

On corruption in South Africa

An alternative interpretation for the case of the Police Service

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Introduction

When it comes to corruption, there is no North-South divide. Neither is it a problem of the centre versus the periphery, or the poor versus the rich. In many accounts, it is presented as a global malaise that thrives as a result of weak institutional arrangements that allow enough room for manoeuvre on the verge of illegality.¹

South Africa, despite the apparent increase in corruption coverage, is not an exception. With increasing frequency, the media, NGOs and academia are drawing attention to the pervasiveness of corruption across society. They highlight the illicit or illegitimate activities of public officials, point to the threat that corruption poses to the creation of a healthy democracy, and present analyses of potential causes and remedies. Its increasing prominence on the national agenda has coincided in recent years with the escalation of protests (often violent) demanding improved quality and quantity of public services. It does not require an expert to connect the dots: when practices that allow the inappropriate use of public funds are entrenched, it becomes a structural impediment to socio-economic and political inclusion, and threatens the consolidation of democratic practice in the longer term.

There is broad consensus about the importance of internal institutional safeguards to discourage corruption within various arms of government, as well as the need for dedicated anti-corruption bodies to fight it. Yet, the South African case seems to challenge this assumption. Despite having a comprehensive suite of laws that govern rights of access, financial management and service delivery in the public sector, and an impressive array of oversight institutions (Asmal 2007), corruption in this sphere seems to have become increasingly rampant. Although there are supervision mechanisms, corruption persists. The question is why.

If we were to regard corruption as an essentially managerial problem, answers to its eradication could be sought simply in administrative reforms to make managerial practices more watertight. It is argued here that the remedy is not that simple. This paper seeks to show that institutional performance cannot be divorced from the social environment within which it operates. If corruption is understood and analysed as embedded in social relationships, then, managerial solutions alone will not suffice. This is particularly relevant to South Africa, with its exceptionally high levels of social inequality, manifested not only in income level disparities but also in access to services.

Given the issues highlighted in the recent Public Protector reports on the procurement of offices for the South African Police Service (SAPS)² and subsequent repercussions, this paper takes its cue from the saga to shed light on the questions of what corruption is, its effects in terms of institutional performance and its implications for governance, considering the broader socio-political context and how it affects the very notion and practice of corruption.

Approaches to corruption

At its core, corruption implies an abuse of power. Probably the easiest way to define it is as a transgression of rules that govern officials' custodianship of public resources. Jonathan Hyslop (2005: 775–776) suggests that: 'It involves the breach of laws or administrative rules governing the allocation of public resources for purposes of political or economic gain, or in order to gain coercive power over individuals or groups'. He suggests that it is important to distinguish corruption from patronage relationships and rent-seeking activities, which may or may not be corrupt. Patronage implies exchanges between individuals in different positions of power or status. For example, a supervisor can recommend one of his or her subordinates for a promotion. Rent-seeking behaviour is involved in any activity that aims at increasing income; for example, asking for a pay rise. Transparency International (TI) defines corruption as 'the abuse of entrusted power for private gain'. The distinction that TI draws is between what they refer to as: 'according to the rule corruption' and 'against the rule corruption'.³ Such differentiation implies that it is possible for corruption to be perpetrated within or outside the limits of the law.

A proper grasp of the term is important from both a normative and a practical perspective. Concepts like these shape how decisions are made in a society; they speak to our sense of 'right' and 'wrong'; and, by extension, they circumscribe our framework of values. Moreover, in an environment of limited resources, conceptual distinctions are important inasmuch as they point out dimensions that require focus and appropriate strategies to be remedied. If we accept that corruption can occur without breaking the law, differentiation between practices becomes more difficult. Although some concrete actions might be morally questionable, labelling them as corrupt becomes challenging if they remain 'within the rules'. A definition of corruption that strictly focuses on the legality of a practise, therefore, will not suffice if our intention is to address its underlying sources.

Another element that makes the delimitation of corruption intricate is its locus. Many of the definitions of the term emphasise the state as the preferential arena for corrupt practices to develop. An assumption is made that corruption is counterproductive to the achievement of those virtues that have been deemed to distinguish democracy from other forms of government (Jordan Smith 2001). Most certainly, the notion of 'corruption' has normative connotations. The interpretation of such norms is framed by the legal-political-administrative system comprised in the notion of 'state'. There

is a system of institutions that has been devised to define what is moral and what is not. According to Douglass North (1990: 3), 'Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction'.

Still, 'it is the informal constraints embodied in norms of behaviour, conventions and internally imposed codes of conduct that are critical' (North 1998: 506, in Fjeldstad 2004: 557). Indeed, there are norms that define the morality of actions which are not materialised in formal rules and procedures. Understanding how such norms are produced and reproduced is an integral part of accounting for how corruption works. Thus, as Daniel Jordan Smith (2001: 344–345) argues, both social and moral elements constitute corruption and 'much of what critics might gloss as "corruption" can look like moral behaviour from local perspectives'. This is not to justify corruption; in order to fight it, a deeper understanding of its social roots is necessary. Understanding why strategies to deal with corruption fail requires an enquiry into its mechanisms of social reproduction. A complementary perspective is added to this when the relationship between the state and ordinary people (as opposed to powerful individuals) is observed. A richer narrative can be built by looking at how such relationships contribute to the perpetuation of corruption.

In contexts of high economic and political insecurity, people may be more likely to rely on social ties than on rules and regulations governing official conduct. In a study of this phenomenon in Nigeria, Daniel Jordan Smith (2001: 345, 360–361) explains that a significant portion of the population prefer to rely on kinship relations than on official sources for their livelihood, because the 'offices of the state are unreliable when it comes to delivering basic services and assistance through formal channels'. He notes that, 'it is, in part, the very demands of clientelistic networks to deliver public resources based on moral obligations and affective attachments that makes it almost impossible for office holders to run their offices in anything other than a prebendal manner' (that is, through patron-client relationships). Yet, engaging in corrupt activities generates distrust; people take part in this sort of activity under the recognition that it is counterproductive and even negative, but there is a perception that participation is necessary to gain access to certain resources or benefits (Jordan Smith 2001).

In the South African case, there appears to be agreement with regard to what corruption means. However, there is disagreement when it comes to its scope and foundation (Hyslop 2005). Research seems to point towards social factors as an element that contributes towards explaining corrupt behaviour. Specifically researching the South African case, Odd-Helge Fjeldstad (2004) stresses that governments can reduce clientelistic relations by generating and promoting policies that increase social protection, particularly of the poor.

Could it be that, in spite of the existence of formal bodies that work to regulate corruption, the persistence of informally institutionalised mechanisms in society conspires against those formal structures?

A complementary interpretation

In a modern democracy, it is probably reasonable for citizens to expect to have 'good' institutions to rely on (that is, institutions that respond to their demands). Such responsiveness is the result of a combination of two factors: effectiveness and legitimacy. Effectiveness is determined by the state's capacity to perform its functions (delivering services, law and order, security) well. It will also be legitimate if its actions are deemed fair (Goldstone 2008). Yet, whether institutions are 'good' or 'bad' cannot be separated from the context within which they operate. Perceptions of legitimacy emanate from that context, and very often perception, or practice, clashes with the official yardsticks for good practice. Assessments of the pervasiveness of corruption, therefore, cannot be isolated from the social and economic environment within which it occurs.

As such, the narrative above suggests a two-way relationship between institutions and citizens: although institutions are 'the rules of the game' and regulate human interactions, human interactions

also (re)define the way that institutions operate. If corruption is seen as the means to get services delivered, it is highly likely that the procedures in place to deliver those services will be affected.

In South Africa, citizens' expectations for more and better service provision increased after the end of apartheid. In the years since the political transition, other profound societal transformations have been reshaping the relationship between the state and citizens. As a recent report from the Centre for the Study of Violence and Reconciliation (CSVR) points out, the emergence of a new elite (together with a new subaltern class that lives in extremely precarious conditions) is generating tensions regarding the processes of inclusion (and exclusion) of these new groups. The same report highlights how citizens perceive their rights to be affected according to their different levels of education, income and gender, among other factors. If the state is not able to put in place policies that compensate for and alleviate those differences, the new subaltern class mobilises violently, which is not surprising in the South African context, where there is a history of violence used as a legitimate means to produce social change (Von Holdt et al. 2011).

Institutional performance that is shaped by corrupt practices eventually distorts governance and results in an inability to deliver on basic mandates. This provides fertile ground for questioning key assumptions about the authority and legitimacy of the state. If it becomes clear that official channels are unable to meet core needs, discontent and disillusionment will convince citizens of the utility of corrupt practices. The cycle is completed when citizen withdrawal from official channels of interaction ultimately undermines institutional capacity to deliver. Taken to an extreme, this entails a risk to political stability.

Unless the structural violence produced and reproduced by corrupt practices is dealt with holistically,⁴ prospects for healthy governance – 'institutional process and the rules of the game for authoritative decision-making' (Grindle 2007: 555) – run the risk of being jeopardised. This suggests that tackling corruption involves more than improving managerial practices; it should also be regarded as symptomatic of other distortions and power imbalances in society.

In the following section, an analysis of recent events relating to alleged mismanagement in the SAPS aims to show how these realities are borne out in practice.

'The fabric of corruption' in the South African Police Service

Contrary to what is suggested directly and indirectly by some commentators, corruption is not a distinctly post-1994 phenomenon. The apartheid era is replete with accounts of extreme corruption and brutality. In democratic South Africa, new forms of corruption underscore Jonathan Hyslop's (2005) assertion that different regimes produce different types of corruption. Yet, they often coexist with inherited ones.

As is the case with the general term 'corruption', the concept of 'police corruption' is a complex one to define. It has sometimes been equated with the term 'misconduct'. Although there is no consensus on the notion of police corruption, it is broadly accepted to mean 'any illegal conduct or misconduct involving the use of occupational power for personal, group or organisational gain' (Sayed & Bruce 1998). A recently released report on these issues in South Africa identifies nine types and dimensions ranging from 'corruption of authority', which does not necessarily involve breaching the law, to 'direct criminal activities' (Newham & Faull 2011: 6–7). The same report argues that the complexity of the definition of police corruption in the Prevention and Combating of Corrupt Activities Act 12 of 2004 is probably one of the reasons why it is difficult to apply in practice.

Explanations as to why police corruption occurs encompass not only individual and organisational reasons, but also environmental ones. Dissatisfaction with the police after apartheid has been explained by perceptions of poor service and corruption, and by an increase in crime rates during the 1990s. Also race-related friction within the police service has been identified as hampering the consolidation of its *esprit de corps* (Newham 2004).

After the end of apartheid, the SAPS went through several institutional changes in order to be aligned with the prescriptions in the new constitution (Newham 2004). Measures were taken at all levels to tackle police corruption. Among other initiatives, a National Anti-Corruption Unit was created and a Service Integrity Framework was devised. Yet, analysis has indicated that these bodies lack effectiveness (Newham 2002; Newham & Faull 2011). Some of the problems identified are a shortage of resources and capacity levels too low to implement the policies devised, together with lack of hope at the management level that any changes are possible (Newham 2002). Also, the need for more responsible citizens has been raised as an essential element in dealing with police corruption: 'A change in civic culture that takes action against all police misconduct, and supports and rewards police professionalism, will inevitably lead to changes in police organisational culture' (Newham & Faull 2011: 46–47). Facilitating access to ways to report incidents, like special telephone lines, is proposed as a means of encouraging responsible citizenship.

There are also distinct organisational challenges to the eradication of corruption in the SAPS, such as fear of change and failure, distrust and lack of incentives (Matthews 2000). Policy-making itself presents challenges as well. As Newham (2004: 232) argues, 'having good policing policy on paper is one thing, while effectively implementing it is another'. The phase of implementation of any public policy is probably as complex as its design phase; interests of different stakeholders come into play, which may hinder or change the original policy objectives. Also, the amount of resources allocated by the government in order to pursue policy is an indicator of how much of a priority that policy is. Ultimately, the problem of corruption within the police service seems to have been assessed as a management problem. When it comes to prescribing solutions, policy recommendations stem from the diagnoses previously made. Alternatives have ranged from increasing the punishment of individuals, to changing organisational culture, to devising mechanisms to empower managers further (Newham 2002; Newham & Faull 2011). In the light of the discussion above, available options seem to address only part of the problem.

The literature on organisational and managerial factors that produce corruption in South Africa is extensive. However, non-managerial explanations have been explored less. Nowadays, the proliferation of informal markets in South Africa, probably mainly due to the high volumes of low-skilled labour, makes individuals more prone to involvement in some form of corruption, owing to their vulnerable position.⁵ Lower ranks of police officers are also in a vulnerable position (poorly paid, lacking training) and frequently experience the need to supplement their incomes to make ends meet. The interaction between these two domains of vulnerability reinforces and perpetuates their existence. An example of this is constituted by illegal markets. Sometimes, police will be bribed to ignore illegality, thus having access to a source of additional income. In turn, for many individuals who live in precarious conditions, being able to work in those markets becomes a question of survival (Newham 2002).

However, poor administration that verges on corruption also seems to occur in spheres within the police service where vulnerability is not necessarily the source. Alleged interference by National Commissioner General Bheki Cele to secure a tender for ruling party benefactors, when it came to the selection of new police headquarters, is suggestive of this (Newham & Faull 2011). However, the 'fabric of corruption' – the existence of corrupt practices at different levels in society – allows and reinforces such practices at both the top and bottom of the hierarchical structure. As Jordan Smith (2007: 231) notes, 'Corruption and the discontent it produces operate at the interstices between state and society, public and private, local and global, pragmatic and moral'. These interactions become visible when scrutinising peoples' perceptions. According to recent data, almost 60 per cent of citizens had some degree of confidence in the police in 2010, as opposed to less than 50 per cent in 2008. Yet, 42 per cent of the people in 2010 thought that it was alright to 'get around the law' to resolve problems (Lefko-Everet et al. 2010: 24).

At the same time, perceptions of poor police performance correlate with a growth in the private security industry.⁶ The proliferation of 'private security' questions the Weberian notion of the state's 'monopoly on legitimate violence'. Most probably, it contributes towards undermining it as well. As Clifford Shearing and Michael Kempa (2000: 205) explain, 'paid security agencies pursue

the security priorities of their employers...meaning that security ends up less a democratic right than a commodity'. Reduced accountability of the state is, arguably, among the most profound implications of the privatisation of security. It also promotes an understanding that the provision of security no longer falls within the realm of the state; more importantly, it represents a withdrawal from the democratic process, understood as the collective negotiation by citizens regarding how state revenue is to be used. Shearing and Kempa (2000: 209) suggest that 'Wealthier persons who are paying directly for private security are not likely to also want to pay for its public provision through state taxes, the result being a paucity of resources available'.

Weaknesses in the SAPS are probably also coupled with lack of control mechanisms in other institutions. In this regard, Robert Mates (2002) presents an interesting perspective on the South African Constitution and the lack of accountability of members of parliament (MPs), as well as a lack of 'checks and balances'. According to him, the Constitution establishes that any MP who is expelled from his or her political party is automatically removed from Parliament. This creates negative incentives towards favouring opinions contrary to the party. Moreover, the separation of powers between the executive and Parliament is not effectively guaranteed in the Constitution, further undermining the capacity of the legislature to control the executive. This also holds specific relevance in terms of appointments within and oversight of the SAPS. Recent assessments have alluded to the question of why social issues escalate to high-level institutions instead of being handled by intermediate bodies designed to prevent corruption (see Hofmeyr 2011). Perhaps, this reaction is the result of a constitutional design that provides for checks and balances, but does not guarantee their efficiency.⁷

Although public spending on the police budget is significant, spending appears to be inefficient and probably also biased towards particular interests.⁸ The definition of priorities is certainly not only a question of the amount of resources allocated to an institution, but also how those are used. Where resources are directed within the police is undoubtedly more than just a technical decision, it is a political one (Vetten 2005).

Still, when looking at crime figures, police performance seems to have improved. According to a recent SAPS report, the number of serious crimes decreased by 2.4 percentage points between the period 2009/2010–2010/2011, and the ratio of serious crimes to population decreased by 3.7 percentage points (SAPS 2011). It could be argued that whether there is corruption is not relevant as long as results are achieved. However, corruption tends to perpetuate power imbalances, eventually undermining the institution's capacity to deliver. Moreover, in a context of increased social tensions, the need for the police to be perceived as a trustworthy mediator is essential to maintain political stability.

As the account above shows, the avenues that seem to have led to the apparent weakening of the SAPS's institutional capacity are diverse and not limited to the sphere of the state. This narrative suggests a two-way relationship, or mutual influence, between citizens' perceptions and attitudes and institutional performance. It also provides a different perspective on how and why corruption occurs, portraying it as a phenomenon that transcends the realm of the state. This observation probably requires further empirical analysis and research to show the extent of the relationship and its potential consequences.

Conclusion: corruption and its implications for governance

This paper seeks to shed some light on the complexities of the phenomenon of corruption and, by extension, institutional performance. It focuses on the SAPS to illustrate its assertions. As a key institution responsible for social order in a country with a history of high levels of crime and conflict, the SAPS has a pivotal role to play in the normalisation of post-apartheid South African society. This piece points to the detrimental impact of corruption in this regard, which emanates from, among other things, a convoluted relationship between citizens' negative perceptions of corruption and, ironically, a need to engage in such activity to fill the void that is created by the unpredictability of

outcomes under conditions of precarious provision of public services. More importantly, perhaps, corruption is also a result of social practices that collide with assumed notions of good bureaucratic practice associated with the prototypical Weberian state, as well as the vulnerabilities of civil servants and ordinary citizens in particular social contexts. Much more needs to be explored around these complexities relating to the relationship between citizens' attitudes, opinions and behaviours, and institutional performance.

Corruption in the police (and, it could be argued, elsewhere) is more than a management problem; thus, it cannot be addressed only by means of managerial reform. Organisational changes need to be coupled with alternative strategies to generate trust among citizens, which may involve other institutions beyond the police.

In broad policy terms, to tackle corruption, efforts need to be made in order to formalise informal markets, the educational system needs to create opportunities for citizens to be better qualified and able to access better jobs, and migration policies need to be reviewed. Indeed, this is not an easy task and steps in this direction have certainly been undertaken. The fact that the issue of corruption has had substantial news coverage and that more information is becoming available about it in South Africa should be welcomed.

Assuming that governance – good governance – is key to the promotion of development, institutions that are able to respond to citizens' priorities and needs are fundamental. Although the police service as an institution needs to be addressed and managerial reforms seem to be necessary, the whole institutional fibre requires strengthening. In a context of limited resources, an exercise of prioritisation must be carried out. Budgetary allocations need to reflect the fact that strengthening the police as an organisation is a priority.

Certainly, fighting corruption requires not only adequate institutions but also political will and citizens' active involvement. Still, corruption is largely symptomatic of power imbalances. It is not the result of an irresponsible private citizenry. If mechanisms to build trust are not in place, administrative change and managerial efforts will be futile. Until now, the focus on citizen mobilisation seems to have been placed on reporting improper actions, not necessarily on building new patterns of relationships that promote greater trust. Most strikingly, it is left to the private will of citizens to report corruption; it is made their responsibility. Change in citizens' perceptions is proposed as an avenue for institutional change; yet, institutional change is fundamental if perceptions are to be changed.

From a research perspective, complementary analyses may contribute towards illuminating other areas. Mechanisms of interaction between institutions and citizens need further empirical exploration. According to Steinar Askvik (2010: 41), 'popular learning in relation to political support is not merely a matter of how public institutions are performing, but would also encompass how identities develop as a consequence of political, economic and social mobilisation in society at large'. Who trusts or distrusts the police the most? Why? Is this perception equal across the board along ethnic, gender and income lines? What does that say about forms of representation?

Indeed, corruption speaks of a management problem and is a crime. It is, however, also the manifestation of structural violence, a series of conditions that oppress individuals, lack of job opportunities, and other social factors. Therefore, any policy strategy aiming at building a more inclusive society should treat the issue of corruption as symptomatic of processes of exclusion that need to be addressed. The structural constraints that lead people to engage in corrupt activities in South Africa need to be further explored. Likewise, understanding the political economy of corruption, who the ultimate beneficiaries are, and what institutional arrangements are functional in sustaining those practices can be of help in devising new strategies to address it.

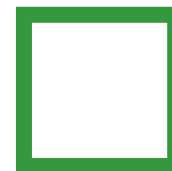
Notes

- 1 See http://transparency.org/news_room/faq/corruption_faq.
- 2 See *Against the Rules Too*, 14 July 2011. Available at: http://www.pprotect.org/library/investigation_report/investigation_report.asp.
- 3 See http://transparency.org/news_room/faq/corruption_faq.
- 4 The term 'structural violence' was coined by Johan Galtung (1969) to refer to violence that is exercised indirectly, not by a specific agent; it is the result of a series of conditions that lead to power imbalances.
- 5 According to figures provided by official sources, unemployment in South Africa in the second quarter of 2011 was 25.7 per cent. Also, in May 2011, around one million people arrived in South Africa (tourists and migrants) and only about 800 000 left (see <http://www.statssa.gov.za/keyindicators/keyindicators.asp>). Moreover, increased xenophobic violence, particularly committed by unemployed youths, in particular, has been highlighted in a recent report (see Von Holdt et al. 2011).
- 6 Different studies on the development of the private security industry in South Africa tend to concur in the assessment that its development dates back to apartheid (Berg 2007; Irish 1999). A report by the Open Society Foundation for South Africa states that in 2007 the ratio of private security officers to police officers was 3 to 1 (see Berg 2007).
- 7 An example of this is the so-called 'Chapter 9 Institutions'. These institutions were established in Chapter 9 of the South African Constitution. Their aim is to support constitutional democracy and they are: the Public Protector, the Human Rights Commission, the Commission for the Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor General and the Electoral Commission. An assessment of these institutions in 2007 highlighted that such a large number of institutions is counterproductive and weakens the purposes for which they were created (see Asmal 2007).
- 8 See, for example, Mzilikazi Wa Afrika and Stephan Hofstatter, 'Bheki Cele's R500m police rental deal', *Sunday Times* 1 August 2010.

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