

Strengthening South African Anti-Corruption Institutions to Safeguarding Democracy: Self Serving Governance System

N Mokoelle

University of Limpopo, South Africa

Abstract: Democracy is central to the South African development agenda, which, finds its cornerstone within the Constitution of the Republic of South Africa, 1996. The new democratic dispensation is rooted in the democratic principle such as the enhancement of the rule of the people, free and fair election, and the rule of law. However, since the attainment of democracy in 1994, South Africa traversed through multiple challenges such as corruption, service delivery backlog, increasing poverty and unemployment, and in recent years, state capture. South Africa has put in place multiple anti-corruption institutions to safeguard democracy through the enforcing the rule of law. South African government used multiple legislations to strengthen these anti-corruption institutions. Although South Africa has created these anti-corruption institutions, corruption and poor governance and the lack of rule of the people continue to deepen, and which consequently lead to faltering democracy. The paper argues that weak political leadership and poorly governed anti-corruption institutions have over the years, yielded increasing corruption which continues to threaten the deepening democracy in South Africa. The theory of planned behaviour posits that human behaviour is constructed through interaction and culture which influences and shapes people to commit any unethical acts such as corruption, bribery, and money laundering. Therefore, the act of corruption is not an accident, but a planned behaviour of an individual to act unethically. The paper will highlight on some of the reports from the anti-corruption institutions like SAPS, Public Protector and IPID focusing on their independence, corruption reports and their capacity to discharge their constitutional mandate in an attempt to safeguard democracy by enforcing the rule of law.

Keywords: Anti-corruption institutions, Corruption, Democracy, People power, Self-serving system, Theory of planned behaviour

1. Introduction

Since 1963, the Organisation for African Union (OAU) committed itself towards fighting African's twin evil of colonialism and apartheid (Paul, 2018) in an attempt to ensure a united Africa. In 1963, the former President of Ghana Kwame Nkrumah who was a proponent of Africanism and African integration argued that if Africa does not unite there and then, countries will get used to the sovereignty (Nkrumah, Arrigoni & Napolitano, 1963). "If we are to remain free, if we are to enjoy the full benefits of Africa's rich resources, we must unite to plan for our total defence and the full exploitation of our material and human means, in the full interests of all our peoples. 'To go it alone' will limit our horizons, curtail our expectations, and threaten our liberty" (Nkrumah *et al.*, 1963:xvii). Despite this strong push towards African unity to grow and development in Africa, countries opted to maintain their sovereignty. Thus, Post-independence of most African countries failed to maintain democracy, which, most leaders in countries such as Zimbabwe, Uganda during

President Idi Amini Dada's rule, Democratic Republic of Congo, Rwanda and Nigeria, resorted to despotic autocracy and authoritarian leadership (Chêne & Hodess, 2008; Riak, 2013; Khan & Pillay, 2019). In the aftermath of political independence from the colonial rule, most African politics became characterised by authoritarianism devoid of any democratic principles such as the rule of law, free and fair elections, accountable and transparent government, and the rule of the people. Furthermore, after decades of putative independence, many African countries have resorted to authoritarianism, corruption, selfishness, greediness, and embezzlement which deterred them from attaining democracy (Paul, 2018) and self-serving government. All these unethical acts take place under the auspices of 'strengthened' anti-corruption institutions.

Tsheola & Molefe (2019: 15) posited that in most African counties, post-independence has been "characterised by despotic autocracy of diverse hues, inclusive of a democratic South Africa's state capture phenomenon, wherein corruption, state

violence and curtailment of freedoms, as well as denigration of human rights of the populace, took prominence". In South Africa, the State Capture inquiry signalled a great juncture within the new democratic dispensation which threatened democracy, the rule of law and the power of the people. Despite the gruesome allegations of corruption, the absence of arrest for those implicated in corrupt act question the independence of these anti-corruption institutions to discharge their constitutional mandate. Anticorruption institutions which are constitutionally mandated to investigate and prosecute all corrupt officials in South Africa (Budhram & Geldenhuys, 2018) are namely: Office of the Public Protector, National Prosecuting Authority, South African Police Service (SAPS), Anti-Corruption Unit, Special Investigating Unit (SIU), and South African National Defence Force (SANDF). Therefore, an inability of a democratic state to curb corruption, autocracy, despotism, selfishness, self-serving political elites, greediness and any unethical behaviour has the potentiality to result in no democracy. This is based on the fact that periodic elections do not necessitate the enhancement of democracy. The paper will be grounded on the theory of planned behaviour to explain the etymological origin of acting unethically by an individual. The paper will further interrogate the democracies and corruption in Africa and the independence of anti-corruption institutions to curb corruption in South Africa.

2. Theory of Planned Behaviour

There have been various debates about the underlining factors that influence an individual to commit an act of corrupt behaviour or unethical conduct. Unethical behaviour is constructed through interaction, cultures, cognitive, motivation and emotions of an individual. The theory of planned behaviour finds its etymology on the works of Rabl & Kühlmann (2008) who looked at the behavioural factors that influence corrupt or unethical action (Brown & Loosemore, 2015). The theory finds its etymological underpinning from the theory of reasoned action which failed to provide an empirical explanation of the factors that influence individuals to commit unethical or corrupt behaviour (Nordin, Takim & Nawawi, 2013; Brown & Loosemore, 2015; Manamela & Mokoete, 2019). Therefore, the theory of planned behaviour provides valuable insight into the reasons why people engage in corrupt behaviour (Brown & Loosemore, 2015; Manamela & Mokoete, 2019). According to Nordin *et al.* (2013),

any form of human behaviour can be traced back to one's cultural background and it is constructed and learned through the interaction between people's socio-economic status, and political ideology.

An unethical action is rooted on the desire, and intention of an individual to act unethical in the pursuit to attain personal or professional goals (Chang, 1998; Nordin *et al.*, 2013; Manamela & Mokoete, 2019). Nordin *et al.* (2013) posited that cultural values are important factors that influence the decision to engage or not to engage in corrupt behaviours or unethical actions. Furthermore, some of the "environments that tolerated corruption in a way forced the individual to pay bribes, under-counter gifts, and dishonest dealings" (Nordin *et al.*, 2013:65) which push people to engage in corruption. Therefore, the theory of planned behaviour clearly explains the behavioural factors that influence any unethical action indicating that a corrupt action is a planned action. It is worth noting that other people argue that 'black leadership is hunger' which ignites their behaviour to commit corruption. Ineffective governance within anti-corruption institutions, unconstitutionality, and corruption that threaten any democracy stem from individual behaviour which is carefully planned and executed in an unethical manner. Upholding to ethical behaviour, constitutional mandate, good governance in anti-corruption institutions, the rule of law and ensuring the power to the people ensure the promotion of democracy is a premeditated behaviour that needs to be maintained by an individual. Therefore, the enhancement of democracy in South Africa can be clearly explained through the theory of planned behaviour. However, in minority cases, an act of corruption is externally induced by people who threaten an individual and the loved one's lives.

3. Corruption and Democracy in Africa

The dawn of independence of African countries in 1963 by Organisations of African Union (OAU) which is now referred to as the African Union (AU) contemplated for future unity, peace, and security, freedom and rights for all its people (Tsheola & Molefe, 2019). Most African countries experienced a honeymoon period post colonisation which was characterised by good governance, democracy, and the delivery of services to ordinary citizens (Chigudu, 2019). According to Cilliers (2016), the current African democracies are constrained by lack of good governance, quality of elections and

neopatrimonialism which undermines electoral democracy. In Nigeria, corruption represents one of the most significant problems (Ozden & Onapajo, 2019) which deterred the enhancement of democracy. Juvenal Habyarimana's leadership in Rwanda cemented the root of corruption and nepotism which became the state policy causing social disorder, and thus contributed to the genocides in 1994 (Riak, 2013). Furthermore, Nigeria is ranked number 148 (of 180 countries) in Transparency International (TI) in terms of the perception of corruption (Ozden & Onapajo, 2019). Nigeria's challenges can be coined to the arbitrary amalgamation of the multiple ethnic groups into a single entity called Nigeria for their administrative conveniences (Agudiegwu, Chukwu & Emefiena, 2019). Corruption, embezzlement, money laundering, mismanagement of state funds and greediness have channelled monies responsible to addressing the underlining development challenges such as poverty, deepening inequality and infrastructure development. These challenges have, in most African countries, resulted into less democracy. However, Buhari's campaign and administration demonstrated a positive attitude towards fighting corruption by stating that "corruption will kill Nigeria if Nigeria does not kill corruption" (Agudiegwu *et al.*, 2019; Ozben & Onapajo, 2019). During this period, Nigeria has shown some successes in fighting corruption and the recovery of government assets and money.

Uganda, the Democratic Republic of Congo (DRC), South Africa, Zambia, and Zimbabwe are some of the African countries that epitomize a disturbing character of corruption post-colonisation and post-apartheid (Cilliers, 2016; Manamela & Mokoelé, 2019; Owusu-Mensah & Rice, 2019). Therefore, corruption in Africa is threatening the advancement of democracy. Countries like Chana used corrupt tactics to win elections (Owusu-Mensah & Rice, 2019). In countries such as Nigeria, Ghana, Zimbabwe, and DRC, the post-electoral processes have been characterised by violence which undermines the very democratic values and principles afforded to ordinary citizens (Africa Conflict Monitor, 2016; Ozden & Onapajo, 2019; Owusu-Mensah & Rice, 2019). Manamela & Mokoelé (2019) reflected that corruption demonstrates that it undermines the social values of the ordinary citizens which threatens democratic values and basic human rights.

Currently, Rwanda and Botswana offer Africa a good example to follow in the quest to make democracy

work for people are being felt by the ordinary citizen and addressing corruption (Chêne & Hodess, 2008; Riak, 2013; Khan & Pillay, 2019). The former President of Botswana Ian Khama has demonstrated energy towards fighting corruption and ensuring that the ordinary citizens benefitted from the diamond deposits through the construction of infrastructure and institutions (Africa Conflict Monitor, 2017). Therefore, it has been indicated that the human rights records of Botswana are generally good. Furthermore, economic independence in Botswana has emboldened to push its pro-democracy, anti-dictator foreign policy further (Gional 2017; Bakr, 2018; Mangu, 2018). The debate demonstrates that the electoral democracy as in South Africa is not the end to it all in terms of democracy. Electoral democracy, and human and economic development (reducing poverty, unemployment, and inequality) of the poor provide an avenue for ensuring the deepening democracy. This finds its etymology of the notion that, until democracy can be felt and seen to be working for the ordinary African citizens who are poor, marginalised and discriminated, it will remain a nebulous and untested reality.

4. South African Anti-Corruption Institutions

South African anti-corruption institutions are instituted to ensure that they uphold democracy by addressing any unethical conduct in the public offices and the rule of law. According to Chigudu (2019:219), "in pursued of the African Union Commission Agenda 2063's Africa of good governance, democracy and the rule of law", the anti-corruption and democratic institutions must be strengthened to ensure transparent and accountable government. South Africa has developed democratic institutions such as SAPS, NPA, and Public Protector, Corruption Watch, IPID, and SIU and provided a legislative framework (South African Police Finance act, 1995 (Act 68 of 1995), Public Finance Management Act, 1999 (Act 1 of 1999), Public Administration Management Act, 2014 (Act 11 of 2014), Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) and Financial Intelligence Centre Act, 2001 (Act 38 of 2001)) to strengthen and support these institutions. Rwanda, like South Africa, has developed anti-corruption institutions and promulgated policies to strengthen them (Chêne & Hodess, 2008; Riak, 2013). Unlike South Africa, the President of Rwanda Paul Kagame prioritized good governance with political elites and high profile civil servants

Table 1: Persons and Government Officials Convicted of Corruption

| Financial years | 5m corruption | Government officials convicted for corruption |
|-----------------|---------------|---|
| 2016/17 | 29 | 224 |
| 2017/18 | 39 | 213 |
| 2018/19 | 17 | 210 |

Source: National Directorate of Public Prosecution, 2018/19

were prosecuted on allegation of corruption (Chêne & Hodess, 2008). Some of the high profile public figures were forced to resign and dismissed with allegation of corruption. However, in South Africa, the notion of clientelism and patronage continue safeguard implicated in corrupt action from prosecution and dismissal.

The reports and evidence that were presented during the state capture commission in South Africa involving improper and corrupt relationships that implicated high ranking officials, senior managers in parastatals and SOEs and their families have surfaced (Budhram & Geldenhuys, 2018), unfortunately, there has not been any arrest, investigation or convictions. The behaviour within the public institutions to ensure good governance (Chigudu, 2019) by eradication of corruption, fraudulent acts and unethical action is planned. Inherent to the principles of democracy is the attainment of the rule of law, civil liberty, free and fair elections, public participation, human rights and good governance (Bakr, 2018; Mangu, 2018; Budhram & Geldenhuys, 2018; Cachalia, 2019; Chigudu, 2019; Manamela & Mokoelé, 2019). Budhram & Geldenhuys (2018) posited that in 2017 a group of academics realised a report under the auspices of State Capacity Research Project (SCRPP) echoing the findings of the Public Protector (PP). SCRPP provided an outline about the realignment and repurposing of state and public institutions following the political project mounted by the former president Jacob Zuma-centred elites. Its central purpose is the "maintenance of systemic illegal and/or unethical rent-seeking action, consisting of premeditated and coordinated activated designed to enrich a core group of beneficiaries" (Budhram & Geldenhuys, 2018:26), and the consolidation of political and economic power.

4.1 Corruption and Fraudulent Behaviour in State Institutions

There have been many corruption cases against high ranking public servants in South Africa. In Limpopo

Province, the case *State v Lebese (LD)* was a former Hawks' constable and was convicted on three counts of corruption and sentenced to 14 years imprisonment by Mokopane Regional Court on 22 October 2018. Between April 2014 and February 2015 constable Papi Jonathan Lebese, who was then attached to the Hawks' Serious Corruption Investigation unit in Limpopo, was investigating a case of fraud and he demanded an amount of R65 000 bribe from an accused in order not to oppose bail. This money was paid to Lebese on different dates. He was convicted and sentenced on three counts of corruption. These sentences are to run concurrently (National Director of Public Prosecution (NDPP), 2018/2019).

In the period 2016-2017, there have been 29 people who were convicted of corruption amounting to more the 5 million and 39 in 2017/18. In 2018/19, only 17 people were convicted of corruption. Table 1 further shows the conviction of government officials who were charged with corruption. In the period 2018/19 financial year, 210 government officials were convicted of corruption. The manifestation of corruption or unethical conduct under the auspices of the anti-corruption institutions and legislations that strengthen the democratic principles create multiple problems in the quest to deepen democracy. Therefore, the behaviour of government officials to attain their personal goals or self-enrichment propels them to commit unethical activities such as corruption and fraud. The theory of planned behaviour provides invaluable lessons on the underpinning factors for an individual to commit corruption.

4.2 Unethical Behaviour within the SAPS

It is clear from the SAPS (2018/19) and NDPP (2018/19) reports that corruption and fraud continue to characterise the contemporary South African situation. However, it is difficult to point a precise picture that depicts the extent of corruption and fraud in South Africa due to the lack of data about the reported and investigated cases. Even

Table 2: Departmental Charges Against SAPS Members

| | |
|--|---------------|
| Departmental charges initiated against SAPS members | 345 |
| Aiding an escapee | 122 |
| Defeating the ends of justice | 35 |
| Corruption | 149 |
| Fraud | 46 |
| Extortion | 4 |
| Bribery | 5 |
| Reasons for not guilty | Number |
| No proper evidence | 30 |
| Member did not commit a misconduct | 15 |
| Contradiction of statement | 14 |
| Complainant failed to appear | 5 |
| The employer failed to prove its case | 40 |
| No reason provided | 4 |
| Chairperson withdrew the case, witness not credible | 6 |
| Total | 114 |

Sources: SAPS Annual report (2018/19)

though the is absent of data reported about corruption, the state capture inquiry lead to deputy justice Ray Zondo, looting VBS mutual bank and collapse State-Owned Enterprises provides the magnitude of corruption in South Africa. The manifestation of corruption within the SAPS, Hawks, and NPA has created a multiplicity of problems in the quest to address these unethical actions and upholding the principles of democracy in South Africa.

In the case of *state v Lerm (GDP)* who flouted supply chain management regulations, and thus, causing the city a loss of more than R50 million that could be used to improve service delivery. With all the multiplicity of corruption cases, the ordinary citizens are the once bearing the brunt of the lack of effective delivery of basic services, ensuring public participation, accountability, and transparency which are the cornerstone of deepening democracy. Budhram & Geldenhuys (2018) posited that despite the high corruption incidences in South Africa, the rate of reporting and successes achieved in law enforcement agencies is comparative. Additionally, it has been over two years since the commencement of state capture commission which unravelled reports and evidence of fraud and corruption, but to date, there has not been any conviction, charge or investigations on those implicated. This shows that the institutions fail to discharge their constitutional mandate, upholding the rule of law, and safeguard democracy in South Africa.

The conceptualisation of democracy "connotes the institutionalisation of a government for service delivery in a manner that would promote the general interest of the people than the leaders" (Fagbadebo, 2019:11). This is supported by the notion that democracy must be felt by ordinary citizens (Tsheola, Ramonyai & Segage, 2014). Therefore, the continuation of blossoming acts of corruption and fraudulent acts demonstrates that it is no longer about the general interest of the people especially the poor, but about the leaders and those in power. The upsurge of corruption and fraud in South Africa amongst those entrusted to protect and serve ordinary citizens have become self-serving and greedy. Therefore, ordinary citizens are relegated to enjoying their electoral democracy through elections without realising their improved standard of living.

5. The Independence or Lack Thereof of Anticorruption Institutions

A plethora of literature has argued that the maintenance of unethical or corrupt behaviour in state institutions and private sectors stem from the lack of independence of the anticorruption institutions to discharge their constitutional mandate. This can be supported by the fact that, during the Zuma led administration, there was a realignment of public institutions in support of the political project mounted by Zuma centred elites (Budhram &

Geldenhuis, 2018). Furthermore, the state capture commissions unravelled allegations and emails about that implicated high profile officials in SOEs and public institutions which have shown corrupt and unethical actions. Despite these gruesome allegations of corruption, these multiple anti-corruption institutions have yet to prosecute those implicated in wrong going. The President of Rwanda Paul Kagame has dismissed those public officials implicated in corrupt action. According to Chêne & Hodess (2008:6), the office of "Ombudsman has taken a strong stand against corruption and regularly exposes cases of fraud, malpractice and corruption. The body deals with corruption at the top, mid and low level throughout the whole country". Although Rwanda continues to experience corruption, the leadership of President Paul Kagame has reduced it and restored social order. In South Africa, the lack of institutions of criminal investigation and convictions paint a blurry picture on the independence and the ability of democratic and anti-corruption institutions such as NPA, SAPS, Hawks, IPID, and SIU to uphold rule of law, to discharge their constitutional mandate, and maintain and safeguard South African democracy. The appointment of ministers by the Gupta family deterred the democratic principle that the interest should be on the ordinary citizens and not the leaders (Fagbadebo, 2019). The perpetuation of corrupt and fraudulent actions by those holding public offices shift the principle from the rule and interest of the people to that of the political elites and connected leaders, and thus, demonstrates the faltering democracy in South Africa. South Africa has demonstrated its incapacity to hold those implicated in corrupt and fraudulent action to account.

The VBS bank which was looted with allegations of pointing to municipal managers in some municipalities, and political figures remains a mystery, and those implicated have not been investigated nor convicted. These multiplicities of corrupt, unethical and fraudulent behaviours question the capacity and independence of anti-corruption institutions to investigate these allegations to uphold and safeguard democracy in which some people were killed and some were imprisoned for pursuing it. Now in pursuit of democracy, the interest of the ordinary people is textual with no pragmatic effect to strengthen the attainment of their democracy. The theory of planned behaviours posits that the idea to engage into corrupt and unethical action is planned and thus, executed to attain one's personal goals or professional aspiration (Chang, 1998;

Rabl & Kühlmann, 2008; Nordin *et al.*, 2013; Brown & Loosemore, 2015; Manamela & Mokoelé, 2019). Therefore, the incapacity of anti-corruption institutions and leaders to engage in corrupt action and not to safeguard democracy is a premeditated action in which the theory of planned behaviour unravels it. Thus, it is important to note that the theory of planned behaviours is a significant theoretical framework that explains the failing of democracy in South Africa and corruption, considering that the action is premeditated.

6. Faltering South African Democracy

It has been over two decades since the inauguration of a new political and legal order based on democracy, the rule of law, human rights, and the people power (Tsheola *et al.*, 2014; Cachalia, 2019; Tsheola & Molefe, 2019). In ideal totality, democracy entails that the state power should be exercised through citizen consultation and participation for its sustenance, and thus, to this extent, the democratic state becomes the servant of the people (Tsheola *et al.*, 2014). South Africa's judiciary developed an impressive body of aspirational jurisprudence to enforce the rights of individuals and the rule of law (Cachalia, 2019). Despite this enforcement of democratic state and ensuring the rule of the people, ordinary citizens have over the past years experienced faltering democracy. The Constitution of the Republic of South Africa, 1996, serves as a blueprint for transformation and social change (Cachalia, 2019) by ensuring that there is a public consultation, public participation, people power and decision making by the public. According to Tsheola *et al.* (2014:393), "for democracy, to be given pragmatic effect with success, it needs to be stressed as "an ideal of political association" that describes "power of the people" wherein they are totally and collectively in control of decisions and their execution". Corruption and fraud deter the ability of ordinary citizens to decide the type of services and developments they need.

The successive reports by the PP which found that public funds were used to upgrade a private homestead of the former president and that he transferred his constitutional mandate of appointing Cabinet ministers to private individuals who are in businesses with his son (Budhram & Geldenhuis, 2018; Asea, 2018; Cachalia, 2019). Budhram & Geldenhuis (2018) and Cachalia (2019) posited that during the Zuma administration, the

public power was discharged by the shadow state which is a well organised clientelistic and patronage network. The state of 'democracy' in South Africa was further complicated by the looting of a mutual bank (VBS) where many ordinary citizens lost their money. However, Tsheola & Molefe (2019) argued that the instrumental value of state apparatus in making any countries' despotic autocracy is in the failing of these state apparatus, but not in the individuals and groups prosecuted and blamed for corruption. Contrary to this notion, the failure of these state apparatus or institutions is based on poor governance, their inability to discharge their constitutional mandate, and captured individuals within these institutions. Therefore, state capture, corruption, fraud, and lack of independence of anti-corruption institutions, which are complicated by the lack of conviction for those implicated with unethical actions, have shifted the notion of democracy from "people power" (Tsheola *et al.*, 2014), upholding the rule of law (Bakr, 2018; Budhram & Geldenhuys, 2018; Mangu, 2018; Owusu-Mensah & Rice, 2018; Cachalia, 2019) and the democratic state becoming the servant of the people (Tsheola *et al.*, 2014) towards a self-serving governance system. Therefore, with all the allegations and convictions of corruption involving monies that could have been used to provide services to the ordinary citizens, there is a clear demonstration that people have been experiencing faltering democracy in South Africa over the past few years.

7. Conclusion

Corruption and fraud have robbed many of South Africa's ordinary citizens of an opportunity to access proper and quality basic services, transparent and accountable government which alienated the notion of democracy from the rule of the people, people power, the rule of law and democratic states becoming the servant of the public to a self-serving government characterised by failing anti-corruption institutions and despotic autocracy. This can be further attributed to the failing governance systems within anti-corruption institutions that make corruption and unethical behaviour to manifest. The charges of corruption and fraudulent action that have been presented in the IPID, SAPS, NPA and PP reports, demonstrate the adverse nature of these unethical actions in South Africa. The theory of planned behaviour has demonstrated that all the unethical acts are inherently premeditated, planned and executed for personal gain at the expense of

the public. Therefore, the rule of the people remains a textual notion without any pragmatic evidence to support it. The moral fibre of most public officials and the public, in general, is torn, which creates a breeding ground for corruption to succeed. There is a requirement for all public officials to go back to basic to ensure deepening democracy and the people's power. The principle of *ubuntu* posits that people at any level should be humane and respectful to one another which is against corruption and fraud. The application of *ubuntu* as a democratic principle within the South African state will enhance good governance which increases the potential to strengthen these democratic and anti-corruption institutions, thereby deepening democracy.

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