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Redefining Corruption
An Honors Thesis in International Relations

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Abstract

The topic of corruption in a globalised world is a critical issue of study. This thesis seeks to challenge the dominant definition of corruption. Corruption is understood as the abuse of entrusted power by public officials for private gain, however, this approach largely informed by the work of Transparency International and its Corruption Perceptions Index (CPI) , completely misses the complexity of corruption. The mixed qualitative and quantitative data presented in this thesis through the Strategic Arms Package (SAP), commonly known as the South African Arms Deal of 1999, reveal that corruption is a borderless, global and systemic problem. Ultimately, my claim is that the dominant construction of corruption frames it as a governance failing on the part of poor and developing states but remains largely silent on the corruption practiced by Western states. Furthermore, the conventional literature does not consider the role that global economic powers play in exporting corruption across borders to developing countries. All in all, the findings of this South African case study make an argument for a more honest and fair definition of corruption. A redefined conceptualisation of corruption will be beneficial for the anti-corruption movement and creation of strong institutions.

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This thesis is dedicated to the South Africans and to a special partner in history, Amb. Princeton Lyman who fought in various ways for the freedom for us born-frees, to dream, to govern and to live in South Africa, our land.

I. Introduction

Before the 1990s, the phenomenon of corruption remained largely unstudied. Corruption was a difficult concept to measure. However, in 1995 Transparency International introduced a simple number to express the corruption in a country quantitatively. The Corruption Perceptions Index (CPI) changed the course of political science, international business, and the accepted understanding of corruption as a whole. While the CPI is important in its contribution to academia and anti-corruption efforts across the world, it is dangerous in its core assumptions about who in the international system is corrupt and who is clean. The dominant explanation of corruption, as informed by the CPI, correlates high corruption with institutional weakness and frames it as being an abuse of entrusted power by public officials for private gain. The approach suggests that corruption is a problem most experienced by developing countries and looks to Western states as examples of societies clean of corruption. However, this approach, endorsed by several international relations theorists because of the influencing effect of the CPI, misses the fact that corruption is not always contained in nation-state boundaries and individually oriented. Corruption is global and systemic in nature.

In this paper I am going to use two cases from South Africa to demonstrate the flaws in our understanding of corruption. Through the cases of the Strategic Arms Package of 1999 and State Capture circa 2016, globalisation will be introduced as a factor that undermines the idea of corruption as individualistic public official behaviour restricted to nation-state borders. Furthermore, these cases will reveal the complex relationship between global economic powers and developing state governments in corrupt deals, highlighting the CPI's inability to account for the corrupt dealings of Western countries outside of their state borders. Thus, the central claim of

this thesis is that corruption is a global phenomenon, a market for international business, and a problem impossible to fight so long as it is understood linearly as a developing world and its leaders' problem.

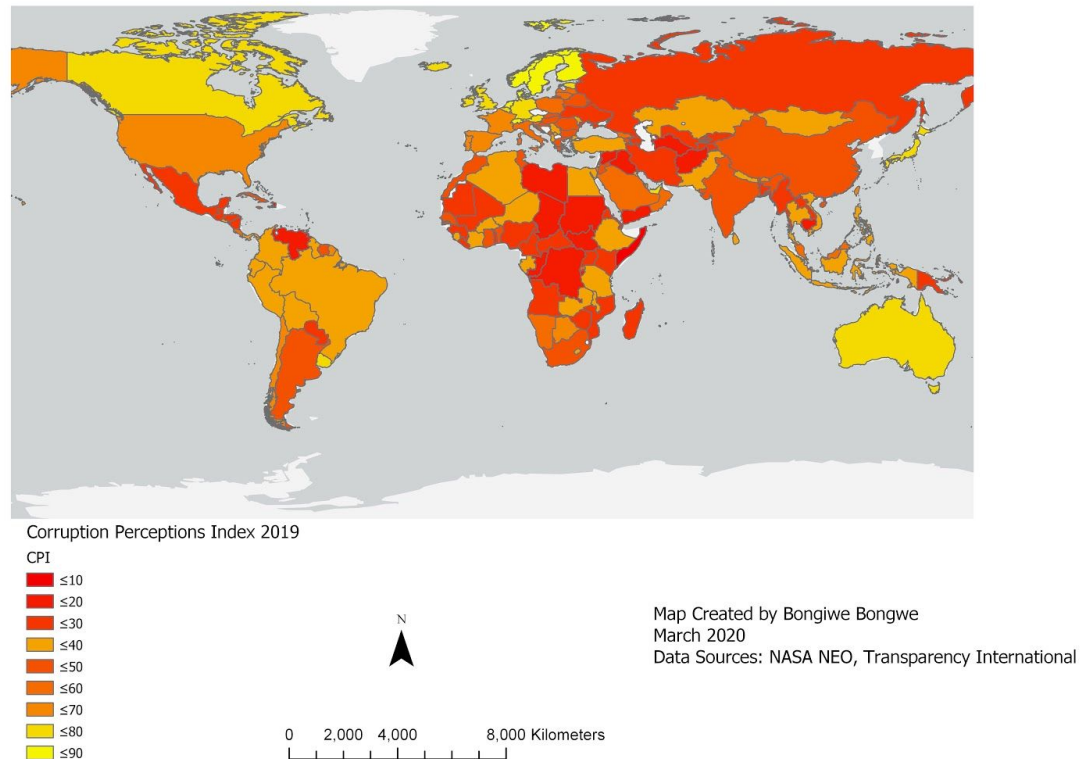
II. Literature Review

Theories of Corruption

Extensive research defines corruption as corrupt acts done for personal gain of public officials, and mostly at the domestic political level. The works written on corruption provide several explanations for why corruption is more prevalent in some states and regions than others. The theories of corruption that exist within international relations and political science center their explanations of the phenomena around economic, institutional and historical/cultural weakness, with recent literature naming contemporary weakness as well.

Transparency International, arguably the leading organisation for corruption studies, developed a Corruption Perceptions Index (CPI) which seeks to explain trends in global corruption and provide a scale through which scholars, investors, and everyday people can judge the level of corruption in the public sectors of 180 countries and territories. The CPI reveals that on a scale of 0 to 100, 100 being very clean and 0 being highly corrupt, most very clean 'yellow' countries are located in North America, Western Europe, The Nordic States, and Australasia, while the highly corrupt 'red' countries can be found in Eastern Europe, South America, Asia, and Africa. The map below shows a visual representation of the CPI's global distribution.

Corruption Perceptions Index Scores across 180 countries and territories in 2019, ranging between 100 (highly clean) and 0 (highly corrupt)



[Figure 1.]

Economically, the red states are mostly developing economies. Lalountas, D.A., et. al (2011) argue that poorer countries have higher corruption levels because low salary levels and poverty are two conditions that allow for an environment permissive for corruption. The argument is that public officials earning low incomes will be more attracted to corruption (Lalountas, D.A., et. al and Forson et. al). With a greater move towards trade openness since the creation of the Bretton Woods Institutions, neoliberal economic policies have been recommended to developing countries as a quick fix and the most effective way to achieve export-led economic growth. However, it is commonly argued (Forson et.al, Stoyanov, Grigorescu, and Lalountas, D.A., et. al) that trade openness can lessen opportunities for corruption because economic reforms of this nature are predicted by economists to create more

economic activity and potentially contribute to increases in investment, GDP and other economic indicators. Thus, the dominant argument is that causes of corruption are said to lie in how poor a state is. This negative relationship suggests that the richer the economy, the lower the corruption, and the poorer the economy, the higher the corruption. This argument of economic prosperity is one that is institutionally backed by Transparency International's CPI, International Monetary Fund (IMF) and the World Bank.

Weak institutions are another popular explanation for high levels of perceived corruption (Forson et.al, Stoyanov, Hellmann and Kaufmann, and Lalountas, D.A., et. al). Corruption is said to be caused by four central institutional failings. The first and most central is the absence of the rule of law, followed by a lack of transparency and accountability of public officials. The size of the government is the third, where a larger government with bureaucratic robustness is more efficient at controlling corruption and functioning as an effective government. Lastly, the absence of high liberty rights and political participation. On this point, scholars (Laountas, D.A., et. al) clarify that lack of freedom of speech has a role in promoting corruption. These four institutional failings are turned into solutions for controlling corruption by Transparency International in their CPI report, citing that they recommend stronger checks and balances, better regulatory quality, and stronger inclusion of citizen voices. Transparency International is not lonely in its view on the role of weak institutions in creating environments conducive for corruption. The World Bank's World Governance Indicators (WGI) measure six variables; Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption. With the exclusion of the variable 'political stability and absence of violence', the WGI's dimensions both inform and support the

existing literature on corruption's view on the role of institutionalism in causing and controlling for corruption. It is important to highlight the circular relationship between the CPI and other corruption measurements. The metric informs perceptions and studies, which go on to influence new literature and studies as well. Thus, it is not surprising that these indicators and metrics look to the same explanations for the causes of corruption.

Quite closely connected to the institutional argument is that of historical causes of corruption. Scholars (Forson et.al) contend that countries once under British colonial control and "legal systems in countries that adopted British legal code will be better at controlling corruption" (564, 2016). These authors argue that embedded in the British legal system is a code that is strongly geared towards transparency, government effectiveness, and good rule of law. Secondly, they consider countries with ethnic fractionalisation and contentious politics to be more likely to have higher levels of corruption, arguing that public officials will take advantage of the divided society to stoke unrest and loot the state with no provision of public goods and little accountability since the populations will be distracted by their civil unrest. This theory, to an extent, is similar to contemporary arguments about democracy being a key determinant of better control of corruption. Firstly, it is considered that if countries are geographically closer to other democracies with robust economies, they will be better at controlling corruption (Laountas, D.A., et. al). Furthermore, the more globalised and interdependent states are in trading relations, diplomatic ties, and international organisation membership with more advanced democracies, they will experience lower levels of corruption.

While these arguments are founded in large and very seminal literature on the causes of corruption, they also make inherently problematic assumptions about corruption. They assume

that corruption is a poor country problem, an ex-colony problem, and a diverse society problem. The literature is silent on the corruption possibly taking place in advanced democracies, but rather promotes narratives to support the visual depiction of the CPI that shows clearly yellow versus red; developed versus developing; rich versus poor; highly clean versus highly corrupt. This distinction created by the CPI creates a clear dichotomy of good and bad, even to use the word clean to describe societies without corruption is connotative. These arguments presented in this literature review expose a major concern in corruption studies; the circular effect of the CPI. The perceptions of scholars and expert's are based on this number which is centered in these underlying assumptions that present a eurocentric exceptionalism in regards to good governance and integrity. Decisions and judgements on state's corruption levels are then made on this number, informing new indicators, and legitimising the underlying assumptions. However, some scholars have identified this bias and have produced challenging literature.

Rebuttals to conventional corruption literature are presented by opposing scholars, who expose alternative ways to conceptualise the root causes and contributions to corruption in today's globalized international community (Adeyeye, Hawley, Vogl, Sung, Luiz and Callum, Feinstein, Holden, and Pace). This opposing literature reveals critical cases that shine a light on the complexity of corruption, the first being the concept of exported corruption. The exportation of corruption occurs when countries initiate and engage in corruption outside of their borders. Western corporations are often endorsed by their governments to participate in corrupt deals in developing countries and gain massive profits in return. The United Kingdom is a pivotal example of this trend in the international political economy that sees economically powerful Western countries initiate and financially sustain corrupt dealings. Susan Hawley in her 2000

article “Exporting Corruption: Privatisation, Multinationals and Bribery”, discusses how the UK is one of the leaders in this type of corruption, however, they are not alone. She goes on to expose several cases such as Norway’s mining company MINDEX’s corruption in Mindoro where they used bribery to bypass the local structures put in place to protect democratic processes. Similarly, the cases of the Canadian mining company Greenstone Resources using bribery to bypass environmental regulations and with regards to the extractive industry in Nicaragua and the Swedish arms manufacturer Bofors who won a contract in India worth £1.3billion and paid £320 million in India are particularly points of concern. Norway (CPI=84), Canada (CPI=77), and Sweden (CPI=85) are part of the top 15 cleanest countries, while their developing state trade partners in the Philippines (CPI=34), Nicaragua (CPI=22), and India (CPI=41) are red corrupt countries. The cases discussed by Hawley should raise concern about the kinds of relationships taking place between advanced economies, their multinational corporations, and developing countries. In addition to this, these cases prompt one to consider very seriously how come this kind of corruption is invisible to the CPI?

A second element of corruption that is discussed is that of the market structure of corruption. Like in any trade agreement, there are two parties. Either in agreement, one in a demanding position, and the other in a supplying position. The same applies with a corrupt trade. Perhaps corruption takes place when the market of political supply and demand in trade is in disequilibrium. Frank Vogl (1998) and Hung-En Sung (2005) in separate articles written seven years apart, enter into a heated conversation regarding bribery in international trade. Vogl, who wrote on the matter first, explains that in this conversation, blame about corruption is often centered on the demand side of the equation. Demand-side of corruption refers to the public

officials exercising corruption by abusing the entrusted power they have access to vis-a-vis their office. These officials are concerned with private gain. The narrative has been that these public officials place pressure on suppliers and trade partners, to pay bribes. In contrast, the supply-side is concerned with the supplier whom Vogl and Sung argue is not always as innocent and blameless as the international community has painted them to be. As explained earlier in the paper, perceptions about the corruption in the domestic business environment of poorer and developing countries have been used as justifications for foreign bribery on the part of suppliers. In addition to this, international instruments too have been able to further enhance the narrative of ‘innocent suppliers’ and ‘ruthless officials’ (Vogl 1998: 30). He laments at the fact that developing and transitioning countries, specifically in Africa, Eastern Europe and Central Asia, are perceived to be heclicly corrupt and expected to tighten regulations and strengthen institutions in order to punish bribe takers in government. However, little expectancy for reformation takes place on the bribe givers, they are almost absolved of any responsibility in the corruption.

Vogl highlights the paradox at play, that the states calling the loudest for anti-corruption reform are the ones whose corporate headquarters are the central bribe payers and initiators in international trade. He asks aptly, “is it fair to suggest that the bribe givers continue to lead largely risk-free lives? It is stretching the truth to suggest that the lack of action against bribe givers by governments of leading industrial countries amounts to tacit support of bribe giving by these governments?” (Vogl 1998: 35). Until the early 2000s and the ratification of the OECD’s Convention on Combating Bribery of Foreign Officials in International Business Transactions, countries like the United Kingdom would in fact allow their corporates to claim tax deductions

on foreign bribes which supports Sung's argument that foreign bribery on the supply side has been institutionalised. Even if it is no longer legal. Both authors employ the international community to think more critically about the role played by the main suppliers of foreign bribes. This alternative approach rests on two hypotheses (Sung 2005: 115);

- I. Demand-Pull Hypothesis states that there is a positive relationship between corruption in the host or importing country and the bribe-paying behaviour among its import trading partners. According to this theory, the levels of corruption in importing countries shape the bribe-paying behavior of exporting countries. Demands for bribes force multinational corporations to selectively engage in tactical bribery to overcome government red tape and bypass regulatory hurdles in, and only in, corrupt host or importing countries where there is a strong demand for bribes.
- II. Supply-Push Hypothesis states that there is a positive relationship between acceptance of corruption in the exporting country and the bribe-paying behaviour among its own multinational firms. This thesis argues that bribe-paying behavior is largely determined by the extent of corruption and tolerance of foreign bribery in exporting countries. Multinational corporations based in pro-bribery exporting countries practice systemic bribery as a business strategy to acquire overseas markets wherever circumstances are permissive.

Luiz and Callum (2013) counteract the literature and suggest that while there is a demand side and supply side, corruption in international business is largely referring to the "activities of officials which result in an abuse of power for the purpose of personal gain on the part of the official" (384). Through a study, surveying executives at anonymous Multinational Enterprises

(MNEs), these authors isolated the words used by MNE representatives to describe how corruptly they view African markets. Words such as “ ‘institutionalised’, ‘prevalent’, ‘very real’, ‘rife’, ‘systemic’, ‘institutionalised’, ‘entrenched’ and ‘endemic’ ” (Luiz and Callum 389). A respondent was quoted to have said, “ ‘You do get the request for facilitation payments, no question about it, they will come up and if you want this process to go quickly and smoothly then you bring along the brown paper envelope’ (MNE1).’ (389)” This argument is the cost of business argument. One that has been perpetuated and sustained by the presentation of global corruption by both Transparency’s CPI and the WGI. Because both indexes attribute corrupted-ness to developing regions, and the broader literature has begun to rationalise this argument as well, it has been accepted and endorsed by the business sector that the cost of doing business in developing countries is corruption. As admitted by the creators of Transparency International’s Corruption Perceptions Index (CPI), reputations about countries and their business environments are largely influenced by corruption measures which make corruption look like an exceptional behaviour, often exercised by specific ‘culprits’ (Martinez, 2019). Such ideas have normalised the expectation, offering, and inclusion of bribery in trading deals with developing countries. Corruption travels across borders, it is not an individual action but rather a complex multiparty behaviour and one that is systemic in nature. To define it as a developing problem, the cost of doing business, and a natural occurrence explained by economic factors and historical events that make developing countries remain behind, is to completely miss the larger issue. Corruption is not national but travels across borders, it is not individual but systemic, and it is not bettered by globalization and privatisation but further enhanced by those borderless and interdependent channels.

III. Case Study: South Africa

The African National Congress (ANC)

Black for the people, green for the land, gold for the natural and mineral wealth. These are the colours of the African National Congress (ANC), a democratic liberation movement founded January 8, 1912 by John Langalibalele Dube, Pixley ka Isaka Seme, and Sol Plaatjie. “The Freedom Charter” has been since 1955, one of the foremost guiding principles of the ANC (ANC Constitution, 1958). Leaders of various congresses, including the South African Indian Congress, the South African Coloured People’s Congress, the South African Congress of Democrats and the South Africa Congress of Trade Unions came together to create this document (sahistory.org, 2016). The Charter asserts that the land belongs to all those who live and work in it, and that the people of South Africa should live to enjoy these rights. It lists the birth rights of the people as having access to land, liberty, and peace which is exclusive of discrimination based on “colour, race, sex, or belief” (The Freedom Charter, 1955). The Congress of the People went into depth regarding the democratic state they all pledged commitment too. On suffrage, it promises that a new South Africa will allow all to vote equally before the state. It values the equality of all people before the state, giving them the right to fair trial and legal representation. The Charter promises the people tools for survival. It proclaims that “THERE SHALL BE WORK AND SECURITY!” through the assurance that men and women, of all races and creeds, shall have access to jobs that have a “forty-hour working week, national minimum wage, paid annual leave, sick leave and maternity leave on full pay for all working mothers.” Together with the access to work, it promises the access to equal education, secure and comfortable housing, and peace.

The Congress of the People unequivocally declares that the people of South Africa have been “robbed of their birthright to the land”, which then follows with democratic recommendations such the abolishment of laws that require land to be distributed based on race. This clause seeks to provide the poorer demographics with opportunities to make money through the land, through agricultural means. They end this section with the title “ THE LAND SHALL BE SHARED AMONG THOSE WHO WORK IT!” Together they committed to “strive together, sparing neither strength nor courage, until the democratic changes here set out have been won”. This signalled a call for a long lasting resistance for the Congress’ Alliances moving into their struggle against apartheid, one that the ANC would present itself as a leader of. In 1994, a coalition that was once a liberation movement, was voted into power, winning the struggle and becoming the leaders of the new democracy. Led by Nobel Peace Prize winner, Nelson Rolihlahla Mandela.

Since South Africa’s first democratic elections in 1994, the ANC has subsequently won elections in a landslide manner in the following general elections; 1999, 2004, 2009, 2014, and 2019. Scholar Tatu Vanhanen, argues that South Africa’s ANC is an example of a dominant party within a democratic state because it won the 2002 elections with 70% of the vote share (Vanhanen 31). Mattijis Bogaards in *Dominant Parties and Democratic Defects*, writes that political scientists have differing views on the definition of the dominant party, however they broadly agree that it is “a political party that maintains an entrenched hold on a state’s governmental system” (Bogaards 2005, 29). The ANC as of 2007 had 621,237 card-carrying members, which is a large number when compared to the German Social Democratic Party which he notes as being both established and present in government (Darracq 2008, 431). Prior

to the 2012 conference in Mangaung, the ANC had over one million card-carrying members but during former President Jacob Zuma's years, specifically 2012-2015, it lost close to 40% of its members, bringing it down to 789,000 which is still comparatively significant (BusinessTech). Vincent Darracq in trying to understand what it means for the ANC to be a 'Movement of the People', and a 'Governing Party', states that the ANC for its voters is "an important actor of local politics, of community social life, a vehicle for peculiar grievances and aspirations" (Darracq 2008, 432), grievances which are effective in lowering support as seen by the loss in card-carrying members most recently.

In an article published by the Journal on African Elections, the 2014 election is written about extensively by Susan Booysen. Through a close reading of Booysen's Election 2014 and the ANC's Duet of Dominance and Decline, three factors can be isolated to explain how the ANC, despite its striking faults, still won in landslide manner; the ANC- people bond, the "Good Story" of 20 years of democracy, and the passing of Nelson Mandela.



[Figure 2: ANC leaflet summarising the 'Good Story, the core message of the 2014 Campaign (Booyesen 2015)]

While this is a good story, and true as such, it does mask the fact that since 1994 the ANC has found difficulty in correcting and creating economic policies that counteract failing economic policies that continue to intensify unemployment rates (Booyesen 2015, 9). In addition to this, two other issues that have been central to criticism of the ANC, are the former President Zuma's personal corruption scandals and state scandals linked to the Indian family, the Guptas. Secondly, the police shooting of miners in Marikana for which the government has been blamed for being uncaring for its workers, with now President Ramaphosa who was once at the center of the controversy. These are the challenges the ANC moved into the 2014 elections with, and won despite. On the ANC-people bond, Booyesen argues that for the South African people, the ANC is a familial force. She writes that, "incumbency and patronage had become interlocked with the notions of the caring parent", further emphasising that for the people, "the ANC is your family. The ANC is your neighbour, the ANC is your mother and father" (11). This family-like party has been able to retain the love of their citizens like a parent and a child, through its struggle for complete liberation, the ANC won the love of the mass majority of South African voters, who attribute their post-apartheid right to suffrage as ANC attained right. Thus, in order to understand ANC today, one needs to understand the ANC between 1994 and 2000, the nascent years of its political party formation.

The Democratic Transition

Although the coming of democracy to South Africa is spoken about romantically, the political work between 1990 and 1994 was no easy feat. The Convention for a Democratic South Africa (CODESA) began in 1991. CODESA 1 and 2 were intended to create a space for discussions to take place about the intricacies of how a peaceful transition of power and ending

of apartheid would take place, and secondly, to design what the democracy of South Africa would look like realistically. CODESA's objections were then, to ensure that South Africa would have a free and fair electoral process, independent media, a budget sound enough for development purposes, a re-entry into international affairs, a constitutional assembly with a constitution, and a 'non-partisan control of security forces' (South African History Online, 2017). CODESA 1 was successful in creating a framework for the state, however, CODESA 2 failed because of the African National Congress (ANC) and the apartheid National Party (NP) could not reach a consensus about the percentage that would constitute a majority in the new constitution and parliamentary practice. It is discussed more openly now, by former ANC ministers of parliament, that the ANC compromised on other issues in order to secure the parliamentary majority democracy enjoys today. One of the issue areas that was compromised on, was that of defense.

Why a defense update was such a big deal

After the arms embargo was lifted at the end of apartheid, the South African Defence Force (SANDF) decided that the country's defence needed to be updated. A defence package worth \$9.1 billion was created in order to purchase state of the art aircrafts, deepwater ships, and submarines. The legitimacy of such a defence upgrade lies in the new constitutional design of South Africa, as articulated in the White Paper on National Defence (1996). The Paper insists that in democratic South Africa, the defence force will have the mandate of being able to protect South Africa whilst bringing a "confidence and security building measure in Southern Africa" (White Paper on National Defence, 1996). In order to do this, SANDF would have to be advanced technologically, in a modern yet affordable manner (White Paper on National Defence

1996: 11.7). The truth, however, even admitted by the drafters of this new constitution, is that realistically with the nature of international relations, post-apartheid South Africa would never face a threat large enough to warrant for the need for such hi-tech arms. The document reads;

“South Africa does not now, and will not in the future, have aggressive intentions towards any state. It is not confronted by an immediate conventional military threat, and does not anticipate external military aggression in the short to medium term (+/-5 years)...The longer term cannot be determined with any degree of certainty because international relations are unpredictable. The absence of a foreseeable conventional military threat provides considerable space to rationalise, redesign and 'rightsize' the SANDF. The details of this process will be spelt out in the Defence Review. The SANDF has to maintain a core defence capability because of the inherent unpredictability of the future. Such capability cannot be created from scratch if the need suddenly arises. The maintenance and development of weapons systems is necessarily a long-term endeavour”

With this argument, in addition to that of South Africa being a regional leader and protector, the SAP was approved by parliament.

The Strategic Arms Package (SAP)

Once the SAP was approved by parliament, several key events took place leading up to its complete acquisition in 1999. In 1995, some prototypes for the SAP were presented. Two prototypes from the British Aerospace Company (BAE) and Swedish Saab, were presented to the South African Air Force (SAAF) for purchasing. The Hawks and the Gripens fighter jets were reviewed as being unaffordable, not satisfactory to meet SAAF's expectations of having an advanced fighter jet for training and combat missions. These two machines did not make the shortlist. In 1996, the South African Government's (SAG) created the National Industrial Participation Programme (NIPP) policy which states that “when government departments and state-owned enterprises procure foreign supplies to the value of \$10 million, foreign suppliers are obliged to provide [30%] offset arrangements in the form of investment into the domestic

economy” (Botha 2003). These projects were overseen by the Department of Trade and Industry (DTI), and fall under the Department of Defence (DoD).

The Summer of 1997, saw SAAF declare that there would be changes made to the procurement requirements, and these new requirements would allow the Gripen and Hawk to make the shortlist. SAAF explained that with the Gripen and Hawk come substantial defense offsets that help minimize the costs of the deal and generate economic growth and employment. Early 1999, Tony Blair, the then Prime Minister of Britain, travelled to South Africa to personally lobby for BAE Systems to win what would be South Africa’s largest arms procurement contract. In the same year, a few months later, the Queen sailed on the Royal Yacht Britannia to Cape Town, inviting 6 high level African National Congress (ANC) ministers for dinner at the harbour to convince them to purchase the BAE/Saab machinery. In November 1999, a dossier was submitted by Patricia de Lille, a Parliamentarian on behalf of concerned ANC MPs, to Judge Willem Heath the then head of the Special Investigating Unit of the South African parliament, flagging the SAP as high risk for corruption.

Why this deal was indeed, high risk

This deal fits the criteria for what arms industry corruption authors categorise as a corrupt deal. There are three key indicators of suspicious behaviour in this deal. The first is the decision to change the procurement criteria in 1997 and then the final acquiring of the Hawks and Gripens. The change in requirements hints at the fact that substantial diplomatic pressure was being applied on the South African government to accept, defunct and unnecessarily expensively priced, arms. Although the visits of Prime Minister Blair and the Queen took place two years later, they are evidence of the very diplomatic ways in which this deal was conducted. The Hawk

and Gripen should not have beat their competitors. It was revealed in the dossier that the offsets were inflated from \$245 million to \$1.6 billion. The chief of SAAF remarked that the Hawk and Gripen were selected because they were “politically obliged to do so” (Feinstein, Holden, Pace: 26, 2011). Thus, the inclusion of offsets in the package signalled a manipulation of the selection

Size of the arms cheque paid to BAE/Saab Consortium compared to the bribe paid to the South African government by the Consortium, in millions of 1999 US Dollars.

| Supplier | Weapon | Quantity | Cost | Bribe paid |
|---------------------|----------------------|----------|------------|------------|
| BAE/Saab Consortium | Gripen fighter jet | 28 | 1.2 | |
| | Hawk trainer/fighter | 24 | 1.2 | |
| Total | | | 2.5 | 1.5 |

Sources: Arms Procurement Commission Inquiry Report (2016), SIPRI Arms Transfers Registry, The Telegraph (2010), van der Westhuizen (2005)

[Figure 3. Suspected Value of the SAP]

process. Lastly, the price of these arms just made no sense at all, purposefully so, in order to conceal the multiple layers of illegalities in this deal. The following arms were bought at this value, with a \$1.5 bribe, as documented by the Stockholm International Peace Research Institute (SIPRI);

While these values from SIPRI are somewhat convincing, they are not a reflection of the true value of the deal. Experts such as Paul Holden consider it to be very difficult to even capture one accurate figure given that large loans were taken out from Barclays Bank and used to pay for this deal, including the bribes which were factored into the cost of the deal. This means that BAE

inflated the prices of the planes to compensate for the bribes being paid to the African National Congress, and subsequently, a loan taken out on behalf of SAG in a British bank was used to pay for the planes, the offsets and the bribes. Thus, this deal was paid for and most probably is still being paid off as a South African government expense using taxpayer money.

SAP in the context of scholarship

In terms of global trade, the arms industry is the most uniquely susceptible sector to corruption. This type of corruption constitutes 40 percent of global corruption in international trade (Feinstein, Holden, Pace 2011). Authors (Feinstein, Holden and Pace) argue that global arms corruption poses a global security risk as it undermines democratic practice and rule of law, with almost absolute impunity for the actors. Arms trade corruption is able to take place successfully because the industry is highly specialised, the market is non-transparent and the financial networks are intricate while production is quiet. This poses a problem because it is only experts who are able to confirm nor deny specifications, and often those experts are a part of the deals. The industry is inherently secretive and confidential. Invoking ‘national security’ as an automatic sealer of information is often used to cover up corruption in these deals. This is problematic, as the actors who bear the consequences of this misuse of state resources are the very people who in democratic states, deserve to know what is going on; citizens. Funds are easily and shamelessly diverted from vital social development projects to satisfy extravagant and mostly unnecessary defence wants. The issue with corruption in the arms industry is that the main actors are often a part of the democracy’s political institutions. They range from state-owned enterprises, to public officials, and in some cases right to the top of the executive branch with deputy presidents, presidents, and prime ministers taking on the roles of arms

dealers and intermediaries. Because of the stature of these actors, together with the inherent secrecy of the industry, the reality is that this corruption often takes place with impunity and remains weakly regulated by international instruments (Feinstein et. al 2011, Roeber 2005).

There are four central methods through which corruption in the arms trade is conducted. The first is bribery. Bribery is used to influence the procurement decision making process, both in the form of cash, or in kind. The non-declaring of conflict of interests is another way in which public officials are able to conduct business with arms deal suppliers whilst upholding roles within the government. Similarly, the issue of the revolving door is another way these deals are secured. Public officials will either be promised employment at an arms deal company after leaving office. Alternatively, the door revolves when individuals who held high ranking positions at defence companies are appointed roles in the defence ministry. This poses a massive problem as it allows incumbents to abuse state resources and complicates communication channels (Ohman 2013). The last method is the offering of preferential business access, particularly in the form of defence offsets. The defense industry as a whole cooperates with such complexity, sophistication and with a *passion for secrecy* as Joe Roeber calls it which makes calling out the corruption hard. The South African Arms Deal illuminates this and more.

Why offsets are problematic:

Defence Offsets are one of the most important features in the global arms trade industry, and the most arbitrary to comprehend. That is purposeful. Particularly, in this South African case, they were one of the central deciding factors around the acquisition of the Hawks and Gripen. Offset agreements are described as incentives offered by arms suppliers/companies to governments, to help them offset and minimize the negative effects of the unusually large arms

purchase. In theory, these agreements are beneficial and straight-forward, in reality they are false promises and hard to enforce. So why are they allowed? Well, these agreements are often used to influence the procurement tender decision making process, and they appeal to buyers of arms (in this case, developing countries) for two specific reasons. Offset agreements are intended to generate economic growth and “compensate the purchasing state for the loss of work within the country” (Sylvester and Seegers 2008). This can be done by either counter-purchasing, or foreign direct investment. Foreign supplier companies can either buy machinery or hardware from local manufactures, or they can invest in the domestic economy. Buying countries will often accept offset agreements that will be paid back in a duration of minimum five years, in order to ensure long-term investment in the local economy and procurement of arms locally at the expense of the foreign supplying entity. These agreements can be institutionalised.

The South African Government’s (SAG) in 1996 created the National Industrial Participation Programme (NIPP) policy which states that “when government departments and state-owned enterprises procure foreign supplies to the value of \$10 million, foreign suppliers are obliged to provide [30%] offset arrangements in the form of investment into the domestic economy” (Botha 2003). These projects are overseen by the Department of Trade and Industry (DTI), and fall under the Department of Defence (DoD). The problem with these arrangements is that although they are legal, they are also hard to uphold in a court of law (Sylvester and Seegers 2008). Foreign companies can renege on the NIPP obligations, and pay the 5% penalty fine that SAG threatens to charge if obligations are unmet over the seven year fulfilment period. Secondly, while offset agreements promise to create employment, this employment is often highly skilled thus not necessarily contributing to local development. Leading economists in the

defence sector argue that offset agreements are “not an effective means of creating jobs as they make the arms deal itself more expensive and only create jobs that are not accessible by the general population (Sylvester and Seegers 2008: 69). Botha argues that if the NIPP was properly used and directed, it could be a powerful tool in promoting industrial development because it is able to generate to generate economic growth that is sustainable, promote FDI, encourage research and development (R&D), create jobs, transfer technology and empower communities that were disadvantaged during apartheid (Botha 2003:3).

| BAE/Saab Offset Breakdown | | | |
|--|-----------------------------|---------------------|-------------------------|
| (Billions of 1999 US Dollars) | | | |
| Project Description | Project job creation | Export Value | Investment Value |
| Export Promotion B Sherwood project | 200 | 500 | |
| Automotive Component Exports (Volve) | 200 | 150 | 8 |
| ABB Procurement | 600 | 1000 | |
| Atlas Copco Mining equipment | 18 | 217 | 5 |
| Electrolux B Household durables | 40 | | 10.3 |
| Industrial-Agri Park & training school | 300 | | 0.8 |
| Totals | 1358 | 1867 | 24.1 |

Source: Trade and Industry Portfolio Coommittee Meeting Report (2001)

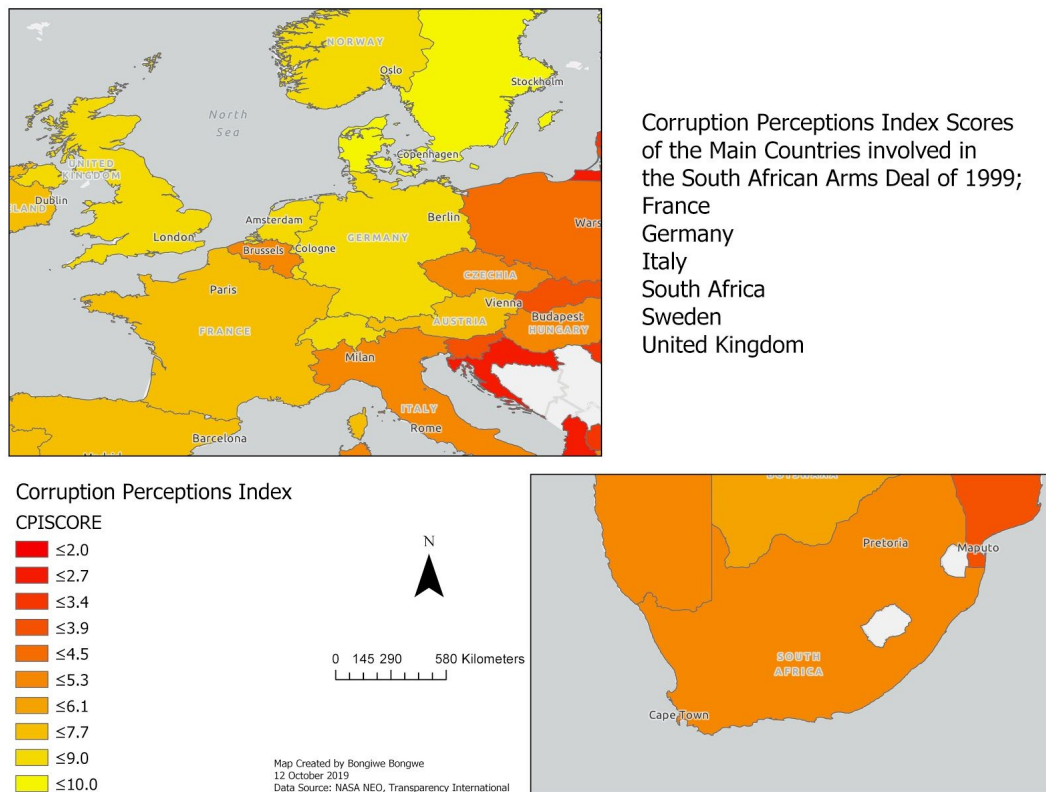
[Figure 4. Breakdown of Offset packages from British BAE and Swedish Saab]

Nonetheless, the concerns with the NIPP address one of the fallacies of international trade; the assumption that labour and capital are transferable and mobile (Siddiqui 2015). Siddiqui argues that “The benefits of trade liberalization are questionable particularly when workers move from low productivity jobs to unemployment instead of moving to higher productivity jobs; capital market liberalization does not necessarily lead to faster growth and

exposes countries to higher risks” (2015: 231). These risks are highlighted by the consequences of the arms trade industry and programmes such as the NIPP which expose how the advantages of trade liberalisation and export-led growth are weakened by the fact that trade openness can simultaneously make developing countries more vulnerable and susceptible to financial exploitation. This exploitation has negative consequences on development because developing governments begin to operate with little economic sovereignty and self-determination, advancing the agenda of foreign entities as opposed to the development agenda from their voting constituencies. While trade liberalisation meets its expectations for multinational corporations (MNCs), and countries in North America, Europe and highly developed countries in East Asia who have better access to international markets, the benefits do not apply to developing countries.

What this means for our understanding of corruption:

The significance of this deal revolves around three central issues. The weakness of the currently dominant definition of corruption, the problematic impunity of the British government and its involvement in sovereign states' democracies, and the systemic nature of the corruption. This case highlights the contradiction that the cleanest of countries according to corruption indicators, engage in some of the most lucrative deals, outside of their sovereign territories, and operationalised by large sums of money in stable currencies that they are able to offer to up-and-coming public officials in newly democratized countries.



[Figure 5.]

The above map shows the CPI in 1999's review of corruption levels in the countries involved in the South African arms deal. This deal was perceived as a South African corruption story, but to view it as simply that is to ignore the alarming actions of the involved Western states, specifically Britain and Sweden who both retained and continue to hold clean state status despite their malfeasance. According to the definition promoted by Transparency and the Bretton Woods, this story does not fit its definition. This bribe was massive, this corruption was not done to benefit a single individual or politician by lining their pockets, but rather to finance a political party led by an internationally recognised political giant, Nelson Mandela. This is a reality the

presiding definition and conceptualisation of corruption cannot account for nor explain. This systemic bribe was able to reassure and elevate a liberation movement turned political party, that it too can win elections and function as a political machine. This corruption was exported from the West to another playground in another part of the world. Cedric Robinson in “In Search of a Pan African Commonwealth” writes aptly, “Our rapacious hyenas are not blameless, but they did not organize the feast” (1996). While the actions of the South African government led by the ANC are not excusable, it would be inaccurate to assess them independent of the opportunity for corruption presented by Britain. Without Britain’s money or arms, there is no arms deal. Britain’s involvement in this arms deal should worry us for two reasons. Britain is still blameless and considered to be clean on the CPI score index, despite orchestrating one of the largest corrupt arms deals in modern history. They successfully bankrolled a political party in another sovereign state through an enticing bribe, money laundered by one of its largest banks. This kind of corruption cannot be explained by the linear and flawed definition of corruption as we know it. *Addressing the issue of political party financing*

The truth is that, from a rational perspective, one could argue that the African National Congress found itself in a tense predicament. They were a social movement that became a powerful political party, but were also given the responsibility to negotiate freedom and constitutional design with an apartheid National Party that was mostly pushed to revoke apartheid because of mounting pressures. However, the usage of these funds and abuse of state resources is an action that one could claim to be uncharacteristically like the ANC. However, when considering how this was an organisation without the money to function, it is less

surprising that the bribes from the \$11billion dollar deal were used to pay for the ANC headquarters, *Luthuli House*, and finance the 1999 elections.

Political parties, as organisations require money to function (Grigorescu 2006; Saffu 2014; Scarrow 2007). Some of the costs associated with the functioning of political parties include office costs (headquarters and local branches), staff wages, vehicles, communication devices, and marketing and campaign expenses (Saffu 2014). In order to cover these costs political parties seek funding in various ways which can be categorised into three types: (1) private/external/ indirect, (2) internal, and (3) public/ state subsidised/ direct (Williams 2000; Scarrow 2007). The least controversial type of political party funding is internal, as it is based on membership fees and party taxes paid by ordinary members and also by those who hold public office positions (Walecki 2014, 79). However, private and public funding have raised several debates and concerns. Private party funding has been associated with issues of agenda setting (Hopkins 2004; Walecki 2014; Williams 2000; Phillip 2001). This is problematic because political parties who take money from outside donors are more likely to be expected to reciprocate this gesture by promising a particular benefit or fulfilling the donors wishes. In turn, political parties abandon policy objectives in order to please their funders (Williams 2000; Kulish, Andriichenko and Reznik 2018). The ultimatum they are presented with is to agree and fulfil the wishes of the donors by engaging in corruption, or resisting and facing the possibility of closure. Thus, this bribe, whether justly taken or not, was not used to just benefit a single public official's private interests as argued by the generalized corruption definition, but rather to finance a political party.

Lalountas et.al write that “in many countries, money collected from corruption is used to finance political parties”, which aptly describes the use of the British bribe for financing the ANC. Southall explains that when the ANC transitioned from a liberation movement into a political party and furthermore a ruling party, it lost a lot of its prior funders who could not donate to a political party, the example he cites is the Swedish Government. As discussed previously, political parties require money to exist. The ANC, because of its size and branch presence nationwide, has a lot of expenses. Apparently, its 1999 budget was R300 million. Southall notes that in 2007 “a year in which there were neither general nor local elections – the ANC had to cover not only a bill of up to R7 million a month to cover the salaries of its staff employed in 53 regions, nine provinces and its head office, but also costs for premises, supplies, benefits, transport and so on” (Southall 285). In order to afford this, the ANC seeks both public and private funding.

The weakness of the political party funding legislation makes it easy for South African political parties to maintain a secrecy around their funding as they do not have to legally report their financials. The Public Funding of Represented Political Parties Act of 1997 allows for all political parties with National Assembly seats to receive a proportionally allocated amount of public funding. There are specific prohibitions as to what this money can be used for. Because of the parliamentary system, the decision about how to allocate this funding is effectively decided by the ANC. It is reported that “during financial 2006-07, for instance, the ANC received R49.3 million of the R74.1 million administered by the Political Parties Fund ” (Southall 286). Outside of this type of public funding, the ANC is able to finance itself through its business network. To demonstrate the way in which these monies do not come free, Southall includes data showing

that the ANC and opposition parties Democratic Alliance (DA), Inkatha Freedom Party (IFP), and the New National Party (NNP) received voluntarily disclosed private donations from AngloAmerican, AngloGold and their subsidiaries Kumba Resources and Anglo-Vall Mining as a way to lobby for government to redraft the black empowerment mining legislature. Because this is funding that most parties benefited from ahead of the 2004 elections, it has not been heatedly debated outside of a few media stories. However, a much more debated funding topic is that of the ANC's businesses. The ANC's first business, Batho Batho Trust which was started by President Mandela, former ANC SG and Deputy President Walter Sisulu, and Tokyo Sexwale the then Premier of Gauteng province. Batho Batho Trust was created to help foster economic sustainability for poorer communities, while its predecessor Thebe Investments was created as the party's investment account. Both are considered by critics to be a front for financing the party. It is said that Chancellor House Holdings, the ANC's investment arm launched in March of 2003 holds shares in companies associated with state-owned enterprises and other extractive industry related companies. Namely energy, mining and technology and innovation. One of the companies that pursued a joint-venture with Chancellor House is Renova Manganese Investments (RMI) which is controlled by a Russian oligarch. The new Political Party Funding Act of 2018, which was signed into law in early 2019 (Gov.za 2019), will make it less possible for parties, including the ANC to legally carry out such activities. It will then be up to parliamentarians to provision for ways to uphold the regulations and expectations of the new Act.

IV. Accountability and Consequences of this kind of corruption:

South Africa has 11 institutions that are mandated to counter-corruption, one of which is the Scorpions, formerly known as the Office for Serious Economic Offences. In February of 2000, the Scorpions opened a probe into the arms deal following the instructions of the auditor-general who categorised the SAP as *high risk*. Instructions based on the 1999 probe by Patricia de Lille, a Parliamentarian on behalf of concerned ANC MPs, to Judge Willem Heath. At the same time, Scopa, the standing committee on public accounts, opened its own probe with hearings in October 2000, concluding with a report submitted to Judge Heath. Scopa's ANC spokesperson was Andrew Feistein. Judge Heath, the then head of Special Investigating Unit of parliament approached president Thabo Mbeki, who was invariably involved in the deal, to begin an investigation into the arms deal however this request was denied by the president on national television. Thus, the pro-arms deal faction of the ANC successfully ended the possibility of a serious investigation into the arms deal.

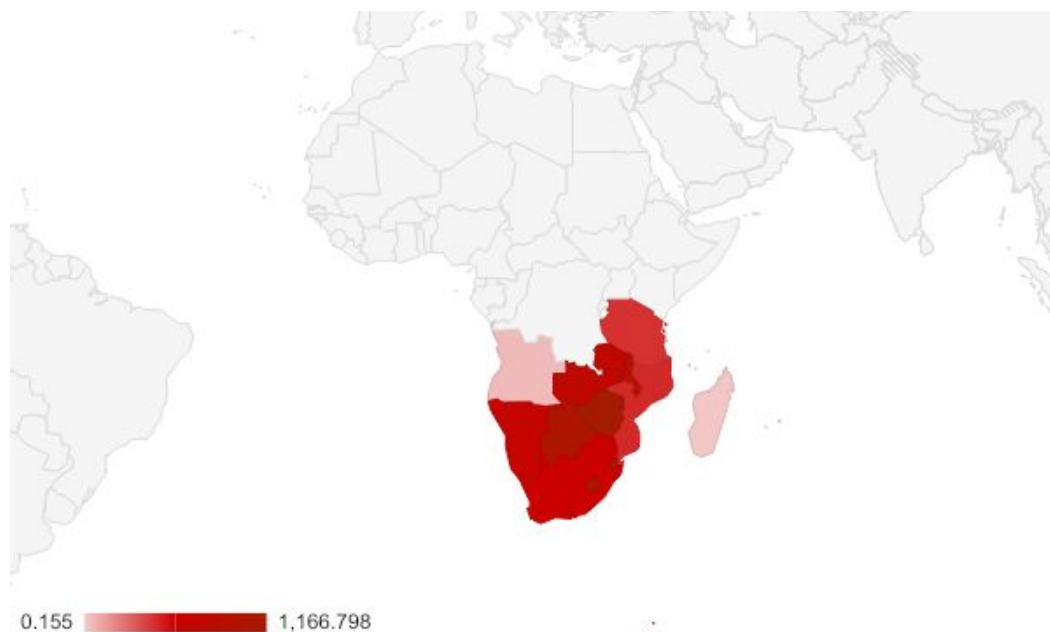
Considering that this deal took place in 1999, the consequences, investigations, and general concern have persisted for years. In September 2011, then President Jacob Zuma allowed for the creation of a commission into this arms deal. The president appointed Judge Willie Seriti to lead the investigation. The Seriti Commission began in August 2013, inviting various involved people to appear and offer testimonies. Including former President Thabo Mbeki, and critical office holding members of the ANC. The findings of the commission however, are notoriously unreliable. The judge deemed that there was no proof of impropriety in the deal and President Zuma took to national TV to state that the Commission found little evidence of corruption in this deal. He said;

“The evidence presented before the commission does not suggest that undue or improper influence played any role in the selections of the preferred bidders which ultimately entered into contracts with the government...The fact that some of the consultants knew or had personal contact with some of the senior politicians in the government of the day was cited as collaboration. The commission states that not a single iota of evidence was placed before it showing that any of the money received by any of consultants was paid to any of the decision makers let alone the members of the inter-ministerial committee or the final decision makers. Government was of the view that any findings pointing to wrongdoing should be handed over to law enforcement agencies for further actions. The commission does not make any recommendations. There are no findings,” (Saba 2016).

This conclusion to a four year long commission which cost millions of taxpayer Rands, exonerated anyone and everyone of wrongdoing, and supported the notion that these were necessary investments from which the country has benefited. While the investigation done by South African authorities concluded that no corruption took place in this deal, the British Serious Fraud Office, in their investigation, came to a different conclusion. A docet entered into the British House of Commons library on 2 March 2010, provides documentation for Members of Parliament on “bribery allegations and BAE Systems” (Jarrett and Taylor 2010). BAE Systems plead guilty that they did in fact pay a series of bribes in their major deals. They paid a \$400 million fine to the US Department of Justice for their illegal activities. Similarly, Saab in 2011 admitted that they too had paid hefty bribes to the South African government “in the form of bonuses and salaries” (News 24 Archives 2011). These admittances undermine the reputability of the Seriti Commission. The deal is littered with irregularities, a point that all investigations knew but ignored in their reports.

The arguments raised by civil society, irrespective of the fact that investigations found no impropriety, raise valid points about the socio-economic consequences of this deal. Economists Allied for Arms Reduction- South Africa (ECAAR-SA) is a collective supported by civil society namely trade unions, the church community, and NGOs that “filed a court application for nullification of the loan agreements that give effect to the transactions. It has done so as a class action suit in the public interest on behalf of poor people in South Africa in terms of Section 38 of the Constitution” (Crawford-Browne 335). This memorandum argued that the SAP is not in the spirit of the Defense White Paper as it undermines the safety and well-being of its people, and also misuses South Africa’s role in the continent to try and argue that this arsenal would be great and there was no foreseeable threat that could warrant South Africa to invest in this much armory. Furthermore, they argued that not only were the arms unnecessary, the offsets did not create the jobs they were intended too. Raising valuable points about the deal which ECAAR-SA argues was ‘surely unconstitutional’, the ECAAR-SA case was denied by the High Court because the court felt it was aimed at discrediting one individual, then Minister of Finance Trevor Manuel, as opposed to pointing out a bad decision on the part of the cabinet as a whole. However, if ECAAR-SA had won this case, it would have been monumental for African politics, but unsettling for international cooperation as the arms deal would have been declared unconstitutional and according to the Constitution which trumps international law, the payment would have been cancelled and the burden of repayment would fall on the European tax payer. The author probes, “Hopefully, Europeans might then ask why their governments are so heavily complicit in the arms trade’ (340). It is unfortunate, that despite the nefariousness of this deal, its existence is virtually undiscussed. The lesson of the arms deal lies in between the lines, where it

becomes clearer that this was a very cynical and vexed deal that was planned years before its execution, with ramifications beyond its completion. Although some people were imprisoned, some laws put into action, the avoidable HIV-AIDS deaths and persistence of poverty are two major public health devastations that could have been mitigated as planned in the White Defense Paper which promises that the new defence strategy of the country would champion a more all-encompassing notion of security.



[Figure 6. Distribution of HIV/AIDS deaths per 100,000, in the Southern African Development Community (SADC): Roser and Ritchie, 2004, downloaded as tables from Our World Data.]

The White Paper not only is undermined by its neglect of the notion of holistic security, but also that it missed the opportunity to rise up to the role of regional leader in providing ARVs not only for South Africans, but to the SADC region, including eSwatini which is landlocked by South Africa and had at this time 1137.46 deaths per 100,000 for a population of 1.095 million in 2004.

This point is included here not to suggest a causality, but to bring to light a moment in policy and government spending decision making where allocations of state funds could have aided in saving lives. Feinstein, Holden, and Pace state that for every 7.63 South African rands spent on the arms deal, only 1 rand was needed to supply 355 000 South Africans with the necessary ARVs.

Where should policy pivot to?

The South African arms deal is unprecedented in that the bribes paid as facilitation payments cost the suppliers more than what they would have earned in the long-run from the sales of the arms, however, it is not unique in methodology and implications. Such high-profile, and scandalous corruption events in international politics have called for various creations of international laws and conventions targeted at countering corruption. Especially if they are coupled with social and/or public health consequences.

The United States was the first international power to acknowledge the use of bribery as a vehicle to influence trade deals. In 1978, the *Foreign Corrupt Practices Act* was put into legislature and the first example of a law that criminalises foreign bribery (Vogl 1998). The reasons behind this decision vary from promotion of fairness in trade, to the US simply making sure that they would not be out-competed by European firms offering hefty bribes to credulous public officials in fragile governments. However, it is relevant that this Act placed pressure on international organisations to begin thinking seriously about the way in which foreign bribery impacts international trade. The OECD's *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, adopted in 1997, borrows some of its language and framework from the United States Act, making sure that fair play is instituted in the trade

between OECD members. However, despite the existence of this international instrument, corruption has been able to still permeate into trade as discussed earlier in this paper. Whilst no international law is able to escape Hurd's key concerns international organisations (obligations, compliance, and powers of enforcement), the biggest fault of international anti-corruption policy is its lack of effectiveness in ensuring compliance with its obligations. For example, all the central actors in the South African SAP are part of the 44 signatories of the OECD Anti-Bribery Convention, yet, were able to successfully carry out an \$11 billion deal.

International conventions follow similar structures, mimicking the United Nations charter in several ways. When it comes to compliance, they often expect the same commitment from member states, despite the organisation. The traditional structure includes member states who have ratified said convention actually putting it into the national legislature, followed by routine reports by member states showing their progress in said implementation, and for some bodies although quite contentious, inspections take place. The OECD's Anti-Bribery Convention follows the same structure as every state that has ratified the convention is expected to meet their obligations by firstly engaging in the thorough peer-review examination process, and then submit reports on the progress of the recommendation implementations. These country reports are open resources and can be accessed on the [OECD website](#).

It is important that the OECD be on top of such policies as its 36 member states, one accession, and five key partners compromise two thirds of world trade and 59% of world GDP (Magina 2019). While the OECD Anti-Bribery Convention is quite traditional in form, its approach to limiting corruption in public procurement and government spending is more normative. Public procurement, as demonstrated in the case study of the 1999 SAP is very

susceptible to corruption, and works hand in hand with bribery to make the deal more probable to succeed. It is a necessary yet high risk portion of the government because it controls the government's central economic activity, and is “a crucial pillar of strategic governance for public bodies and services delivery for any government” (Magina 2019). The OECD reports that public procurement constitutes roughly 57% of foreign bribery cases between 1999 and 2014. Paula Magina, Head of the Public Procurement Unit at the OECD believes that the best public procurement policy is one that moves from anti-corruption to integrity, emphasising that the new strategic approach to integrity focuses on the following caveats (Magina 2019);

- I. “Moving from distinct frameworks to a coherent integrity system.”
- II. “Supporting resilience to corruption through a risk based approach.”
- III. “Advocating a whole-of-government and whole-of-society approach.”
- IV. “Recognising integrity as a cornerstone of good governance and lever for trust.”

Thus, public procurement reform rests on a normative questioning about the approach to fostering better decision-making processes within governance. Magina explained that part of welcoming this new approach is making public officials aware that better accountability also means the possibility of having to resign from public office. By developing open source procurement tools to increase transparency in the procurement process, the OECD’s approach instils higher ethical standards for actors, and sets clearly defined rules about what is a misuse of public funding, a conflict of interest, and promotes civil society and media oversight. In addition to this, the OECD states that there should be a corruption risk management division set to control the potential areas where there are risks for unfair practices particularly between the pre-tender and tender stage. During the pre-tender phase, issues such as ambiguous contract details, criteria

manipulation, and intent to purchase verbose items should be flagged by such a division for posing potential risks. If either of these situations existed, the risk management division would have to call for the oversight of an independent body to assess. These are processes that could have lessened the ability of BAE/Saab and the SAG in 1999 from succeeding with such an unprecedented misuse of state resources. However, despite the events of the past, the OECD's renovated anti-corruption architecture provides a good example for global IGOs and powers to think more about the role of public integrity in limiting corruption risks, not just anti-corruption as a set of rules but as a code of conduct.

South Africa's attempts to counter-corruption:

As one of the OECD Convention signatories, South Africa has the obligation of adopting and implementing the convention into the national legislature. The Prevention and Combating of Corrupt Activities Act of 2004 (PCCAA) was initially written in 2002 and enacted in 2004. It is in this document that South African law acknowledges, for the first time, the notion of foreign bribery of public officials (Sibanda 2005). In several ways, the PCCAA borrows from the OECD Convention, and in other ways, South African policymakers have added their own stipulations.

Both legal instruments address the promising or offering of benefits to public officials, however, the PCCAA provides more detail than the OECD on what kinds of acts constitute this kind of unethical gratification citing the exchange of money, sexual gratification, and property (Sibanda 12). However, where they begin to differ is in the margins of definitions, which in turn are important for understanding attribution of punishment. For example, although the OECD's use of the term 'foreign public official' suggests an individual, the PCCAA includes the state as a foreign official, specifying that "indirect payment through an agent (or other

intermediaries/third parties) will likewise constitute the main offence of bribing a foreign public official” (13) However, political candidates or international organisations (IOs) are not covered by this definition, for both the OECD Convention and PCCAA. This is a controversial part of both documents. It is said that during the drafting of the OECD Convention, the writers debated and could not reach a consensus about including political parties and candidates because this could de-legitimise campaign funding. However, once could rebut this point to say that funding of political parties, although a legal practice, is a potentially dangerous and accessible place for bribery to be used.

To further complicate this, both instruments talk about intermediaries being punishable for their actions in corrupt business transactions, but what happens if (as in the case of SAP), it is the party of members of a political party who act as intermediaries for deals between a company or non-state entity and the government? Sibanda suggests that if the money stays with the party or candidate, and does not go to a specific public official then it is not a case of bribery. However, in one party states and dominant party governments it is quite difficult to draw the line between a member of the party and a public official. Another very grey area in these instruments is the distinction between facilitation payment, defined by Transparency International as “a small bribe” used to speed up/grease the process of a certain government actions, whilst a bribe (which the instruments punish individuals for) is defined as “the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust” (Transparency School, 2019). The OECD Convention has no clear standing on facilitation payments, but the PCCAA does not consider a facilitation payment to be as punishable as a bribe. Since the The OECD Convention gives parties the right to decide on

appropriate punishment for bribe paying. The PCAA thus says that appropriate punishments can include a fine or imprisonment of a maximum of 18 years (which can be done by High Court) and a fine or five year maximum imprisonment sentence (magistrates court) (Sibanda 2019). Thus, South African law has its own sovereignty in deciding on repuccutions for corrupt acts. In no way is the implementation of the OECD instrument into domestic law seamless nor perfect, however, it is a step in the right direction for South Africa in trying to control the flow of cross-border money.

Initially this research sought to answer the question “what role do global economic powers play in facilitating grand corruption in the developing countries?”, but in researching and writing, this has become a very unresolved question. The role of Western powers and their companies in corruption in the Global South and Middle East is that of a partnership. While these governments and companies, like British BAE and Swedish Saab, are able to offer grand amounts of bribes over to government officials, the government officials who collaborated with BAE and Saab in billing the South African government for bribes whilst taking out loans from Barclays Bank, reveals the way in which globalised corruption is only possible through a cynical kind of coalition. In some cases it is easy to believe that developing countries have been coerced into accepting foreign bribes, or that indeed in certain countries paying a bribe to a public official does expedite the process, but largely it takes two to tango. This is why, especially for the good of development and economic growth, having a balance between corporate anti-corruption sentiment and national anti-corruption in governance in instruments that govern domestically and internationally. The empirical data in democratisation studies is rich in its understanding of the link between effective democratic governance, democratic promotion, and democratic

maintenance through examples like Sweden and Norway. However, corruption studies, like this one, cast doubts on what can be deemed as a successful democracy. Perhaps, there needs to be a consideration that no country is a finished product, even those that score 100 on Transparency International's CPI. An overall need for the benefit of democratic maintenance globally, is a solution to the ineffectiveness and inefficiency of international law in holding countries to account.

V. Corruption in post-2010 South Africa

State Capture as a term and concept emerged from an observation made by World Bank researchers working on the Business Environment and Enterprise Performance Survey in 1999 (Hellmann et.al). They observed a pattern, particularly in East Europe, that within states transitioning from a planned to a market economy, institutions such as the legislature and executive are vulnerable to influence by outside business firms and/ or actors. The term came back into the mainstream in 2016 when then Public Prosecutor of South Africa, Professor Thuli Madonsela revealed that billions of South African Rands have been syphoned by the President, Jacob Zuma, and his associates, the Gupta family. This family consisting of Indian citizens and businessmen gained undue political influence to the extent of being able to hand-pick members of the cabinet. State capture as defined by Hellman and Kaufmann (2001) is “the efforts of firms to shape the laws, policies, and regulations of the state to their own advantage by providing illicit private gains to public officials” (31). While this is the first and almost seminal definition in the field, it is based in neoliberalism which as explained through the first case of the South African arms deal, is very much focused on the notion that public officials are inherently corrupt and corruption is a reflection of government weakness, largely ignoring factors such as globalisation

(Dassah 2018: 2). However, this thesis contends that state capture reveals aberrations in governance that are more complicated than the actions of individual public officials, but rather, the importance and fragility of institutions.

State Capture in theory

State Capture, the process through which outside actors influence government policies, is a problem for many democracies, and some have experimented with different types of political party funding as a way to avoid its appearance. State capture is traditionally conceptualised to the point in which the government and its institutions are no longer in control of the rules of the game. Instead, decisions around policy making and governance are made with the wishes of the selectorate (in this case, the captors) in mind, and not the electorate. After a kleptocracy, state capture is the highest level of grand, political corruption.

Defining State Capture

The definition of state capture that is most widely accepted was created by Hellman and Kaufmann (2001) who describe it as “the efforts of firms to shape the laws, policies, and regulations of the state to their own advantage by providing illicit private gains to public officials” (31). This behaviour affords captor firms the ability to change the rules of the game. Hellman and Kaufmann (2001) centre their definition on the influence of captors on lawmaking, whilst scholars like Fazekas and Toth (2016) view state capture as being more centered around the abuse of public spending. However, state capture is a blend of both objectives. On the one hand it is facilitated by the ability of outside actors to influence laws but also their capability to affect the redistribution of state resources and wealth. Hence state capture is a product of both a weak control of corruption and government ineffectiveness (Innes 2014; Martini 2014). Capture

is not a form of corruption, but a state of efficiency reached through corrupt behaviours, commonly referred to as petty corruption. Examples of petty corruption include payments for election campaigns, vote-buying practices, bribery, and illegal donations to political parties (Gherghina and Volintiru 2015; Martini 2014; and Mwangi 2008). Stoyanov, who writes on state capture in post-communist countries, is in opposition to most state capture scholars who write on it as if it is a form of corruption, not a consequence of corruption. For Stoyanov, the term state capture is too general of a label. He argues that state capture is “used as a label for too many different negative governance scenarios” despite each state having different and “various cases of bad governance” (2018, 169). However, his type of description is more in line with that of Innes (2014) and Martini (2014) because Stoyanov (2018) views state capture as a condition achieved through the use of corrupt mechanisms, or petty corruption as explained earlier. In his research, Stoyanov finds that there is a relationship between state capture and the challenges countries face in the transition to democracy.

As state capture is the condition in which the political system and/or its institutions have been captured by outside actors for the purpose of policy manipulation and misuse of state resources, there are several features that must exist in a society to allow for this behaviour. The literature introduces several independent variables that lead to state capture. The most agreed upon feature of state capture is that of the transitioning state (Hellman and Kaufmann 2001; Grzymala-Busse 2003; Stoyanov 2018; Hellman, Geraint and Kaufmann 2000; Walecki 2014). An incomplete process of democratisation leads to vulnerabilities in governance structures. The vulnerability of the system is where the argument that state capture is a reflection of bad governance derives from, because weaker institutional quality promotes opportunities for capture

(Hellman, Geriant, Kaufmann 2000). Grzymala-Busse specifically identifies the bureaucracy as a hotspot for state capture, arguing that it is hard to establish an independent bureaucracy where there has not been one before and as it expands during the process of democratisation, it becomes more vulnerable to capture (2003, 1128). In contrast, Fazekas and Toth (2016) consider the public procurement sector to be a dangerous zone because in it are the largest portions of public spending and access to public budgets (321). This assumption compliments the thinking of Hellman and Kaufmann (2001) who consider high-capture economies to be those who engage in significant foreign direct investment, especially with foreign investors who have “local partners and domestic headquarters” (33).

Alternative International Relations Scholarship views

Scholarship based in the neo-liberal thinking is highly criticised for its explanations of state capture. The neoliberal belief is that because public officials are inherently corrupt in an economic system that will always self-regulate due to supply and demand, there will always be rent for policy makers to seek (Dassah 2018). New Institutional Economists (NIEs) write in rebuttal to neo-liberal thinking, arguing that there needs to be a greater focus on the value and importance of strong state institutions and their ability to reduce “the uncertainties that exist in market transactions” (Dassah 2018, Srouji 2005). NIEs observe that state capture takes place in states where institutions are either “too weak or too much in their lack of autonomy to enforce such rules or guarantee such rights” (Dassah 2018: 15).

In comparison to scholars such as Hellman and Kaufmann, and other scholars not discussed in this particular work (Bardhan, Huggard et.al, Evans), NIEs have a different set of criteria for strong states. According to NIEs, a strong state is one that has a small government

with a professional bureaucracy that is independent to a strong private sector presence. This government should be able to enforce contractual and property rights but be open to negotiation with key interest groups. A strong state is one that is able to commit to a particular development policy (Dassah 2018: 15). The NIE view of a strong state is not revolutionary, but it does focus more on the nature of relationships necessary to make government official.

This is an opinion almost similarly shared by structural Marxists who acknowledge that policy making is a series of power relationships to lead to certain outcomes, hopefully beneficial for the people. For structural Marxists, however, policy making is the relationship between power holding competing elites in institutions that were either birthed from past social and political struggles for power, or are being used to preserve and reinforce current struggles for power (Dassah 2018, Srouji 2005). Structural Marxists also see the state as being in a constant state of capture as there is always a dominant class, group, or actor that is yielding undue power on state functions. Srouji who writes on state capture in the context of Lebanon says that, “the term ‘capture’ should be reserved for cases where the state loses its capacity to formulate longer-term development goals or an ‘encompassing’ development vision, and when its policies are so manipulated to generate very negative repercussions for major sectors of the economy and society” (Srouji 2005: 18). It is based on Srouji’s understanding of state capture that this paper will assess the South African state capture.

Significance of state capture

The ancient politician Cicero observed that, “Often the most powerful men in a state can pass down a street unrecognised, while the most famous bask in fetid impotence” (Harris 2015). In Eastern European regions, the individuals Cicero described are known as oligarchs, in Japan

members of ‘the Iron Triangle’, and more broadly, the Grey Cardinals. These are political and business influencers, with vested interest, and access to potentially insuperable power. In 2016, the Republic of South Africa, saw the Gupta family from India emerge as the very men Cicero feared- virtually unrecognizable, but unbelievably powerful. The Guptas, once just three citizens of India, brothers, and sons of a local Indian shopkeeper found through their connection to Jacob Zuma, the then president of the ANC and South Africa, an avenue to become one of the richest families in South Africa and single-handedly one of the most influential decision-makers in South African politics (Onishi and Gebrekidan 2018). Through corrupt networks, a multitude of shell companies, and direct access to public officials at the highest level of the executive branch, the Gupta’s managed to steal, according to the Financial Times, billions of dollars. Public Protector Thuli Madonsela’s inquiry into state capture was sparked by the then Deputy Minister of Finance, Mcebisi Jonas’ claim that President Jacob Zuma and the Gupta Family offered him the position of Minister of Finance along with a R600 million bribe (February 2018, Momokhere 2018, Madonsela 2019). These events took place prior to the December 9, 2015 cabinet reshuffling. Jonas did not accept the position nor the bribe, and in April 2017, the cabinet was reshuffled again to the request of the Guptas and President Zuma, and without the knowledge of the ANC. While the story of the Guptas is not unique, it fits into our understanding of globalised corruption with the motive of rent-seeking and wealth accumulation, the Gupta and Zuma state capture, a relationship colloquialized by South Africans as ‘*Zuptas*’ (*Zuma + Gupta*), brings to the surface some concerning governance issues for democracies like South Africa.

Globalization

While the Zupta case study as a showing of grand political corruption is simpler to comprehend and situate in the existing empirical scholarship, it is still odd in that it contradicts the idea that global economic powers, corporations and agents originate from Western countries. This Indian family was able to loot an emerging market, infiltrate its political decision making processes to the extent of being able to hand-pick cabinet members without towing the party line (Shai, Dassah 2018, February 2018, Momokhere 2018, Madonsela 2019). However, one would not typically think of agents besides the West and China being involved in corruption in an African state.

State capture brings into question financial openness, the market strategy promoted by neo-liberal institutions like the IMF and World Bank. Is it genuinely beneficial for low to middle income states? Does it foster an environment from which corruption and exploitation can take place. Trade openness policies were pitched to developing countries as a quick fix and the most effective way to achieve export-led economic growth. However, these policies have created more opportunities for grand corruption. Lalountas et.al (2011) consider that perhaps financial openness is a condition for grand corruption in a globalized international community. Through this openness, economic powers, whether formalised with nation state legitimacy or a band of brothers, have been able to engage in high level corruption anywhere in the world and with almost absolute impunity. This is done through the guise of fair and free international trade with the promise of development and economic growth. The truth is, the benefits of this liberalised trade have not been even or evenly distributed for all countries. And whilst some public officials have benefited financially from the corruption that exists within international trade, the

consequences have been devastating for people in developing countries. Thus, the way in which financial openness can devastate the economy by leaving it vulnerable to undue influence from actors external to the state, brings into question whether in fact it is an effective macroeconomic policy to foster development. However, this is a conversation for another day.

Business and Government

For now, my focus remains in understanding how problematic the relationship between government and business can be in limiting democratic consolidation and economic growth. The relationship between the public and private sector is one that if exercised with propriety can foster economic growth in developing countries but if ill-regulated can give way for “corrupt connections” to arise (Gherghina and Volintiru 2017). As democracy continues to mature in South Africa, business should be interacting with the government in a non-coercive and non-influential manner. There is a necessity for state-owned enterprises to be run with transparency, especially with regards to selection of directors. During state capture, one of the primary reasons why the Zuptas made the decision to reshuffle the cabinet in April 2017, was to allow Zuma full access to the National Treasury without the gatekeeping of Pravin Gordhan, a critic of corruption (February 2018, Madonsela 2019, Momokhere 2018). With full access to the treasury, Zuma was able to work with Vladimir Putin on a \$76bn nuclear plant deal (Cotterill 2017), gained greater control over South Africa’s State Owned Enterprises (SOEs) such as Eskom (electricity), Transnet (transport and pipelines), Sasol (petroleum refinery) and South African Airways (transport). These SOEs are important to economic activity and government functionality, however, if poorly mismanaged are successful and appropriate targets for capture.

Weak Institutions and Weak Laws

The argument of weak institutions has been used as both the problem and the solution to good governance. The irony of the South African state capture case is that on paper, South Africa has the institutions and structures to combat corruption of this nature, however, the space between policy creation, implementation, and then enforcement is where commitment to anti-corruption falls through the cracks. Following the Public Protector's report, the following procedures were taken by the state: "A Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State; a Commission of Inquiry into the South African Revenue Services (SARS); and four separate inquiries into state capture undertaken by the following parliamentary portfolio committees: Public Enterprises, Home Affairs, Mineral Resources, and Transport" (Madonsela 2019). While these were effective in bringing the actors to the stand to be held accountable for their actions, there has been no legal undertaking as the commission continues on since its inception in August of 2018. President Ramaphosa, who assumed office after President Zuma's successful vote of no confidence via secret ballot in February 2018, has put great emphasis on anti-corruption as a part of his executive directives. In his state of the nation address, he explained that;

"After years of state capture, corruption and mismanagement, we are working to ensure that all SOEs are able to fulfil their developmental mandate and be financially sustainable. In consultation with the Presidential SOE Council, we will undertake a process of rationalisation of our state owned enterprises and ensure that they serve strategic economic or developmental purposes. The extent of capture, corruption and mismanagement in SOEs is best demonstrated at South Africans Airways, which was placed in business rescue late last year. We will not let up in the fight against corruption and state capture. We need to work together to root out corruption and strengthen the rule of law. We therefore welcome the work of the joint government and civil society working group charged with developing a national anti-corruption strategy and implementation plan, which is close to completion of this phase of

its work. We plan to launch the strategy by mid-year. The Zondo Commission of Inquiry into State Capture continues with its critical work with the full support of government and other institutions” (Ramaphosa 2020).

Ramaphosa’s efforts are valiant and promising, however, one must remain skeptical as this was the same messaging after the Seriti Commission of Inquiry into the 1999 arms deal. These are effective protocols in setting public integrity standards, however, they do not go as far as to strengthen institutions to prevent another arms deal or state capture. The strength of the institutions thus, is not in its ability to increase the functions of government but prevent government from mass exploitation.

VI. Conclusion

State capture is not a new phenomenon in South Africa. The South African economy has been captured for centuries by business, informally, colonially, oppressively, and globally. The real issue that exists with this corruption business is that it derails the government from meeting their development expectations and bettering the state for the poor. However, state capture is a different case in comparison to the arms deal of 1999. While they both reveal truths about the grand corruption, they are distinctly different in their contributions to our understanding of political corruption. The arms deal challenges the conventional thinking of leading international relations theorists and organisations in three ways. It begins by undermining the accepted notion that corruption is done for private and individual gain of public officials by showing a case in which a large, systemic bribe was used not to simply line the pockets of officials, but to bankroll a major dominant political party that was financially in-equipped to govern a democracy. Secondly, the SAP highlights the problematic involvement of economically advanced Western nation states in the sovereign decision making processes of developing countries. Particularly,

the involvement of Britain in a former colony. Britain's role in the arms deal is a problematic one from an international relations perspective too as since 1999 it is still perceived and treated as being a highly clean and non-corrupt actor, while the South African corruption perception was impacted by the corruption of this deal. This unfair assessment misses the fact that without the British, there would be no arms deal and one billion dollar bribe, after all trade is a supply and demand dynamic. Lastly, the case study, in unequivocal ways, speaks to how concerning it is that foreign states and companies are using procurement sectors particularly for the military, to promote democracy by capturing political parties and leadership. This behaviour most negatively and severely impacts the development prospects of the developing country, taking away resources that are meant to be allocated for development projects. The British government through its SOE, the BAE, gave the most important political party in South Africa a billion dollar bribe which was re-paid through a loan taken out of the British Barclays Bank, and then billed to the South African government and essentially the people. This is not a standard corruption deal as imagined by neo-liberal organisations and thinkers, instead it is a massive warning about the ways in which development can be derailed, state resources can be abused, and money can travel, all in the name of democratic promotion.

The Zupta state capture is not the same case. It fits, almost perfectly, into neo-liberal understandings of corruption. While the scale of state finances looted and executive functions infiltrated might be surprising, it is a conventional corruption deal. However, it shows how important proper readdressing of policy priorities and strengthening of institutions is. It foreshadows the kind of corruption that is possible if silent, out of the radar and specialised corruption like the SAP, goes undetected and unaddressed. By missing the opportunity to reform

state policies and build-up institutions after the arms deal, the South African system remained very vulnerable to mass exploitation and grand corruption in the way that organisations like Transparency International conceptualize. It is essential for nation-building, that errors of the past be confronted, institutions be redesigned and strengthened, and markets be protected, in order to protect developing countries from experiencing two expensive and corrosive corruption moments in the short span of 17 years. But perhaps, the most simple way to begin fighting corruption is by redefining it and expanding our understanding of what corruption really looks like in a globalised world.

Future Research

For South Africa, it is apparent that the economy and government function as a permissive environment for corruption. Future research will entail thinking very seriously about how to strengthen democratic institutions in a highly globalised international community. Specifically, understanding foreign control of the economy as a feature of South Africa's history which continues to affect state capacity today. Such research would encompass a study of South Africa's economy, beginning with colonialism, apartheid, neo-colonial (South Africans arms deal of 1999), and open-market exploitation (State Capture).

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