

ANALYSIS OF POLITICAL CORRUPTION TRENDS IN TRANSITIONAL STATES

Research Paper submitted in partial fulfilment of the requirements for the degree of Master of
laws: Transnational Criminal Justice and Crime Prevention

By

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DECLARATION

I, Prosper S Maguchu, hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that secondary information used has been duly acknowledged in this dissertation. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LL.M Degree in Transnational Criminal Justice and Crime Prevention.

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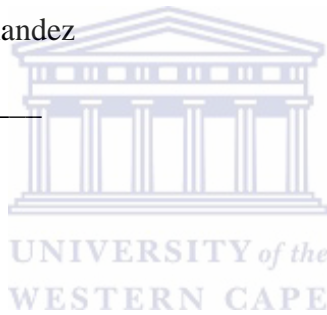
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‘Little did we suspect that our own people, when they get the chance, would be as corrupt as the apartheid regime.’

Nelson Mandela



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I am sincerely and heartily grateful to my advisor, Lovell Fernandez, for the support and guidance he showed me throughout my research and Raymond Koen for the technical support. I am sure it would have been impossible without their help. I would also like to extend my gratitude to family, comrades, friends and my classmates for their encouragement and support and more importantly the Catholic Academic Exchange Service (KAAD) for the financial support.



KEY WORDS

Bribery

Electoral Corruption

Embezzlement

Organised Crime

Political corruption

Power vacuum

Southern Africa Development Community

Transitional Justice

Trading in influence

Unbridled opportunism



LIST OF ABBREVIATIONS AND ACRONYMS

ANC	: African National Congress Unity
APANC	: African Parliamentarians Network against Corruption
FRELIMO	: Liberation Front of Mozambique
ICTJ	: International Centre for Transitional Justice
ISS	: Institute for Security Studies
MCP	: Malawi Congress Party
MYP	: Malawi Young Pioneers
NDDP	: National Director of Public Prosecutions
NPA	: National Prosecuting Authority
OECD	: Organisation for European Cooperation and Development
ONUMOZ	: United Nations Operation in Mozambique
PEPs	: Politically Exposed Persons
RENAMO	: Mozambican National Resistance
SADC	: Southern Africa Development Community
TI	: Transparency International
UK	: United Kingdom
UNCAC	: United Nations Convention against Corruption
UNCTOC	: United Nations Convention against Transnational Organised Crime
UNODC	: United Nations office for Drugs and Crime
UNODCCP	: United Nations Office for Drug Control and Crime Prevention
WB	: World Bank
ZANU PF	: Zimbabwe African National Unity (Patriotic Front)
(Z)ACC	: Zambia Anti-Corruption Commission

ZANACO : Zambia National Commercial Bank Limited

ZSIS : Zambian Security Intelligence Service



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CHAPTER ONE

INTRODUCTION AND OVERVIEW OF THE STUDY

1.1 Background to the Study

Politicians have hijacked the transition to democratic governance and are manipulating it to guarantee that their privileges are not threatened.¹ Transparency International's report notes that when citizens vote for representatives and entrust them with state resources and the power to make policies on their behalf, some politicians use this opportunity to secure benefits for themselves and on behalf of those who funded their political ambitions.² Thus, political corruption is an Achilles heel of transitional states globally and transitional states in the Southern Africa Development Community are no exception.

Political corruption is equally problematic in other states that are not in transition. However it has more dire consequences in states in transition. According to a World Bank policy report the problem is most entrenched in transitional states where it undermines the reform projects, forces business to operate outside the formal rules, leads to massive looting of resources, and discourage investments. Consequently, these countries are at the risk of being trapped in a system in which political corruption cuts public revenues, weakens public trust, and deteriorates the credibility of the state, unless the necessary reforms are implemented.³

The nexus between political corruption; its causes and negative impact on states emerging from civil conflict or authoritarian rule in the SADC region remains empirically under-

¹Mukum Mbaku, J (2007:103).

²Transparency International 'Global Political Report (2004) Political Corruption' available at http://www.transparency.org/global_priorities/corruption_politics (accessed on 12 July 2011).

³ World Bank 'Anti-Corruption in Transition: A Contribution to the Policy Debate' available at info.worldbank.org/etools/docs/library/17506/contribution.pdf (accessed on 12 July 2011).

researched. Hence, it is against this background that this paper is premised as a contribution to the growing literature of corruption in transitional states.

1.2 Research Question

The main research question is this: How can transitional states, combat political corruption? This begs for digression into an enquiry on; what are the causes and conditions of this special form of corruption in transitional states; how does political corruption manifest itself, and what impact does it have on the establishment of the rule of law, democracy and respect for human rights in the SADC region.

1.3 Objectives of the Study

The primary purpose of this research is to analyse the typologies, conditions and costs of political corruption in the SADC countries as they emerged from conflict and/or autocratic regimes. The secondary purpose of this paper is to provide some solutions to curb political corruption in these transitional states. The recommendations will take into account the extent and nature of the state's vulnerability, which is to say, the degree to which the state exposes itself to a particular typology of political corruption at a particular point of its transition.

1.4 Significance of the study

This paper is of academic and practical relevance. Both the area of international anti-corruption law and transitional justice are emerging fields of interest to both academics (criminologists, economists, social theorists, criminal justice researchers) and practitioners, for example, lawyers, police, politicians, policy makers, etc.). Whereas transitional justice and anti-corruption law separately have given rise to a considerable volume of literature, the

same cannot be said of political corruption in transitional set ups.⁴ While the latter phenomenon is known to exist, there is not much written about it, especially insofar as it pertains to the Southern Africa region in particular.⁵ One reason is that corruption is forever changing its appearance, making it difficult to pin down confidently. Also, minimum consideration has been paid to the extent to which political corruption influences the course of political transitions.⁶

The significance of this paper lies in the fact that it will show how political corruption makes it hard for emerging democracies to grow into stable societies in which economic benefits are distributed more equitably throughout society. It will also show that there are ways, not to eliminate political corruption altogether, but to make it difficult to prosper at the expense of the political and socio-economic interests of Southern African peoples.

1.5 Literature Review

The literature utilised in writing this papers mainly from research institutes such as the Institute for Security Studies (ISS) Monograph series and the United Nations Office on Drugs and Crime (UNODC) Global Reports.

As well as, literature from international non-governmental organisations and aid agencies such as; Transparency International (TI) Global Corruption Report (2004) which focuses on Political Corruption, International Centre for Transitional Justice (ICTJ) the World Bank

⁴For this argument see for example Carranza, R (2008: 310).

⁵See for example WB Anti-Corruption in Transition the Contribution to Policy Debate, See also OECD (2005), Fighting Corruption in Transition Economies: Armenia, OECD, Paris and OECD (2006), Fighting Corruption in Transition Economies: A Country Report Series.

⁶Sannerholm, R (2007: 87). He advocates for a focus on legal, judicial and administrative reform in post-conflict states, including the control of corruption. He advised that law reform efforts focus only on human rights areas while ignoring basic issue of state organisation.

(WB)Anti-Corruption in Transition the Contribution to Policy Debate and the comprehensive papers on political corruption by the U4 Anti-Corruption Resource Centre.

This author also referred to books and articles from academics, researchers and practitioners, who have written widely on the subjects of corruption and transitional justice, among others; Stephen Kotkin, András Sajó (political corruption in transition a sceptic's handbook) Peter Gastrow, Charles Goredema, Annette Hubschle, Susan Rose Ackerman, Inge Amundsen, Robert Klirtgaard, and Mary Robin. However all these research does not exclusively delve upon the problem of political corruption in the SADC region. This research is aimed at filling this gap.

1.6 Research Methodology

The research paper is based on a desk-top study, which draws on primary materials and secondary sources. The primary materials will be mainly composed of international and regional declarations, treaties, conventions and protocols, national laws and policy documents of selected countries. The secondary sources will be mainly journal articles, books, chapters in books, media reports, and the publications of research institutes, aid agencies and non-governmental organisations.

The study will start with an analysis of the factors that make states in transition vulnerable to political corruption. The subsequent chapter will discuss the most prevalent typologies of political corruption, as they manifest themselves in selected SADC countries. This will be followed by a critical examination of the negative impact of political corruption. In closing, the study will offer numerous recommendations to curb the challenges examined in the preceding chapter.

1.7 Delimitation of the Study

Typologies of corruption offer useful points of departure.⁷The basic differentiations between different types of corruption provide a preliminary guidance for any inquiry into corruption.⁸For this reason, this paper shall be limited to the study of political corruption only because it is more linked to the phenomenon of political transitions which is the germane subject of this paper.

Moreover, ‘types of corruption differ according to the nature of the political and economic regime’.⁹ Therefore, this paper is limited to the study of political corruption insofar as it plays itself out during transitional periods in selected countries of the SADC region namely Swaziland, South Africa, Mozambique, Malawi, Zambia and Zimbabwe.

Also, for the purposes of this study, the term ‘transition’ shall be defined according to the definition associated with the concept of transitional justice, namely a emergence from conflict and/or state repression to a democratic polity.

Further, this paper does not deal exhaustively with the types, causes, consequences of political corruption, nor does it pretend to hold all the solutions to curbing this kind of phenomenon in all the states undergoing transition.

⁷ Bailey, J ‘Corruption and Democratic Governability in Latin America: Issues of Types, Arenas, Perceptions, and Linkages’ available at http://pdba.georgetown.edu/Security/reference_materials_bailey.pdf (accessed on 13 July 2011).

⁸Anders, G and Nuijten, M (eds.) (2007:6).

⁹Anders, G and Nuijten, M (eds.) (2007:7).

1.8 Outline of the Study

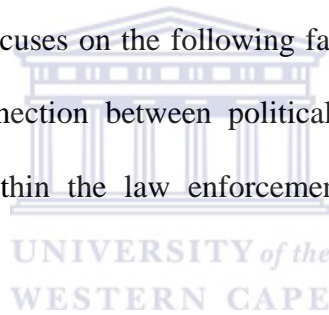
The remainder of this research paper is divided into four chapters.

Chapter Two: Dynamics of Political Corruption in Transitional States of the SADC Region

This section analyses specific types of political corruption common in transitional states, namely; bribery, trading in influence, patronage, electoral fraud, embezzlement and involvement in organised crime.

Chapter Three: The Dynamics of Political Corruption in Transitional States

This chapter gives an overview of some of the more glaring causes of political corruption during periods of transition. It focuses on the following factors; a vacuum in power, lack of social control mechanisms, connection between political power and access to economic resources, lack of resources within the law enforcement mechanisms, and unrestrained opportunism.



This chapter examines the causes and conditions of political corruption in transitional states in the context of organised crime. It highlights why political corruption flourishes and spreads itself with impunity in those selected countries of the SADC region.

Chapter Four: The Costs of Political Corruption in Transitional States

This chapter discusses the effects of political corruption on transition states of the SADC region across a range of sectors. It points out how it subverts promising constitutional rights, rule of law, democracy, and legitimacy of the state and economic development.

Chapter Five: Concluding Remarks and Recommendations

This chapter will summarise the paper and will set out some recommendations, flowing mainly from the discussion in Chapter Four, on what needs and could be done to deter political corruption following transitions in the SADC region.



CHAPTER TWO

DYNAMICS OF POLITICAL CORRUPTION IN TRANSITIONAL STATES OF THE SADC REGION

2.1 Definition

What is political corruption? Is it prudent to pin this phrase down to a strict definition or rather, it is worthy to follow the advice of Marx Weber on defining corruption. According to him, a definition should be avoided at the beginning, however, it should be derived in the end by analysing specific examples which are not definitions in themselves, but can be tailored to suit the purpose at hand.¹⁰

The literature on political corruption offers numerous definitions. However, definitions are dynamic. For instance, societies' understanding of what counts as corruption changes over time¹¹. Thus, the text of United Nations Convention against Corruption (UNCAC) does not include a definition of corruption because States Parties agreed during the drafting stages that corruption is a changing concept that can mean different things to different people at any given time and is not capable of being given a fixed definition.¹²

In order to understand the provinces of political corruption one needs to first understand the definition of corruption in general. For the purposes of this research we shall adopt the Weberian approach and analyse the definition of the law as it is written¹³. Therefore it is

¹⁰ Weber, M, Coe, M.D and Parsons, T (2003:5).

¹¹ Klirtgaard, R (1991:23).

¹² Argandona, A (2006:7).

¹³ Klirtgaard, R (1991:23).

necessary to scrutinise the laws of a selected group of countries as well as the overarching regional instruments related to fighting corruption in the region.

According to the Zimbabwean Prevention of Corruption Act,¹⁴ corruption is defined as consisting in:

‘[a]ny agent corruptly soliciting, accepting, obtaining, agreeing to accept, or attempt to obtain from any person a gift or consideration for himself or any other consideration for himself or any other persons as endowment or reward for doing or not doing for having done or not done any act, in relation to his or her principals affairs or business.’

The Malawian Corrupt Practices Act¹⁵ defines corrupt practice as:

a) the offering, giving, receiving, obtaining or soliciting of any advantage to influence the action of any public officer or any official or any other person in the discharge of the duties of that public officer, of official or other person;

b) influence peddling;

c) the extortion of any advantage.

In Mozambique, corruption is defined negatively by Article 6 of the Anti-Corruption Contractual Clause¹⁶ as follows:

‘Parties undertake not to offer, whether directly or indirectly, benefits to third parties nor request, promise or accept, for their own benefit or the benefit of others, offers for purposes of obtaining a favourable decision in respect of the services to be offered.’

¹⁴Prevention of Corruption Act, No, 15 of 1994.

¹⁵ Corrupt Practices Act, No. 18 of 1995.

¹⁶ Anti-Corruption Contractual Clause Law, No. 6 of 2004.

The Southern Africa Development Community Protocol against Corruption (SADC Protocol against Corruption)¹⁷ defines corruption as any act which:

‘[I]ncludes bribery or any other behaviour in relation to persons entrusted with responsibilities in the public and private sectors which violates their duties as public officials, private employees, independent agents or other relationships of that kind and aimed at obtaining undue advantage of any kind for themselves or others.’

A general trend can be deduced from these definitions, which defines political corruption where;

‘A public official (A),

In violation of the trust placed in him/her by the public (B),

And in a manner that harms the public interest,

Knowingly engages in conduct which exploits the office for clear personal and private gain in a way which runs contrary to the accepted rules and standards for the conduct of public office within the political culture,

So as to benefit a third party (C) by providing (C) with access to goods or service (C) would not otherwise obtain.’¹⁸

The other definition of political corruption is made with reference to the personnel involved, namely senior politicians, and the purpose of the corrupt behaviour, namely to sustain the

¹⁷SADC Protocol against Corruption adopted on 14 August 2001 and came into force on 6 July 2005, available at <http://www.sadc.int/index/browse/page/122> (accessed on 13 August 2011).

¹⁸Philip, M (2002:42).

hold on power.¹⁹ Robin Hodess offers a concise definition of political corruption as ‘the abuse of entrusted power by political leaders for private gain, with the objective of increasing power or wealth’.²⁰ This is the kind of corruption that plagues transitional states, such as the ones comprising the SADC region.

2.2 Types of Political Corruption Prevalent in Transitional States in the SADC Region

2.2.1 Bribery

According to the Black’s Law Dictionary a bribe is the ‘offering, giving, receiving, or soliciting of any item of value (my emphasis) to influence the actions of an official or other person in charge of a public or legal duty’.²¹ The other terms for bribery are kickbacks, baksheesh, sweeteners, grease money and pay-offs, which all include forms of payments which are made to make things happen quicker, smoother or more favourably through a bureaucracy, or to avoid some impediment.²² The most infamous type of a bribe is a kickback which is defined as amount of money paid each time by a contractor when it received some work or payment through corrupt means.²³

¹⁹U4 Anti-Corruption Resource Centre ‘Political Corruption’ available at <http://www.u4.no/themes/political-corruption/introduction.cfm> (accessed on 13 July 2011).

²⁰Hodess, R (2004:11).

²¹(2001).

²²Amundsen, I (1999:11).

²³U4 Anti-Corruption Resource Centre ‘Potential Scheme: Bribes and Kickbacks’ available at <http://www.u4.no/themes/corruption-aid/red-flag-tool/Bribes%20and%20kickbacks.cfm> (accessed on 12 July 2011).

The South African case of *S v Zuma and Others*²⁴ can effectively illustrate the problem of bribery in transitional states. In this case, known as the arms deal scandal, Jacob Zuma, when he was South Africa's deputy president, was charged with allegations of allegedly attempting to solicit a bribe from the head of the German arms manufacturing company trading in South Africa, Thomson, in return for protecting the company from being investigated. However, the case ended when the National Director of Public Prosecutions (NDPP) who heads up the country's National Prosecuting Authority (NPA) announced that Zuma would not be charged despite there being a valid case against him because the State was not sure of its chances of success in court. This was despite, the fact that the charges against Zuma's financial advisor Schabir Shaik, have spelled out sufficient evidence linking Zuma to the bribe, such as the amount of money and other benefits he allegedly received.²⁵

It is worthy to note that the charges against Zuma were dismissed two weeks before the presidential elections in which Zuma was the ANC party candidate. When Zuma appeared in court, Judge Chris Nicholson ruled that the corruption charges were brought outside the provisions of the Constitution and were therefore unlawful because the NDPP did not follow the procedure in the South African Constitution to give Zuma a chance to make representations before deciding to charge him.²⁶ Because of that, the Court ruled that the NDPP's violation of the procedure which is prescribed in South African Constitution rendered the charges against Zuma illegal. The Court held further that the NDPP's decision to bring the charges Zuma immediately after his appointment as his party's president could possibly lead one to conclude that there was some political interference in this case from the

²⁴(CC) 358/08 [2006].

²⁵*S v Shaik* 2007 (1) SACR 142 (D), *S v Shaik* 2007 (1) SA 240.

²⁶African Reuters (9 February 2009) available at, <http://af.reuters.com/> (accessed on 16 September 2011).

other branches of the state.²⁷ However, the judge also emphasised that whether Zuma was guilty or innocent was not determined by his ruling, which was merely on a procedural point. Consequent to this judgement, the NDPP was still eligible to file fresh charges against Zuma, once they had complied with the provisions of the Constitution.

2.2.2 Embezzlement

Another typology of political corruption that is rampant in transitional states is embezzlement. It is defined as theft of public resources by public officials.²⁸ Therefore, embezzlement cannot be defined as corruption from a strict legal view in many domestic and international definitions of corruption.²⁹ This is because there is a common recognition that corruption is a transaction between two actors, the public servant and the citizen or company from the other side.³⁰ But for this common theft to fall into the context of corruption, few conditions must exist, namely: the official must take or convert public money, or property, which he or she is not entitled to, but has access to such assets.³¹

A country in transition faces economic and political changes. According to research by an economist, the rational choice theory explains embezzlement as a legitimate means during periods of transition.³² According to Banerjee this theory is based on the premises that individuals pursue goals, interests and choose actions that can satisfy their own welfare more

²⁷ African Reuters (9 February 2009) available at, <http://af.reuters.com/> (accessed on 16 September 2011).

²⁸ Amundsen, I (1999:7).

²⁹ Langseth, P (2006:10).

³⁰ Dvorak, J 'Researching Embezzlement in Public Sector: Limits and Possibilities' SSRN14 November 2008 2 available at SSRN: <http://ssrn.com/abstract=1636206> (accessed on 15 July 2011).

³¹ Dvorak, J 'Researching Embezzlement in Public Sector: Limits and Possibilities' SSRN 14 November 2008 2 available at SSRN: <http://ssrn.com/abstract=1636206> (accessed on 15 July 2011).

³² Banerjee, A (1997:31).

efficiently than any collective goals.³³ Dvorak, using the example of how the collapse of Soviet Union provided opportunities for embezzlers to introduce their illegal behaviour as fighting against the communist regime notes that for states in transition embezzlement will become a habit and stealing from the government is a norm.³⁴

From the prevalence of cases involving embezzlement it can be deduced that those SADC countries in transition are no special exception to this behaviour.

The case of *Attorney General of Zambia for and on behalf of the Republic of Zambia (Claimant) –and-Meer Care & Desai (a firm) &Ors*,³⁵ a civil case brought by the Attorney General of Zambia for and on behalf of the people of Zambia against the former president of Zambia, Fredrick Chiluba and other members of his government before the Chancery Division of the England and Wales High Court, can support this assentation.

The brief facts of the case are as follows: Zambia was in transition after 31 years as a one-party state when Chiluba came to power in 1991. During his 10-year rule he allegedly embezzled at least US\$46 million with the aid of the Zambian Security Intelligence Service (ZSIS).³⁶ The embezzlement scheme was a transnational one, straddling South Africa, the United Kingdom, Belgium and Switzerland. The civil case is threefold: The first part involves the transfer of at least \$52,000,000 made by Zambia to Zamtrop a secret bank account held at the London based Zambia National Commercial Bank Limited (ZANACO), referred to as the "Zamtrop Conspiracy". The second cases concerns a property of a company

³³Banerjee, A (1997: 31).

³⁴Dvorak, J 'Researching Embezzlement in Public Sector: Limits and Possibilities' (SSRN 14 November 2008) available at [SSRN: http://ssrn.com/abstract=1636206](http://ssrn.com/abstract=1636206) (accessed on 15 July 2011).

³⁵[2007] EWC 952 2 (CH).

³⁶ See *Republic of Zambia v. Meer Care & Desai* [2007] EWC 952 2 (CH).

registered in the UK called MOFED Ltd which is owned by the Government of Zambia, known as the "MOFED Claim". The third case deals with payments of about \$20,000,000 allegedly made by Zambia to Bulgaria for arms deals paid into accounts in Belgium and Switzerland involving London, the "BK Conspiracy".³⁷

The court proceedings took place privately on the order of the trial judge to avoid prejudicing another trial in Zambia that was underway where Chiluba and his accomplices were facing criminal charges relating to the same matter. According to the civil case, the most telling evidence was the US\$1,2 million worth of boutique clothing that Chiluba, who earned US\$105000 between 1991 and 2001 when he was President, bought in Switzerland to maintain his reputation as a 'smart and expensive dresser', a reputation for which he was known worldwide. His own stylish suits were monogrammed with his initials and he boasted a large number of specially-made signature shoes and thousands of monogrammed shirts. Chiluba was found guilty of embezzling \$46m of public money by the England and Wales High Court.

2.2.3 Trading in Influence

Trading in influence or influence peddling is a form of corruption common in transitional countries: 'Trading in influence constitutes a corrupt trilateral relationship in which a person with real or supposed influence on other persons, often public officials, trades this influence against money with someone seeking influence.'³⁸

³⁷Basel Institute on Governance, International Centre for Asset Recovery Knowledge Centre, available at, <http://www.assetrecovery.org/kc/node/4ec2e572-cd77-11dc-b471-db7db47931e5> (accessed on 16 September 2011).

³⁸Council of Europe (1998:10).

It is sometimes problematic to differentiate this form of political corruption from lobbying. By and large, both are ways of getting assistance from the state officials through exchanging some form of favours.³⁹

Trading in influence has been identified as a potential problem for the SADC countries in transition.⁴⁰ Consequently, the SADC Protocol against corruption, which seeks to curb all traits and forms of corruption that are thriving in the region, has proscribed trading in influence. The SADC Protocol against Corruption provides that:

‘the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of the influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.’⁴¹

In Mozambique, top politicians often trade in influence. Senior political figures, mainly veterans of the anti-colonial liberation war, use their influential positions to corrupt judicial officials and other individuals capable of acting against corruption and organised crime.⁴²

³⁹Campos, N and Giovannoni, F (2006:1).

⁴⁰Ramachandran, V, Shah, M.K and Tata, G ‘How Does Influence-Peddling Impact Industrial Competition? Evidence from Enterprise Surveys in Africa’ SSRN (October 1 2007) available at <http://ssrn.com/abstract=1101694> (accessed on 18 July 2011).

⁴¹SADC Protocol against Corruption, Article 3(1) (f).

⁴² Gastrow, P and Mosse, M ‘Mozambique: Threats posed by the penetration of criminal networks’ (19 April 2002 19) available at www.metier.co.mz/b/pv_mosse_crime_corruption_moz.pdf (accessed on 20 July 2011).

2.2.4 Patronage

Another special form of political corruption that arises during transition to democracy is patronage. A patronage system of governance is exemplified by the appointment of party loyalist to senior positions in the government.⁴³ This can pose a dilemma for states in transition in which preference should be given to those individuals who demonstrated commitment to the ideals of democracy.⁴⁴ Patronage can be legitimate, for example, when a newly, elected government changes the top officials of the erstwhile regime in order to ensure that its policies are implemented promptly. But it would be a sign of corruption if incompetent party officials are preferred above qualified persons for deployment in the public service in thankfulness for supporting the governing political party.⁴⁵

Zimbabwe is a case in point as regards the latter. After independence from Britain, the number of public servants increased from 40 000 in 1979 to 189 000 in 1992.⁴⁶ Most of these jobs were filled by party loyalists with no credible qualifications for the job. More recently appointments to key positions in the government, parastatals and diplomatic services have been reserved for those who are loyal to President Mugabe or the Zimbabwe African Nationalist Union (Patriotic Front) (ZANU (PF)) party.⁴⁷ Parastatals have been converted from being production and marketing mechanisms into sites of political patronage as ZANU PF appointments to the respective boards were based on a system of patronage. For example, in 2005 state owned enterprises were forced to erect stands and pay rentals at the ZANU PF

⁴³Kunaka, C, Mashumba, N and Matsheza, P (2002:13).

⁴⁴Kritz, N (1995:6).

⁴⁵Gyimah-Boadi, E 'Election Corruption' (27 April 2004) available at www.cddghana.org/documents/Election%20Corruption.pdf – (accessed on 22 July 2011).

⁴⁶Tangri, R.K (1999:151).

⁴⁷Kunaka, C, Mashumba, N and Matsheza, P (2002:14).

congress, thereby contributing to the cost of the event and maintaining ZANU PF's grip on power.⁴⁸ Also, whereas in most democracies cabinet reshuffles are meant to improve efficiency, thus enhancing the government's chances of achieving its policy, in Zimbabwe reshuffles have been used to award those who are loyal to the president and instrumental to maintaining the presidential grip on power in Zimbabwe.⁴⁹

Patronage is a double-edged knife when it comes to corruption in transitional societies. It is itself a form of corruption and it also harbours and breeds other forms of corruption. For instance, when such loyal persons are accused of corruption, the government's stalwarts immediately defend their patronage, accusing those calling for accountability as sell-outs, racists, diversionists and non-patriotic.⁵⁰

2.2.5 Election Corruption

Another form of political corruption omnipresent in transitional states of the SADC region is election corruption. According to a Ghanaian academic, Emmanuel Boadi, election corruption falls under the category of political corruption and therefore it is a special type of corruption.⁵¹ He argues that political corruption in the form of electoral corruption is a common feature of politics and elections in both established and nascent democracies.⁵²

Election corruption varies widely in both scope and extensiveness, from Sunday school elections to national presidential elections, the locus classicus being the Liberian 1927

⁴⁸Kunaka, C, Mashumba, N and Matsheza, P (2002:14).

⁴⁹Tangri, R.K (1999:151).

⁵⁰Kunaka, C, Mashumba, N and Matsheza, P (2002:13).

⁵¹Gyimah-Boadi, E 'Election Corruption' (27 April 2004) available at www.cddghana.org/documents/Election%20Corruption.pdf – (accessed on 22 July 2011).

⁵²Gyimah-Boadi, E 'Election Corruption' (27 April 2004) available at www.cddghana.org/documents/Election%20Corruption.pdf – (accessed on 22 July 2011).

Presidential elections in which the True Whig Party (TWP) and the incumbent President, Charles King, used state coercive machinery, forcing citizens to vote for King.⁵³ Election officials also allowed the TWP members to vote repeatedly, a fact evidenced by King winning the election by a wide margin of 240 000 votes, whereas only 15 000 Liberians were entitled to vote. These elections went down in the Guinness Book of World Records (1982) as the most fraudulent elections in history.⁵⁴

Election corruption is twofold. It involves both private entities and individuals, the latter being the subject of discussion here. The fact is that the incumbent ruling party and its officials use finances or administrative resources to guarantee election victory, or use other government or public resources for political party purposes.⁵⁵

Similar to the other forms of political corruption, the concept of electoral corruption embraces a range of practices, some that are illegal and others not.⁵⁶ According to Gyimah-Boadi common manifestations of election corruption are the following:

- Holding political rallies in a government or public facility for free, and denying the same facilities to other political parties and candidates;
- Barring other parties and candidates from access to state, public or tax payer- funded resources such as media, conference halls, public grounds, and other public places to disseminate their political message;

⁵³McWhirter, N (1982:135).

⁵⁴McWhirter, N (1982:135).

⁵⁵Gyimah-Boadi, E 'Election Corruption' (27 April 2004) available at www.cddghana.org/documents/Election%20Corruption.pdf – (accessed on 22 July 2011).

⁵⁶Lodge, T (1999:1).

- Using civil servants to work for political parties at rallies and party offices during working days or working hours or even to staff party affiliated organisations,
- Using state vehicles, and other public-funded facilities to carry political party supporters to political rallies, polling stations or to transport party materials;
- Compromising the political neutrality of the security agencies; and
- Election officials showing a lack of equity and vigour in adjudicating elections disputes amongst parties or pursuing allegations of election irregularities made by opposing parties.⁵⁷
- Studies on electoral corruption have shown that election manipulation in transitional states is carried out even when a landslide victory is certain, in order to influence expectations and subsequent patterns of political participation.⁵⁸ For example, it can discourage opponents from joining or supporting opposition parties, voting for them, or any other participation.⁵⁹



The South African experience can offer a valid example of election corruption during periods of transition. A political scientist, Lodge, notes that the 1994 elections, which marked the beginning of a transition, revealed serious incidences of electoral corruption, such as ballot stuffing that was carried out through illegal polling stations in the province of Kwa Zulu Natal and other parts of the country.⁶⁰ Similarly, other media reports of election fraud during this election were reported elsewhere in newspapers ranging from South Africa's daily *The*

⁵⁷Gyimah-Boadi, E 'Election Corruption' (27 April 2004) available at www.cddghana.org/documents/Election%20Corruption.pdf – (accessed on 22 July 2011).

⁵⁸Gyimah-Boadi, E 'Election Corruption' (27 April 2004) available at www.cddghana.org/documents/Election%20Corruption.pdf – (accessed on 22 July 2011).

⁵⁹Gyimah-Boadi, E 'Election Corruption' (27 April 2004) available at www.cddghana.org/documents/Election%20Corruption.pdf – (accessed on 22 July 2011).

⁶⁰ Lodge, T (1999:2).

Argus to the *London Sunday Times*.⁶¹ These reports lead cynics to argue that the elections were tainted by election fraud and that the results which were announced came as a result of some negotiations, hence the following statement:

‘The 1994 election was so chaotic that no accurate result could be computed. Hence, its final outcome was essentially the product of negotiation. The ANC was accorded 63% of the vote, but this might well have exaggerated its true support. Opposition parties initially wanted to challenge the election result, but in the end they chose rather to accept it. For to question the outcome or demand a re-run of the poll was to risk throwing the country into the vortex of the people’s war once more – and few people had the stomach for that. Most South Africans preferred to take comfort in the notion of a miracle transition and to hope that this would bring about the bright new future the ANC had long been promising.’⁶²

Whether this statement is true or not, what it does do is to illustrate the problem that election corruption may pose in states in transition.

Some scholars even argue that election corruption cannot be avoided in transitional democracies due to the fact that winning an election in a democracy is expensive, as elections and party financing will become increasingly subject to restrictive rules, and the demand for more campaign spending is high compared to that in autocratic states, thus making election corruption inevitable.⁶³

⁶¹ See in general ‘Fraud, Failure and Farce: An Analysis of South Africa’s Election 94’ available at http://www.christianaction.org.za/newsletter_uca/uca-artic_fraud_freedom_farce.htm (accessed on 12 July 2011).

⁶² South African institute of Race Relations, available at, http://www.sairr.org.za/sairr-today/news_item.2009-09-03.4310602162 (accessed on 13 July 2011).

⁶³ Kotkin, S and Sajo, A (2002:12).

2.2.6 State involvement in organised crime

Organised crime is still a new concept in Southern Africa.⁶⁴ For easy reference, this paper will use the term ‘organised crime’ as defined by a pioneer South African writer in this field, who defines it as follows:

‘Organised crime consists of those serious criminal offences committed by a criminal organisation, which is based on a structured association of more than two persons acting in concert over a prolonged period of time in pursuit of both their criminal objectives and profits.’⁶⁵

Defined thus, acts according to this definition, which are prevalent in transitional states in the region, include inter alia; smuggling, illegal importation of goods, drug markets, dealing in protected species or rare resources, economic crimes and money laundering. The involvement of the state in organised crime differs from country to country and also in relation to the stages in the transitional period. However, the case of Mozambique offers a unique example of state involvement in organised crime in the SADC region.

In Mozambique, there is a common perception within academic circles that the state is involved in criminal activities.⁶⁶ This has been discussed even in public discourses. Mia Couto, a popular Mozambican writer, commented that Mozambique has become a corrupt country akin to kingdom which is ruled by criminals.⁶⁷ Antonia Soute, a well-known Mozambican economist, added that generally all the arms of the states in Mozambique are

⁶⁴Hubschle, A (2010:7).

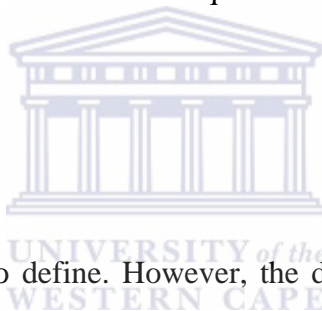
⁶⁵ Gastrow, P (2001:28).

⁶⁶ Gastrow, P and Mosse, M ‘Mozambique: Threats posed by the penetration of criminal networks’ (19 April 2002 19) available at www.metier.co.mz/b/pv_mosse_crime_corruption_moz.pdf (accessed on 20 July 2011).

⁶⁷ Metical, Maputo, September 2001.

inefficient and have been captured by the Mafia which is now running the state.⁶⁸ This represents a more widely held notion among the general public that their country is linked to organised crime.⁶⁹

The rationale for such a view that Mozambique is a criminal state is the easiness with which organised criminal networks have managed to manipulate both the state and private business structures.⁷⁰ A classic example is the theft of US\$14 million from the Central Bank of Mozambique, the murder of Carlos Cardoso, an investigative journalist, who was killed following his reports on corruption and organised crime, and the lackadaisical response by the state security in investigating these cases. Thus authors Gastrow and Mosse concluded that empirical studies clearly show that Mozambique is coming close to becoming a criminal state.



2.3 Conclusion

Political corruption is not easy to define. However, the definition by Robin Hodess which defines it with reference to the personnel involved, namely senior politicians, and the aim of the corrupt behaviour, namely to withstand the hold on power can be used to describe political corruption in transitional states of the SADC region. In the SADC region political corruption manifests itself in the following typologies: bribery; embezzlement; trading in influence and the State's involvement in organised crime.

⁶⁸Souto, A Metical, Maputo, 2 January 2001.

⁶⁹ Gastrow, P and Mosse, M 'Mozambique: Threats posed by the penetration of criminal networks' (19 April 2002 19) available at www.metier.co.mz/b/pv_mosse_crime_corruption_moz.pdf(accessed on 20 July 2011).

⁷⁰ Gastrow, P and Mosse, M 'Mozambique: Threats posed by the penetration of criminal networks' (19 April 2002 19) available at www.metier.co.mz/b/pv_mosse_crime_corruption_moz.pdf(accessed on 20 July 2011).

CHAPTER THREE

THE CAUSES AND CONDITIONS OF POLITICAL CORRUPTION IN TRANSITIONAL STATES

3.1 Introduction

What are the circumstances, developments and characteristics peculiar to transitional states within the SADC region that make them vulnerable to political corruption? It is certain that political corruption might have been in existence in these countries long before transition.⁷¹ Hence, it is not possible to outline definitive evidence that transition causes corruption, but it is clear that the political and economic reforms that are associated with the process of transition can exacerbate the opportunities for political corruption in these emerging democracies.⁷²

Accordingly, there is a growing body of literature on the causes of political corruption, ranging from variables such as, political instability, voting turn-out, state formations, inequality, number of women participation in public life,⁷³ and some even argue that the more officials there are, the more the potential for political corruption.⁷⁴ However, some suggest

⁷¹World Bank 'Political Corruption in Transition: A Contribution to Policy Debate' available at info.worldbank.org/etools/docs/library/17506/contribution.pdf (accessed on 26 July 2011).

⁷²World Bank 'Political Corruption in Transition: A Contribution to Policy Debate' available at info.worldbank.org/etools/docs/library/17506/contribution.pdf (accessed on 26 July 2011).

⁷³ Dollar, D, Fisman R, and Gatti, R (2001:423).

⁷⁴Treisman, D (2000:404).

that even this list is not exhaustive, but just serves the purpose of illustrating many explanations proposed.⁷⁵

The literature cited above illustrates that the causes of political corruption can be discussed from different points of view. However, there is no consensus on the factors that cause corruption because this depends on the choice of the analytical module or framework employed.⁷⁶ Corruption can be analysed using different methods and borrowing from a variety of disciplines.⁷⁷ Therefore, it has been argued that, the choice of the analytical framework used to analyse corruption determines the view of the causes of corruption.⁷⁸

For the present purposes, political corruption is analysed through the prism of organised crime. There is little evidence and statistical results available focusing on the relationship between corruption and organised crime, however, most researchers point out the symbiotic relationship of these concepts.⁷⁹ Hence, the United Nations Convention against Transnational Organised Crime (UNTOC), which is specifically designed to combat organised crime, contains numerous provisions pertinent to the fight against corruption. In particular, the convention dwells on the criminalisation of political corruption.⁸⁰

⁷⁵Singh, G 'How to Weed Out Corruption at Personal Level, and 'Research' Studies' (April 19 2011) available at <http://www.speakingtree.in/public/ao6msdk0v6d21fbaemja8g8u/blog/How-to-Weed-Out-CorruptionIV-Personal-Levels-Research> (accessed on 28 July 2011).

⁷⁶ Collins, N and Oshea, M (2000:86).

⁷⁷ Ampratwum, E.F (2008:78).

⁷⁸ Institute for Security Studies 'Causes and Conditions for Corruption' available at <http://www.iss.co.za/Pubs/Monographs/No65/Chap4.html> (accessed on 22 July 2011).

⁷⁹ U4 Anti Corruption Resources Centre 'Organised Crime and Corruption' available at (28 May 2008) <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=171> (accessed on 24 July 2011).

⁸⁰ UNODC (2005) 3.

Goredema identified the factors peculiar to transitional states that create a vulnerability to organised crime as the following: occurrence of a power vacuum; diminished social control; close connection between political power and access to economic leverage; imbalance in resources between law enforcement structures and criminal organisations; and unbridled opportunism.⁸¹ The following paragraphs expand on these factors as the causes and conditions for political corruption in transitional states of the SADC region.

3.2 Occurrence of a Power Vacuum

The dictionary defines a power vacuum as a condition that exists when someone has lost control of something and no one has replaced them.⁸² The authoritarian period characterised mainly, by ‘one-person rule, one-party rule and even military juntas’ that preceded democratic transition of the SADC states might have created power vacuums.⁸³

Moreover, the power vacuum in the SADC region can be viewed as a by-product of colonialism through the tactful use of various mechanisms to induce African traditional leaders to cooperate with them in the quest of their colonial aim of governing and manipulating their own peoples.⁸⁴ This is against a background of decolonisation in the region that was primarily promoted by international forces, and most territories were not prepared to deal with good governance and corruption issues.⁸⁵ Therefore, the practice of political

⁸¹Goredema, C (2003:36).

⁸² Cambridge Advanced Learner's Dictionary, available at <http://dictionary.cambridge.org/dictionary/british/power-vacuum> (accessed on 22 July 2011).

⁸³Matlosa, K (2007:5).

⁸⁴Mulinge, M and Lesetedi, G (1998:17).

⁸⁵ In Southern Africa, decolonisation can be classified in three stages: The first stage is the attainment of independence by SADC countries formerly colonised by Britain, which were known as the High Commission territories, namely; Lesotho, Botswana, and Swaziland, and Northern Rhodesia (Zambia) and Nyasaland (Malawi). The second stage, is marked by the struggle for independence in the Mozambique and in Zimbabwe

corruption in the post-colonial SADC region is a mere extension of colonial policies and practices which have served to cement it.⁸⁶

This is because many changes take place in transitional states after regime change, and it may take time to develop new structures. This may create a power vacuum, and by corollary, conditions for political corruption.⁸⁷ For example, political corruption that may emerge out of this power vacuum is created by lack of adequate law enforcement mechanisms because, for example, they resigned from working in the new government.

On the other hand, the power vacuum created by the collapse of a previous regime during transition periods may be quickly replaced, in most cases by a new government practising widespread corruption.⁸⁸ Thus, despite getting political independence, most of the countries in transition have been labelled as suffering from colonisation by corruption, which has been facilitated by transnational forces.⁸⁹ The point is most clearly illustrated by the case of Malawi's transition from the autocratic rule of Banda and the corruption case of *R v Bakili Muluzi & Another*.⁹⁰

Malawi experienced one of the most autocratic regimes in Africa.⁹¹ The Southern African country witnessed a relentless centralization of power under the autocratic rule of the

in which gained independence in 1980; and, third, the liberation of Namibia in 1990 and of South Africa, which secures majority following elections in 1994. See Britannica Online 'Independence and Decolonisation of Southern Africa' available at <http://www.britannica.com/EBchecked/topic/556618/Southern-Africa/43825/Independence-and-decolonization-in-Southern-Africa> (accessed on 1 August 2011).

⁸⁶Mulinge, M and Lesetedi, G (1998:17).

⁸⁷ Parliamentary Centre (2000:15).

⁸⁸ Parliamentary Centre (2000:15).

⁸⁹ Parliamentary Centre (2000:24).

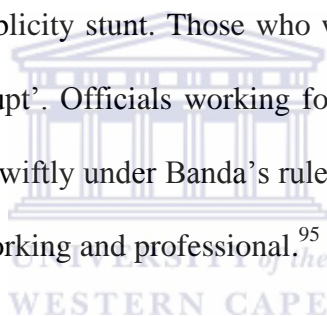
⁹⁰ (1 of 2009) [2009] MWHC 18 (8 July 2009).

⁹¹ Meinhardt, H and Patel, N (2003:3).

country's first President, Hastings Kamuzu Banda and his Malawi Congress Party (MCP).⁹² He transformed his status from Prime Minister to President for life, placing himself at the top of extensive party machinery. He crushed and outlawed political opposition and put himself in control of every state institution in the country.⁹³

However, despite this undemocratic set up, political corruption was not rampant during Banda's rule. Banda himself used to say on political corruption within his government that his 'main business' was to create an honest, efficient, stable government and incorruptible administration that will allow foreign investors to get a licence without paying bribes to government officials.⁹⁴

This was not a mere political publicity stunt. Those who worked directly with Banda assert that he was 'not personally corrupt'. Officials working for the state or the MCP who were accused of theft were dealt with swiftly under Banda's rule and this resulted in a civil service that was relatively honest, hardworking and professional.⁹⁵



⁹² 'The MCP was efficiently structured from top down to the community level and was present in every single village in Malawi as a semi-state institution. It relied on a special police branch of the police, which had received training from the Mossad, an Israeli secret service and was backed by the Malawi Young Pioneers MYP a paramilitary movement, and a politically compromised police force to keep the society under check. Any comments and criticisms about the MCP, the state or Banda's policies was a serious crime. The youth league the MCP was responsible for ensuring that all Malawians renewed their annual party membership. As there are no ID-cards in Malawi, the MCP political party card became a de facto identity card for Malawians, for instance it was required to buy goods at the market, to use public transport and even to acquire medical services. See, Meinhardt H and Patel N (2003:4).

⁹³ Cammack, D and Kelsall, T 'Neo-patrimonialism, Institutions and Economic Growth: The Case of Malawi' IDS Bulletin (4 March 2011) available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1759-5436.2011.00214.x/abstract> (accessed on 2 August 2011).

⁹⁴ Baker, C (2001:162).

⁹⁵ Anders, G 'Like Chameleons: Civil Servants and Corruption in Malawi' available at <http://apad.revues.org/137> (accessed on 2 August 2011).

The democratic transition that followed the end of Banda's autocratic regime set new parameters for managing political competition. Bakili Muluzi won the 1994 presidential election, the country's first multiparty election, defeating Banda. Whereas Banda had control of parliament and the selection of members of parliament (MP), Muluzi had to contend with opposition parties, multi-party elections, a minority government and coalition forming, and rowdy MPs who could possibly leave and join other parties.⁹⁶ To retain support, the President ended up using the state resources and he often appointed people loyal to him even though unqualified for the job to run the state owned companies, for instance, he increased the size of his cabinet to include more allies, and oversaw the siphoning of funds from government coffers by senior party people for political and personal ends.⁹⁷ Corruption spiralled out of control.

Political corruption in Malawi degenerated to a scale previously unseen. This is reflected by numerous corruption reports involving senior politicians that were submitted to the anti-corruption board, media and which were sometimes tried in the courts. For example, Chilumpha, Malawi's vice-president was allegedly involved in corruption, however the case remain unresolved. Friday Jumbe, former head of the Agriculture Development and Marketing Corporation was involved in a maize scam which cost the country MK2.9 billion. He was later appointed as Finance Minister; Former Attorney General, Peter Fatch, allegedly took part in the Land Rover Scam award of a contract to supply 110 Land Rover vehicles to government.⁹⁸ Bakili Muluzi was accused and charged with siphoning US\$12 million from international donors to his personal accounts, however, the state prosecutors dropped the

⁹⁶Khembo, N (2006:31).

⁹⁷Khembo N (2006:32).

⁹⁸ Hussein, M (2005:11).

charges against him following the suspension of the country's top anti-corruption official on the basis that there was no one competent to investigate the case.⁹⁹

3.3 Diminished Social Control

Social control mechanisms can be defined as:

‘[T]hose organized responses to crime, delinquency and allied forms of deviant and/or socially problematic behaviour which are actually conceived of as such, whether in the reactive sense (after the putative act has taken place or the actor been identified) or in the proactive sense (to prevent the act).’¹⁰⁰

In the context of anti-corruption, social control mechanisms include inter alia; anti-corruption steering committees, operational watchdogs working inside state departments, committees made up of members of the civic society and government officials.¹⁰¹ These social control mechanisms play a fundamental role in the vulnerability of a country to political corruption.

On the other hand, transitions if handled badly may also have adverse impacts on the social controls in any society in which, for instance, it may lead to the weakening of these mechanisms.¹⁰² It follows logically that the lack of social and internal control mechanisms that are associated with transitional periods, people in power are more likely to be involved in

⁹⁹APANC ‘State Drops Charges against Muluzi’ available at http://www.apnacafrika.org/malawimuluzicharges_dropped_e.htm (accessed on 3 August 2011).

¹⁰⁰ Cohen, S (1985:3).

¹⁰¹UNODCCP (2001:55).

¹⁰² Shaw, M (2002:2).

political corruption.¹⁰³ This can take different forms such as embezzlement of funds, bribery, patronage, electoral corruption and involvement of the state in organized crime.

Post-conflict Mozambique illustrates this point very well.¹⁰⁴ In Mozambique, for example, as a result of political transition, most of the social control mechanisms that were put in place under the socialist rule of Samora Machel, which included mechanisms that allowed citizens to participate in political discussions that affect them daily, such as determining methods to hold politicians accountable in carrying out their public functions, were abrogated and substituted by dubious government structures which were mere window dressing measures to a country failed by its politicians.¹⁰⁵ Following such retreat in social control mechanisms, political corruption soared out of control.



¹⁰³ Klirtgaard, R 'The Future of Corruption' available at <http://www.transparentnizakazky.cz/novinky/130-the-future-of-corruption-by-prof-robert-klitgaard>-(accessed on 3 August 2011).

¹⁰⁴ Since the 1980s, the political transition in Mozambique can be divided into five stages; the fifth one is still on-going. The first stage started in 1983 and ended in 1985 with the adoption of the Nkomati non-aggression agreement between Mozambique's political party RENAMO and South Africa to end the war. The second stage was marked by a military crisis between the government of Mozambique and RENAMO rebels in 1987. President Joaquim Chissano curved in to the pressure by the Mozambican civic society, which was calling for the government to make peaceful talks with RENAMO. The third stage begins in the 1990s and was brokered by Sant' Egidio Catholic lay community in Rome which facilitated some talks between the FRELIMO government and RENAMO to resolve the conflict amicably which culminated in the adoption of the General Peace Agreement (GPA) on 4 October 1992 in Rome. This stage can be considered as the landmark period in the transition process, it happened in juxtaposition with the political transition in South Africa, a critical dry spell in the whole of the Southern Africa region, and the demise of the Cold War. The fourth stage is the implementation of the GPA, monitored by the United Nations Operation in Mozambique (ONUMOZ), which concluded with the plural party elections in October 1994. The final stage started in 1994 when the United Nations handed over to the Mozambique authorities, this is the consolidation of democracy phase of the peace process, and it still remains unstable. Armon, J, Hendrickson, D and Vines, A (1998).

¹⁰⁵ Gastrow, P and Mosse, M 'Mozambique: Threats posed by the penetration of criminal networks' (19 April 2002 19) available at www.metier.co.mz/b/pv_mosse_crime_corruption_moz.pdf (accessed on 20 July 2011).

Moreover, a drawback in social control mechanisms will result in distrust of the government by members of the public. Citizens will be less interested in exercising moral checks on their leaders because of the cynicism that nothing will happen and where cynicism reigns, apathy follows.¹⁰⁶ It will become easier for citizens to accept that nothing can be done about an issue once they convince themselves that it does not matter. This behaviour allows political corruption to flourish in transitional states.

3.4 Lack of resources within law enforcement structures

According to Transparency International (TI), in the context of anti-corruption law, enforcement structures may include the following entities:

- ‘An auditor general, acting as a watchdog over financial integrity and the credibility of reported information,
- The attorney general, “acting as the chief law officer of the state guardian of the public interest”,
- The public service, erecting a system designed to protect the public decision making process,
- The rule of law, to adjudicate whether or not a particular action taken by, or on behalf of a state is in accordance with the law,
- The judiciary which should be independent and informed it holds a central place in the realization of just, honest, open and accountable government,

¹⁰⁶ Klirtgaard, R ‘The Future of Corruption’ available at <http://www.transparentnizakazky.cz/novinky/130-the-future-of-corruption-by-prof-robert-klitgaard-> (accessed on 3 August 2011).

- An ombudsman who acts to prevent corruption and maladministration; it can recommend improvements to procedures and practices and act as an incentive for public officials to keep their files in order,
- Independent anti-corruption agencies “as the corrupt grow more sophisticated conventional law enforcement agencies are becoming less able to detect and prosecute complex corruption cases”.¹⁰⁷

The above-mentioned law enforcement structures are crucial measures to curb political corruption. For instance, effective law enforcement can discourage corruption by breaking the cycle of impunity.¹⁰⁸ However for these structures to perform effectively, they need to be adequately resourced. The lack of resources within the law enforcement structures of the state will create an opportunity for political corruption to prosper undetected.

Law enforcement mechanisms in transitional states lack adequate resources and therefore, they are vulnerable to political corruption. The underlying assumption is that the more personnel and resources which are employed in law enforcement structures, the more effective will be the performance of the relevant agencies in fighting corruption.¹⁰⁹ The effectiveness and efficient functioning of the criminal justice system will control corruption levels, since corruption is a crime involving the rational valuation of potential costs and

¹⁰⁷ Transparency International *The National Integrity System Concept and Practice*(2001)

¹⁰⁸U4 Anti-Corruption Resource Centre ‘The Impact of Law Enforcement Interventions on Corruption’ available at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=215> (accessed on 6 August 2011).

¹⁰⁹Buscaglia, E and Dijk, J ‘Controlling Organized Crime and Corruption in The Public Sector’ available at http://www.unodc.org/pdf/crime/forum3_Art1.pdf (accessed on 6 August 2011).

benefits by those who commit such acts. If chances of being caught are high, politicians will refrain from resorting to corruption and vice versa.¹¹⁰

But according to research, only little empirical evidence is available to demonstrate that law enforcement can have long-term effects on the fight against corruption.¹¹¹ Moreover, according to research, certain conditions need to exist for specialised law enforcement structures to be able to work effectively as a tool against corruption namely: they need to be supported by dedicated government anti-corruption policies; they require a conducive legal background; a satisfactory government with adequate resources; and legitimacy. But most of these conditions are sometimes lacking in a transition state underpinning transition.¹¹²

3.5 Close connection between political power and access to economic leverage

Empirical evidence by practitioners revealed close connection between political power and access to economic leverage is a source of political corruption in transitional states.¹¹³ By virtue of their position and the influence that they may hold, Politically Exposed Persons generally present a greater risk for potential involvement in political corruption in transitional states.¹¹⁴

¹¹⁰Buscaglia, E and Dijk, J ‘Controlling Organized Crime and Corruption in The Public Sector’ available at http://www.unodc.org/pdf/crime/forum/forum3_Art1.pdf (accessed on 6 August 2011).

¹¹¹U4 Anti-Corruption Resource Centre ‘The Impact of Law Enforcement Interventions on Corruption’ available at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=215> (accessed on 6 August 2011).

¹¹²U4 Anti-Corruption Resource Centre ‘The Impact of Law Enforcement Interventions on Corruption’ available at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=215> (accessed on 6 August 2011)

¹¹³ Amundsen, I (1999:11).

¹¹⁴ Carranza, R (2008:311).

Who are the politically exposed persons?

The UNCAC defined Politically Exposed Persons as:

‘[a]ny person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law of a State Party.’¹¹⁵

For the purposes of this research, the definition above will be used.

In what ways do PEPs abuse their authority?

This section will explain different methods that can be employed by PEPs to engage in political corruption for their personal enrichment or maintenance of political power. Traditionally, politicians were well known to pass legislation that will allow them to abuse office, in nascent democracies. It has become more and more difficult for legislators to pass laws with the aim to pursue a private agenda without constraints. However, because legislators have an upper control on the law-making process they may use that position to engage in corruption or may become susceptible to corruption by individuals whose interests may be affected by such laws.

Moreover, there are many ways in which PEPs can be involved in political corruption. For example, PEPs may embezzle state resources when they steal from the government or when

¹¹⁵UNCAC, Article 2 (a).

they abuse their authority as the intermediaries in business and commercial activities by soliciting and accepting bribes. For instance, PEPs frequently use opportunities presented by bureaucratic decisions to solicit for bribes. In some cases, PEPs may become corrupt through controlling the amount of information accessible to the public or by even restricting such information. Finally, a politician may practice patronage by allocating public funds to a selected few, such as his supporters and indigenous people etc.¹¹⁶

With regards to Southern Africa, an extract from the Institute for Security Studies (ISS) monogram edited by Gastrow gives an overview of the conditions that most SADC states encountered in the early stages of transitions. He observed:

‘Many recently independent states were then faced with the overwhelming task of managing a double transition, namely from state-led to market-led economies, and from autocratic rule to transparent democratic politics. With some exceptions, such as Botswana, the SAPs (structural adjustment programmes author’s note) tended to produce unintended consequences. Besides being ineffective on a macro-economic level in many countries, there were elements in the political leadership and in bureaucracies who skilfully managed the reforms in a way to suit themselves. These elements were able to use the new ideological changes to engage in “practices of accumulation”, by staking out for themselves profitable areas for their own business activities. They straddled positions of public office with positions of accumulation, inevitably leading to corruption. This development was bound to impact on corruption.’¹¹⁷

¹¹⁶Pande, R (2007: 6).

¹¹⁷ Gastrow, P (2003:15).

Therefore politicians were using their control on the economic leverage for private gain during the political and economic transformations.

3.6 Unbridled Opportunism

Political corruption in the SADC region can be attributed to unchecked opportunism, which in many cases may be a result of the following factors: democratisation; privatisation; unclear rules; and an influx of funds aid and foreign business. All these factors may lead PEPs to ‘strike while the iron is hot’ during the transitional interlude.

The democratisation process may provide new opportunities for political corruption in the region. The unexpected increase in the respect for human rights violations may lead to an epoch of governing without accountability, where the former victims of an autocratic state will confuse ‘the freedom from oppression with freedom from any authority and any responsibility’.¹¹⁸ Chang explained the rationale for political corruption in nascent democracies as being attributable to the need to introduce elections before laying out a structure for political accountability. He argues that this system will lead to political corruption in that those appointed in political offices will not be subject to any system of checks and balances.¹¹⁹

Another main feature of transition is the enormous reallocation of the former state’s property from government control into the private sector or privatisation.¹²⁰ This provides another source of opportunism during transitional periods. It is mainly this exercise of privatisation

¹¹⁸Amundsen, I (1999:18).

¹¹⁹Ashiku, M (2011:112).

¹²⁰ World Bank ‘Political Corruption in Transition: A Contribution to Policy Debate’ available at info.worldbank.org/etools/docs/library/17506/contribution.pdf (accessed on 26 July 2011).

that has been the main motivation for political corruption in transitional states.¹²¹ The inherent vulnerability of privatisation to political corruption has been attributed to the strategy by senior politicians overseeing the process who then become severely tempted to manipulate the rules to their advantages and also to enrich themselves economically during the course of economic transition.¹²²

Furthermore, anecdotal evidence has shown that countries in transition will experience a rise in cases of political corruption, for example, in the form of bribery demands mainly because government officials may exploit the unclear rules during periods of transition. This would enable corrupt officials to commit unscrupulous offences or find means to coerce funds from ordinary and ignorant civilians.¹²³ Unclear rules may be a result of repeal of formerly draconian criminal legislation used by the erstwhile autocratic regime.

Moreover, political corruption tends to increase in periods of transition because States coming from a period of conflict will normally have very weak institutions of accountability and an inflow of resources from outside.¹²⁴ These scenarios will most likely provide inducements for corrupt officials to engage in activities for their own enrichment. The major sources of funds are business investments and foreign aid. Senior politicians will be involved in negotiating business investments and at the same time have discretion as to the disbursements of foreign aid which they receive on behalf of the citizens.

¹²¹ World Bank 'Political Corruption in Transition: A Contribution to Policy Debate' available at info.worldbank.org/etools/docs/library/17506/contribution.pdf (accessed on 26 July 2011).

¹²² Reed, Q (2002:263).

¹²³ Rose-Ackerman, S 'Corruption and Post-Conflict Peace-Building' (Draft for ONULR 4 January 2008) available at www.upenn.edu/provost/images/uploads/RoseAckerman.pdfSimilar (accessed on 27 July 2011).

¹²⁴ Rose-Ackerman, S 'Corruption and Post-Conflict Peace-Building' (Draft for ONULR 4 January 2008) available at www.upenn.edu/provost/images/uploads/RoseAckerman.pdfSimilar (accessed on 27 July 2011).

3.7 Conclusion

Many factors can lead to political corruption in transitional countries. In the case of the SADC region it can be concluded that the following factors have created an impetus for political corruption: the power vacuum that occurs following the loss of control by the repressive regime in its dying stages; plus, the absence of checks and balances that find resonance in the diminished social control mechanisms by the civilians; and the lack of resources within the State's law enforcement mechanisms. On the other hand, at the individual level, the close connection between access to economic and political leverage, in juxtaposition with unrestrained opportunism, influence politically exposed persons in transitional states to be prone to corruption.



CHAPTER FOUR

THE COST OF POLITICAL CORRUPTION IN TRANSITIONAL STATES

4.1 Introduction

The costs of political corruption are not only confined to transitional states. In fact, it has been noted that corruption is everywhere and that the incidence and type may vary in degree and in significance, but the effects are the same in every country, namely: it will tarnish the image of the State; damage the moral fabric of the society, diminish the ethical standards in governance; give rise to social instability and insecurity due the increased gulf between the rich and the poor; and in particular, it results in a heavy economic burden being placed on the poor and the weak.¹²⁵

Pioneering research on the effects of corruption in Africa has yielded two schools of thought.¹²⁶ For convenience, the one view shall be called the ‘grease in the wheels’ view and the other, the ‘sand the wheels’ view.¹²⁷ The grease in the wheels hypothesis is mainly identified with writers such as Nathaniel Leff, Samuel Huntington and Colin Leys, to mention just a few.¹²⁸ The premise they put forward is that corruption may be beneficial because of the complications which may be a result of mismanagement in government institutions. Their main point is that an unproductive administration creates an obstruction to investments, a state of affairs that some ‘speed’ or ‘grease’ money may assist to by-pass. In

¹²⁵Hassan, S (2004:25).

¹²⁶MukumMbaku, J (2007:87).

¹²⁷ Guillaume Méon, P and Sekkat, K (2005:122).

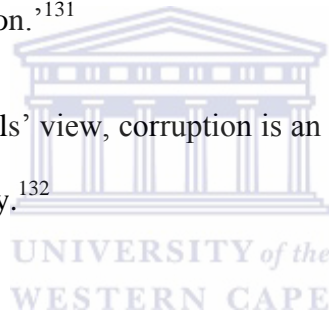
¹²⁸Leff, N.H (1964:8), Huntington, S (1968:386), Leys, C (1965:3) respectively.

short, the grease the wheels theory postulates that corruption may act as a good mechanism, which facilitates efficacy, investments and consequently development.¹²⁹

The other school argues that corruption enhances inefficiency in the public services and generally has a negative effect on development as a whole.¹³⁰ One of the proponents of this theory, Cartier-Bresson, argues that the:

‘[t]heoretical and empirical analyses of the causes and consequences of, as well as the means of fighting against, corruption has reached a certain level of maturity. The functionalist currents, which viewed corruption as a system that lubricates the cogs of the bureaucratic machine, have disappeared. Economists have reached a consensus on the very negative effects of the phenomenon.’¹³¹

According to the ‘sands the wheels’ view, corruption is an impediment to development and it frustrates transitions to democracy.¹³²



4.2 Rule of Law

O'Donnell argues that if defined broadly, the rule of law and corruption are complementary topics because, for example, ‘the rule of law is founded on impersonal trust in laws and institutions and corruption has been associated with higher levels of “particularized trust” between individuals’.¹³³

¹²⁹ Anoruo, E and Braha, H (2005: 43).

¹³⁰ MukumMbaku, J (2007:87).

¹³¹ Cartier-Bresson J ‘From the State of the Question to the Question of the State’ available at <http://www.copenhagenconsensus.com/Admin/Public/DWSDownload.aspx?> (accessed on 19 September 2011).

¹³² Toke, S.A (2011:15).

¹³³ O'Donnell, M ‘Post Conflict Corruption: A rule of Law Agenda?’ available at www.u4.no/themes/ces/postconflict/odonnell.pdf (accessed on 17 September 2011).

States in transition are swiftly decentralising their authority by moving away from planned economies to liberalisation, and from unitary to plural democratic politics. In essence, the hegemony of state control on the economic and political aspect is diminishing gradually.¹³⁴ However, political corruption will have adverse effects on the application of the rule of law, which will be substituted 'by the rule of whoever has the influence or the ability and willingness to pay.'¹³⁵ Corruption flouts the rule of fairness, which is the cornerstone of the principle of the rule of law, by giving some people advantages and others not.¹³⁶

An example of the negative effect of political corruption on the rule of the law can be illustrated by the situation that occurred in Zimbabwe in 1988. Several ZANU PF party officials were involved in illegal purchasing of motor vehicles from a local car manufacturer and reselling them at a substantial mark-up in what was known as the 'Willowgate scandal; which is cited as the most notorious case of corruption in Zimbabwe's history.¹³⁷ One of the officials, a cabinet minister at the time, Fredrick Shava, was arrested and prosecuted for corruption in that case. He was pardoned immediately after conviction by President Robert Mugabe. Today, he is the Zimbabwean ambassador to China. As a result of the presidential pardon of the minister convicted, the Attorney-General subsequently dropped the charges against other ministers and members of parliament.¹³⁸

¹³⁴ El-Ayouty, Y, et al 'Combating Corruption for Development: the Rule of law, Transparency and Accountability' (UNPAN1 10 October 2002) available at <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan005786.pdf> (accessed 17 September 2011).

¹³⁵ Shihata, I (1997:451).

¹³⁶ Uslaner, E M (2008:258).

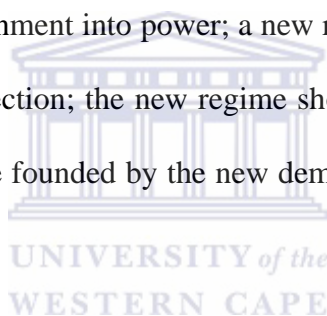
¹³⁷ Sithole, J 'Corruption A Way of Life in Zimbabwe (Institute for War and Peace Reporting 11 April 2008) available at <http://iwpr.net/report-news/corruption-way-life-zimbabwe> (accessed on 21 September 2011).

¹³⁸ Zhangazha, W 'Presidential Pardons Should be Transparent' (Zimbabwe Independent 6 May 2011) available at <http://allafrica.com/stories/201105091454.html> (accessed on 22 September 2011).

4.3 Democratisation

The term democracy, like political corruption, defies a common definition. For the purposes of this study, democracy shall be defined as ‘a system of governance in which rulers are held accountable for their actions in the public realm by citizens acting indirectly through the competition and cooperation of their elected representatives’.¹³⁹ Democratisation is therefore, a process whereby a country embraces such a system.¹⁴⁰

There are four main phases of democratisation, namely: the fall of the authoritarian regime; the transition; the consolidation; and the maturing of the political order.¹⁴¹ Democratisation is attained when the following features are in place: a consensus has been arrived at on the political methods to elect a government into power; a new regime has attained authority to rule on the basis of a free and fair election; the new regime should have the power to enact new laws; and all the arms of the state founded by the new democracy enjoy absolute power over other bodies.¹⁴²



The negative effects of political corruption on democracy have been well documented. For example, Warren provided a detailed research on the effects of corruption on democracy, which can be summarised as follows: firstly, corruption interrupts the connection between collective decision making and the majority’s authority to contribute in collective decisions by way of discussions or by vote. Secondly, corruption reduces efficient distribution of

¹³⁹Schmitter, P.C and Karl, T.L (1991:76).

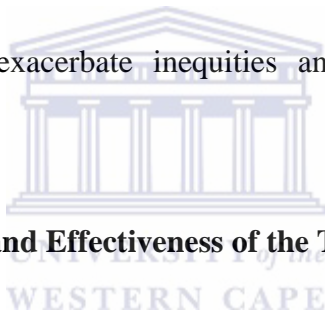
¹⁴⁰Hauss, C ‘Democratization’ (The Conflict Resolution Information Source August 2003) available at <http://www.beyondintractability.org/essay/democratization/> (accessed on 18 September 2011).

¹⁴¹Nicolescu-Waggoner, C ‘The Negative Impact of Corruption on the Consolidation of Democracy’ available at www.democracy.uci.edu/.../democracy/.../The%20Negative%20Impact%20of%20Corruption%20on%20the%20Cons (accessed on 18 September 2011).

¹⁴²Linz, J and Stephan, A (1996:3).

information to citizens, and by corollary, it decreases access to democracy and renders public office an instrument of private benefit. Thirdly, corruption weakens the principles of democracy because it forces people to have no self-assurance that policies are made for motives that are transparent and permissible, hence they become suspicious of public speeches and discussions. Finally, corruption undermines the ability of civil society to participate in democratic processes, thereby eroding trust in the institutions of the state.¹⁴³

In the context of the SADC states, the South African experience illustrates the effects of corruption on the consolidation of democracy. DuToit argues that political corruption in the form of patronage, whereby the state delivers social amenities, make appointments to the public service, and awards state a contract discriminately, based on identity, communal affiliation or partisan loyalty, exacerbate inequities and therefore directly undermines democracy in South Africa.¹⁴⁴



4.4 Legitimacy, Credibility and Effectiveness of the Transitional Government

In order to fully comprehend the negative effects of political corruption on the legitimacy of a government in transition, three distinct labels or typologies of legitimacy, as a concept, have to be noted.¹⁴⁵ The first meaning of legitimacy lies in the political concept, which has been defined by Lipset as the capability of a government to create and uphold the trust that the current governing institutions are the most suitable ones for the country.¹⁴⁶ Secondly, legitimate in the legal sense is when a state enjoys legitimacy because it is recognised as

¹⁴³ Warren, M (2004:328).

¹⁴⁴Du Toit, P (1998:157).

¹⁴⁵Bekeer, H (2000:22).

¹⁴⁶Lipset, M.S (1983:64).

being in agreement with the law.¹⁴⁷ The third meaning of legitimacy relates to the field of economics. In this case, legitimacy is measured, using the opinion of the public on the system of the economy i.e. if the economy is working effectively and efficiently enough to provide the most basic needs of the citizens then a government is considered legitimate.¹⁴⁸ Although coming from different disciplines, these definitions nevertheless prove that the concept of legitimacy is based on widespread support for the politicians, their political choices, and institutes.¹⁴⁹ Political corruption can pose some challenges on these different dimensions of the concept of legitimacy.¹⁵⁰

Legitimacy is an important aspect of transition. There is a presumption that the process of transition from its commencement to the consolidation phase creates the political establishments, legal framework and all the other mechanisms which exists in and outside the government structures, that facilitate citizens' participation and control of the politicians.¹⁵¹ Moreover, legitimacy facilitates the provision of noticeable results, for instance, the delivery of necessary public goods and services to meet the minimum basic needs of citizens. It also strengthens the rule of law by requiring government to act in consonance with the law, and it promotes human rights.¹⁵²

The pernicious impact of political corruption on legitimacy can be drawn from the effects of corruption in general. Recently, researchers came up with decisive evidence which

¹⁴⁷Friedrich, C (1963:186).

¹⁴⁸Dye, T.R (1990).

¹⁴⁹Blondel, J (1995:62).

¹⁵⁰Bekeer, H (2000:22).

¹⁵¹ Andreev, S.A (2008:95).

¹⁵² Andreev, S.A (2008:95).

corroborates the opinion that corruption leads to reduced legitimacy.¹⁵³ Corruption increases inequality and creates inefficiency. It damages the legitimacy of a government, be it democratic or a one-party state.¹⁵⁴ For instance, if political officials abuse their positions for personal enrichment, government projects become less effective and the effect of international and donor aid lose its value.¹⁵⁵ By corollary, if the government is ineffective then it will not be able to provide basic amenities and will fail to establish its legitimacy. The other way corruption will erode the legitimacy of the government is when poverty is widespread and most people struggle on a daily basis to satisfy their basic needs whilst on the other hand, a few corrupt civil servants and politicians are living a luxurious lifestyle that is beyond the majority of the population .¹⁵⁶

An example of how political corruption can undermine the legitimacy of a government is illustrated by the 2011 demonstrations in Swaziland, against corruption. The government had been warned about its reckless expenditure. For instance, in 2010 the government budgeted R170 million for the royal family. In terms of the Royal Emoluments and Civil List Act (Act of 1998), each year an allocation has to be made from the national budget to cover expenditure associated with the monarchy.¹⁵⁷ The programs director at Freedom House, Robert Herman, commented on the legitimacy of the government of Swaziland, which he

¹⁵³Porta, D (2000:205).

¹⁵⁴Sandgren, C (2008:966).

¹⁵⁵Rose-Ackerman, S (2008:4).

¹⁵⁶MukumMbaku,, J (2007:108).

¹⁵⁷Nxumalo, M 'IMF should think hard before dictating changes to Swaziland' (Daily Maverick) available at, <http://dailymaverick.co.za/opinionista/2011-04-07-imf-should-think-hard-before-dictating-changes-to-swaziland> (accessed on 2 October 2011).

said was forfeited by the latter's decision to disregard the important concerns of its citizens over the rate of maladministration and corruption within the government departments.¹⁵⁸

4.5 Transitional State Funds and Donor Aid

Vito Tanzi states that political corruption negatively affects the resources allocation by diverting them away from the much needed intended destinations to the ones that will ensure some private advantages for the corrupt official.¹⁵⁹ Transitional governments have a lot of need for revenues to build new infrastructure and for other governmental functions. Therefore, if corruption increases the official level of expenditure it reduces the part of it which is needed for developing the country.¹⁶⁰

An important source of funding during transition comes from foreign donations. These are not exempt from abuse by corrupt state officials, as already illustrated in Chapter three of this paper. In the cases of Jacob Chiluba and Bakili Muluzi, both former presidents of Zambia and Malawi, respectively, were involved in embezzling significant amounts of donor funds. Therefore, it is no coincidence when political corruption researchers Chabal and Daloz argue that the misuse of foreign aid in the pursuit of political objectives is one of the major features of 'aid dependency' in Africa.¹⁶¹ As it does to state revenue, political corruption in foreign aid takes away aid from the intended projects, hence severely undermines the usefulness and success of aid.¹⁶²

¹⁵⁸Freedom House, 'Freedom House Condemns Government Crackdown in Swaziland' April 12, 2011 available at <http://www.freedomhouse.org/template.cfm?page=70&release=1394> (accessed on 3 October 2011).

¹⁵⁹Tanzi, V (1998:119).

¹⁶⁰Tanzi, V (1998:119).

¹⁶¹Chabal, P and Daloz, P (1999).

¹⁶² How is Development Aid undermined by Corruption? Available at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=76> (accessed on 22 September 2011)

The ramifications of corruption are that it will not only make aid ineffective, but will also limit the amount of foreign aid to a country that is well-known to be corrupt. The two case studies of Zambia and Malawi can illustrate this point clearly. In 2001 the major donors to Malawi suspended donor aid and even asked for a reimbursement of the amounts already disbursed due to massive political corruption.¹⁶³ Similarly, in 2009 the Dutch and Swedish governments put a hold on any financial assistance to the government of Zambia for health projects on allegations of corruption. The decision was made after a whistle-blower informed the Zambia's Anti-Corruption Commission [ACC] about the embezzlement case of at least US\$2 million that was stolen by senior government officials from the from the Ministry health.¹⁶⁴

However, the effects of corruption on donor aid is complicated mainly because aid is fungible, in that it leads to an unintended minimal increase in public expenditure which corresponds to an influx of aid.¹⁶⁵ As a result, it is prudent to take a holistic approach when assessing the influence and quality of overall government expenditure, as opposed to concentrating on one department's spending or on whether the funds were used for the purposes for which they were originally meant.¹⁶⁶ For example, Santiso noted that foreign aid may be donated to enable the recipient country to build a school, which indeed the recipient may use for that purpose, however, because of the availability of aid funds to build the school could make it possible for the recipient to use the resulting savings to buy sophisticated

¹⁶³ 'Malawi Donors Suspend Aid' (BBC News 19 November 2001) available at <http://news.bbc.co.uk/2/hi/africa/1665141.stm> (accessed on 23 September 2011).

¹⁶⁴ 'Health Funding Frozen after Corruption Alleged' (Plus News Zambia: 27 May 2009) available at <http://reliefweb.int/node/310890> (accessed on 23 September 2011).

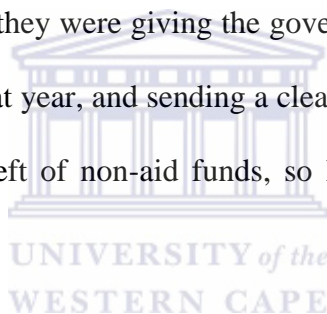
¹⁶⁵ Ampratwum E .F (2008:83).

¹⁶⁶ Ampratwum E .F (2008:83).

weapons whose purchase may provide opportunities for illegally diverting funds into individuals' pockets than school construction could.¹⁶⁷

In the SADC region, the case of the management of donor aid in Mozambique illustrates this reasoning quite well. This extract by Joseph Hanlon describes it better:

'The Mozambican elite have become highly skilled at ensuring that management of donor money is transparent and clear. The predatory elite do not steal donors' funds; instead they rob banks, skim public works contracts, demand shares in investments, and smuggle drugs and other goods and they ensure that the justice system does not work so they cannot be caught. When donors gave the government an extra \$122 million at the Consultative Group meeting in October 2001, they were giving the government enough money to plug the hole in the banking system for that year, and sending a clear message that donor money could be used to cover murder and theft of non-aid funds, so long as it was done publicly and transparently.'¹⁶⁸



This extract clearly explains how ingeniously donor money can be corruptly used by the state officials.

4.6 Human Rights Violations

Political corruption may lead to suppression of the enjoyment of all the fundamental human rights.¹⁶⁹ However, even though corruption may pose a threat on the enjoyment of human rights, this is not one and the same with violation of human rights, and to escape such

¹⁶⁷Quoted in Ampratwum, E.F (2008:83).

¹⁶⁸Hanlon, J (2004:758).

¹⁶⁹Bacio-Terracino, J 'Corruption as a Violation of Human Rights' available at [SSRN: http://ssrn.com/abstract=1107918](http://ssrn.com/abstract=1107918) (accessed on 23 September 2011).

oversimplifications it is relevant to examine how corruption can lead to a practice of human rights violation.¹⁷⁰

First, there should be an obligation on the states concerned. There are basically three levels of state obligations in relation to human rights, namely to: respect; protect; and fulfil.¹⁷¹ The duty to 'respect' entails that the State should desist from any practices that may take away individuals ability to satisfy rights by their own means if they are in a position to do so. The duty to 'protect' requires the State to inhibit violations of human rights by any other individuals or element. Non-compliance with this obligation may be a vital determinant of state responsibility in corruption cases.¹⁷² The third obligation is pertinent to privatisation processes, for instance, the privatisation of public services such as health, transport or telecommunications may increase chances for corruption and thus indirectly harm the satisfaction of a number of rights, such as access to clean water.¹⁷³ The third obligation to fulfil requires States to adopt methods that will guarantee that everyone has access to basic needs that are provided in human rights instruments, which they do not have means to satisfy without the assistance of the state.

Corruption may directly violate a human right when a corruption is intentionally used as a means to violate human rights. Secondly, corruption can be a necessary contribution linked to a series of actions that will lead to abuse of human rights. In this case, violation of human rights is connected to an act of corruption which triggers the events that directly violate the concerned right. Thirdly, corruption can play a more remote role in human rights violations,

¹⁷⁰Bacio-Terracino, J 'Corruption as a Violation of Human Rights' available at [SSRN: http://ssrn.com/abstract=1107918](http://ssrn.com/abstract=1107918) (accessed on 23 September 2011).

¹⁷¹ International Council on Human Rights Policy and Transparency International (2009:22).

¹⁷² International Council on Human Rights Policy and Transparency International (2009:22).

¹⁷³ International Council on Human Rights Policy and Transparency International (2009:23).

for example, electoral corruption can raise suspicions about the truthfulness of the results, people may react by demonstrations, strikes, protests etc. and the law enforcement may use unlawful force to quell the demonstrations violating fundamental rights such as torture, right to life and unlawful arrests in the process.¹⁷⁴

All three situations can be analysed from the cases discussed so far. The case of patronage in Zimbabwe illustrates the first case. For instance, because of patronage only ZANU PF supporters can get appointed in government and diplomatic jobs, thus violating the rights of other Zimbabweans of access to employment free from political discrimination. The second situation can be related to the case of embezzlement in Zambia. When Chiluba embezzled donor funds meant for public health, the recipients of those health facilities were denied of their right to access health facilities. The third situation can be illustrated in Swaziland during the demonstrations, protestors rights such as the freedom of movement, association, expression, right to life, were violated in the state-sponsored violence that ensued.

4.7 Conclusion

Political corruption in its different manifestations as addressed in chapter two of this paper can pose multiple challenges for states undergoing transition into democracy. As highlighted above, the ramifications of political corruption on the rule of law, democratisation, legitimacy of the government, enjoyment of human rights and the state revenue cannot be underestimated. The discipline of transitional justice must engage with the so-called second generation human rights, such as economic crimes and political corruption in the same way it deals with violations of civil and political rights.¹⁷⁵

¹⁷⁴ International Council on Human Rights Policy and Transparency International (2009:25).

¹⁷⁵ See in general Carranza, R (2008: 310-330).

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter is an overview of the whole research paper, summarising the main arguments and salient findings in the trends of political corruption in the SADC region. It will then draw some conclusions from the same findings and attempt to offer both specific and general recommendations to solve the challenges posed by political corruption in those selected countries of the SADC region that are subjects of this study.

5.2 Summary

An analysis of transitional states of the SADC region reveals a trend of a certain typologies of political corruption. This is bribery, trading in influence, patronage, electoral fraud, embezzlement and involvement in organised crime. These types of political corruption are closely related to the effect of consolidation of political power and self-enrichment, a characteristic of politics during transition. Therefore an analysis of political corruption can be understood as an issue linked to power and power relations.¹⁷⁶

In chapter three of this research paper, it can be deduced that the underlying causes and conditions for political corruption in the region are mainly: occurrence of a power vacuum; diminished social control; close connection between political power and access to economic leverage; lack of resources within the law enforcement structures; and unbridled opportunism. Further, political corruption is committed by the so-called PEPs, as illustrated by all the cases discussed in this research paper, including heads of states and senior

¹⁷⁶Kalombo, G (2005:19).

politicians. In all these cases no prosecution was successful except in the Zimbabwean and South African cases of Fredrick Shava and Shabir Shaik. However, in the former case the minister concerned was pardoned immediately after conviction and in the latter, Shaik was released early from prison on medical parole after serving only two years and four months of his 15-year term.¹⁷⁷

The fourth chapter canvassed the costs and effects of political corruption in transitional states of the SADC region. Citing concrete examples and making reference to the cases discussed in the previous chapters, it points out how political corruption can lead to violation of human rights, the rule of law, democracy, and legitimacy of the state and economic development by abusing states revenue.

5.3 Conclusion

Political corruption can easily thrive under transitional periods. The process of transition can influence corruption because it involves the development and institutionalisation of authoritative norms of political office and political responsibility. If public officials evade these norms then political corruption will simply flourish.¹⁷⁸

The costs of political corruption on states pursuing democracy are devastating. Thus, by unbundling corruption in transition, revelations of the extent to which these costs vary as a result of different patterns of corruption becomes clear.¹⁷⁹ Political corruption can derail transitional processes.

¹⁷⁷'Schabir Shaik back in prison' (News 24, 13 March 2011) available at <http://www.news24.com/SouthAfrica/News/Schabir-Shaik-back-in-prison-20110314> (accessed on 3 October 2011).

¹⁷⁸Philip, M (2002:62).

¹⁷⁹World Bank (2009:18).

Political corruption is not addressed adequately in the SADC region due to lack of political will, lack of capacity to deal with complex corruption cases during the early phases of a transition, a weak civil society and a muzzled media (except in South Africa). Robin Hodess notes that the knowledge of political corruption often affects societies but bureaucrats charged with political corruption are tough to prosecute or convict, some of them may die before they are prosecuted.¹⁸⁰

5.3 Recommendations

5.3.1 Legal Remedies

5.3.1.1 National Legislation

Some of the selected countries legislation dedicated to combat corruption have defined the term corruption in a very restricted sense and are therefore recommended to widen the definition to include other corrupt acts. According to Goredema, it is apparent that during the phases of economic and political transition in the region corruption will go beyond the traditional transgressions such as bribery and extortion. He argues that legislation should be amended to include other forms of corruption in order to avoid the bypassing of proper systems and the suppression of corrupt practices.¹⁸¹

¹⁸⁰Hodess, R 'Political corruption' available at

http://www.uneca.org/itca/governance/Documents/Introduction_to_political_corruption.pdf (accessed on 6 October 2011).

¹⁸¹Goredema, C (2000:15).

5.3.1.2 Codes of Conduct

An appropriate way of dealing with unbridled opportunism is by establishing legal ethics and codes of conducts.¹⁸² Pelizzo and Stapenhurst recommend that an ethics regime, in the form of either ethics codes or codes of conduct, represents a valuable anti-corruption tool.¹⁸³ It has been noted that all the countries under discussion in this paper have rules and regulations which guide the conduct of heads of states, parliamentarians, and senior government officials. However, states are recommended to periodically review their codes of conduct with the view to achieving transparency and accountability. ‘An institution which has outdated policies and regulations is a fertile ground for corruption.’¹⁸⁴ States Parties are also recommended to adopt best practices from the regions such as the South Africa, which is itself not free of corruption.

5.3.1.3 Asset Declaration and Financial Disclosures Laws

5.3.1.3.1 Adopt Asset Declaration Legislation

In Swaziland and Zimbabwe assets disclosure is not required. In Malawi, Mozambique and Zambia disclosure is required but cannot be made public. In South Africa it is accessible to the public.¹⁸⁵ Corruption is difficult to prove, asset declaration laws and rules can assist in both prevention and detection of political corruption.¹⁸⁶ For example, they can help anticipate potential conflicts of interest before misconduct occurs. Filing of false and misleading

¹⁸² ‘Code of conduct is a system of rules and regulations governing human behaviour in a particular environment. It defines what may and may not be done and stipulates the process for commissioning unacceptable behaviour in the context of that environment’ See Matsheza, P and Kunaka, C (2000:39).

¹⁸³ Pelizzo, R and Stapenhurst, R (2006:197).

¹⁸⁴ National Anti-Corruption Strategy Malawi 4.

¹⁸⁵ Income and asset disclosure in World Bank client countries

¹⁸⁶ U4 Anti-Corruption Resources Centre ‘African experience of asset declarations’ available at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=160> (accessed on 1 October 2011).

declarations is easier to monitor, detect and punish.¹⁸⁷ By corollary, disclosures should be made public, subjecting them to strict rules of confidentiality will limit transparency.¹⁸⁸

5.3.1.3.2 Disclosure should be periodically

It is recommended that those SADC states without asset declaration laws enact asset declaration laws and rules to fight corruption by politicians.

It is further recommended that submissions should be made periodically. Filers must update their submission whenever there is a “significant” change of their assets and officials should make a disclosure upon entering government and upon leaving.¹⁸⁹ For example, Article 34(5) (b) of the Zambian Constitution states that a Presidential candidate is under obligation to make a statutory declaration of his assets and liabilities, but there is no law that requires the President to file declarations of assets and liabilities after assuming office and for the duration of his tenure as President.¹⁹⁰ The case of Chiluba emphasises the need for the President to declare his assets and liabilities on a regular basis to a body or institution with the capacity to monitor this.¹⁹¹

¹⁸⁷ U4 Anti-Corruption Resources Centre ‘African experience of asset declarations’ available at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=160> (accessed on 1 October 2011).

¹⁸⁸ Gastrow, P and Mosse, M ‘Mozambique: Threats posed by the penetration of criminal networks’ (19 April 2002 19) available at www.metier.co.mz/b/pv_mosse_crime_corruption_moz.pdf (accessed on 20 July 2011).

¹⁸⁹ Messick R (2009:9).

¹⁹⁰ Transparency International (Zambia) ‘Position Paper on Disclosure Laws in Zambia’ (February 2005) available at

http://www.tizambia.org.zm/download/uploads/POSITION_PAPER_ON_DISCLOSURE_LAWS_IN_ZAMBIA.pdf (accessed on 1 October 2011).

¹⁹¹ Transparency International (Zambia) ‘Position Paper On Disclosure Laws In Zambia’ (February 2005) available at http://www.tizambia.org.zm/download/uploads/POSITION_PAPER_ON_DISCLOSURE_LAWS_IN_ZAMBIA.pdf (accessed on 1 October 2011).

In this area, SADC states can seek assistance on the designing and implementation of asset declaration laws from the World Bank Group (WBG) and the UNODC-STAR initiatives, which assist with capacity building for government officials and civic society practitioners involved in the implementation and daily management of asset and income disclosure systems and provide information such as practice manuals on the policy discourse around this subject.¹⁹²

5.3.1.4 Criminalise illicit enrichment

SADC states should criminalise illicit enrichment. ‘Illicit enrichment is defined as a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.’¹⁹³ The creation of the offence of illicit enrichment has been useful as a deterrent to political corruption in many jurisdictions.¹⁹⁴ This is mainly because illicit enrichment is a predicate offence of corruption.¹⁹⁵

5.3.1.5 Specialised Ant- Corruption Courts

SADC countries should adopt a judicial framework of specialised anti-corruption courts. In the alternative they need to have specialised prosecutors to handle corruption cases. Some

¹⁹² World Bank and UNODC ‘Asset And Income Declaration Guide Concept Note’ (February 11, 2009) available at http://siteresources.worldbank.org/INTSARI/Resources/AssetIncome_Declaration_Guide.pdf (accessed on 1 October 2011)

¹⁹³ AU Convention against Corruption, Article 1.

¹⁹⁴ UNODC (2006:103).

¹⁹⁵ Gacheri-Kamunde, N ‘The Crime of Illicit Enrichment under International Anti-Corruption Legal Regime’ available at <http://www.kenyalaw.org/klr/index.php?id=426> (accessed on 2 October 2011).

countries such as Kenya, Pakistan and the Philippines have established specialised criminal courts for corruption.¹⁹⁶

5.3.1.6 Reforms to the SADC Protocol against Corruption

All the countries under review have signed the SADC Protocol against Corruption. However, Mozambique and Swaziland are yet to ratify the Protocol.¹⁹⁷ The Information appears in the

Table 1 below

Table 1.

No	Country	Signature	Ratification/Accession
1	Malawi	14/08/2001	27/09/2002
2	Mozambique	14/08/2001	Not yet ratified
3	South Africa	14/08/2001	15/05/2003
4	Swaziland	14/08/2001	Not ratified
5	Zambia	14/08/2003	08/07/2003
6	Zimbabwe	14/08/2003	08/10/2004

¹⁹⁶U4 Anticorruption Resources Centre ‘Supporting Zambian Judicial Capacity to handle Corruption Cases’ (23 May 2008) available at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=169> (accessed on 1 October 2011).

¹⁹⁷ Institute for Security Studies ‘A Comparative Analysis: SADC Protocol against Corruption (2001) AU Convention on Preventing and Combating Corruption (2003) UN Convention against Corruption (2003)’ (November 2004) available at <http://www.iss.co.za/pubs/Other/CorruptHandbookNov04/Intro.pdf> (accessed on 1 October 2011).

In order to address the problem of political corruption the SADC Protocol against Corruption needs to be reviewed in the following respects:

1. On the article relating to the embezzlement, misappropriation or other diversion of property by a public official

Article 3(1) (d) of the SADC Protocol only deals with “diversion” of such property. UNCAC deals with the “embezzlement, misappropriation or other diversion” by a public official of any property, public or private funds or securities in more detailed manner in Article 17. Therefore, the SADC Protocol should be amended to include misappropriation and other diversion to the corruption crime of embezzlement.

2. Inclusion of the crime of obstruction of justice in the Protocol.

This offence can be used by PEPs to avoid accountability. The SADC Protocol against Corruption does not criminalise this offence. It is recommended that the Protocol should copy Article 25 of the UN Convention which requires that each States Party must adopt measures necessary to establish obstruction of Justice as a criminal offence.¹⁹⁸

3. Sanctions

The SADC Protocol does not deal with sanctions or penalties in case of the commission of an offence or non-compliance with prescribed measures. It is recommended that the Protocol should be revised and take into account the sanctioning and punishment offence and non-compliance. UNCAC, for example, specifically provides for sanctions.

¹⁹⁸Babu, R ‘The United Nations Convention against Corruption: A Critical Overview’ (1 March 2006) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=891898 (accessed on 2 October 2011).

4. As noted in the discussion on the causes of corruption that transitional states attract foreign business. This, in turn, can lead to foreign officials bribing local politicians. This has been noted by Nsereko and Kebonang that ‘there is problem of foreign companies or businessmen offering bribes to local state officials. This is a major menace in the SADC region, as it involves high government officials, powerful transnational corporations and colossal sums of money.’¹⁹⁹ The SADC Protocol against Corruption does not deal adequately with this issue. It was noted that the wording in the SADC Protocol referring to “by a public official” is wrong and should actually be similar to the wording in the AU Convention, namely, “to a public official”.²⁰⁰

5.3.2 Non-Legal Remedies

5.3.2.1 Implementation of Social Control Mechanisms

Social control mechanisms are fundamental in the fight against corruption.²⁰¹ The lack of social control mechanisms was attributed as one of the major causes of political corruption in the previous chapters. By corollary, implementation of social control mechanisms can help to prevent corruption in the region.

These mechanisms must include ‘strategic anti-corruption steering committees, operational watchdogs working within government institutions composed of civil society and government

¹⁹⁹Nsereko, D.D.N and Kebonang, Z (2005:301).

²⁰⁰Institute for Security Studies ‘A Comparative Analysis: SADC Protocol against Corruption (2001) AU Convention on Preventing and Combating Corruption (2003) UN Convention against Corruption (2003)’ (November 2004) available at <http://www.iss.co.za/pubs/Other/CorruptHandbookNov04/Intro.pdf> (accessed on 1 October 2011).

²⁰¹Empowering the Victims of Corruption through Social Control Mechanisms ‘Empowering the Victims of Corruption through Social Control Mechanisms’ (October 2001) available at <http://www.unodc.org/pdf/crime/gpacpublications/cicp17.pdf> (accessed on 2 October 2011).

officials working together. Those operational mixed watchdog bodies must cover monitoring and evaluation of local and central government affairs such as budget-related policies, personnel-related matters, public investment planning, complaint matters and public information channels.²⁰²

5.3.2.2 The role of civil society

SADC countries should promote civil society in the fight against corruption, including community and rural-based organisations. Shelley's studies on the role of civic society in the fight against corruption in Russia and Ukraine during the transition from socialism revealed that civic society pressure groups are 'potent forces in controlling corruption than the explicit anti-corruption activists because they reflect deep seated indigenous concerns of the citizenry and have not developed as a response to foreign stimuli to create anti-corruption movements'.²⁰³



5.4.3 Promote the Media and Investigative Journalism

5.4.3.1 The Media

The media has a dual role to play as an anti-corruption tool. Firstly, it raises public awareness about the causes, consequences and the possible solutions of curbing corruption and moreover it investigates and report incidents of political corruption.²⁰⁴ Thus, media should be promoted in general and, in particular, investigative journalism should be promoted in the SADC region to fight political corruption.

²⁰² Empowering the Victims of Corruption through Social Control Mechanisms 'Empowering the Victims of Corruption through Social Control Mechanisms' (October 2001) available at <http://www.unodc.org/pdf/crime/gpacpublications/cicp17.pdf> (accessed on 2 October 2011).

²⁰³ Shelley, L (2005:10).

²⁰⁴ Macdonell, R and Pesic, M (2006:111).

5.4.4.2 Investigative Journalism

Investigative journalism is defined as ‘in-depth, long-term research and reporting including documentary research and the use of public and private records, extensive interviewing and other crime-solving tools and methods such as undercover reporting, hidden cameras, and surveillance.’²⁰⁵ Investigative journalism skills need to be mastered and learned.²⁰⁶ Therefore the SADC region media should promote the role of investigative journalism. There are lots of organisations that offer capacity building for investigative journalism, for example the World Bank. It is recommended that SADC media houses should utilise these opportunities in order to acquire and enhance skills on the subject.

Investigative journalism is expensive and time-consuming and the interest of companies advertising in the media may obstruct investigative journalism. As a result, it is not lucrative to corporate media.²⁰⁷ Civic society and the media can combine resources to promote investigative journalism. It is recommended that other SADC countries should follow the example of the South African Mail and Guardian Centre for Investigative Journalism also known as the *amaBhungane*. This institute aims to develop investigative journalism in the public interest and is mandated to produce major investigative stories in the public interest.²⁰⁸ For example, it has played a pivotal role in exposing political corruption in South Africa amongst other cases

²⁰⁵ Philippine Centre for Investigative Journalism ‘Investigative Reporting’ available at pcij.org/training/Investigative%20Reporting.doc (accessed on 29 September 2011).

²⁰⁶ Macdonell, R and Pesic, M (2006:111).

²⁰⁷ Kotkin, S and Sajo, A (2002:258).

²⁰⁸ M&G Centre for Investigative Journalism available at <http://amabhungane.co.za/section/investigations> (accessed on 24 September 2011).

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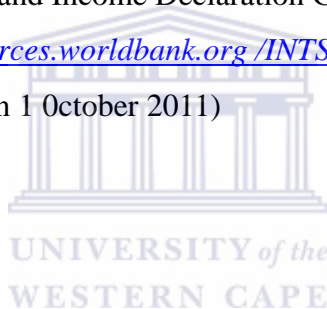
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