cameroon everything is possible, if one considers the common French saying, “*impossible n’est pas Camerounais*”, meaning “impossible is not Cameroonian”. Be that as it may, because such monies could have been ill-gotten funds, keeping them in the house would be the safest way to escape tax and accountability, or unwanted investigation from anti-corruption agencies like the National Anti-Corruption Commission (CONAC) and the National Financial Investigations Agency (ANIF), the High State Audit Agency (CONSUPE), and Opération Épervier (Sparrow Hawk).

According to a 2020 annual report by CONAC on the fight against political corruption, the phenomenon continues in the public sector. In the report, the road transport sector appears to be the most corrupt sector, with (17.10 per cent), followed by the land affairs sector (14.60 per cent), law enforcement (13.60 per cent), finance (12.60 per cent), justice (11.30 per cent), and trade (09.10 per cent).⁴⁹ The Government of Cameroon suffered an overall financial loss of 17.611 billion CFA francs due to corruption-related offences.

According to the ANIF, in 2020 the Government of Cameroon lost over 794.7 billion FCFA from the embezzlement of public funds, other forms of corruption, terrorism financing, and other trafficking activities. Among these categories, the embezzlement of public funds saw the highest loss rate, of 47.45 per cent⁵⁰ – a fact highlighting the

⁴⁶ President Paul Biya 2022 “End of year address to the nation”.

⁴⁷ Frontlinedefenders “Statement – Cameroon: Killing of human rights defender and journalist Martinez Zogo” (2023) available at <https://www.frontlinedefenders.org/en/statement-report/statement-cameroon-killing-human-rights-defender-and-journalist-martinez-zogo> (accessed 23 March (2023)).

⁴⁸ Takambou MM “Wife of Cavaye Yeguie in court over missing 85 million FCFA” (2023) available at <https://mimimefoinfos.com/wife-of-cavaye-yeguie-in-court-over-missing-85-million-fcfa/> (accessed 26 January 2023).

⁴⁹ Tametong S “The fight against corruption and related acts in the NDS 30 in Cameroon” (2022) at 2 available at <https://nkafu.org/download/assessing-the-challenges-of-the-fight-against-corruption-in-cameroon/> (accessed 17 January 2023).

⁵⁰ See “Cameroun: Plus de 94 milliards de flux de blanchiment de fonds détectés en 2016” *Business News* 12 January 2018 available at <https://www.camerounweb.com/CameroonHomePage/business/Cameroun-plus-de-94-milliards-de-flux-deblanchiment-de-fonds-d-tect-s-en-2016-430314#> (accessed 31 January 2023).

endemic nature of political corruption in the country. The spread of political corruption and related acts was present in the context of the Covid-19 pandemic, including the notorious corruption scandals of Covid-gate⁵¹ and Olembe-gate⁵² that made headlines on national television and in newspapers. Indeed, the Audit Office report of 2021 of the special national solidarity fund for the fight against coronavirus and its economic and social repercussions indicated that the management of the funds was marred by acts of (political) corruption and embezzlement of public funds.⁵³

3.2 South African perspective

South Africa has experienced decades of corrupt activities by public officials who have abused and continue to abuse their entrusted power for private gain at the expense of the general public. From 2012–2022, South Africa’s Corruption Perception Index score has been in the range of 42–45 out of 100.⁵⁴ Additionally, the effects of corruption are disproportionately felt by poorer South Africans, due to the widened gap between the rich and the poor, with the burden mostly carried by the poor.⁵⁵

There are numerous political corruption cases involving high-level officials in South Africa. Two of South Africa’s heads of state have been involved in corruption-related matters. In 1998/9, the South African government signed contracts at the cost of an estimated R30 billion with European manufacturers to buy weapons systems,⁵⁶ dubbed the Arms Deals saga. In the years 2001 and 2002, an investigation of alleged bribery involving the former President of South Africa, Jacob Zuma, took place. In 2003, the National Prosecuting Authority (NPA) decided to prosecute Schabir Shaik on a charge of corruption.⁵⁷ In 2011, the Seriti Commission was established to probe corruption in the

⁵¹ Kindzeka ME “Cameroon investigates missing \$335 million in COVID funds” *VOA* (2021) available at <https://www.voanews.com/a/africa-cameroon-investigates-missing-335-million-covid-funds/6206445.html> (accessed 26 January 2023); Tankwa JM & Sieleunou I “The mismanagement of covid-19 funds in Cameroon and the necessity for reforms towards more transparency and accountability” *SPARC* (2021) available at <https://sparc.africa/2021/08/the-mismanagement-of-the-covid-19-funds-in-cameroon-and-the-necessity-for-reforms-towards-more-transparency-and-accountability/> (accessed 26 January 2023).

⁵² See 237 Online “CANGate, Covidgate and Olembegate: The task force in panic!” available at <https://www.237online.com/en/cangate-covidgate-et-olembegate-la-task-force-en-panique/> (accessed 26 January 2023).

⁵³ Tametong S “The fight against corruption and related acts in the NDS 30 in Cameroon” (2022) at 2–3 available at <https://nkafu.org/download/assessing-the-challenges-of-the-fight-against-corruption-in-cameroon/> (accessed 17 January 2023).

⁵⁴ Transparency International “Corruption Perception Index” available at <https://www.transparency.org/en/cpi/2022/index/zaf> (accessed 1 March 2023).

⁵⁵ Van Vuuren H *Apartheid grand corruption: Assessing the scale of crimes of profit from 1976–1994* Cape Town: Institute for Security Studies (2006) 1 at 1.

⁵⁶ See Solomon H & Liebenberg I *Consolidation of democracy in Africa: A view from the South* New York: Ashgate (2017).

⁵⁷ Bruce D “Without fear or favour: The Scorpions and the politics of justice” (2008) 24 *South African Crime Quarterly* 11 at 11–15.

Arms Deal. In 2016, the Commission found no corruption or wrongdoing in the Arms Deal.⁵⁸ Corruption Watch and R2K challenged the final report of the Seriti Commission on the basis that the investigations were not properly performed, arguing that the final report should be set aside. In 2019, the North Gauteng High Court set aside the Seriti Commission's final report.⁵⁹

In his 2017 speech as the then-new leader of the African National Congress, President Cyril Ramaphosa committed to fighting corruption in the country.⁶⁰ However, in 2020 a housebreaking at his private residence resulted in the theft of money amounting to USD 580,000 concealed in a sofa.⁶¹ There is no evidence to indicate how the money entered South Africa, and the investigation by the South African Reserve Bank indicates that there is no record of the money entering the country.⁶² The bank sent a letter inquiring into the origins of the foreign currency and the transaction that led to the money being received. If the money entered the country lawfully and adhered to all banking procedures, the bank's system would reflect its details, and the investigation by the bank would not have been necessary.⁶³

The Prevention and Combating of Corruption Act (PCCA) 12 of 2004 seeks to strengthen anti-corruption measures. Section 34 of the Act provides for the duty to report on any person in a position of authority on offences set out in subsection 1(a) or (b). The law requires the theft of concealed money to be reported by the owner to explain the source of the money.⁶⁴ A decision was made to keep the investigation secret and therefore the crime was not reported to the South African Police Service where the farm is located. Instead, General Rhooode, a member of the Presidential Protection Unit, investigated the burglary and theft using state resources.⁶⁵ President Ramaphosa requested the President of Namibia to assist in apprehending the mastermind behind the burglary and theft.⁶⁶ The mastermind was detained, interviewed and confessed to the crime without a case being registered or a case being opened with the Police Service. No one was convicted of the crime.⁶⁷ Nevertheless, the alleged concealment of large undisclosed

⁵⁸ Callaghan N, Foley R & Swilling M (eds) *Anatomy of state capture* Stellenbosch: African Sun Media (2021) at 404.

⁵⁹ Corruption Watch "Seriti commission's findings set aside" (2019) available at <https://www.corruptionwatch.org.za/seriti-commissions-findings-set-aside/> (accessed 2 March 2023).

⁶⁰ Winning A & Macharia J "South Africa's new ANC leader Ramaphosa aims to fight corruption" (2017) available at <https://www.reuters.com/article/idCAKBN1EE2WI-OCATP?edition-redirect=ca> (accessed 2 March 2023).

⁶¹ Parliament of the Republic of South Africa *Report of the section 89 independent panel appointed to conduct a preliminary enquiry on the motion proposing a section 89 enquiry volume 1* (30 November 2022) at 58.

⁶² Parliament of RSA (2022) at 47.

⁶³ Parliament of RSA (2022) at 6.

⁶⁴ Parliament of RSA (2022) at 76.

⁶⁵ Parliament of RSA (2022) at 57.

⁶⁶ Parliament of RSA (2022) at 58.

⁶⁷ Parliament of RSA (2022) at 58.

sums of money by the President ought to be regarded as proof of money laundering, which is a corrupt practice prohibited by the PCCA.⁶⁸

Other corruption-related cases that are either ongoing or completed include that of former Free State Minister of Agriculture, Mosebenzi Zwane, who was arrested and appeared in court in 2022. Zwane and other accused persons faced fraud, corruption and money laundering charges over the R280 million Estina dairy farm project.⁶⁹ Estina, was a company that was supposed to operate the Vrede farm on behalf of the Department of Agriculture. However, in 2023, with Estina under liquidation, the money laundering charges against Estina were dropped.⁷⁰

In 2018, the Judicial Commission of Inquiry into Allegations of State Capture (the Commission) was established following the 2016 report of former Public Protector Thuli Mandonsele.⁷¹ In 2022, the Commission released its findings and non-binding recommendations. In relation to corruption-related activities, the Commission recommended the investigation of awards of contract and prosecution of individuals. Furthermore, the Commission made several recommendations for the prosecutions of implicated individuals and entities on charges of fraud, corruption, money laundering, contravention of the Public Finance Management Act, the Prevention of Organised Crime Act and the PCCA.⁷² Several high-profile individuals and senior public officials were implicated.

For example, the Commission outlined that there is a case of corruption against former South African Airways board chairperson Dudu Myeni in terms of the PCCA, and recommended law enforcement to investigate and prosecute.⁷³ Brian Molefe was amongst the public officials implicated. The Commission outlined instances for further investigations and prosecution including his involvement in the conclusion of contracts between Transnet and TNA, and how Molefe misrepresented some contracts. The Commission recommended prosecution of Molefe, Anoj Singh, Siyabonga Gama, and others for fraud, racketeering, and contravention of the PFMA and PCCA. This further includes receipt of gratification during visits to the Gupta compound in the period 2010–2018.⁷⁴

⁶⁸ Parliament of RSA (2022) at 12.

⁶⁹ Mitchley A “Vrede dairy farm project: Case against ex-minister Zwane and co-accused transferred to High Court” (2022) available at <https://www.news24.com/news24/southafrica/news/vrede-dairy-farm-project-case-against-ex-minister-zwane-and-co-accused-transferred-to-high-court-20221102> (accessed 2 March 2023).

⁷⁰ Mntambo N “Money laundering charges against Estina dropped, says NPA” (2023) available at <https://ewn.co.za/2023/01/26/money-laundering-charges-against-estina-dropped-says-npa> (accessed 2 March 2023).

⁷¹ Public Protector South Africa *Report No. 6 of 2016/17* (14 October 2016).

⁷² Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State *Report Part VI, Vol IV: Summary of Recommendations* (22 June 2022).

⁷³ Judicial Commission of Inquiry (2022) at 68–69.

⁷⁴ Judicial Commission of Inquiry (2022) at 14 and 29.

In another 2022 case, former Transnet Group CEO Brian Molefe, former CFO Anoj Singh, and Regiment Capital Directors Niven Pillay and Litha Nyhonhya were charged with fraud in the estimated Transnet R398.4 million corruption case.⁷⁵ In another case, in May 2022, Eastern Cape Chief Director of Community Safety and Liaison, Neil Naidoo, and his co-accused were arrested for allegedly bribing the investigating officers with R3.5 million to stop investigations into a multi-million-rand police tender.⁷⁶ The accused is set to stand trial in January 2024.⁷⁷

The former South African President Jacob Zuma was among those implicated. The Commission established that, amongst other things, there was sufficient evidence to suggest that the former President accepted gratification “from another person, i.e. Bosasa (or its directors or employees)” to obtain contracts with government, thus breaching his constitutional, legislative and ethical obligations. The Commission therefore recommended further investigation.⁷⁸ Other notable recommendations made by the Commission were for the recovery of amounts paid to those implicated,⁷⁹ the establishment of a Standing Appointment and Oversight Committee for, inter alia, the nomination of persons for Board appointments or senior executives and the investigation of complaints of misconduct,⁸⁰ and the establishment of a statutory offence that renders it a criminal offence for any person vested with public power to intentionally abuse such power.⁸¹

In another example, in 2022, the former North West Department of Community Safety and Transport Management head and three others were arrested and charged with 34 counts of fraud, corruption, money laundering and contravention of the Public Finance Management Act. This follows the handling of service tenders to rehabilitate and reintroduce flights to Mahikeng and Pilanesberg Airports. At least R220 million was paid by the department to SA Express.⁸² In another case, four members of the South

⁷⁵ Nkosi N “Former Transnet Group CEO Molefe and former CFO Singh and others bust in a case related to R398.4 million fraud and corruption charges” (2022) available at <https://www.iol.co.za/the-star/news/former-transnet-group-ceo-molefe-and-former-cfo-singh-and-others-bust-in-a-case-related-to-r3984-million-fraud-and-corruption-charges-33aeb7b9-246a-4851-af3c-035ac9a5876c> (accessed 2 March 2023).

⁷⁶ Mitchley A “Top Eastern Cape officials, 2 businessmen, arrested over alleged bribe linked to police tender” (2022) available at <https://www.news24.com/news24/southafrica/news/top-eastern-cape-official-2-businessmen-arrested-over-alleged-bribe-linked-to-police-tender-20220523> (accessed 2 March 2023).

⁷⁷ Dayimani M “Eastern Cape govt director in dodgy R69m police tender to stand trial in January” available at <https://www.news24.com/news24/southafrica/news/eastern-cape-govt-director-in-dodgy-r69m-police-tender-to-stand-trial-in-january-20230615> (accessed 27 September 2023).

⁷⁸ Judicial Commission of Inquiry (2022) at 63–65.

⁷⁹ Judicial Commission of Inquiry (2022).

⁸⁰ Judicial Commission of Inquiry (2022) at 181–182.

⁸¹ Judicial Commission of Inquiry (2022) at 44.

⁸² Monana T “Former North West transport HOD in court in connection with R200m tender corruption” (2022) available at <https://www.news24.com/news24/southafrica/news/former-north-west->

African Defence Force appeared at a military court in 2022. The accused have been charged with fraud and corruption related to the procurement of personal protective equipment items. The investigation is examining the awarding of contracts to companies to the sum of at least R273 million.⁸³

4 INTERNATIONAL AND AFRICAN INSTRUMENTS ON POLITICAL GRAND CORRUPTION

The discussion below provides a synopsis of anti-corruption instruments in the international community aimed at the prevention of corrupt practices and the promotion of good governance. In 1975, the United Nations General Assembly adopted its first instrument on corruption, that is, “Measures against Corrupt Practices of Transnational and Other Corporations, Their Intermediaries and Others Involved”.⁸⁴ Regrettably, the instrument fell short of outlining corrupt practices other than bribery. In 1978, the International Agreement on Illicit Payments Committee replaced the Ad Hoc Intergovernmental Working Group on the Problem of Corrupt Practices.⁸⁵ This led to the drafting of the convention on illicit payments, forbidding any act of “offering, promising, or giving of illicit payments to public officials in international commercial transactions”.⁸⁶

In 1994, the Naples Political Declaration and Global Action Plan against Organised Transnational Crime was established in an attempt to call for the deliberation of a convention on organised transnational crime.⁸⁷ Almost 20 years later, the Assembly adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions.⁸⁸ Following the prevalence of corruption, particularly through bribery, the International Cooperation against Corruption and Bribery in International Commercial Transactions Resolution A/RES/52/87 was adopted in 1998,

[transport-hod-in-court-in-connection-with-r200m-tender-corruption-20220930](#) (accessed 2 March 2023).

⁸³ Monana T “Four SANDF members in court for PPE corruption worth R273m” (2022) available at <https://www.news24.com/news24/southafrica/news/four-sandf-members-in-court-for-ppe-corruption-worth-r273m-20220926> (accessed 2 March 2023).

⁸⁴ Measures against Corrupt Practices of Transnational and Other Corporations, Their Intermediaries and Others Involved, United Nations General Assembly Resolution 3514 (XXX), U.N. Doc. GAOR, 30th Session, 2441st meeting, U.N. Doc. A/RES/3514 (XXX) (1975).

⁸⁵ Measures against Corrupt Practices (1975).

⁸⁶ Measures against Corrupt Practices (1975).

⁸⁷ Naples Political Declaration and Global Action Plan against Organized Transnational Crime, United Nations General Assembly Resolution 49/159, U.N. GAOR, 49th Session, 94th meeting, U.N. Doc. A/RES/49/159 (1994) and Bantekas I & Nash S *International criminal law* 3 ed London: Routledge (2009) at 234.

⁸⁸ United Nations Declaration against Corruption and Bribery in International Commercial Transactions, United Nations General Assembly Resolution 51/191, U.N. GAOR, 51st Session, 86th meeting, U.N. Doc. A/RES/51/191 (1997).

in an attempt to criminalise acts of bribery by public officials.⁸⁹ Moreover, in the same year, the Assembly adopted Resolution 53/111 on Transnational Organised Crime, which lays down transnational offences including money laundering.

In 2003, the Assembly adopted the United Nations Convention against Corruption (UNCAC) to, among other things, “promote and strengthen measures to prevent and combat corruption more efficiently and effectively”.⁹⁰ The Convention criminalises numerous corrupt offences including bribery, embezzlement, misappropriation or any other diversion of property by a public official, illicit enrichment, laundering of proceeds of crime, and “concealment or continued retention of the property when the person involved knows that such property is the result of an offence”. Apart from the above-mentioned anti-corruption instruments, there are numerous African instruments against corruption. In 2001, the Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption was adopted,⁹¹ articles 6, 7 and 12 of which set out to criminalise acts of corruption. In the same year, the South African Development Community (SADC) adopted the Protocol against Corruption (the Protocol) to promote the development of anti-corruption mechanisms at the regional level. The Protocol came into force in July 2005.⁹²

The African Union Convention on Preventing and Combating Corruption (AUCPCC) was adopted in 2003 and entered into force on 5 August 2006.⁹³ The Convention calls on African states to promote, facilitate, regulate and strengthen mechanisms for the prevention, detection, punishment and eradication of corruption. Similar to UNCAC, this Convention prohibits, amongst other things, acts of soliciting or accepting anything of monetary value or benefit, illicit enrichment, and the use or concealment of proceeds derived from any of the acts stated in the Convention.

5 ANTI-CORRUPTION MECHANISMS IN CAMEROON AND SOUTH AFRICA

The discussion above outlined international anti-corruption instruments. To highlight anti-corruption efforts, the discussion below provides an overview of legislative and institutional efforts in Cameroon and South Africa.

5.1 Cameroon

⁸⁹ International Cooperation against Corruption and Bribery in International Commercial Transactions, United Nations General Assembly Resolution 52/87, U.N. GAOR, 52nd Session, 70th meeting, U.N. Doc. A/RES/52/87 (1998).

⁹⁰ Article 1 of the United Nations Declaration against Corruption and Bribery (1997).

⁹¹ ECOWAS Protocol on the Fight against Corruption, 21 December 2001, reprinted United Nations, *Compendium of international legal instruments on corruption* 2 ed United Nations Office on Drugs and Crime (2005) 211–213.

⁹² Berning J & Montesh M “Analysis of South African national anticorruption agencies” in Lemieux F, den Heyer G & Das DK (eds) *Economic development, crime, and policing: Global perspective* London: CRC Press (2015) at 225.

⁹³ Kameswari G *Anti-corruption strategies: Global and Indian socio-legal perspectives* Hyderabad: ICFAI University Press (2006) at 15.

Cameroon has over the years adopted and implemented various anti-corruption laws and institutions to help address the issue of political corruption. Although the Constitution of the Republic of Cameroon, 1996 (the Constitution) does not explicitly refer to corruption, it contains provisions that are worthy of consideration. Article 45 of the Constitution provides that duly ratified international and regional treaties and conventions such as those relating to corruption are directly applicable in Cameroon. This provision means that one could invoke the normative provision of, for example, UNCAC and the AUCPCC, which Cameroon has ratified, in a court of law against acts of political corruption. It is reported that, in 2017, Cameroon's obligation and compliance with UNCAC were reviewed during the first cycle of the review of the implementation of the Convention.⁹⁴

Beyond this constitutional mandate, CONAC was created by a presidential decree on 11 March 2006 as an independent body to combat (political) corruption.⁹⁵ It comprises two organs. These are the Coordination Committee and the Permanent Secretariat. CONAC's mission to combat corruption revolves around three issues – prevention and communication, studies and cooperation, and investigations of acts of political corruption.⁹⁶ The Commission is responsible for monitoring and evaluating the effective implementation of the governmental anti-corruption plan; gathering, centralising and analysing information forwarded to it in respect of corrupt practices, deeds and facts and similar offences; conducting all studies or investigations and proposing any measures aimed at forestalling or curbing corruption; carrying out, where necessary, on-the-spot controls of the execution of projects, as well as the evaluation of conditions of public contract awards; disseminating and popularising anti-corruption instruments; identifying the causes of corruption, and proposing to the relevant authorities measures likely to lead to its eradication from all public or semi-public services; and performing any other duties assigned it by the President of the Republic.⁹⁷

Even though the Commission was created as an independent anti-corruption body, the fact that it performs duties assigned by the President of the Republic makes one doubt its impartiality and independence. Apart from CONAC, other anti-corruption institutions are the NAFI, the audit division of the Supreme Court of Cameroon, the branches of the Supreme State Audit Office, the anti-corruption units in government ministries and public institutions, and the SCC.

⁹⁴ See United Nations "Conference of State Parties to the United Nations Convention to against Corruption: Implementation Review Group – First Resumed Eleven Session" (2020) at 2 available at <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V2003421e.pdf> (accessed 26 March 2023).

⁹⁵ See article 2 of Decree No. 2006/088 of 11 March 2006 governing the powers, composition, organization and operation of CONAC.

⁹⁶ See National Anti-Corruption Commission available at <https://conac.cm/en/about-us/history/> (accessed 26 March 2023).

⁹⁷ See National Anti-Corruption Commission available at <https://conac.cm/en/about-us/missions/> (accessed 26 March 2023).

Furthermore, the government adopted the National Anti-Corruption Strategy in 2010. Cameroon, like other African countries, is profoundly contaminated by political corruption which, as mentioned above, is orchestrated by the ruling political elites, notwithstanding that this is a criminal offence under section 134 (entitled 'Active Corruption') of Law No. 2016/007 of 12 July 2016, relating to the Penal Code (Penal Code). This law distinguishes between active and passive corruption.⁹⁸ Despite this difference, the Penal Code provides a caveat to the prosecution of corruption-related offences. Section 134-2 exempts the prosecution of criminal proceedings in instances where the accused "reports the acts of corruption to judicial authorities".⁹⁹ Other relevant provisions of the Penal Code about corruption include undue demand,¹⁰⁰ indulgence,¹⁰¹ procuring influence,¹⁰² misappropriation of public funds,¹⁰³ the compulsion of the public servant,¹⁰⁴ and the corruption of employees.¹⁰⁵ Of all these provisions, the misappropriation of public funds has been the most prosecuted offence among ruling political elites in Cameroon. This much is indicated in section 6 below.

5.2 South Africa

There is plentiful anti-corruption legislation in South Africa. However, the discussion below outlines the primary legislation and institutions aimed at combatting activities related to political corruption. The Public Service Act (PSA) of 1994 as amended by Act 30 of 2007, among other things, prohibits public officials from accepting gifts for performing their duties. Section 217 of the Constitution of the Republic of South Africa, 1996 (South African Constitution) requires the state, in the event of awarding contracts for services, to do so fairly, equitably, and in a transparent, competitive and cost-effective manner.¹⁰⁶ Political corruption by public officials often involves more than one public official. In an attempt to foster measures to combat organised crime, money laundering and gang activities, the Prevention of Organised Crime Act 121 of 1998 was enacted. Chapter two of the Act lays out offences relating to racketeering activities. Chapter three of the Act is dedicated to offences relating to the proceeds of unlawful activities. These are centred on money laundering and assisting another to benefit, acquire, possess or use the proceeds of unlawful activities. Chapter four lays out offences that relate to gangs, while Chapter five focuses on the proceeds of unlawful activities.

⁹⁸ For more on this difference, see section 134 and 134-1 of the Penal Code.

⁹⁹ It is important to note that in the civil law system of French Cameroon, an accused is guilty until proven innocent. This is different from the common law, where the accused is innocent until proven guilty.

¹⁰⁰ Article 142 of the Penal Code.

¹⁰¹ Article 317 of the Penal Code.

¹⁰² Article 161 of the Penal Code.

¹⁰³ Article 184 of the Penal Code.

¹⁰⁴ Article 160 of the Penal Code.

¹⁰⁵ Article 312 of the Penal Code.

¹⁰⁶ Section 217 of the Constitution of the Republic of South Africa Act, 1996.

Acknowledging that political corruption primarily involves the misappropriation or theft of state or public funds, public finance management (PFM) aims to regulate the state's financial management at the national and provincial level through the establishment of a National Treasury and National Revenue Funds. The PCCA is also considered one of the primary statutes against corruption. Section 3 of the Act specifically lays out offences relating to public officials. Additionally, section 10 outlines offences relating to the receiving or offering of unauthorised gratification. Section 17 further outlines offences relating to the acquisition of a private interest in a contract, agreement or investment of a public body. Unfortunately, the Act does not explicitly refer to the misappropriation or expropriation of public funds. Rather, section 34 mentions common law offences, namely theft, fraud, extortion, forgery, and uttering of a forged document.

In addition to the primary anti-corruption legislation, there are anti-corruption institutions established to investigate alleged corrupt activities. The Office of the Public Protector was established by sections 181–183 of the South African Constitution. Its functions, as outlined in the Constitution, include investigating conduct in state affairs or public administration in any sphere of government alleged or suspected to have been improper or resulting in impropriety or prejudice.

The Directorate of Priority Crime Investigation, known as the Hawks, was established by section 17A of the South African Police Service Act 68 of 1995. The Hawks are an independent institution established to combat and investigate national priority offences such as serious organised crime.¹⁰⁷ The Special Investigation Unit (SIU) was established by the Special Investigating Unit and Special Tribunal Act 74 of 1996. Its functions include investigating serious malpractices, maladministration and corruption in connection with the administration of state institutions. In addition to the unit, section 2(1) of the Act established an independent and impartial Special Tribunal (ST) to adjudicate civil matters instituted by the SIU. With similar status to the High Court,¹⁰⁸ in 2022, it was reported that the ST recovered R8.6 billion in unlawful contract funds.¹⁰⁹

While it is acknowledged that the ST has done well in recovering siphoned funds, a reconsideration of its scope may be necessary considering the complex nature of corrupt practices. Thus, to deal adequately with corruption, South Africa ought to explore an exclusive independent specialised institution that handles criminal matters on corruption. This may be possible through the Prevention of Organised Crimes Act, which criminalises various corruption-related offences, as opposed to the tribunal adjudicating on civil matters and the National Prosecuting Authority, adjudicating on criminal matters. The rationale for this view is that civil matters require a guilty public

¹⁰⁷ The Police Service Act 68 of 1995.

¹⁰⁸ See *Special Investigating Unit and Another v Caledon River Properties (Pty) Ltd t/a Magwa Construction and Another* (GP/17/2020) 2021 ZAST 4 (26 February 2021).

¹⁰⁹ McCain N "Special Tribunal is 'turning the tide' against corruption – President Cyril Ramaphosa" (2022) available at <https://www.news24.com/news24/southafrica/news/special-tribunal-is-turning-the-tide-against-corruption-president-cyril-ramaphosa-20220314> (accessed 11 April 2023).

official to repay siphoned funds, which may take years to recover or are sometimes not recoverable if funds have been hidden in offshore accounts or laundered. At times the guilty public official may have to repay the funds, but will not be barred from occupying public office. However, criminal proceedings will result in the guilty public official being convicted and imprisoned for his or her conduct. Moreover, the conviction may serve as a warning for employees in public offices that handle public funds. Additionally, the element of imprisonment serves as a deterrent and fuels the machinery of justice. The possible amendment of the jurisdiction of the Special Criminal Court would strengthen accountability and the rule of law.

The Asset Forfeiture Unit was established in 1999. As part of the Office of the National Director of Prosecutions, the unit serves to implement chapters 5 and 6 of the Prevention of Organised Crime Act. The unit primarily seizes assets obtained from organised crime. This clearly shows that there are numerous anti-corruption instruments and institutions in South Africa to combat corruption. Unfortunately, high-level officials continue to engage in corrupt practices. We advance the argument that this should not minimise successful attempts to hold public officials accountable for their actions, as this presents some justice to ordinary South Africans. However, the selection, investigation and subsequent conviction of senior or high-level corrupt public officials may be questioned.

6 THE ROLE OF A SPECIALISED CORRUPTION COURT

In any democratic government, including Cameroon and South Africa, the prosecution of offenders of corruption-related crimes is a useful way to advance the spirit and purport of the rule of law as well as to address political corruption effectively. The establishment of anti-corruption mechanisms would be of little or no value if not backed by some form of judicial enforcement, particularly by a specialised court designed for that purpose. Globally and in Africa, with the ongoing struggle to adequately address the cancerous problem of political corruption, various countries have established specialised corruption courts.¹¹⁰ There has been a steady increase in new specialised courts in the last two decades worldwide.¹¹¹ The prominence of specialised courts in the fight against political corruption, therefore, remains unavoidable, especially considering the inability of lower courts to deal with corruption adequately. Their roles as masters of interpretation of the law are useful and relevant in discerning interpretative approaches to combatting the persistent problem of political corruption, as well as in enforcing anti-corruption laws.

Furthermore, specialised corruption courts have the potential to provide orderly mechanisms in the adjudication of corruption cases based on merit, speed, efficiency and fairness. Additionally, specialised courts show that a state is committed to its

¹¹⁰ For example, the Ugandan High Court has an Anti-Corruption Division and Tanzania, an Economic, Corruption and Organised Crime Court.

¹¹¹ See Stephenson MC & Schutte SA "Specialised anti-corruption courts: A comparative mapping" (2016) at 6-7 available at <https://www.cmi.no/publications/file/6030-specialised-anti-corruption-courts.pdf> (accessed 10 April 2023).

international obligations and, therefore, takes the fight against corruption seriously. Finally, they provide the most viable approach to strengthening judicial integrity and rule of law in the fight against corruption. However, it is important to point out that it is of no value to merely establish such a court without guaranteeing its independence when adjudicating sensitive high-profile corruption cases concerning top government officials. This means that a well-functioning and independent specialised corruption court is pivotal in addressing political corruption effectively,¹¹² though this does not rule out the fact that judicial institutions may be corrupt.

To help combat corruption, and in keeping with its international commitment, the Government of Cameroon, on 14 December 2011, enacted a law (Law No. 2011/028) establishing the Special Criminal Court (SCC),¹¹³ with exclusive jurisdiction to hear and determine special kinds of corruption cases (misappropriation of public funds), especially those exceeding 50 million FCFA, throughout Cameroon.¹¹⁴ This means that the Court can hear corruption cases only above the threshold of 50 million FCFA, and that any case falling below this threshold would be decided by lower courts – the High Court (HC) and/or the Court of First Instance (CFI), as the case may be. It also means that the scope of the Court’s jurisdiction is restricted to only one kind of corruption, the misappropriation of public funds. This suggests that there is a need to establish other special courts to deal with other kinds of corruption, such as the declaration of assets, for example. Section 4 of Law No. 2011/028 stipulates that the SCC shall comprise a bench (consisting of a president, one or more vice presidents, one or more judges and one or more examining magistrates), a legal department (consisting of the *procureur général*, one or more advocates general, and one or more deputy *procureurs généraux*) and a registry (consisting of a registrar-in-chief, one or more section heads, one or more registrars, and registrars) working with the examining magistrate. The Law obliges judicial officers, court registrars and judicial police officers to perform their functions diligently and to respect the law.¹¹⁵

¹¹² Gloppen S “Courts, corruption and judicial independence” Elgar Online (2014) at 68 available at <https://www.cmi.no/publications/file/5091-courts-corruption-and-judicial-independence.pdf> (accessed 14 January 2023).

¹¹³ See Law No. 2011/028 of 14 December 2011, as amended by Law No. 2012/011 of 16 July 2012.

¹¹⁴ See section 2 of Law No. 2011/028 of 14 December 2011, which provides as follows: “The Court shall be competent to hear and determine matters, where the loss amounts to at least 50 000 000 CFA Francs relating to misappropriation of public funds and other related offences provided for in the Penal Code and International Conventions ratified by Cameroon.” However, section 2 of the amended version of the Law (Law No. 2012/011 of 16 July 2012) repeats the previous section except with the “the loss amount” changed to “the value of the loss”. It stipulates: “The Court shall be competent to hear and determine matters of misappropriation of public property and related offences where the value of the loss is at least fifty million (50,000,000) francs CFA as provided for by the Penal Code and International Conventions ratified by Cameroon.”

¹¹⁵ Section 5 of Law No. 2011/028.

Over the years, the SCC has prosecuted and rendered judgments in more than 225 decisions on corruption and embezzlement.¹¹⁶ Some top government officials who have been prosecuted and imprisoned so far for corruption include the former Prime Minister, the former Secretary General at the Presidency, the former Minister of Finance, the former Minister of Public Health, the former Minister of Basic Education, the former Minister of Mines and Energy, the former general managers of several state-owned corporations, bankers, accountants, and tax inspectors, on account of corruption.¹¹⁷ In 2015, the former Director-General of Cameroon's Airports (Aéroports du Cameroun, ADC), Yves Michel Fotso, was sentenced to 30 years' imprisonment by the SCC for misappropriating FCA 1,642,000,000.¹¹⁸ More recently, the former Director of the National Broadcasting Corporation, Amadou Vamoulke, was sentenced to 12 years for corruption after spending six years in custody.¹¹⁹ The case initially suffered 137 adjournments.¹²⁰ Despite these prosecutions, the corruption jurisprudence from the court is "highly under-reported, under-investigated and under-prosecuted".¹²¹ Even though one may be tempted to regard these prosecutions simply as a victory for the SCC, one cannot ignore the fact that specialised corruption courts like the SCC too often mute the system-critical energies of anti-corruption measures.

This fact suggests that this court may be regarded ambivalently as a tool for addressing corruption. It should be asked whether indeed the court itself is free from corruption,¹²² or whether the cases so far are not politically induced in the context that they were heard, which raises the issues of a political witch-hunt.¹²³ Some may consider this as implausible, but it is common knowledge under the ruthless dictatorial regime of Paul Biya, who like other dictators will do anything to deter his opponents (through imprisonment, for example) and safeguard power. (This determination is beyond the focus of this article, but could be a suitable topic for investigation.) Another concern

¹¹⁶ See Cameroon Tribune "Special Criminal Court: Some 225 decisions rendered" available at <https://www.cameroon-tribune.cm/article.html/33965/fr.html/special-criminal-court-some-225-decisions-rendered-> (accessed 27 January 2023).

¹¹⁷ For more, see, Agbor AA "Prosecuting the offence of misappropriation of public funds: An insight into Cameroon's Special Criminal Court" (2017) 20(1) *Potchefstroom Electronic Law Journal* 1 at 1-31.

¹¹⁸ Wandia SP "The efficacy of the Special Criminal Court in the fight against misappropriation of public funds in Cameroon" (2022) available at <https://hrlrc.org/2022/12/29/the-efficacy-of-the-special-criminal-court-in-the-fight-against-misappropriation-of-public-funds-in-cameroon/> (accessed 31 January 2023).

¹¹⁹ Agence France Presse "Ex-TV chief in Cameroon given 12 years in high-profile trial" (2022) available at <https://www.barrons.com/news/ex-tv-chief-in-cameroon-given-12-years-in-high-profile-trial-01671624015> (accessed 26 January 2023).

¹²⁰ See Agence France Presse (2022).

¹²¹ Agbor (2017) at 3.

¹²² For an understanding of corruption in the judiciary, see Fonachu nèe Fang Helen Ike "The criminal justice system in Cameroon: Problems faced with regard to corruption and suggested solutions" in Resource Material Series No. 76, UNFAEI (2008).

¹²³ See also Kamga (2020) at 153.

about the SCC is its impartiality in handling corruption cases and the overbearing control of the executive in that regard.¹²⁴

This means the current mandate, composition, proceedings and modalities do not empower the SCC to adjudicate on corruption cases without fear, favour and/or interference by the executive arm of government, and this hinders the effective functioning of the SCC.¹²⁵ In a sense, Cameroon's judicial system, including the SCC, is not liberal in enforcing decisions. For example, according to section 3 of the Decree fixing modalities for the Restitution of Corpus Delicti in Cameroon,¹²⁶ only the Minister of Justice is mandated to authorise and approve the restitution of the *corpus delicti* by a concerned party. This was the issue of the high-profile corruption of former Minister of Mines and Energy, Blaise Antagana Kouna, whose proceedings were discontinued. He was later granted an audience at the Presidency upon release from jail. Such overbearing power, and control of the executive over the judiciary, vitiate the rationale and purpose of the separation-of-powers doctrine in the Constitution of Cameroon.¹²⁷ It therefore means that the SCC cannot function smoothly, but must serve the whims and caprices of the executive to the detriment of the dictates of the Constitution.

The last concern about the SCC is whether its establishment was even desirable. Agbor succinctly sums up this undesirability and argues that "the creation of the SCC in Cameroon did nothing more than introduce a new court into the country's court system to exercise jurisdiction over conduct that had been criminalized by the country's existing laws".¹²⁸ It is, therefore, apposite to argue here that, despite the prominence of the SCC in the fight against corruption in Cameroon, its credibility, effectiveness and sustainability in solving the problem are doubtful.

It is, however, important to indicate here that, before the establishment of the SCC, offences of misappropriation were heard by the CFI and the HC. These courts also heard cases of corruption beyond the threshold of 50 million FCFA. Even though there may be executive interference in the smooth functioning of the SCC, one cannot avoid appreciating its purpose, and the corresponding success it has had in combatting political corruption in Cameroon. It is common knowledge that Cameroonians are happy when a government official is tried by the court, because they believe that justice will be served. South Africa could emulate the Cameroonian experience and establish a specialised court to hear and try particular corruption cases. This would not mean that other lower courts could not also try cases of corruption.

Kamga (2020) at 141.

¹²⁵ Also see Fombad CM "A preliminary assessment of the prospects for judicial independence in post-1990 Africa constitutions" (2007) 2 *Southern African Public Law* 233 at 233.

¹²⁶ See Decree No. 2013/288 of September 2013 fixing modalities for the Restitution of Corpus Delicti.

¹²⁷ See article 37(3) of the Constitution of Cameroon.

¹²⁸ Agbor (2017) at 10.

7 CONCLUSION

Corruption is as old as human civilisation.¹²⁹ Its existence over time has enabled it to evolve and immerse itself within the social fabric. No state is immune to corruption. In dealing with the prevention and eradication of corruption, existing international anti-corruption instruments show that corruption is not only a global pandemic, but a global norm for too many public officials and civilians. Certainly, corruption yields detrimental consequences, but political corruption in particular devastates economies and social welfare universally, and Cameroon and South Africa are not immune to its repercussions. This is because political corruption involves the misuse or abuse of power by those in high levels of government. Large amounts of funds are involved, and there is a huge impact on society. The increased rate of political corruption cases in Cameroon and South Africa demonstrates the absence of active political will to combat corruption, violations of the rule of law, lack of political accountability, lack of consideration of property and human rights, and a lack of concern for the need for proper service delivery.

In recognition of this, the above discussion has reiterated the call to the global community to fight political corruption through international anti-corruption instruments. We have outlined the anti-corruption response in Africa. In an attempt to fight the invisible enemy amongst us,¹³⁰ Cameroon and South Africa have developed anti-corruption measures. Despite, in theory, the existence of anti-corruption measures in these two countries, political corruption continues to thrive. To buttress this assertion, we have outlined a handful of cases involving high-level officials embroiled in political corruption. In recognising the shared cancerous problem, and in a bid to find a workable solution for South Africa, we suggest the consideration of an SCC comparable to that of Cameroon.

AUTHORS' CONTRIBUTIONS

The authors contributed in equal measure to the article. Their specific contributions are listed below.

Anzanilufuno Munyai made the following contribution to the article:

- Introduction (joint contribution)
- Section 3.2
- Section 4
- Section 5.1
- Section 7

Jean-Claude N Ashukem made the following contribution to the article:

¹²⁹ Berman EM & Sabharwal M *Public administration in South Africa: India, Bangladesh, and Pakistan* London: CRC Press (2016) at 238.

¹³⁰ See Agbor (2017) at 1–31.

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- Introduction (joint contribution)
- Section 2
- Section 3.1
- Section 5.2
- Section 6

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