

Counting the covert

Using data to understand
corruption in South Africa

David Bruce



Contents

Executive summary	1
Chapter 1: Introduction	5
Defining corruption.....	6
Chapter 2: Examples of reporting on corruption in South Africa	9
Department of Public Service and Administration Anti-corruption Strategy, 2002	9
Public Service Commission (PSC) reports	10
Corruption Watch annual reports.....	12
Summary	12
Chapter 3: Major manifestations of corruption	15
Procurement corruption	15
<i>Procurement, collusive bidding and the question of private sector corruption</i>	18
Other bribery and extortion (administrative)	21
Misappropriation, embezzlement, fraud or theft.....	23
Nepotism in employment and promotions	25
At the boundaries of corruption: other mismanagement or abuses of official resources	26
Major manifestations of corruption: summary	27
Chapter 4: Similarities and differences among the categories	29
Collusion by government officials vs lone perpetrators	29
Are private sector or other civilian role-players always involved?	30
Credit corruption	31
Bribery, extortion and debit corruption.....	32
Corruption victims and witnesses: direct and third-party victimisation	34
Repeat offending and victimisation.....	36
Under what circumstances do acts of corruption become visible?	37
Chapter 5: Interpreting currently available data on corruption	41
Data from victimisation surveys on bribery.....	41
South African Police Service crime statistics and other criminal justice data	46
Special Investigating Unit data	49
Data from government departments on disciplinary cases.....	52
Data from PSC reports on cases reported to the National Anti-Corruption Hotline.....	53
Chapter 6: Conclusion	55
Notes	59

Abbreviations and acronyms

ANC	African National Congress
DOT	Department of Transport
DPSA	Department of Public Service and Administration
JCPS	Justice, Crime Prevention and Security
NACH	National Anti-Corruption Hotline
NPA	National Prosecuting Authority
NVCS	National Victims of Crime Survey
POCA	Prevention of Organised Crime Act
PRECCA	Prevention and Combating of Corrupt Activities Act
PSC	Public Service Commission
RDP	Reconstruction and Development Programme
SAPS	South African Police Service
SIU	Special Investigating Unit
TI	Transparency International

Executive summary

Can we quantify corruption or authoritatively comment on trends in corruption in South Africa? How should we assess quantitative data emerging from criminal justice agencies or other investigative bodies, anti-corruption hotlines, or corruption surveys? How is this data meaningful and helpful in understanding the nature and extent of corruption in South Africa?

In recent years concern about corruption has increased in South Africa. But although it is widely discussed there is often a lack of specificity when it is discussed. To address this problem a greater degree of precision is needed when corruption is reported on or analysed. For instance, greater clarity is needed on the precise meaning of the various forms of corruption. Is bribery different from procurement corruption or nepotism in the employment domain? When developing strategies to address corruption, should we assume that corrupt actions generally involve two discrete parties? Does corruption inevitably involve role-players from the private sector? Related to this, is it meaningful to talk about private sector corruption? What should be made of surveys that claim to quantify overall levels of bribery or levels of exposure to corruption by people accessing services from government departments? Should data from surveys be regarded as a reliable guide to overall levels of corruption?

This monograph aims to engage with questions such as these. In the first part it provides examples of reports on corruption by government and civil society organisations. These illustrate that different agencies consistently apply different approaches to classifying forms of corruption, while reports providing quantitative data consistently fail to explain the approach they have used to differentiate forms of corruption from one another. In addition, anomalies are often present in the labelling of forms of corruption, resulting in the data provided in these reports becoming confusing.

A preliminary objective of this monograph is to provide a more clearly articulated system for labelling and differentiating the key visible manifestations of corruption in South Africa. The assumption is that a more clearly defined system of classifying acts of corruption will support greater analytical clarity in comparing these acts. Defining corruption as 'the abuse of public position for private gain', the second part of the monograph attempts to provide such a system to categorise manifestations of public sector corruption. Five primary categories and 14 associated subcategories are defined. The following five forms of corruption and their subcategories are then described and discussed:

- Procurement corruption
- Other bribery and extortion
- Misappropriation, embezzlement, fraud or theft
- Nepotism in appointments and promotions
- Other mismanagement or abuse of state resources (sometimes corrupt)

The manifestations are differentiated from one another in terms of the practices or transactions that they involve. The discussion of these categories also identifies overlaps between various categories and clarifies how questions of classification are addressed when such overlaps occur. An important point is that one of the subcategories of procurement corruption also involves bribery. Therefore the analysis of bribery applies to both transactions in the 'other bribery and extortion' category and those in the 'bribery' subcategory of procurement corruption. A key focus of this section is also on the meaning of the term 'private sector corruption'. The interpretation of this term is discussed and the monograph's focus on public sector corruption is clarified.

The third section uses the system of categorisation presented in the second section as the basis for discussing similarities and differences among the various categories. Acts of corruption committed by single perpetrators acting in secrecy may be differentiated from a wide number of other acts of corruption that involve multiple role-players. These may be government officials who are cooperating with each other, but may involve officials colluding with civilians. However, many acts that fall into the 'misappropriation, embezzlement, fraud or theft' category would not conform to these generalisations either because they involve individual perpetrators or because they do not involve cooperation with civilians. Acts in the 'other mismanagement or abuse of state resources' category also often do not involve civilian accomplices.

The third section also introduces the concepts of credit and debit corruption, which are critical for analysing the issues that the monograph is concerned with. Whether they involve collusion between government officials or government officials and civilians, corrupt practices are generally credit corruption. This means that the parties who are directly involved view the corrupt act as beneficial to them.

Key questions reflected on in this section are (1) to what degree do corrupt transactions have discrete and clearly identifiable victims and (2) when are these victims direct participants in the corrupt transaction? In some situations no individuals are direct victims of corruption. This applies, for instance, when the costs of corruption are borne by the taxpayer. However, in some cases of procurement corruption and nepotism, where a supposedly competitive process is decided through corruption and in acts of 'misappropriation, embezzlement, fraud or theft' there may be people (or companies) who can be regarded as victims in that they are specifically disadvantaged by the corrupt transaction, although they are not direct participants in and therefore witnesses to that transaction. Such people are referred to as 'third-party victims', although this does not imply that they are not victims, but that they are not directly exposed to the corrupt act. However, because they are not direct participants they may not be aware that the corrupt transaction has taken place. The degree to which they are conscious of having been disadvantaged, and therefore of being victims, will depend on whether the malfeasance has been exposed or whether they suspect that corruption was involved.

It is therefore only in situations of debit corruption that one of the participants in the corrupt transaction suffers adverse consequences from it. This person is therefore simultaneously both a participant and a victim. While credit corruption includes a wide range of corrupt practices, debit corruption generally involve acts of bribery that include some element of extortion (including in procurement and ‘other bribery’ situations). The fact that acts of corruption sometimes involve repeat victimisation is also important in understanding the prevalence of corruption. However, it should be borne in mind that some acts of this kind take place in a grey area between debit and credit corruption in that victims experience the extraction of bribes as oppressive, but simultaneously benefit from it, such as by being able to continue to drive vehicles that are not roadworthy or escape deportation despite being in the country illegally.

Beyond acts of bribery that constitute debit corruption, therefore, it needs to be acknowledged that many corrupt transactions remain invisible except to those who benefit from them.

However, apart from debit corruption, where there is a victim who is disadvantaged by the corrupt transactions, other factors are linked to acts of corruption becoming visible to law enforcement agencies or the public.

It is therefore only in situations of debit corruption that one of the participants in the corrupt transaction suffers adverse consequences from it

This issue informs the discussion in the fourth section on current data on corruption in South Africa. This includes data from victimisation and other surveys, criminal justice agencies, the Special Investigating Unit (SIU), disciplinary data from government departments, and data provided in Public Service Commission reports. The section discusses whether and to what degree the data presented in these reports helps us to understand the prevalence and nature of corruption.

The distinction between debit and credit corruption is generally not acknowledged in reports on victimisation or other surveys of people’s experiences of bribery. However, it seems likely that there are consistent biases in the data generated by these surveys and that survey respondents who are asked to pay bribes are more likely to acknowledge having received these requests than those who offered them. It is therefore likely that these surveys may largely reflect debit corruption rather than credit corruption. There is therefore a need not only for consistent methodological rigour in carrying out these surveys, but also for awareness of the likelihood of biases of this kind when interpreting the information emerging from them. Nevertheless, it seems that the willingness to admit the payment of bribes is not necessarily restricted to victims of debit corruption. However, the degree to which these kinds of surveys may be representative of both debit and credit bribery is unclear.

Efforts to understand bribery in South Africa might therefore benefit from the use of dedicated general-population corruption surveys and surveys focusing on groups, likely to have been exposed to corruption, such as business people, specific categories of public servants, prisoners, immigrants, and people making use of the services of customs and other officials at border posts. However, these surveys should only be regarded as reliable sources of information on levels of and trends in bribery if they are methodologically rigorous. Furthermore, they are probably mainly a source of information on debit corruption. They may also be useful if they acknowledge that bribery in some service areas involves very high levels of repeat victimisation, as well as repeat offending by many perpetrators. Repeat offending may also be a feature of many forms of corruption that are not susceptible to analysis through survey research.

Certain types of corruption can be exposed by forensic methods, with data from the SIU, the only agency in the current South African multi-agency system with a dedicated focus on corruption, potentially serving as a rich source of information on this kind of corruption. However, data generated through forensic investigations cannot be assumed to be representative and may disproportionately represent forms of corruption that are easily uncovered by forensic methods. More generally, corruption in the 'misappropriation or embezzlement, fraud or theft category', that involves high-volume repeat offending, is most likely to be exposed. Linked to this, very high numbers of cases in this category, particularly those involving occasional or single instances of offending, are likely never to be detected. Data from bodies such as the SIU is also shaped by the resources available to the agency and by tactical decisions on how to focus investigations. Although in some circumstances this data might indicate changing levels of certain forms of corruption, it should be used with caution for purposes of quantifying corruption. Equally, cases identified by bodies such as the SIU do not always involve government officials, even if they do involve the defrauding of or theft from government agencies.

In the concluding section the monograph uses this analysis to reflect on the quantification of corruption in South Africa. It suggests that bribery in the form of debit corruption is quantifiable and that more intensive use of methodologically rigorous survey research is needed to quantify this phenomenon. Other data, especially from the SIU, and data on whistleblowing may also increase our understanding of corruption, although it should not be treated as representative.

Other data sources such as South African Police Service statistics should largely be disregarded as a source of data on corruption. Apart from the general question of which offence categories should be used as a source of information, using this data to understand corruption trends presents other problems, including the fact that the data does not distinguish crimes involving government officials from those that do not.

Recently the government has claimed to be strengthening efforts to address corruption. Corruption was also a key focus in the manifestos of virtually all of the main parties contesting the 2014 elections, suggesting that there is widespread support for the idea that the problem needs to be addressed more vigorously. The question then arises as to whether increased government and other resources are resulting in lower levels of corruption. Therefore, more in-depth research on these questions may well be supported.

However, any research to measure levels of corruption would have to be sensitive to its multifaceted nature. As this monograph argues, mainly debit corruption can be quantified by survey research. Dedicated general population surveys and more focused surveys that use rigorous methods could assess levels of and trends in certain types of bribery.

However, it cannot be assumed that trends in one form of corruption reflect trends in others. Intensified control may focus on certain forms of corruption, while reduction in corruption that is easier to detect and control may result in more sophisticated corruption and increases in less detectable forms.

The monograph therefore aims to provide a clearer framework for the analytical discussion of corruption, and particularly its quantification, in South Africa. It emphasises that trends in and levels of corruption will be better understood by using an approach in which forms of corruption are defined and differentiated from each other in an analytically clearer way.

Chapter 1

Introduction

Can we quantify corruption or identify corruption trends in South Africa? How should we assess quantitative data emerging from criminal justice agencies or other investigative bodies, anti-corruption hotlines, or surveys of one kind or another? In what way – if at all – does this data help us to understand the nature and extent of corruption in the country?

In recent years concern over corruption has increased in South Africa. Corruption is the focus of media stories, pronouncements by political leaders, political party manifestos, policy documents and new laws, and academic and other analytical papers. Data on corruption is also given in reports on surveys that evaluate perceptions of corruption or ask people about their exposure to aspects of the problem.

However, this discussion often lacks specificity, while corruption is discussed as if it were a uniform phenomenon. Under the broad topic of ‘corruption’ a specific example of the problem is often discussed, implying that this reflects the major manifestation of the problem or encapsulates all other forms of it. Questions on participation in corruption or the impact or costs of corruption are discussed, but primarily in relation to only one of the manifestations of the problem. It often seems to be assumed that a common understanding exists of what is being discussed.

Addressing the problem of corruption in South Africa requires a greater degree of precision and specificity, particularly when corruption is reported on or analysed. For instance, greater clarity is needed when talking about different forms of corruption. Is bribery different from procurement corruption or nepotism? When developing strategies to address corruption, should we assume that corrupt actions generally involve two different parties? Does corruption always involve role-players from the private sector and, related to this, is it meaningful to talk about private sector corruption? What should be made of surveys on corruption that claim to quantify overall levels of bribery or levels of exposure to corruption by people accessing government services? Is data from surveys a reliable guide to overall levels of bribery or other aspects of corruption?

This monograph aims to deepen the analytical discussion of corruption by engaging with questions such as these. This discussion has four parts.

- The first part provides examples of reports from government and civil society organisations that engage with corruption. These illustrate that organisations apply different approaches to classifying forms or manifestations of corruption. Reports providing quantitative data on corruption

do not explain the way in which they have differentiated forms of corruption from one another. In addition, anomalies often appear in the labelling of forms of corruption, resulting in the data provided in these reports becoming confusing.

- Defining corruption as ‘the abuse of public position for private gain’, the monograph then provides a system for categorising manifestations¹ of public sector corruption. The intention is not to provide a definitive system to classify acts of corruption, but rather to clearly differentiate the various categories of corruption from one another and, in particular, acknowledge overlaps between different categories and clarify how classification is addressed when such overlaps occur. The first objective of this monograph, therefore, is to provide a clearer system for labelling the key manifestations of corruption in South Africa and differentiating them from one another. The assumption is that such a system will provide greater analytical clarity in the analysis of corruption. A key focus of this section is also on the meaning of the term ‘private sector corruption’.
- The third section uses this categorisation system as the basis for discussing similarities and differences among the various categories. Acts of corruption committed by single perpetrators acting in secrecy can be differentiated from other acts of corruption that involve multiple role-players. These may involve government officials cooperating with one another, but may also involve officials colluding with civilians. The distinction between credit corruption and debit corruption² introduced in this section is critical for the analysis of the questions that the monograph deals with. A key question is to what degree corrupt transactions have discrete and clearly identifiable victims. Furthermore, when – if at all – are these victims direct participants in corrupt transactions? And if there is no victim, what other factors allow acts of corruption to become visible to law enforcement agencies or the public?
- The preceding sections inform the discussion in the fourth section on current data on corruption in South Africa. This includes data from victimisation and other surveys, criminal justice agencies, the Special Investigating Unit (SIU), disciplinary data from government departments, and data provided in Public Service Commission (PSC) reports. The section discusses whether and to what degree the data presented in these reports helps our understanding of the prevalence and nature of corruption.

Based on this analysis, the concluding section focuses on the quantification of corruption in South Africa. It suggests that primarily bribery that constitutes debit corruption can be quantified. The more intensive use of methodologically rigorous survey research would help to quantify this phenomenon. Other data, especially from the SIU, and data on whistleblowing may also enrich our understanding of corruption, although it should not be seen as representative.

The monograph therefore aims to provide a clearer framework for the analysis of corruption, and particularly its quantification, in South Africa. Trends and levels of corruption may be better assessed if forms of corruption are more clearly defined and differentiated from one another.

Defining corruption

The widely used definition of corruption as ‘the abuse of public position for private gain’³ is used as the point of departure for this monograph. This definition might be regarded as a definition of public sector corruption (although questions arise as to whether the term ‘private sector corruption’ is a useful one⁴). If this definition is used it implies that corruption is not restricted to offences under the Prevention and Combating of Corrupt Activities Act (PRECCA).⁵ By implication it includes other

criminal offences, including fraud, theft⁶ and others, as well as acts such nepotism that do not necessarily constitute criminal offences.

Although the definition is widely used, this is not to say that it does not raise questions as to how to interpret it⁷ or that it cannot be critiqued or improved.⁸ As is frequently the case with definitions, in this one there is a core area of acts and behaviour to which the definition can clearly be applied. There are also other forms of conduct whose inclusion under the definition is debatable, such as abuse that goes beyond overt violations of the law. Other questions include to what degree gain from corruption may not be financial or material and whether it may extend beyond personal gain.⁹

For instance, it has been asserted that corruption is used to provide funding to the African National Congress (ANC) or other organisations.¹⁰ Some might argue that if this is to be regarded as corruption, then the definition of gain cannot be restricted to private gain and would need to be redefined. The definition of corruption as ‘the abuse of public position for private or organisational gain’ would be more accurate if transactions like these are classified as corrupt. The approach taken in this monograph is that using state procurement transactions to advantage the ANC or any other organisation is a form of private gain. Private gain should therefore not be equated with individual gain and includes gain by a group or organisation. Corruption therefore refers to any instance where a public position is abused to advance the interests of any person or entity.

The key point here, however, is that although this monograph attempts to provide greater analytical clarity, it is not intended to be highly legalistic or technical in nature. It focuses on forms of conduct that are widely regarded as corrupt and with developing a framework for analysing them that is conceptually more clearly defined. Nevertheless, as illustrated below, it accepts that grey areas will be encountered in efforts to differentiate forms of corruption from one another.

Chapter 2

Examples of reporting on corruption in South Africa

This section examines how various reports on corruption in South Africa differentiate among forms or manifestations of corruption.

Department of Public Service and Administration Anti-corruption Strategy, 2002

The earliest of the reports discussed here is the Public Service Anti-Corruption Strategy published by the Department of Public Service and Administration (DPSA) in January 2002.¹¹ The report provides the following list of forms or manifestations of corruption:¹²

- Bribery
- Embezzlement
- Fraud
- Extortion
- Abuse of power
- Conflict of interest
- Insider trading/abuse of privileged information
- Favouritism
- Nepotism

In the DPSA strategy document an explanation and illustrative example are provided for each of these terms, indicating how they are to be applied. While the list is helpful in some ways, it contains anomalies. One of these relates to the term ‘abuse of power’. As already indicated, a widely used definition of corruption – one used this monograph – refers to the ‘abuse of public position for gain’. The abuse of power or public position is therefore regarded as a general attribute of corruption. However, the term ‘abuse of power’ can be applied to a range of actions, such as brutality by police, whether they are carried out for gain or not. Rather than helping to understand manifestations of corruption, the inclusion of the term ‘abuse of power’ therefore broadens the scope of conduct that is being discussed far beyond what should reasonably be regarded as corruption. The illustrative example that is provided for the term ‘abuse of power’ is that ‘during a tender process, but before actual selection of a successful contractor, the head of department expresses his/her wish to see the contract awarded to a specific person’. The head of department is clearly expressing an inappropriate preference, but it is not clear that he/she or a person close to him/her will benefit from

the tender being awarded in this way. The head of department may, for instance, genuinely believe that the person in question would be the best contractor to appoint. In terms of definitions that emphasise that corruption is carried out for gain, it is therefore not clear that this is an act of corruption.

Another problem is the use of the term 'conflict of interest' to define a form of corruption. A conflict of interest is not necessarily a form of corruption, but might rather be understood as something that increases the probability that an administrative decision was made corruptly. The example given above certainly demonstrates a conflict of interest. To prevent conflicts of interest from impacting on procurement, government officials¹³ are required to disclose such conflicts and recuse themselves from any procurement process in which they have an interest. The example cited to illustrate this term refers to a public servant who 'considers tenders for a contract and awards the tender to a company of which his/her partner is a director'. This indicates that conflicts of interest sometimes occur in during procurement processes. However, they may also take place in the employment domain, such as when a family member applies for a position in the same department as a senior official. Nepotism, which is identified as a separate form of corruption in the above list, may then also be linked to a conflict of interest. Ultimately, though, conflicts of interest might better be understood as risk factors for corruption rather than an actual form of corruption.

Finally, it may be noted that both in relation to the abuse of power and conflict of interest, the illustrative examples refer to alleged acts of corruption in the public procurement process. In this monograph it will be suggested that corruption in public procurement should be understood as a major form of corruption in its own right.

Public Service Commission reports

In 2011 the PSC published a report on 'the most common manifestations of corruption' that had been reported to it. The report analyses complaints received by the National Anti-Corruption Hotline (NACH) during the period 31 September 2004–31 June 2010.¹⁴ Of these complaints, 7 766 were identified as cases of corruption, which were classified into 11 categories (Table 1).

However, what is never clarified in the report is how these categories are generated and what their parameters are. Some overlap and thus it is not clear how they are to be differentiated. For instance, the first category, 'fraud and bribery', might be understood to imply that acts involving fraud or bribery have something in common and that it is therefore appropriate to categorise them together. It might also imply that the other categories do not involve fraud or bribery. However, there is also the category of 'identity document fraud', indicating that not all fraud cases have been included in the 'fraud and bribery' category. Furthermore, fraud and/or bribery also affect social grants, RDP housing and procurement, but these are put in separate categories. It is therefore unclear why 'fraud and bribery' constitute a stand-alone category when they are clearly elements of many of the other categories.

Indeed, closer examination of the report suggests that the cases of corruption in the 'procurement irregularities' category might be different from those in the 'fraud and bribery' category. Under 'procurement irregularities' the report states that 'Cases of procurement irregularities involve

**Table 1: PSC categorisation of cases reported to the NACH as corruption
(September 2004 – June 2010)**

Categories of corruption	No. of complaints	%
Fraud and bribery	1 511	19
Abuse of government resources	985	13
Mismanagement of government funds	870	11
Identity document fraud	781	10
Procurement irregularities	720	9
Appointment irregularities	627	8
Unethical behaviour	580	8
Criminal conduct	512	7
Reconstruction and Development Programme (RDP) housing irregularities	450	6
Social grant fraud	420	5
Other	310	4
Total	7 766	100

collusion between a person issuing a tender and an associate which is often a family member or friends seeking to win the tender'.¹⁵ These therefore appear to be distinct from the procurement-related examples cited under 'fraud and bribery', which involve members of the public giving 'bribes' and 'kickbacks' to public service officials to obtain government contracts.¹⁶ However, if there is an intention to distinguish procurement contracts awarded to members of the public because of bribes or kickbacks from those that are awarded to family members or associates, it is never made explicit.

'Fraud and bribery' are also forms of criminal conduct, but there is a separate category of 'criminal conduct'. Later in the report it becomes apparent that cases included in the 'criminal conduct' category tend to involve theft. Perhaps the category should have been called 'theft' rather than using the very broad term 'criminal conduct', which suggests that none of the conduct reported in the other categories is criminal.

In addition to its 2011 report covering 'common manifestations of corruption',¹⁷ in 2009, 2010 and 2011 the PSC issued reports on financial misconduct in the public service. Rather than being based on reports received by the NACH, the cases discussed were recorded by national and provincial departments and reported to the PSC. In these PSC reports the types of financial misconduct are classified as corruption, financial mismanagement, gross negligence, theft, misappropriation and abuse, and fraud.¹⁸

In these reports, therefore, 'corruption' is a subcategory of financial misconduct, is defined in line with PRECCA,¹⁹ and is distinct from theft and fraud. On the other hand, in the DPSA report and the PSC report on 'common manifestations of corruption', corruption is used as a broad term that encompasses various forms of crime or misconduct, including not only actions that are criminalised by PRECCA, but also theft and fraud.

Corruption Watch annual reports

Yet another approach to the classification of corruption cases can be found in the first two annual reports produced by the non-governmental organisation Corruption Watch. These reports provide an overview of the cases that Corruption Watch received during 2012 (1 227 cases)²⁰ and 2013 (1 312 cases),²¹ its first years of operation. Defining corruption as ‘the abuse of public resources or power to enrich or give unfair advantage to individuals, their family or their friends’,²² Corruption Watch’s approach to categorising cases of corruption and the percentage of cases in each category are reflected in Table 2.

Table 2: Corruption Watch’s categorisation of corruption, 2012 – 13 (%)

	2012	2013
Abuse of government resources by government official	32	43
Procurement corruption ²³	23	16
Bribe	22	13
Corruption in employment ²⁴	12	8
Other	11	20
Total	100	100

Corruption Watch uses fewer subcategories (five) than either the DPSA anti-corruption strategy (nine) or the PSC reports on cases reported to the NACH (11 categories; see Table 1). The category containing the most cases– that of the ‘abuse of government resources by government official’ – appears to overlap with the category ‘abuse of government resources’ used in the PSC report. Though it is also one of the larger categories in the PSC report, it only accounts for 13% of all cases received. However, in the Corruption Watch reports it not only constitutes the largest category, but accounts respectively for a third and nearly half of cases received in 2012 (32%) and 2013 (43%), respectively. However, particularly in the 2013 report, there is little clarity on what types of conduct fall into this category. The only category that the Corruption Watch reports have in common with the DPSA system of classification used in the 2002 anti-corruption strategy is that of bribery.

Another feature of the Corruption Watch system of classification is that ‘bribe’, ‘procurement corruption’ and ‘corruption in employment’ are distinct categories. One implication of this is that bribery is distinct from the other two categories and therefore that implicitly neither ‘procurement corruption’ nor corruption relating to ‘employment’ involves bribery. If this is not so, then the question arises as to how Corruption Watch classifies cases that fall into both categories.

Summary

PRECCA is used as the basis for classifying corruption in a series of PSC reports on financial misconduct in the public service. But several other documents produced by leading governmental and non-governmental agencies concerned with corruption, including the DPSA, the PSC itself and Corruption Watch, all identify corruption as a multidimensional phenomenon that includes a number of different practices. However, there is little consistency among the different classifications used in

their reports. In addition, the reports often use categories that overlap, but generally do not indicate how they are to be differentiated from one another.

These variations and internal inconsistencies in approaches to the classification of forms of corruption make it difficult to interpret the data presented in these reports. The lack of a clear approach to understanding, defining and categorising corruption also affects attempts to answer other questions, including those about measuring and assessing trends in corruption.

Chapter 3

Major manifestations of corruption

From the preceding discussion it is apparent that a system for classifying forms of corruption is needed in which the categories used and the distinctions between categories are clearer. Using the definition of corruption as ‘the abuse of public position for private gain’, this monograph will therefore present a system to categorise manifestations of public sector corruption.

The manifestations of corruption were identified by analysing and classifying examples of corruption referred to in media and other reports.²⁵ If these reports described practices that appeared to constitute ‘the abuse of public position for private gain’, they were regarded as cases of corruption. Cases that share common features have then been grouped in relevant categories. Rather than being based on the area where these practices occur, such as employment (as in the Corruption Watch reports), or housing or social grants (as in the PSC report referred to above), the approach uses the types of practices that these manifestations of corruption involve. An attempt has been made to identify what differentiates each category from other categories with which it has common characteristics.

The purpose of this system of classification is not to define an exhaustive set of categories of possible forms of corruption, but to provide an analytically clearer outline of the major manifestations of corruption that allows one to be more specific about the categories used to compare one manifestation with one another.

Procurement corruption

Corruption in procurement is one of the major forms of corruption in South Africa. In 2011, for instance, Willie Hofmeyr, who at the time was head of both the SIU and the Asset Forfeiture Unit, said that he believed that between R25 and R30 billion – in the region of 20% of South Africa’s procurement budget – was being lost to corruption.²⁶ At the time, Hofmeyr said, the SIU was investigating 558 procurement contracts to the value of R1.9 billion and 360 cases of conflict of interest involving R3,4 billion.²⁷ Not surprisingly, cases of procurement corruption are often linked to areas of government with large procurement budgets. Allegations of procurement corruption have, for instance, received publicity in relation to the Department of Public Works at both the national and provincial level,²⁸ various departments of health²⁹ and components of the Department of Education,³⁰ municipalities,³¹ and para-statals such as PetroSA.³²

It is important to differentiate between two broad subcategories of procurement corruption.

1. The use of procurement to channel public resources to a government official with influence over the procurement process.

One form of procurement corruption is when a contract is awarded to a company in which a government official with influence over the procurement process has an interest or to other companies in which people connected to him/her have an interest. One of numerous alleged cases of this kind was reported in August 2012 when ‘four former and current employees of the Limpopo nursing college were arrested ... for allegedly awarding a host of tenders to companies which they, their friends and family members owned’.³³ Particularly in cases where government officials or their family members own the company, these officials are channelling public resources directly to themselves. It may be assumed that no ‘bribe’ is paid, but the government official benefits directly from the payments made to the company to which the tender is awarded.

In theory it is possible that the company awarded the contract may have put in the most competitive bid and may be best suited to deliver the goods or services being procured. If the goods or services are indeed needed by the public agency, this may not necessarily be a case of corruption. However, the fact that there is a ‘conflict of interest’ raises a red flag that corruption could be a factor. In practice, however, in cases of this kind the contract is generally awarded to a specific company because the government official in question will benefit from the tender. The company to which the tender is awarded is not the most competitive, and may even be unable to provide the services or goods in question at a minimum standard.

In this subcategory the transaction may benefit the government officials involved in various ways. In one variation the company to which the contract is awarded is not owned by the official or one of his/her family members, but appoints as a subcontractor a company in which the government official has an interest. In one such case it was alleged that the director of an Eastern Cape municipality:

... facilitated the awarding of a tender for the installation of electricity to surrounding villages to a certain company. This company, in turn, appointed the director’s company as a sub-contractor on the project ... no electricity was installed in the villages in and around the municipality The main contractor allegedly channelled more than R12m into the director’s company bank account.³⁴

2. Bribery-related award to a company to which an official has no personal links. There may be variations in the process involved in the cases in this subcategory, but ultimately the award of the tender is conditional on the willingness of the bidder to pay a bribe. In some cases an above-board tender process is initially followed and the most competitive bid is provisionally nominated for the contract. However, the bidder is then told that he/she will receive the tender if he/she pays a bribe. If he/she refuses, the contract is offered to another bidder, presumably on the same conditions.

For instance, a report in *The Star* tells of how business owners ‘are required to “grease the machinery”’ (a term for kickbacks) or face exclusion from multimillion-rand contracts. Interviewees reported that ‘Big tenders in all provinces are usually “spoken for” or earmarked for certain people or companies’. If those earmarked did not pay bribes, ‘they would be

disqualified for questionable reasons by members of the bids evaluation and adjudication committees'. According to the report,

... the kickbacks are paid in cash, or through subcontracts given to relatives or the spouses of politicians and public servants, or the winning bidders are instructed to buy expensive 'gifts', such as cars worth up to R1 million. The kickbacks ranged between 5 and 10% of the total contract value, or up to 50% of the total value of the profit made.

Business people interviewed also said that 'they were expected regularly to donate huge sums to the ANC, its leagues, the SACP [South African Communist Party] or even opposition parties in charge of a province or municipality'. 'From time to time you are called to make donations to today's ANC and tomorrow's ANC. There are also donations to the youth league, the women's league and the SACP', an interviewee is reported to have said.³⁵

In another example a person reported to Corruption Watch that 'I tendered for land but was asked to pay a R1 000 000 bribe'.³⁶ Cases of this kind are therefore to some degree distinct from those in the first category, because the corrupt government officials enrich themselves by inducing members of the public to make payments or provide resources to them rather than channelling public resources to themselves or their associates. In these cases corruption may also be initiated by contractors in order to be awarded the contracts.

A variation on this category is where one of the bidders is contacted by the government official or someone acting on his/her behalf and told that he/she will receive the contract, but that an amount will be added to the contract price that must be transferred

to the official.³⁷ It might be argued that cases of this kind should be understood as part of the first category. Inflating the price of the contract may be understood merely as a way of disguising the fact that public funds are being channelled to the state official with the person receiving the contract merely serving as a conduit for this. There is therefore a grey area between the two subcategories of procurement corruption.

Despite the fact that there is not a watertight distinction between the two subcategories, this broad distinction seems reasonable

Similarly, in the discussion of the first subcategory of procurement corruption the example was given of contracts being awarded to friends or other associates of the government official. However, in these cases there is likely to be a quid pro quo in terms of which the government official is 'reimbursed' in some way for this favour (in the example given above this took the form of being employed as a subcontractor). This quid pro quo might in law be regarded as a bribe, and therefore it might be argued that cases of this kind should fall into the second and not the first subcategory.

Despite the fact that there is not a watertight distinction between the two subcategories, this broad distinction seems reasonable. In some cases government officials use procurement to channel public resources to themselves or their associates, while in others officials use their power over the procurement process to solicit or accept bribes from members of the public. In the latter case the party that has paid the bribe might try to recover the cost of the bribe from the payments that they receive from government for their services. For instance, one of the business people interviewed by *The Star* said that 'they had to pay kickbacks and recoup

the money from the public'. This may reduce the quantity or quality of the goods or services supplied. Corruption may therefore reduce the 'return' on the public investment. In effect, public resources are diverted from the purpose for which they were intended to off-set the cost of the bribe. As in the first subcategory, the benefit received by the government official is therefore ultimately paid from the public purse.

While acknowledging that there is a grey area between the two subcategories, it is nevertheless important to note that bribery (often underpinned by an element of extortion – see below) is only a feature of the second subcategory. Procurement corruption therefore overlaps with the category of 'bribery', but not all procurement corruption involves bribery. This is acknowledged in PRECCA.³⁸ The 'general offence of corruption' provided for in section 3 of the Act is in effect a codification of the common law offence of bribery and pertains to the second subcategory (see also the offences pertaining to tenders provided for in section 13). But part 5 of the Act also provides for an 'Offence relating to acquisition of private interest in contract, agreement or investment of public body' (sec. 17). This provision criminalises acts of corruption in South Africa that fit into the first subcategory. Procurement corruption therefore may broadly be said to fall into two subcategories, one of which involves conflicts of interest and the other bribery.

Corruption in procurement is often associated with various strategies – sometimes referred to as 'bid rigging' – intended to minimise the scrutiny that the bid is subjected to or legitimise the awarding of the tender to a bidder whose bid is not the most competitive. For example, the tender threshold may be reduced to ensure that a formal tender process is not required, requests for proposals may be designed to favour a specific bidder, tender specifications may be ignored, qualified bidders may be unfairly disqualified, or procurement officers may tamper with tender documents after submission.³⁹ In others the required procurement process may simply not occur.⁴⁰ Nevertheless, bid rigging is not an end in itself, but is generally associated with one of the two identified subcategories in which either a government official benefits from the contract itself or a bribe is paid.

Procurement, collusive bidding and the question of private sector corruption

According to the definition used in this monograph, actions only qualify as acts of corruption if the people involved are abusing public positions. This definition might therefore be regarded as a definition of public sector corruption.⁴¹

The interest in corruption as occurring in the public sector is in some ways consistent with the history of the offence of bribery. The common-law crime of bribery 'could be committed by or in respect of a state official only'.⁴² But the codification of bribery in PRECCA – the main legislative instrument that addresses corruption – provides that corruption can be committed without the involvement of a state official. While some continue to regard corruption as generally involving government officials, there is an increasing emphasis on the phenomenon of private sector corruption. For instance, this is referred to in the ANC's 2014 election manifesto, which says that 'Corruption is a broad societal problem prevalent in both the public and private sectors'.⁴³

But what is meant by the term 'private sector corruption'? One possibility is that it refers to the fact that private people or private sector organisations are often co-perpetrators or otherwise implicated in corruption transactions involving the public sector.⁴⁴ Understood in this way, the question then concerns the role of private people in public sector corruption (i.e. corruption that involves the abuse of public positions).⁴⁵

However, it is not clear that this is necessarily what is implied in discussions of private sector corruption. The July 2013 hearings of the Competition Tribunal on collusion in the construction industry⁴⁶ point to another explanation. The hearings revealed that collusive bidding involves clandestine processes of which the government officials involved in the procurement process are unaware. Those involved know that a few companies have the ability to carry out certain kinds of high-value construction projects. If all the major construction companies collude they can be sure that no other company will be able to compete with them for that contract. By colluding they are able to ensure that one of them secures the bid. The other bidders deliberately submit higher bids, a practice known as cover pricing. In return for their cooperation they might then submit the winning bid on another tender or receive some other 'losers fee' such as a payment of some kind, or the guarantee of being subcontracted to assist with delivery of the initial tender.

Generally it may be assumed that government officials are not involved in this collusion and do not benefit from these contracts. If this is corruption, then it is 'pure private sector corruption'⁴⁷ related to procurement. Not only does collusive bidding qualify as corruption in terms of PRECCA, but it also falls within the Corruption Watch definition of corruption, which includes not only the abuse of public power, but also the abuse of public resources to enrich or give unfair advantage to specific people. It can be argued that collusion of this kind constitutes abuse of public resources because it ensures that the winning bid is relatively high and therefore ensures greater profits. As Corruption Watch said in an article on the matter,

It's corrupt because it's a conspiracy against the public. The public pays both as taxpayer and as consumer of public services, the latter being the poorest South Africans who are most reliant on public services. Rigging bids for public sector tenders also undermines the very system – public tendering – designed to meet the constitutional requirements that public sector procurement be fair, transparent and cost-effective.⁴⁸

Extending the definition of corruption in this way seems to make sense. The discussion of social grant fraud later in this monograph⁴⁹ highlights that this type of fraud is sometimes committed by members of the public without active collusion by government officials. Does it make sense only to classify social grant fraud involving government officials as corruption, despite other similarities in the type of abuse? However, extending the definition of corruption in this way may increase confusion about the meaning of the term 'corruption'. An example is the problem of copper cable theft, which has indirect costs to the South African economy of close to R5 billion⁵⁰ and costs state-owned companies like Eskom and Transnet many millions of rand annually.⁵¹ The thieves involved in copper cable theft work hand in hand with scrap-metal dealers,⁵² and therefore the private sector is implicated in the process. Whether or not they are state employees, people who steal copper cables from state-owned companies are effectively abusing public resources for private gain. If corruption is understood to be defined by the 'abuse of public resources', this implies that copper cable theft is also part of the problem of corruption.

In the same way, tax evasion⁵³ is also part of the problem of corruption. Tax evasion directly impacts on the state's ability to mobilise public resources to implement government policies. But should tax evasion committed by companies in the private sector and by individual (private) members of the public also be regarded as (private sector) corruption? Tax evasion does not necessarily involve the abuse of public power (unless a tax official colludes in it). However, if corruption is defined in terms of 'public resources' (as proposed by the Corruption Watch definition) and not just 'public positions',

then tax evasion is a failure to provide the South African Revenue Service with resources that should legally become public. In other words, should the term 'public resources' be seen to include only resources already owned by the state, or also resources that are legally owed to but not yet under the control of the state?

Another approach to answering this question might be to say that corruption includes any conduct that qualifies as corruption in terms of PRECCA, including any situation where a person in a position of power has something given or offered to them to encourage them to use their power illegally or unfairly.⁵⁴ One implication of using the definition in PRECCA is that both copper cable theft and tax evasion are generally not regarded as forms of corruption. Questions around understanding private sector corruption would then interpreting the Act and identifying the range of situations in which conduct that falls under it take place that (exclusively) involve private companies or individuals. However, using PRECCA to define corruption would also exclude many practices that qualify as corruption in terms of this monograph. For instance, many practices labelled by the PSC as corruption in the report on 'common manifestations of corruption' do not qualify as acts of corruption in terms of PRECCA.

All questions about how to define the term 'private sector corruption' also involve the question of whether it applies exclusively to the business world (the 'private sector') or to any private person. If the answer is that it applies to the former, the term 'private sector corruption' would be understood to refer to a range of offences often referred to as white-collar crime or corporate crime.⁵⁵

These are generally crimes committed by people at a professional or management level in private sector companies. Ultimately, the term 'private sector corruption' is often

used to refer to all crimes committed for gain by senior personnel in private sector organisations. It may be preferable to examine these types of abuses, including those that involve transactions with government officials, under the label of white-collar or corporate crime, partly because they may be more diverse than is captured by the concept of corruption.

The role played by the private sector, and civilians more generally, in corruption in the public sector, should be more clearly understood

As this monograph will make clear, the analysis of public sector corruption implicitly requires that the role played by the private sector, and civilians more generally, in corruption in the public sector, should be more clearly understood. It is clear that the willingness of people in the private sector, and other civilians, to engage in corrupt transactions is one of the factors contributing to public sector corruption. Nevertheless, it is important to focus on public sector corruption (including the role of the private sector or civilians in it) as a subject of study in its own right, because it affects the state's ability to address other problems, including private sector corruption. Furthermore, extending the definition of corruption in any of the ways suggested could mean that the concept loses any clear analytical meaning. It may therefore detract from the ability to analyse corruption for purposes of developing public policy.

This monograph is therefore concerned with public sector corruption, defined as 'the abuse of public position for gain'. Collusive bidding and other abuses by private people such as copper cable theft and tax evasion are not discussed because they are not part of the problem of public sector corruption. However, questions about the role played by private people or organisations in public

sector corruption remain highly relevant to understanding the questions about quantifying corruption that are the monograph's key concern.⁵⁶

Other bribery and extortion (administrative)

This category involves the payment of bribes, but excludes procurement transactions that involve bribery. (If they were to be included in this category they would fall into the second or third subcategory listed below.) If procurement corruption also involves the payment of bribes, the two categories overlap. A rough distinction between the two categories is that while procurement corruption involves senior officials and politicians, the officials involved in 'other bribery and corruption' are often low-level administrators such as border officials, officials of the Department of Home Affairs, police or traffic police. Junior officials are therefore unlikely to be the main beneficiaries in corrupt procurement transactions, although senior officials may still be linked to transactions that constitute 'other bribery'.

The available evidence is that bribery is a high volume crime most notably in traffic policing. For instance, 4.5% of respondents to the 2011 National Victims of Crime Survey (NVCS) said that government officials had asked them for or otherwise solicited a bribe involving money, a favour or a present. Of this 4.5%, 50% said that this was connected to traffic fines, 23% to 'policing' and 13% to driver's licences (see Tables 6 and 8). Using figures from the NVCS, a 2012 report estimated that one in four drivers in Johannesburg had been asked for a bribe to avoid a traffic fine.⁵⁸

A 2013 Transparency International (TI) survey provides a dramatically higher figure for overall levels of bribery than the NVCS. In the TI survey 47% of South African adults who had accessed one or more of eight different services admitted to paying a bribe during the year prior to the survey. According to the survey 36% of people who had dealt with the police in the previous year had paid a bribe, as well as 39% of those who had accessed 'registry and permit services'.⁵⁹

One may differentiate among five subcategories of 'other bribery or extortion'. These are:

- 1. To speed up the delivery of a service,** for example to obtain an identity document, travel document, firearm or liquor licence that one is entitled to, more quickly.
- 2. To receive a service or document to which one is entitled or to influence a decision in one's favour even though one already fulfils the administrative requirements.**

For instance, it has been reported that at many driver's licence testing centres officials sometimes refuse to pass people unless a bribe is paid even if they have successfully completed the test. One of the reports received by Corruption Watch stated that

I went to test for my driver's licence at *** testing station, the Officer asked for R2 500.00 before I got tested. The money is meant for making the test easy. I was told I failed the inspection test before driving. I was told I failed. I'm convinced I was failed because I did not pay the R2 500.00.⁶⁰

In another example someone described how passport control officials at an airport said that he would not be allowed to leave unless money was paid to them.⁶¹ Another example is where people who have suitable qualifications have to pay a bribe to be considered for employment in a state organisation. If they do not have the appropriate qualifications but are able to secure employment by paying a bribe, this would fall into the next subcategory. A further example is where people who have been contracted to provide a specific

service to a government department have to pay an official to receive one or more of the payments due to them.

- 3. To receive a service to which one is not entitled or illegitimately influence a decision in one's favour.** As discussed above, in some cases people who have successfully completed a driver's test may be failed. But in other cases people who do not qualify are allowed to pass. For instance, a press report in October 2011 indicated that at four of the five City of Johannesburg testing centres fake learner's and driver's licences 'were available for those willing to pay'. The report tells of an instructor at the Langlaagte testing centre who said that a R4 500 fee for a truck driver's licence would ensure that the applicant is 'not penalised for errors during the driving exam'. At the Florida testing centre applicants were told that they would not even have to get behind the wheel. At Florida a 'sure pass' learner's licence could be obtained for R900 and the R108 administrative fee charged at the centre. The applicant would sit the exam, but would be given an exam booklet with the answers already filled in. At Randburg a 'sure pass' learner's licence could be obtained for R800.⁶⁴ Another press report in December 2013 indicates that three men at the privately owned Phoenix testing station in Durban had been arrested on charges of fraud and corruption. It was alleged that while 'a roadworthy test normally cost R250 ... unroadworthy vehicles would be passed as being roadworthy for R450'.⁶⁵ Other examples of corruption of this kind are where bribes are paid to municipal officials for preferential allocation of RDP housing or where officials of the Department of Home Affairs sell South African identity documents to foreign nationals.⁶⁶
- 4. To avoid or reduce a legitimate sanction.** A 2012 report on corruption in the Johannesburg Metro Police Department (JMPD) describes how JMPD officers wait on roads leading away from well-known drinking establishments, particularly on Friday nights. The fact that drivers who are arrested for being over the legal limit face spending the weekend in jail before appearing in court is an additional incentive to 'resolve the problem' and increases the ability of JMPD members to extract bribes. People driving expensive cars are a specific target, because JMPD members believe that they can be expected to pay larger bribes.⁶⁷ Another press report describes an extortion racket involving a group of customs officials and police officers who would 'obtain information about foreign business people who held large amounts of money and who may have acted illegally During unauthorised raids, the officials threatened the foreigners with arrest'.⁶⁸
- 5. To avoid illegitimate sanction (pure extortion).** Here a police officer threatens a foreigner with arrest even though his/her papers are in order unless he/she pays a bribe. Various cases of this kind are also recorded in a report on corruption in the JMPD. These cases may simply involve the use of official authority rather than the threat of arrest or prosecution. In some cases JMPD members refuse to allow people to continue with their journey until a bribe is paid.⁶⁹

One of the variables in these cases is the degree to which they involve extortion of some kind. Extortion is committed 'when a person unlawfully and intentionally obtains some advantage' which is not due to them from another 'by subjecting the latter to pressure which induces [them] to hand over the advantage'.⁷⁰ There can be no doubt that extortion occurs in the last-mentioned subcategory: for example, if a police officer threatens to arrest someone who is obviously innocent in order to

extract a bribe this is clearly extortion. But extortion is not necessarily limited to these kinds of cases. The second subcategory, where a person is forced to pay a bribe in order to receive a service or document to which they are entitled or influence a decision in their favour even where they fulfil the administrative requirements, also involves extortion. Officials who extract bribes from people who are applying for RDP houses, driver's licences or roadworthy certificates, as well as building inspectors and other officials may all take advantage of their position of power to exploit the vulnerability of the people who they deal with. A person denied a driver's licence despite passing the test may not be able to obtain certain kinds of employment. Officials who obstruct people's ability to travel,⁷¹ earn a living⁷² or access state-subsidised housing unless they pay a bribe are all taking advantage of their victims' vulnerability to pressurise them into offering some type of payment.⁷³ Even in cases in the fourth subcategory, where a police officer is entitled to fine or arrest someone, the threat to do so constitutes extortion if it is used to extort a bribe.⁷⁴

Misappropriation, embezzlement, fraud or theft

A third category of corrupt practices involves misappropriation, embezzlement, fraud or theft. In common with the first subcategory of procurement corruption, in these cases state officials appropriate or divert state resources to themselves or their associates. In this respect this category therefore resembles the first subcategory of procurement corruption. It may be differentiated into four broad subcategories.

- 1. Misappropriation or embezzlement.** Corruption in this category involves government officials who control property, money or a financial instrument such as a credit card that is 'publicly' owned and use this illegitimately to benefit themselves or their associates. For instance, a Corruption Watch report refers to a school principal who was accused of abusing school funds. One of the allegations against her is that she 'cashed 41 school cheques amounting to R134 487.56 that were made out to herself. Some cheques indicated they were for "feeding of learners", but there were no corresponding invoices'.⁷⁵ Other reports describe conduct of this kind in municipalities.⁷⁶ Various reports refer to the use of government credit cards for personal use.⁷⁷ One of the most prominent examples in this category was the so-called 'Travelgate' affair in which a large number of members of parliament from various political parties used parliamentary travel vouchers to go on holidays or trips unrelated to work. The abuse of government vehicles 'as taxis for personal benefit'⁷⁸ can also be included in this category, even though the vehicles are not removed permanently.⁷⁹ Other cases in this subcategory include: (1) the use of state resources to secure votes for a specific party or politician in local⁸⁰ or other elections; (2) petty cash fraud;⁸¹ and (3) abuse of telephones.⁸²

An interesting case exposed by Corruption Watch involved the acting manager of a nature reserve outside Pretoria. The acting manager's husband ran a private resort belonging to an unregistered company owned by him in the reserve. The couple indicated that he had a lease agreement to use the land for private business purposes. Visitors to the reserve were allegedly often redirected from the official entrance to the entrance to the private resort. The acting manager and her husband allegedly also built shacks in the reserve that were rented out to employees of her husband's company. Although the case does not lend itself to the label 'embezzlement', it nevertheless could be said to fit into this category.

The acting manager allegedly used her position of authority at the reserve to benefit her husband's company, in effect treating the reserve as a family asset.⁸³

2. Misrepresentation (fraud) by government official in order to secure public resources.

In this subcategory misrepresentation is a way of obtaining a benefit (usually financial) that one would not otherwise have access to. In the 'misappropriation or embezzlement' subcategory, on the other hand, the abuse relates to resources that are already under the control of the government official. The case of the school principal referred to above involves an alleged misrepresentation, but because she signed the cheques, the resources were already under her control.⁸⁴ The alleged misrepresentation therefore did not enable her to obtain access to the resources, but involved how they were used. However, in this subcategory access to the resources is obtained by means of a misrepresentation. In one case a KwaZulu-Natal police station commander is alleged to have filled in requisition forms for police station supplies, but received cash instead of the equipment. He allegedly arranged with the supplier that he would receive 80% of the payment, with the supplier retaining the balance.⁸⁵ The creation of 'ghost' social grant beneficiaries by officials for personal benefit, other cases of social grant fraud⁸⁶ and many cases involving land grants,⁸⁷ housing,⁸⁸ and the workers compensation fund⁸⁹ also appear to involve corruption of this kind. Other examples include officials claiming overtime that was not worked;⁹⁰ travel and subsistence claim fraud in which officials claim subsistence allowances for unauthorised trips or trips not undertaken;⁹¹ and payments to staff members who either do not exist or have not actually turned up for work.⁹²

Arguably, the upgrades to President Zuma's Nkandla residence could – at least in part – fall into this category. In this case the alleged misrepresentation that allowed access to state resources was that all of the improvements were necessary for security purposes.⁹³

As will be illustrated later in this monograph (see the discussion of SIU data), members of the public often defraud the government. For instance, people register for grants they are not entitled to. However, unless government officials use their positions to facilitate these transactions and they or their family members also benefit from them, these transactions do not constitute public sector corruption.

3. (Other) theft. Theft is differentiated from the above in that it involves the removal of a physical item. This may also be an object that the official has access to but is not in his/her domain of control. Examples include the theft of petrol from government-owned vehicles,⁹⁴ the use of bricks and equipment meant for building RDP houses to build houses for councillors and municipal officials,⁹⁵ teachers stealing government furniture at schools,⁹⁶ officials stealing government computers,⁹⁷ and nurses stealing medicines at hospitals.⁹⁸ The Corruption Watch first anniversary report, for instance, includes numerous reports of theft from schools, municipalities and hospitals.⁹⁹

4. Sale of government property to someone at a discounted rate. This is probably distinct enough to constitute a subcategory in its own right, although it could also fall into the first or second subcategory. In one example the North West Department of Public Works sold a residential property to a senior politician on the basis of a seven-year-old valuation. The

North West Land Administration Act states that the price of a state property should be based on a valuation certificate issued in the year before the sale takes place. It is estimated that the senior politician paid approximately 50% of the current value of the property. In another case in Mangaung some land was allegedly sold to a trust managed by friends of senior local politicians at 20% of the value of the property.¹⁰⁰ These cases generally appear to involve the use of political influence or authority. The people who deal with the technicalities of the transaction are not likely to benefit from it and therefore effectively collude (perhaps because of their subordinate position) in the transaction. These cases do not fit into the first subcategory because the property is not already under the direct control of the government official who benefits from the transaction except in the broad sense that he/she has political influence or authority over the public servants who execute the transaction. It is the intention to favour specific people that results in the price of the property being discounted rather than misrepresentation, so these cases do not fall into the second category either. However misrepresentation is involved in the attempt to pass the transaction off to other parties as legitimate.

Once again, therefore, the distinction among these various subcategories is relatively subtle and the classification of specific cases may be debatable. For instance, there is not a watertight distinction between the category of 'theft' and that of 'misappropriation or embezzlement'. If someone physically removes money from a cash box that they are responsible for and deposits it in his/her bank account or spends it, this might be classified as 'theft' or 'misappropriation'. (From a legal point of view these may merely be different categories of theft¹⁰¹). As indicated, the categories and subcategories are intended to differentiate different forms of corruption, with the focus being on the types of 'practices or transactions involved'.

Nepotism in employment and promotions

In an article on its website Corruption Watch reproduces a report that refers to the 'hiring of certain fortunate individuals' at a state-owned enterprise. The report says that [person A], the wife of [person B] was employed. 'There was no advertisement, just a formal notice (rumours) in corridors that the "wife" will be working in the [state-owned enterprise] as a communications manager – she used to work as a PA for the regional manager.'¹⁰² If person B, who appears to hold a managerial position, was involved in his wife's promotion, this constitutes a case of 'the abuse of public position for private gain' and therefore of corruption. Even if the person who is appointed is suited to the job, other people who might be equally or better suited have been denied the opportunity to apply for it. The key point, however, is that these types of appointments or promotions constitute another way in which public resources are diverted to enrich government officials or their associates.

Even if the person who is appointed is suited to the job, others who might be equally or better suited have been denied the opportunity to apply

In terms of the approach applied in this monograph, nepotism, which is a way of expanding one's family's access to state resources, is also distinct from cases where officials demand payments from people who wish to be employed by the state or for promotions. These latter cases fall under the category of 'other bribery and extortion' (either the second or third subcategory depending on whether or not the person seeking employment is qualified for the post).

At the boundaries of corruption: other mismanagement or abuses of official resources

In some situations where state resources are abused it is less clear whether they involve corruption.

- 1. Self-indulgent, wasteful and excessive state expenditure linked to the performance of official duties.** A number of cases have been reported of government officials spending public money in a way that seems indulgent, wasteful and excessive, but where this is linked to their official duties or is something that they are technically entitled to do. A previous minister of defence was criticised for using expensive chartered jets, often for domestic flights, to carry out her ministerial duties. Total expenditure on these flights was estimated at R40 million over a three-year period.¹⁰³ Another issue has been the use of government allowances by senior politicians to buy expensive cars.¹⁰⁴ The large salaries and increases paid to municipal managers and chief financial officers¹⁰⁵ and the remuneration of the executive directors and managers of state-owned companies¹⁰⁶ have also received media attention. Another issue has been the use of state funds by senior politicians and others to stay in expensive hotels.¹⁰⁷ In 2012 the Gauteng MEC for sports attracted attention when he and six other officials travelled to London for 10 days to watch the Olympic Games at a cost of R1,6 million. The justification provided was that the Gauteng premier had announced that a 'Gauteng Sports Village' was to be built and that 'part of the planning included undertaking study tours to identified countries to study best practises'.¹⁰⁸ Also in 2012 a senior official of the Road Traffic Management Corporation had an official bodyguard who was paid an annual salary of R221 000. No other heads of Department of Transport para-statal had bodyguards at the time. A case that appeared to generate not only outrage but some amusement was that of the Northern Cape provincial premier who spent over R50 000 at fast food outlets over a 10-week period using her government credit card.¹⁰⁹

The examples provided here cannot all simply be regarded as examples of either corruption or 'not corruption'. Rather, they would need to be evaluated on a case-by-case basis as to whether they constitute 'the abuse of public position for gain'. As a general rule the expenditure discussed here is incurred in terms of formally authorised procedures and therefore can technically be justified as not involving a breach of laws or regulations. Therefore one cannot simply classify these cases as examples of 'abuse'. In some cases the expenditure also appears to be related to and be a way of expediting the performance of official duties.

However, particularly where the justification for the expenditure is fairly weak and superficial and there is a clear element of personal gain, the case might be regarded as one of corruption. But even where the behaviour might technically not be regarded as corruption, it might be linked to and potentially exacerbates the problem of corruption. This is because, at the very least, it demonstrate a reckless and self-indulgent attitude to expenditure. Those involved are therefore guilty of disregarding the need to exercise care and demonstrate modesty in using public resources, qualities that are important attributes for public officials.

- 2. Favouritism.** Other practices may be regarded as undesirable, but should probably not be classified as corruption. For instance, a case of favouritism, where a non-family member is unfairly appointed and there is no direct benefit for the official who secures

the appointment, should probably not be seen as corrupt. In cases of favouritism the 'gratification' that is received – that of the pleasure of having done a favour for someone whose goodwill is valued – is relatively intangible. Such examples would have to be examined on a case-by-case basis to ascertain whether treating someone in a preferential way is done with the expectation that the favour will be returned later. While the practice may be regarded as undesirable and unfair and may constitute a disciplinary offence, it is often not corruption as this monograph defines it.

- 3. Other abuses of state resources.** There are other examples of reckless or negligent use of state resources and procedures or a contemptuous attitude towards one's professional obligations to the state. They may resemble corruption if they are associated with the abuse of state resources, although they are not necessarily associated with gain, especially with direct financial gain. For instance, a PSC report refers to 'senior officials giving unlawful instructions to junior officials to authorise expenditure' and 'irregular and fruitless expenditure and non-compliance with the operational policies of a department or public body'.¹¹⁰ However, these problems are not necessarily examples of corruption because they could reflect lack of capacity or a disregard of procedures, but do not involve personal gain. As Corruption Watch said in an article, 'It is important to understand that not every adverse report regarding the management of public resources is evidence of corruption. Public resources may be abused through negligence; regulations may be ignored as a result of negligence or even ignorance'.¹¹¹

A similar point applies to cases where 'officials drive Government owned vehicles recklessly and at high speed'.¹¹² This is an 'abuse of government resources' and is contrary to constitutional principles,¹¹³ but, as in the case of favouritism, the gain is relatively intangible. In the case of 'Officials coming to work late or being absent from work without permission',¹¹⁴ whether this should be classified as corruption depends on the specific circumstances and reasons for this misbehaviour. For instance, if someone is repeatedly absent from work because of an alcohol problem, it is probably inappropriate to label this as 'corruption' (although the same argument would probably not apply to someone who uses public money to finance a gambling habit¹¹⁵). This is not to say that their conduct is acceptable, or conforms to the professional standards required of public servants, or should be tolerated in the public service.

Major manifestations of corruption: summary

The manifestations of corruption outlined above may broadly be divided into two groups. Some involve corrupt transactions in which members of the public make payments to officials. However, a significant number involve government officials channelling public resources to themselves. In the latter cases they may benefit from the assistance of associates or other 'private' people, but the resources are nevertheless public resources rather than payments from members of the public. As illustrated in Table 3, the two subcategories of procurement corruption are differentiated in this way. The category 'other bribery and extortion' involves extracting resources from members of the public,¹¹⁶ while the other three categories, like the first subcategory of 'procurement corruption', involve the appropriation or abuse of state resources.

It should be noted that some cases of alleged corruption involve a range of transactions and do not lend themselves to being classified under one of these categories. For instance, in a 2005 case

exposed in Mangaung it was alleged that the city manager and chief operating officer had developed an elaborate scheme that would eventually result in their benefitting from the development of new regional offices for the municipality. The process started with the sale of municipal land to a ‘trust’ at roughly 80% below market value. The trustees were friends of the city manager, chief operating officer and other councillors. The purchase/lease agreement between the trust and the municipality committed the municipality to repurchasing the property for R79 million after the new offices had been built, which was more than three times the estimated value of the development. The procurement process allegedly did not involve a tender.¹¹⁷ Complex transactions such as this may not fall into a single category or subcategory. However, if analysed separately, specific components of the transaction may still fit into the system of categorisation used here.

Table 3: Summary of manifestations of public sector corruption

	Use of official position to enrich oneself or one’s associates with state resources	Use of official powers or position to solicit, extort or otherwise obtain payments (or other benefit) from members of the public
Procurement corruption Subcategory: public resources channelled to official with influence over the procurement process	Yes	
Procurement corruption: Subcategory: bribery-related award to company to which official has no personal links		Yes
Other bribery and extortion (including all five sub-categories)		Yes
Misappropriation, embezzlement, fraud or theft (including all four subcategories)	Yes	
Nepotism in appointments and promotions	Yes	
Other mismanagement or abuse of state resources: sometimes corrupt (including all three subcategories)	Yes	

Chapter 4

Similarities and differences among the categories

As indicated in the previous chapter, the purpose of the attempt to outline different manifestations of the problem of corruption is not to establish an exhaustive set of categories of possible forms of corruption, but to provide an analytically clearer outline of the major manifestations of corruption. Ultimately, the aim of this monograph is to reflect on how to assess trends in and measure of levels of corruption. The assumption is that greater clarity about the attributes of the categories of corruption that are being discussed will be an advantage in this regard. Now that the categories of corruption have been identified, we turn to a discussion of key similarities and differences among them.

Collusion by government officials vs lone perpetrators

Corruption is partly a crime of opportunity – people who engage in corruption are situated at different levels and perform different functions in government. The types of corruption that people are linked to involve their exploitation of opportunities that are open to them for corrupt enrichment of themselves and their associates. Thus, people who are involved in and have influence over the procurement process are generally senior officials, because only they have opportunities to engage in corruption related to procurement. Similarly, nepotism is only possible among people with a certain level of managerial authority, while only officials who interact directly with the public, such as traffic police, have other kinds of opportunities.

However, whatever the location of corrupt officials in the state system, it would appear that many of the forms of public sector corruption that are discussed in this monograph involve collusion between government officials. For instance, procurement transactions are often complex and, whether corrupt or not, require the involvement of a number of different parties. It seems unlikely that anyone could single-handedly manage the corrupt aspects of some of these transactions without the knowledge of others. Many large-scale housing and social grant frauds appear to involve syndicates of public service employees who collude with one another. Similarly, police who target foreigners to extort bribes from them often collaborate. Whether they involve complex transactions or not, therefore, many acts of corruption appear to involve some level of cooperation or mutual assistance among several people.

The analysis should not be restricted to those who are directly involved in the corrupt transaction itself, because people behind the scenes may play a less visible role. As one analyst has argued in relation to police corruption,

for corruption ... to develop ... it must involve the organised cooperation of other police in equally relevant areas. It also involves usually some degree of continuity or at least a time factor. To achieve this involves either knowledge and acquiescence at various levels of supervision or a lack of knowledge, either real or pretended The very nature of the supervisory structure usually found within a police force means that it is virtually impossible for it to exist without some involvement at different levels, although numbers may be fewer at the higher levels.¹¹⁸

In line with this argument, a 2012 report on corruption in the JMPD argued that the level of corruption in the unit suggested strongly that 'corruption is not limited to the "frontline" of the JMPD in traffic or by-law enforcement; or in the licensing departments. Some of those who are complicit must be members at higher levels in the organisation'.¹¹⁹ Therefore, widespread corruption by frontline personnel in any organisation raises questions about the possible complicity of more senior officials.

Another aspect of this cooperative dimension of many corrupt transactions is that they may also rely on subordinates to assist in executing a transaction (sometimes these subordinates may have misgivings about doing so). For instance, a report on one allegedly corrupt procurement transaction in Mangaung states that 'Concerns expressed by the finance department about the transaction were squashed' by one of the alleged perpetrators, 'who "ordered" the department to issue a favourable comment, according to the forensic study'.¹²⁰ (Multiple examples of this type of abuse of authority were also revealed in the trial of Schabir Shaik,¹²¹ although Shaik himself was located in the private rather than the public sector.)

Nevertheless, some corrupt acts are carried out more secretly and do not necessarily involve collusion or the assistance of other state officials. Examples involving lone perpetrators may tend to involve acts in the 'misappropriation, embezzlement, fraud or theft' category. For example, a 2005 press report describes a 'system administrator at the Johannesburg offices of the Social Development Department' who:

... allegedly fleeced R2,75-million by creating beneficiaries using ID numbers, names and addresses of dead people, people who did not exist, and people who had never applied for social grants, and then induced the department to pay a monthly social grant to these fictitious beneficiaries.¹²²

Are private sector or other civilian role-players always involved?

Related to questions about the degree to which these offences are collusive is the issue of to what degree the various categories of corruption involve civilians.

Possibly it is only in forms of bribery (in procurement and more general 'other bribery') that corruption generally involves civilians. However, there may be cases of bribery, for instance, where an employee bribes a more senior person to secure a promotion, where no civilian role-player is involved.¹²³ The general observation that may be made, therefore, is that acts of bribery in the public service mostly, but do not always, involve a public servant and a member of the public.

It appears that other categories of corruption may also involve civilian accomplice. For example, in 'non-bribery' procurement corruption government officials award contracts to civilian associates as a

way of accessing government resources. Their associates are expected to reimburse them in some way for the award of the contract.

Similarly, civilian agents are effectively co-perpetrators or accomplices in some of the complex cases of fraud. For instance, the housing subsidy fraud syndicates of public servants referred to earlier may also be assisted by civilians. In KwaZulu-Natal, for instance, syndicates based in the Department of Housing worked closely with a number of firms of attorneys to fabricate the transfer of property. Syndicate members forged title deeds, application forms, deeds of sale and deeds of grants. The attorneys would then assist them to transfer the fictitious property and obtain the housing subsidy, which would be transferred to the attorneys' account. The subsidy would then be divided between the attorney and syndicate members.¹²⁴

As indicated, bribery or extortion does not always include civilian participants. By their nature, cases of internal bribery where money is paid to enable a person already employed in the public service to be appointed to a specific post or be promoted do not involve civilian participants. But although incidents of bribery largely include both government and civilian participants (in incidents of public sector corruption that is), the involvement of civilians in acts of public sector corruption is not restricted to bribery. Nevertheless, it is important to recognise that even if it is collusive, much of the corruption in the 'misappropriation, embezzlement, fraud or theft' category does not include civilian participants.

Public sector corruption, then, is often, but not always, collusive. Furthermore, the fact that it is collusive does not necessarily imply the collusion of civilians.

Credit corruption

It has been said that 'corruption is an offence that always involves two parties'.¹²⁵ The observation should probably be understood to refer to incidents of bribery, in which the bribe payer and the person who receives the bribe constitute two distinct parties with different roles. But, as highlighted above, acts of corruption often involve a number of role-players who collude. They may also involve subordinates who are forced to cooperate as a result of relationships of authority. In addition, many forms of corruption, including procurement corruption, bribery and some frauds, generally involve civilians.

However, whether they are all government employees or whether some are civilians, the people involved might often better be labelled as 'co-perpetrators', or 'accomplices' of a principal perpetrator, who have consciously helped to execute the act of corruption. This applies to public servants who cooperate with one another in carrying out acts of corruption, although it may not apply to subordinates who help to execute corrupt transactions out of deference to authority. But it also applies where a procurement contract is awarded to an associate or family member who is linked to a government official who stands to benefit from the award. It applies in some type of fraud, such as the housing subsidy fraud discussed above, where the involvement of attorneys was key. All of these role-players consciously cooperate in the execution of the crime. Although one or more of the perpetrators may play a more prominent role, such as in initiating or leading the conspiracy, the point is that in many situations where more than one role-player is involved the role-players are in some way equals in that they are willing participants in the crime. In general, therefore, these transactions are forms of 'credit corruption' where 'all parties involved view corruption as an

exchange that creates a win-win situation for all of them'.¹²⁶ This may be at the expense of third parties who are not directly involved in the corrupt transaction.

In acts of nepotism and favouritism the person who uses his/her influence to make the appointment and the person who is appointed are co-perpetrators in some cases. But in others the person who authorises the appointments or salary packages is a principal perpetrator who initiates the process as a way of benefitting members of his/her own family or an associate's. The person who is appointed or promoted might be a subordinate of the initial perpetrator and, in being appointed, might in some cases be submitting to the chief perpetrators' authority. In other cases the family member or other person who is appointed or promoted might initially put forward the idea and even put pressure on the person in charge to appoint or promote them. However, whatever the dynamics between those who are involved, acts of nepotism in particular also constitute credit corruption in that both people who are directly involved (appointer and appointee) benefit from the arrangement.

Bribery, extortion and debit corruption

Some say that the offering or paying of a bribe is active bribery, while its receipt is passive bribery.¹²⁷ But it cannot be assumed that the person paying the bribe is the more active and the recipient the more passive participant in the transaction. Insofar as they imply that the relationship between the two parties generally follows this pattern, these labels are misleading.

Similarly, it is inappropriate to assume that civilians are generally the corrupters and state official are the ones who are corrupted¹²⁸ by criminally minded members of the public who lure the officials into acts of corruption. In some cases the civilian is the corrupter by, for instance, taking advantage of the fact that many public service salaries are often low. But, as a report on corruption in the JMPD observes, although members of the public may initiate corrupt transactions, there is 'no questions that aggressive soliciting and extortion by JMPD members is a major part of the problem'. The report goes on to say that 'For many interactions between JMPD members and drivers in Johannesburg it is also perhaps at this point meaningless to talk about "who initiates" the payment of the bribe. Bribe paying is simply part of a mutual understanding about how things are done'.¹²⁹

However, the point here is not so much about who initiates the bribe, but that it is often willingly paid. Many acts of bribery are therefore also forms of credit corruption. For instance, one of the PSC reports dealing with cases reported to the NACH discusses 'identity document fraud' (see Table 1). Whistleblowers reported that 'officials from the Department of Home Affairs fraudulently sold South African identity documents, passports, birth and marriage certificates to foreign nationals, in return for financial gain'.¹³⁰ It appears to be implied that foreign nationals approach the Home Affairs officials knowing that they are not entitled to the documents, but in the understanding that they may be procured by people willing to pay bribes. Both the foreign nationals and Home Affairs officials, it is implied, engage in the transaction as willing participants.

However, certain cases of bribery may better be categorised as 'debit corruption'. In Table 4 the subcategories of bribery outlined in the discussion of 'other bribery and extortion', above, are characterised as either involving credit or debit transactions on the part of the bribe payer.¹³¹ As reflected in Table 4, the category of 'debit corruption' therefore corresponds to situations where bribery is associated with of extortion of some kind (see the discussion of 'other bribery and extortion', above). Debit corruption is usually coercive – the person receiving the bribe uses his/her position of power to extract a bribe from the briber. The briber unwillingly pays an amount that they

Table 4: Classification of subcategories of bribery as credit or debit corruption

Subcategories of bribery	Credit/debit (for bribe payer)
To speed up the delivery of services	Credit
To receive a service or document to which one is entitled or influence a decision in one's favour where one fulfils the administrative requirements	Debit
To receive a service to which one is not entitled or illegitimately influence a decision in one's favour	Credit
To avoid or reduce a legitimate sanction	Credit
To avoid an illegitimate sanction (pure extortion)	Debit

are not required to pay to obtain something they are legally entitled to. This may also be to avoid a penalty that they are held liable for.

Acts of procurement corruption in the second subcategory can also qualify as debit corruption in some cases such as where a bid committee awards the tender to a deserving bidder, but securing the contract is conditional on the payment of a bribe. Such cases would conform to the second subcategory of bribery listed in Table 4. If a tender is not the most competitive, but the contract is secured by paying a bribe (the third subcategory in Table 4), this is credit corruption.

It should be noted that some cases in the fourth subcategory conform to the rule that debit corruption and extortion can be equated, such as in situations where a police officer is authorised by law to carry out an arrest, but is unlikely to do so unless there is the prospect of a bribe. This is the mirror image of cases where a service is denied to someone who is lawfully entitled to it (the second subcategory in Table 4); here the aim of offering the 'service' (i.e. arrest) is to obtain a bribe. If he/she was not viewed as the possible source of a bribe, the law violator would not face arrest. On the other hand, if the police officer intends to carry out the arrest anyway, but is willing to 'make an exception' for those willing to pay bribes, the situation is one of credit corruption. In the debit corruption case the prospect of a bribe motivates the arrest, while in the credit corruption case the intention to arrest exists, but is abandoned when the bribe is offered. However, in these examples, classifying the act as either credit or debit corruption involves focusing on the state of mind of the police officer. From the point of view of the bribe payer they are both cases of credit corruption.

As suggested in Table 5, many of the public 'services' where bribery has been known to be a common feature appear to be amenable to both forms of corruption. More in-depth research would be necessary to establish whether corruption associated with any of these services takes on one form more than the other.

The distinction between credit and debit corruption draws attention to the fact that many forms of corruption involving multiple participants are defined largely by a relationship of mutual benefit. However, largely in cases where bribes are extracted in situations that have elements of extortion, corruption is experienced as an onerous and unwelcome burden on one of the parties directly involved in the transaction. It is in these cases that the relationship between the parties *directly* involved in the corrupt transaction is that of perpetrator and victim.

Table 5: Circumstances of debit and credit corruption in well-known public services where bribery has been known to be common

Public service function or service	Debit corruption	Credit corruption
Procurement bribery	Required from winning bidder to secure contract	Required from losing bidder to secure contract
Border posts	Payment required to enter country or remove goods from country when a payment is not legally required	Payment enables person to enter country or bring goods into country despite not being entitled to do so
Firearms licences	Payment required to secure licence to which person is entitled	Payment enables person to secure licence when not legally entitled to do so
Identity documents and other certificates	Payment required to secure document to which person is entitled	Payment enables person to secure document to which they are not legally entitled
Foreigners (police)	Legal foreigners pay police to avoid victimisation and harassment	Illegal foreigners pay police to avoid enforcement of the law
Traffic enforcement	To avoid victimisation and harassment	To avoid enforcement of the law
Learner's licences and driver's licences	Payment is required to pass test despite successful performance	Payment secures a 'pass' despite test performance being unsatisfactory
Vehicle (roadworthy) licensing	Payment required in order to secure certificate despite vehicle being in satisfactory condition	Payment secures certificate despite vehicle being in unsatisfactory condition
Employment	Payment required to secure employment despite eligibility	Payment secures employment for ineligible person

Corruption victims and witnesses: direct and third-party victimisation

It has been argued that corruption sometimes has positive economic benefits. For example in countries where red tape impedes economic activity, corruption may contribute to economic development.¹³² People involved in credit corruption transactions obviously also experience them as personally beneficial, as do the recipients of bribes in cases of debit corruption. But beyond this it is widely agreed that corruption is very destructive. As Corruption Watch says in its annual report, 'The direct economic cost of corruption is huge and the impact of this behaviour is primarily felt by the poor. At the same time, corruption erodes trust in public and private sector institutions and leadership'. Partly because they often rely heavily on services provided by governments, but also because they are less able to afford the cost of conforming to regulatory requirements, poor people are more likely to experience demands for bribes.¹³³ But corruption also undermines the quality of public services provided to poorer people. Where corruption is widespread, poor people, and even the population of a country more broadly, may legitimately regard themselves as victims of corruption, whether they have personally experienced it or not.

However, rather than dealing with the broad issue of the impact of corruption, this section is concerned with the more specific question of whether discrete individuals (people or corporations) are direct victims of corruption.

The example of the theft of equipment or funds belonging to a state entity (as opposed to the purse from an employee's bag) provides a point of departure for answering this question. In such cases the immediate corporate victim is the public service institution itself and, less directly, the public purse generally (and thus the taxpayer), as well as the people who are supposed to benefit from the services provided by the state entity. However, the process of victimisation may remain largely invisible and cause little concern. For instance, if a desktop computer that is currently not in use is stolen from a government office, the loss may not disrupt the functioning of government. When the theft is discovered there is likely to be some bureaucratic inconvenience as forms have to be filled in and people who may have information are briefly questioned. But the costs of replacing the computer form part of the general costs of providing equipment in the department. Ultimately, therefore, the financial burden of the theft is transferred to the taxpayer. Although the department has suffered the theft of a computer, this does not impact financially on any single individual.

Thefts or acts of embezzlement from state institutions may have more immediate impacts than in the above example. Theft is generally carried out in secret. However, even if the theft is from an institution, if it is discovered, the people affected may legitimately feel that they have been personally disadvantaged by it and that the offence is, at least in part, one against them personally. If medicines are stolen from a hospital depot, this may mean that a patient is denied medication. In relatively small state institutions such as schools, the theft of money from school funds may also have directly tangible impacts. The school may not be able to buy teaching or sports equipment or finance a planned school outing. Even though it is a state institution, the financial loss is not just transferred to the taxpayer and forgotten. Teachers, members of the parent body, and learners may all feel that the theft has negatively affected them.¹³⁴

Similarly, there may be people or companies who are specifically disadvantaged by procurement corruption, whether the corruption is bribery related or involves the awarding of a tender to a company in which a government official or one of his/her associates has an interest. If they believe or know that corruption has occurred, they may legitimately regard themselves as victims.

A person who has been disadvantaged by nepotism or favouritism may also legitimately feel victimised. In some cases it may be obvious that an appointment or promotion is inappropriate, and people who see themselves as having been disadvantaged by it will believe that they have been unfairly treated.

This section is concerned with the more specific question of whether discrete individuals (people or corporations) are direct victims of corruption

It is therefore apparent that in corrupt transactions in a range of categories there may be people or companies identify themselves as victims of corruption. In many of these cases, including instances of procurement corruption, theft or misappropriation, or nepotism, there may be several individuals (or several companies) that believe they have been disadvantaged. A single instance of corruption might result in a number of people identifying themselves (or their companies) as victims.

These victims of corruption are ‘third-party’ victims of corruption. This does not mean that they cannot legitimately claim to be victims, but simply that they were not directly exposed to the corrupt act. As has been discussed, most people who are *directly* involved in corrupt transactions are involved in credit corruption. This constitutes a win-win situation in which none of the *direct* role-players is likely to regard him-/herself as a victim.

Such win-win situations include some forms of bribery. Implicitly, in many cases of bribery the parties are co-perpetrators rather than victim and perpetrator. It is only in situations of debit corruption that one of the direct parties may be regarded as a victim. Although individuals may regard themselves as victims of a wide range of corrupt practices, it is only in acts of debit corruption that the victim is a direct participant. As a result, many acts of corruption remain largely invisible to all but direct beneficiaries of the transaction. In other words, although many acts of corruption have victims, it is only in cases of debit corruption that the victim is a direct physical participant in and witness to the act itself.

Repeat offending and victimisation

Most manifestations of corruption are likely to involve repeated offending. It is possible, that nepotism is not always repeated, but it seems unlikely that people who cooperate in executing one corrupt procurement deal will stop there. The forms of fraud and embezzlement that receive publicity also generally appear to involve repeat offending, although acts of this kind are probably more likely to be detected if they are repeated. However, it would appear that some forms of ‘other bribery and extortion’ are especially likely to involve serial offending. This might be partly because the benefit in each corrupt interaction is relatively modest and the ability to gain financial advantage may depend on repeated infractions. It is also likely that positions that lend themselves to this kind of infraction sometimes involve high levels of interactions with members of the public and therefore offer many opportunities for the extraction of bribes.

Related to the routine nature of some forms of ‘other bribery and extortion’, it would appear that certain categories of victims are at greater risk of repeat victimisation. These would include minibus taxi-drivers for a number of reasons, including that they have far more interactions with traffic police because of their daily use of roads, but also because their incomes are related to the number of journeys they make. As a result they are often inclined to break the rules of the road. In addition, the condition of their vehicles also provides traffic police with a pretext for accosting them.¹³⁵ Vehicle drivers in lower-middle-class areas may also be exposed to relatively high levels of victimisation by traffic police, partly because they or their vehicles may be unlicensed and partly because the condition of their vehicles may attract police attention.¹³⁶ In these situations the boundary between credit and debit bribery is not clear. Traffic police deliberately target people in these areas to extract bribes, but the bribes may be fairly small, and police willingness to accept bribes enables people to avoid large fines or the costs of complying with the law.¹³⁷ People who frequent late-night drinking establishments also tend to have repeated encounters with traffic police.¹³⁸ Again, the payment of bribes may allow the victim to avoid serious charges of drinking and driving. This is still effectively credit bribery, although repeated and frequent police attention may cause resentment and some criticism of and (often-anonymous) reporting of the police officers involved.¹³⁹ Particularly in areas where they form a large proportion of the population, foreigners may also experience high levels of repeat victimisation because police tend to use these areas as easy sources of cash.¹⁴⁰

Bribery related to procurement corruption is also likely to involve ongoing relationships and the repeated paying of bribes. However, there may be considerable variations in the degree to which the providers of goods or services experience this as credit or debit corruption, and therefore whether it causes a sense of victimisation that is reinforced by its repetition. In some cases the providers may value the fact that they would not be a 'preferred supplier' if procurement procedures were properly applied. In common with other types of credit corruption, therefore, they may see themselves as partners rather than victims. However, as indicated earlier, their ability to maintain their 'preferred' status may depend on paying more bribes. Also, the requirement that people pay bribes is not restricted only to securing contracts. In the words of one interviewee,

You pay to be introduced to the political principals, you pay to get a tender, you pay to be paid and you must also grease the machinery. From time to time you are called to make donations to today's ANC and tomorrow's ANC. There are also donations to the youth league, the women's league and the SACP.¹⁴¹

If the most eligible bidder is asked for a bribe and pays it they may therefore become both a repeat victim and offender. On the other hand, if one of the people (X) associated with a bid is approached and asked for a bribe and refuses to pay it, the contract will probably not be awarded to him. In this situation their status as a victim may take many forms. The act of soliciting the bribe constitutes a crime in itself and therefore X will have experienced corruption directly. Despite not having become complicit in it, X is therefore both a victim of and witness to corruption.¹⁴² However, the government officials involved will probably not continue to make offers of this kind to X and will offer them to others. In effect, therefore, through this behaviour, X has excluded herself from further 'opportunities' of this kind. Knowing that procurement contracts are dealt with corruptly, X may decide not to submit more bids to this department, even though the goods or services that she provides are needed by the department on an ongoing basis. If X continues to submit bids to this department, procurement continues to be managed corruptly and X is known to be unwilling to pay bribes, X's status is likely to shift from that of being directly exposed to corruption to being a third-party victim of corruption to whom corrupt transactions are no longer directly visible.

Repeat victimisation may be less of an issue with other services associated with high levels of corruption. For instance, vehicle and driver licensing is a major location of corruption. However the high levels of repeat offending by officials at testing centres do not necessarily translate into repeat victimisation if the victims use these services only occasionally.¹⁴³

Under what circumstances do acts of corruption become visible?

It should be noted that there are broadly two, qualitatively different types of processes through which acts of corruption become visible. The first of may be seen as a relatively passive process in which people who are selected as respondents to surveys acknowledge that they have been exposed to corruption in one way or another. In these circumstances the reporting of corruption feeds into the production of data, often quantitative in nature, about the prevalence or other attributes of corruption. The person carrying out the survey generally assures the person reporting corruption that their anonymity will be protected. (Questions about to what degree people who have been exposed to corruption are likely to reveal this to people who are conducting surveys are discussed in the following section of this monograph).

The second type of process is qualitatively different, partly because it requires a more active decision to report corruption. It also, as a general rule, involves specific cases of corruption being identified or revealed, often with the parties involved, or allegedly involved, or location of an incident, being identified. This type of process often involves someone who is aware of corruption taking a decision to report this to a senior person in the department that they work in, to an official agency or to another body such as a newspaper or anti-corruption NGO. The person reporting the incident may identify themselves or do so anonymously. If the report is anonymous the level of detail may also tend to be lower.

As a general rule, acts of corruption are carried out in secret. Although they are sometimes engaged in collectively, the people involved are often co-perpetrators rather than distinct parties who are involved in a reciprocal offence. It is primarily in cases of debit corruption, usually involving forms of bribery that involve extortion, that the relationship between the parties who are *directly* involved in the corrupt transaction is one of perpetrator and victim. Nevertheless, even if extortion is involved, such as where a bribe is demanded in order for the payer to secure a procurement contract, once the bribe is paid there is mutual complicity. Because of this, and because the bribe payer fears further victimisation by the perpetrator, she or he may not wish to report or expose it.

In relation to other forms of corruption, including 'procurement corruption', forms of 'misappropriation, embezzlement, fraud or theft' and 'nepotism', some people may believe they have been disadvantaged by

Nevertheless, even if extortion is involved, once the bribe is paid there is mutual complicity

corruption and therefore see themselves as its victims. For instance in procurement and employment situations there are usually rival bidders or job applicants. Because of their interest in and proximity to the process, they may subject it to critical scrutiny, and irregularities may make them suspicious that it is not above board. However they are not direct participants in the corrupt transaction and it cannot be assumed that they will be aware that corruption has taken place and that they have been disadvantaged as a result.

One set of factors affecting whether or not corruption becomes visible to official or other agencies is therefore whether victims of corruption are both conscious of the corruption, and overcome any inhibitions against reporting it. Other factors affecting whether or not acts of corruption become visible to official or other agencies (these are also relevant to understanding the visibility of forms of corruption that have no direct or third-party victims) include:

- **The nature of the corrupt actions.** This includes the level of care taken to conceal the corrupt action, the scale of the infringement and other factors promoting visibility. Transactions that involve large quantities of money are more likely to attract scrutiny, while repeated acts are more likely to be exposed. Similarly, evidence of bid rigging in a procurement transaction¹⁴⁴ would raise a red flag about irregularities. The appointment of someone who is clearly related to a senior person and is obviously not qualified for the job would also be likely to do so. But, if the relationship is less obvious, the corruption may be less visible.
- **The type of management practice in organisations.** The greater the care taken with scrutinising financial transactions and managing resources, the greater chance that missing funds or equipment will be noticed.

- **Other potential whistleblowers.** Because corruption takes place in work settings, colleagues may be witnesses and may report it. The use of the services of subordinates who are not partners in the transaction also implies visibility to role-players who are external to the process. An aggrieved partner in a corrupt transaction may also change from being an insider to an outsider.
- Some forms of corruption may be identified through **forensic processes**, although there would generally have to be some reason for suspicion about corruption or maladministration for an investigation to occur. Some of these processes are relatively simple, such as where the large number of government employees who were fraudulently drawing social grants were identified by checking the ID numbers of people on the social grant system against those of government employees. However, some forensic processes are far more complex.

Corruption is therefore not always exposed by victims or other whistleblowers and may be exposed by financial auditing or forensic analysis. In so far as victims or whistleblowers are responsible for exposing it they would need to have a motive for reporting it. This motive has to be strong enough to overcome the fear of adverse consequences or other factors that may discourage them from reporting it. People may believe that there is no point in reporting it or that it is not worth the trouble, for example if they believe that their information will not ensure that someone is prosecuted or disciplined. In some work and community settings corruption appears to be so much part of the established culture that, although it is highly visible, there is little or no whistleblowing. In these cases, therefore, it is the 'normalisation' of corruption – sometimes combined with anxieties about the risks of whistleblowing – that keeps it relatively invisible rather than the fact that it occurs in secret.

Chapter 5

Interpreting currently available data on corruption

Data from victimisation surveys on bribery

One of the major sources of data on corruption in South Africa is victimisation surveys or other general surveys on levels of bribery. Probably the most credible source of this kind of data, partly because of the relatively large sample sizes used, is the National Victims of Crime Surveys (NVCSs) that have been carried out five times since 1998.¹⁴⁵

One of the key issues that need to be clarified is what NVCS data actually represents. In strict terms, it should be understood as data on the soliciting of bribes by government officials. For instance, the report on the 2010 survey states that ‘Households were asked if any government or public official asked for money, favours or a present for a service that he/she was legally required to perform’. As reflected in Table 6, there has been some level of fluctuation over the years in responses to this question, varying from 2% saying that they had received requests for money in 1998 and 2.9% saying that they had received requests for ‘money, a favour or a present’ in 2007, to 7% saying that they had received the latter type of request in 2010.

Table 6: Percentage of people from whom payments were requested by government officials¹⁴⁶

	1998	2003	2007	2010	2011
Asked for money, a favour or a present	–	5,6	2,9	7,0	4,5
Asked for money only	2,0	4,6	–	5,6	4,2

A second question is what proportion of bribery-related behaviour this represents. If it is assumed that the questions were understood properly and answered honestly and literally, it would mean the data includes cases where bribes were requested by government officials irrespective of whether they were paid or not. But the implication would be that it does not include cases where members of the public offered them to government officials when they were not first requested (whether the offer was accepted or not). There is no way of knowing what proportion of bribery-related behaviour is initiated by officials soliciting bribes rather than the offering of bribes to officials.

The fact that bribes were solicited does not mean that they were paid. This is discussed in the report on the 2003 NVCS that provides data on answers to a question about whether people paid bribes

when they were solicited. The data on responses to this question is provided for specific services. No overall figure is given for the total percentage of respondents who said that they paid bribes after these were requested from them. Percentages for those who said that they paid the bribes varied dramatically among different departments or sectors. An 'astounding' 100% said that they had paid bribes to avoid traffic fines. But only 16% who received requests for bribes for identity documents or passports said they had paid and none said they had paid bribes to the police.¹⁴⁷

A more general question concerns the overall reliability of the data provided in these surveys as a measure of the extent to which members of the public receive requests for bribes. The report on the 2003 survey, for instance, suggests that

Some victims may be aware of their perceived 'complicity' as the bribe payer ... and would worry that by answering the question they might implicate themselves. Others may not be aware that being asked for a bribe in return for a service is a crime, and may instead see this as a 'normal' transaction fee required to ensure the delivery of services.¹⁴⁸

On the other hand, the 2012 Corruption Watch report on corruption in the JMPD suggests that surveys of this kind, that

are based on visits to 'households', may under-represent some of the constituencies, including younger drivers, taxi drivers and immigrants, who are more likely to be routinely exposed to JMPD corruption. Members of these constituencies may, for various reasons, be less accessible to those conducting these surveys.¹⁴⁹

The observation may apply to services other than traffic policing and the groups that they routinely target to extract bribes.

Questions about reliability are also suggested by comparisons between the findings of the surveys. For instance, as shown in Table 6, the fairly substantial fluctuation in overall levels of corruption over the years 2003–2010 suggests that there was a sharp decrease in corruption after 2003 followed by a fairly sharp increase after 2007, and questions may be asked as to whether these trends were not affected by methodological inconsistencies. The data in the 2003 survey that 100% of those who said they had received requests for bribes in respect of traffic fines admitted to paying these bribes, while none of those who said they had received requests for bribes from police officers admitted to paying them also sounds implausible. Taken at face value, the data in Table 7 appears to indicate that requests for bribes fell by more than 50% in KwaZulu-Natal over a one-year period and by 33% in Mpumalanga. It is also interesting that the Eastern Cape, which is often characterised as one of the more corrupt provinces, records the lowest levels of requests for bribes in both 2010 and 2011.

Nevertheless, the survey data should not be dismissed altogether. For instance, the data in Table 7 reflects a degree of consistency in the ranking of the provinces between the 2010 and 2011 surveys. Although North West moves from the fourth-lowest to second-highest position, there is no major shift in the overall level of requests for bribes between the two years in the province.

The data in Table 8 also indicates that responses to questions about the departments or services that are linked to corruption have consistently demonstrated a similar pattern. Requests for bribes in relation to traffic fines have consistently featured at the top of the list. In 2003 the second-highest number of requests was in relation to 'employment or jobs', but in subsequent years the second-highest number of requests has consistently been related to policing, and requests for bribes from

Table 7: NVCS data on requests for money from government officials by province (%)

	2010	2011
Gauteng	10,6	9,5
North West	3,7	4,6
Free State	5,8	4,2
Mpumalanga	5,3	3,5
Limpopo	5,4	2,4
Northern Cape	1,9	2,3
KwaZulu-Natal	4,3	2,1
Western Cape	2,2	1,4
Eastern Cape	1,7	1,1
South Africa	5,6	4,2

**Table 8: NVCS data on types of service where corruption was experienced
(% of respondents)¹⁵⁰**

	2003	2007	2010	2011
Traffic fines	27,7	32,8	52,8	50,0
Policing	19,9	18,6	21,4	22,9
Driver's licence	9,1	13,9	15,9	13,2
Employment or job	20,1	13,9	13,8	11,7
Identity document or passport	13,9	16,5	13,3	9,7
Water or electricity	8,1	5,8	7,3	7,7
Pension or social welfare grant	11,1	9,4	6,6	7,5
Housing	1,7	2,6	8,3	7,0
Court-related services	4,4	2,8	3,9	3,8
Medical care	0,3	2,1	2,8	2,1
Customs	0,7	2,8	2,2	1,8
Schooling	2,6	3,2	3,1	1,6

police have been received by a relatively similar proportion of respondents who were asked for bribes (roughly one-fifth) throughout.

Confidence in the data provided by surveys of this kind would be increased if there were greater consistency between the data generated by different surveys. As already mentioned, a 2013 survey by Transparency International reported that 47% of the South African adults surveyed and who had accessed at least one of eight services admitted to paying a bribe during the year prior to the survey.¹⁵¹ Differences between the questions asked in the two surveys could not on their own account for the discrepancy unless the number of people who paid unsolicited bribes were far greater than the number of people from whom bribes were solicited. However, if there is room for a degree of uncertainty about the accuracy of the NVCS, there is room for greater uncertainty about

the overall accuracy of the Transparency International survey, because it has much smaller sample sizes than the NVCS and was carried out in a limited number of urban areas.¹⁵²

Another possible source for comparison might be the data reported from the Afrobarometer survey (see Table 9). Although the services covered by the data in this survey are more limited, there is some overlap between the two, with both providing data on medical care, schools and policing. However, the questions asked are different. Firstly, this is because the NVCS asks about requests for bribes, while Afrobarometer asks about their payment. The second more critical difference is that the NVCS asks those who were asked for bribes about the sector or department that the official belonged to, while the Afrobarometer survey asks those who indicated that they had accessed specific services whether bribes had been requested from them by the personnel who served them. Both types of data are interesting, but the NVCS approach may be misleading in some respects.

Table 9: Respondents to the 2011 Afrobarometer survey who had contact with government bodies or services: ‘how often in the past year have you had to pay a bribe, give a gift, or do a favour to government officials in order to ...’ (%)¹⁵³

	... obtain a document or permit?	... obtain water or sanitation services?	... obtain treatment at a local health clinic or hospital?	... avoid a problem with the police, like passing a checkpoint or avoiding a fine or arrest?	... obtain a place in a primary school for a child?
Never	90	90	88	89	90
Once	5	5	6	6	5
More than once	4	4	7	4	4
Don't know	0	0	0	1	1

The significance of this distinction is illustrated by a 2009 UN Office on Drugs and Crime survey of corruption in Afghanistan. Although roughly 25% of respondents reported paying bribes to police, municipal and provincial officials, the percentage reporting the payment of bribes to customs officers was relatively low at 3%. However, the data for those who actually accessed the specific service paints a different picture. Roughly 52% of those who had interacted with police reported that they had paid a bribe. For those who had interacted with customs officials the rate was 50%, in fact a greater percentage than that for those interacting with municipal and provincial officials (43%).¹⁵⁴ The number of people experiencing corruption from customs officials was relatively small compared to those experiencing corruption from police and municipal and other officials. But those actually using customs services were experiencing very high levels of corruption.

The Afrobarometer approach takes into account that people have different levels of exposure to different service providers. Effectively it suggests that, for those exposed to or using these services, levels of exposure to corruption are fairly similar. But comparison of the NVCS and Afrobarometer data indicates that at least one of the surveys is probably inaccurate. In the NVCS 2011 data the percentage of those who had received requests for bribes indicating that they had received such requests from police (22.9%) is 14 times greater than that relative to requests for bribes in schools (1.6%). The service provided by schools is widely used by the South African population (although

only by families with children) and one would therefore expect that the level of use of state schools is comparable to the use of policing services. However, the Afrobarometer data from 2011 suggests that levels of bribery are very similar for those using these services. If this is true, and it is also true that levels of use of the two services are similar, then the NVCS should also generate similar results for the two services. It seems doubtful that this discrepancy can be accounted for by the distinction between the questions (about requests for bribes compared to payment of bribes) asked in the two surveys. This would only serve to explain the different findings if bribes were paid by an extremely high proportion of those who received requests for bribes at schools, but by a much lower proportion who received these requests from police.

There are therefore many grounds for querying data that emerges from victimisation surveys or other general population surveys. Among others, these may include questions about sampling methodology and about whether the staff who administered the survey ensured that questions were clearly understood and were effective in reassuring respondents about the confidentiality of their responses.

A further issue that requires greater clarification involves the understanding of the term 'victimisation' as it is applied to bribery in victimisation surveys. Implicit to the inclusion of the question about requests for bribes in the NVCS is that such requests constitute a form of victimisation. This monograph, however, identifies victimisation with adverse consequences (see the discussion of victimisation above). As discussed above, in some situations (generally those involving credit corruption) the person from whom the bribe is requested is happy to pay a bribe. In this type of situation it may be assumed that the transaction has some benefit to them but it also requires that the person paying the bribe set aside any moral aversion that they may have to engaging in bribery. It can therefore be argued that requests for bribes involve victimisation only if they are unwelcome. This may be because the transaction constitutes debit corruption or because the person from whom the bribe is requested finds bribery morally repugnant. If victimisation is understood as conduct that is unwelcome then it cannot be assumed that all requests for bribes constitute victimisation.

On one level this may seem to be merely a semantic debate. It might be said that the NVCS data is of interest in that it provides an indication of certain bribery-related behaviour (requests for bribes from government officials) whether this is welcome or not, or is classified as victimisation or not. But it is not known to what extent factors related to victimisation and complicity in corruption affect the way in which survey respondents answer questions about requests for bribes in surveys like the NVCS. It is possible to suggest various hypotheses about the relationship between these variables including that:

- Survey respondents who receive unwanted requests for bribes (often associated with debit corruption) are more likely to acknowledge having received these requests than those who want them or made the offer themselves (credit corruption).
- Survey respondents who received requests for bribes but did not pay them are more likely to acknowledge that they received such requests.
- Survey respondents who admit to receiving requests for bribes may not necessarily admit to paying them if they did so.

But though each of these hypotheses appears reasonable there is no clear information that can help us to assess the possible significance of any of them. There is evidence of respondents' willingness

to disclose some forms of credit corruption to researchers. In research carried out in 2011 some people in inner-city Johannesburg were willing to disclose that they had bribed traffic officers to ignore the fact that their vehicles were unroadworthy.¹⁵⁵ It therefore cannot be assumed that survey respondents who admit to paying bribes are only those who have been involved in debit corruption. Nevertheless, it seems likely that survey data might be more representative of those who paid bribes reluctantly and those who refused to pay them than of those who paid them willingly.

Not only do we not know to what extent bribery-related behaviour is associated with a sense of victimisation, but we do not know much about the factors impacting on how people respond to questions about bribery in victimisation or other surveys. While they provide interesting data, questions therefore remain about what dimensions of the phenomenon of bribery are best represented in survey data.

Even though they do not necessarily illuminate all dimensions of bribery equally, methodologically rigorous surveys could be used more extensively. For instance, although there is reason to believe that corruption in prisons is a major problem,¹⁵⁶ the NVCS data does not indicate that prisons are a particular problem area. Surveys of prisoners or recently released prisoners might provide insight into the scale and nature of this problem. Another area that is not reflected in the NVCS data is that of state procurement and other specific aspects of corruption, such as licensing, that involve private sector companies. Surveys of such companies might also help to gauge the extent of corruption in this sector. Surveys of state officials, especially those who regularly deal with members of the public, might provide quantitative data on other questions such as how often public servants receive offers of bribes from members of the public. They might also indicate the degree to which the payment of bribes and factors such as favouritism affect promotions or transfers. Focused surveys or other research could also target other groups, such as foreigners, minibus-taxi drivers and people interacting with officials at border posts.¹⁵⁷ If carried out with methodological rigour, surveys could substantially deepen our understanding of the problem of bribery.

South African Police Service (SAPS) crime statistics and other criminal justice data

Most, but not all, manifestations of corruption as it is defined in this monograph are criminal offences.

- Many acts of procurement corruption would constitute offences under PRECCA, including under section 12 (offences relating to contracts), section 13 (procurement corruption related to bribery) or section 17 (procurement transactions from which a public officer benefits directly).
- Acts in the 'other bribery and extortion' category might be criminalised under section 3 (the general offence of corruption), section 4 (relating to government officials), section 7 (relating to members of a legislature), section 8 (relating to the judiciary), section 9 (relating to the prosecuting authority) or section 10 (relating to employment), among others.
- Acts of corruption in the 'misappropriation, embezzlement, fraud or theft' category would generally constitute either fraud or theft. Some corrupt procurement transactions or other acts of bribery may also involve fraud.

People who are charged with offences relating to acts of corruption may also face charges of money laundering or racketeering under the Prevention of Organised Crime Act (Act 121 of 1998) (POCA) or other common law offences such as forgery.¹⁵⁸

However, not all acts of corruption are criminal offences. For instance, a municipal manager who encourages or pressures municipal staff to award a tender to a company in which his wife or other family member or another associate has an interest would be guilty of a disciplinary offence under the Code of Conduct for Municipal Staff Members¹⁵⁹ but not guilty of a criminal offence. Only if there was a direct personal benefit of some kind would he be guilty under PRECCA. Similarly, acts of nepotism or favouritism may be disciplinary violations, but would not be criminal offences. Wasteful expenditure may also qualify as ‘financial misconduct’ under the Public Finance Management Act, but would not be a criminal offence unless it involved fraud or theft.

In the SAPS annual report some cases of corruption are reported on in a section of the report entitled ‘Specialised investigations into serious commercial crime’.¹⁶⁰ This deals with investigations into ‘various forms of serious and priority fraud, serious commercial-related theft, complex commercial crimes where the services of a chartered accountant or forensic auditor is required during investigation, and contraventions of certain commercial-related statutes’.¹⁶¹ The report presents data on cases received, arrests, convictions and the value of cases for 25 different subcategories of serious commercial crime. The data on cases in four of these subcategories, which could be relevant to analysis of the forms of corruption discussed in this monograph, is presented in Table 10, together with the overall number of cases reported as serious commercial crime.

Table 10: Overview of SAPS data on cases received in 25 categories of serious commercial crime, 2007/08 – 2012/13

	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Other fraud	10 643	12 185	10 082	9 766	7 466	4 126
Theft	1 137	1 216	1 152	1 042	733	473
Falling under 1992 Corruption Act and PRECCA	124	89	93	86	88	129
Falling under POCA	1	1	2	15	10	8
Other 21 categories	12 483	15 192	18 785	17 811	9 791	6 205
Total: All serious commercial crime cases received	24 388	28 683	30 114	28 720	18 088	10 941

As reflected in Table 10, the SAPS is now recording a dramatically smaller number of serious commercial crime cases than it was a few years ago, with the total number of cases recorded in 2012/13 representing 36% of those recorded in 2009/10. However, it appears unlikely that this dramatic change reflects changes in the number of crimes, but rather in the way offences are recorded or other changes of this kind.¹⁶³ The 25 categories reported on as serious commercial crimes include (some) cases falling under PRECCA and POCA. They also include various subcategories of fraud, of which the category of ‘other fraud’ is consistently the largest. Theft is another comparatively large category consistently making up 4% of cases reported as serious commercial crimes in the last six years.

On the other hand, cases that fall under PRECCA (or the 1992 Corruption Act) make up a relatively small proportion of the total number of cases recorded in the ‘serious commercial crime’ category (1% in 2012/13). Those falling under POCA make up an even smaller percentage. However, it cannot be assumed that these cases make up all of the offences that fall under these two statutes and presumably only include those judged to be serious commercial crimes. For instance, the cases of theft recorded are only those in the serious commercial crime category and make up a tiny percentage (substantially less than 0.5%) of the total number of cases of theft recorded by the SAPS in categories such as ‘all theft not mentioned elsewhere’ (362 816 cases recorded in 2012/13)¹⁶⁴ or others. Similarly, it is likely that cases of bribery that are not as serious are reported on elsewhere in SAPS crime statistics, most likely in the ‘commercial crime’ category (91 569 cases recorded in 2012/13).

It is generally agreed that crime statistics cannot be used as a source of information on overall levels of most types of crime, because they are contingent on someone being aware of the crime and reporting it, and on the report being recorded.¹⁶⁵ As discussed above, there are a number of factors affecting whether or not corruption is ultimately reported to an official (or another) agency. But even though most forms of public sector corruption constitute criminal offences, SAPS crime statistics cannot even be used as a source of information on *reported* public sector corruption. This is partly because of the intricacies of SAPS crime recording practice, but also because the statistics do not differentiate between cases involving government officials (that might therefore constitute public sector corruption) and other cases. Any person may be charged under PRECCA or POCA or the other offence categories, whether they are employed in the public sector or not.

Reports from other criminal justice system departments could also contain data on corruption. For instance, National Prosecuting Authority (NPA) annual reports provide data on ‘convictions in specialised commercial crime courts’, the number of people convicted of corruption where the amount involved is more than R5 million, and ‘the number of prosecutions instituted for serious corruption matters’.¹⁶⁶ Only one of these categories focuses on public service officials. Because corruption among Justice, Crime Prevention and Security (JCPS) cluster officials is prioritised, recent NPA annual reports provide data on JCPS officials who have been convicted of corruption (Table 11), but do not record the number of government officials who are prosecuted. The data is also opaque in several other ways. For instance it is not clear which departments these officials are from. Although the JCPS cluster generally covers the criminal justice system (police, justice, corrections),

Table 11: NPA data on JCPS officials convicted of corruption, 2009/10 – 2012/13¹⁶⁸

	2009/10	2010/11	2011/12	2012/13
Number of JCPS personnel convicted of corruption	40	29	107	152
Number of cases in which convictions were obtained			127	
Cases of JCPS corruption finalised			175	249
Number of JCPS officials prosecuted			182	200
Conviction rate ¹⁶⁹			73%	82%

it also includes the military, intelligence services and Department of Home Affairs.¹⁶⁷ There is also no indication of how corruption is defined, specifically whether this is restricted to offences under PRECCA or includes other offences such as fraud or theft.

However, even if the data provided by the SAPS and NPA were to consistently distinguish cases against public officials from others and address the other deficiencies outlined above, the key point is that data from criminal justice agencies is at best a measure of how much corruption is being revealed and the relative vigour with which it is being addressed by the criminal justice system. It therefore does not reflect the extent of corruption in the country.

Special Investigating Unit data

Another type of official data that may help in understanding levels of corruption is that from Special Investigating Unit annual reports. SIU data is potentially of considerable interest. While the current ‘multi-agency anti-corruption system’¹⁷⁰ involves several agencies in the fight against corruption, the SIU is the only one focused mainly on corruption and related problems. SIU investigations are initiated by presidential proclamations. They usually focus on state agencies, but do not deal exclusively with state officials. The data in Table 12, extracted from SIU annual reports for nine consecutive years, reflects some of the outcomes of one of the largest investigations conducted by the SIU, the one into social grant fraud.

Table 12: SIU data on investigations into social grant fraud, 2004/05 – 2012/13¹⁷²

	2004/ 05	2005/ 06	2006/ 07	2007/ 08	2008/ 09	2009/ 10	2010/ 11	2011/ 12	2012/ 13	Total
Evidence prepared for criminal action/ number of new cases before court	181	814	2 675	4 204	3 930	3 797	2 809	2 488	865	21 763
Number of criminal convictions achieved	9	408	2 215	3 625	3 605	3 345	2 477	2 258	822	18 764
Acknowledgement of debt signed	327	2 120	4 677	9 391	9 680	8 401	6 326	5 487	3 372	49 781
Disciplinaries prepared	–	–	686	8 018	4 100	2 890	2 095	2 213	766	20 768
Recommendations for removal from social pension system (other remedial action)		111 517 ¹⁷³	72 278	103 689	151 184	8 383	6 326	5 487	3 454	462 318

Several points need to be borne in mind when interpreting SIU data. The first is that the SIU engages in a diversity of investigations and SIU data is not necessarily presented in a standard format. The more important point, however, is that, as with other official data, SIU data reflects the activity of an anti-corruption agency. This is illustrated by information provided in SIU reports indicating that from

2009/10 onwards the Department of Social Development requested that the SIU shift its focus away from social grant fraud to procurement irregularities in the South African Social Security Agency.¹⁷⁴ Data from the NVCS (Table 8) suggests that social-grant-related corruption had decreased during this period. This suggests that this shift in focus might be justified. Nevertheless, if the NVCS 2011 figures are extrapolated for the overall adult population of South Africa, this would suggest that, in 2011, officials administering social grants requested bribes from more than 100 000 South Africans. The fact that the number of convictions obtained and other indicators in Table 12 have all declined substantially in recent years does not therefore indicate that social grant corruption is no longer a major problem. As the SIU acknowledged, the changes in these figures primarily reflect the move away 'from high yielding process-driven investigations to procurement focused investigations which typically yield lower numbers'.¹⁷⁵ Changes in the number of cases reported or other indicators therefore reflect decisions about the overall strategy for investigations relating to the Department of Social Development.

Nevertheless, this is not to say that SIU data cannot be used to illuminate aspects of the problem of corruption. For instance, the sheer volume of cases reported in Table 12 clearly reveals the scale of the problem of social grant fraud. However, although the SIU is generally concerned with corruption in public sector agencies, its data does not always only deal with public servants.

Like data provided by the SAPS and NPA, SIU data does not generally distinguish between government officials and other people. There are some exceptions to this. One example of SIU data that specifically focuses on public servants is that presented in Table 13. This shows that by 2007/08 the SIU had identified almost 70 000 public servants who were registered on the social grant system,¹⁷⁶ although it appears that they were not necessarily there illegally.¹⁷⁷ For instance, the same report indicates that only 27 504 public servant grants had been deactivated over the three years from April 2005 to March 2008,¹⁷⁸ suggesting that others were legitimate. Furthermore, 287 484 grants were removed from the system over this three-year period, indicating that the majority of grant beneficiaries who were removed were civilians rather than public servants.¹⁷⁹

Table 13: SIU data on public servants registered on the social grant system according to type of grant, 2007/08¹⁸⁰

Type of grant	Number of public servants receiving grant
Old age grant	3 183
War veterans grant	2
Disability grant	9 123
Maintenance grant	1 130
Foster care grant	11 642
Combination grant	180
Grant in aid	39
Care dependency grant	2 129
Child support grant	42 371
Total	69 799

Another example of SIU data that distinguishes government officials from civilians is data on a national SIU investigation into the irregular issuing of driver's licences conducted in conjunction with the Department of Transport (DOT). As Table 14 indicates, over a six-year period from April 2005 to March 2011, 350 officials and 2 146 civilians were arrested for cases relating to driver's licences. Data from a related investigation into the registration of stolen vehicles on the National Traffic Information system, which differentiates arrests of officials and civilians, is also provided in the annual reports.

Table 14: Data on SAPS arrests linked to SIU–DOT investigation into driver's licences, 2005/06 – 2010/11

	Public officials	Civilians
2005/06	34	374
2006/07	64	950
2007/08	25	177
2008/09	106 (70 government, 5 municipal, 31 driver's licence testing centre)	253
2009/10	93 (39 government, 22 municipal, 32 DOT)	232
2010/11	28 (6 government, 19 municipal, 3 DOT)	160
Total	350	2 146

Therefore, although the SIU is generally concerned with corruption and other financial crimes affecting state entities, its data includes cases where civilians have colluded with public servants. It also includes cases where civilians defraud the state without assistance from public servants. These cases would not qualify as cases of public sector corruption in terms of the approach used in this monograph because they do not involve the abuse of public positions. Caution should therefore be exercised in interpreting SIU data because it does not exclusively reflect cases involving government officials.

Another point of comparison between SIU and NVCS data concerns data on the corrupt issuing of driver's licences. The SIU investigation into the irregular issuing of driver's licences (the DOT investigation) is not reported on after the 2010/11 SIU annual report. This would appear to indicate that the investigation ended in that year. However, the data in Table 8 indicates that levels of corruption related to the issuing of driver's licences remained fairly constant over much of this period, which suggests that the investigation may have been ended prematurely. In other cases SIU data may help to understand corruption that is not reflected in victimisation or criminal justice data. For instance, reports on the SIU–DOT investigation also provide data on the investigations into the registration of stolen vehicles on the National Traffic Information system. Forensic processes may therefore in some cases lead to data being generated on types of corruption that are less susceptible to examination through survey research.

SIU reports show that a large number of corruption cases are addressed using civil rather than criminal processes. Typically these involve the signing of acknowledgment of debt (AOD) agreements in which public servants or others who have defrauded or stolen from the government undertake to repay the government money that they have unlawfully obtained. For instance, the data in Table 12 indicates that 49 781 AODs had been signed in the nine years up to March 2013. The number of AODs signed in each year far outnumbers the number of criminal cases for which evidence was prepared (21 763). It may also be noted that if the SIU does provide data on cases addressed through the criminal justice process, it may be duplicated in statistics provided by the SAPS and NPA. If cases justify criminal investigation and prosecution, the SIU refers them to these agencies. The cases for which the SIU prepared evidence ‘for criminal action’ or in which ‘criminal convictions’ were achieved may also be reported on in SAPS or NPA reports.

Data from government departments on disciplinary cases

Another source of information on corruption is the data provided in some departmental annual reports on internal disciplinary measures. Some of the more detailed data of this kind can be found in a breakdown of disciplinary cases of ‘fraud and corruption’ provided in recent SAPS annual reports (see Table 15).

Table 15: SAPS data on fraud- and corruption-related disciplinary charges against SAPS personnel, 2011/12 – 2012/13

	2011/12	2012/2013
Number of personnel charged	1 050	892
Corruption	383	319
Fraud	257	153
Aiding an escapee	352	349
Defeating the ends of justice	209	149
Extortion	67	46
Bribery	18	10
Total	1 286	1 026

SAPS disciplinary data provides another example of variations in the approach to the classification of corruption cases. One of the anomalies is that there are different categories for ‘corruption’ and ‘bribery’. Considering that PRECCA – South Africa’s principal legislative instrument for criminalising corruption – is in effect a codification of common law provisions relating to bribery, it is puzzling that ‘corruption’ and ‘bribery’ are recorded as distinct disciplinary offences. It is likely that the offence of ‘aiding an escapee’ may also often involve bribery, implying that acts of ‘bribery’ extend beyond the bribery category.

Alongside the fact that the categories used are far from self-explanatory the key point is that the data is primarily a reflection of anti-corruption activity. The NVCS data appears to indicate that police in South Africa requested bribes from upwards of 300 000 people in 2011.¹⁸² If this data is correct, then the SAPS data indicates that the disciplinary system is dealing with a very small portion of the overall problem of police corruption.

Data from PSC reports on cases reported to the National Anti-Corruption Hotline

Rather than being an indication of anti-corruption activity by state agencies, data in PSC reports on cases reported to the NACH (see Table 1) basically reflect levels of whistleblowing. Table 16 contains data from a 2012 PSC report on cases reported over a six-year period.

Table 16: PSC data on corruption cases reported to the NACH, September 2004 – August 2010¹⁸³

2004/05 (7 months)	2005/06	2006/07	2007/08	2008/09	2009/10	2010 (5 months)
(600)	1 046	1 127	1 469	1 857	1 419	(393)

Data on cases reported to Corruption Watch (see Table 2) also reflects levels of anti-corruption whistleblowing. In 2013 Corruption Watch carried out a survey of people reporting cases to identify the kind of person making use of anti-corruption whistleblowing facilities. This survey found that more than 90% of people who reported corruption were African, 81% were between the ages of 30 and 59, 74% and 63% were employed or self-employed, respectively, and 56% were public servants. Almost half (49%) of respondents reported corruption online, while 23% reported by SMS.¹⁸⁴

On the other hand, PSC data on cases of financial misconduct (Table 17), like much of the other data reflected in this report, also reflects anti-corruption activity. A PSC report highlights that over the four years ending in March 2012 the percentage of ‘fraud and theft’ cases among the financial misconduct cases reported to the PSC appears to have fallen steadily. Unfortunately, data of this kind is not provided in any of the other subcategories, including that of cases falling under PRECCA, the subcategory identified in PSC reports as constituting corruption.

Table 17: PSC data on reported cases of financial misconduct, 2008/09 – 2011/12¹⁸⁵

	2008/09	2009/10	2010/11	2011/12
Cases of financial misconduct reported to the PSC	1 204	1 135	1 035	1 243
% of cases of ‘fraud and theft’ among financial misconduct cases	63%	64%	55%	39%

Chapter 6

Conclusion

This monograph focuses on the multifaceted phenomenon of public sector corruption, which is defined as ‘the abuse of public position for private gain’. An attempt is made to come to terms with the complexity of this phenomenon by differentiating among major forms or manifestations of corruption. As reflected in Table 18, five primary categories and 14 associated subcategories are differentiated according to the ‘practices or transactions’ that they involve. The purpose of differentiating them is to promote conceptual clarity on questions about assessing trends in and measuring levels of corruption.

It is important to note that one of the subcategories of procurement corruption also involves bribery. Therefore, the analysis of bribery in this monograph applies to both transactions in the ‘other bribery and extortion’ category and those in the ‘bribery’ subcategory of procurement corruption.

Table 18: Major manifestations of public sector corruption

Categories	Number of subcategories
Procurement corruption	2
Other bribery and extortion	5
Misappropriation, embezzlement, fraud or theft	4
Nepotism in appointments and promotions	–
Other mismanagement or abuse of state resources (sometimes corrupt)	3

The execution of acts of corruption often involves government officials cooperating with each other rather than individuals acting alone in secrecy. Many acts of corruption also involve civilians who collude with government officials. These generalisations apply to some acts in the ‘misappropriation, embezzlement, fraud or theft’ category. However, many acts that fall into this category would not conform to these generalisations either because they involve individual perpetrators and/or because they do not involve civilians. Acts in the ‘other mismanagement or abuse of state resources’ category also often do not involve civilians.

Whether they involve collusion between government officials or between government officials and civilians, corrupt practices generally amount to credit corruption, where the parties who are directly

involved benefit from the corrupt act.¹⁸⁶ Although the act may be at the expense of third parties, these third-party victims are not directly exposed to the corrupt transaction itself as participants and direct witnesses. The range of actions that constitute credit corruption include some acts of bribery, such as where someone pays a bribe to access a service that he/she is not legally entitled to.

As opposed to credit corruption, debit corruption involves one of the participants in the transaction suffering adverse consequences from the corrupt transaction such as the cost of paying a bribe for a service that he/she is legally entitled to. While credit corruption includes a wide range of corrupt practices, debit corruption generally involve acts of bribery that include some element of extortion (including in procurement and 'other bribery' situations). Debit corruption is therefore different from credit corruption in that there is a witness to the act of corruption who is also a victim as a result of being adversely affected by it (although if a bribe is paid, he/she may also be complicit as a perpetrator).

The distinction between debit and credit corruption is generally not acknowledged in reports on victimisation, or other, surveys that ask people about their experiences of bribery. However, it seems likely that there are consistent biases in the data generated. Survey respondents who receive unwanted requests for bribes are more likely to acknowledge having received these requests. It therefore seems likely that these surveys are more representative of bribery that constitutes debit corruption rather than credit corruption. Not only is consistent methodological rigour needed in the execution of these surveys, but one should also be aware of the likelihood of biases of this kind when interpreting the information emerging from them. Nevertheless, it seems that people are often willing to admit that they have received requests for or even paid bribes, and these surveys may therefore help to measure levels of and trends in bribery as one form of corruption.

Efforts to understand bribery in South Africa might therefore benefit from the use of dedicated general-population corruption surveys and surveys focusing on groups such as business people, specific categories of public servants, prisoners, immigrants, and people making use of the services of customs and other officials at border posts. However, only studies that consistently meet very high levels of methodological rigour should be regarded as reliable sources of information on levels of and trends in bribery. They should probably also be regarded as a more representative source of information on forms of bribery that constitute debit corruption. They may also be a richer source of data if they acknowledge that bribery in some service areas involves very high levels of repeat victimisation associated with repeat offending by many of the perpetrators (repeat offending may also be a feature of many forms of corruption that are not susceptible to analysis through survey research).

In some instances of corruption there are no individuals (including corporate individuals) who are explicitly disadvantaged. This applies, for instance, when the impact of corruption is primarily translated into costs that are transferred to the taxpayer. However, in some cases of 'procurement corruption' and 'nepotism', where a supposedly competitive process is decided through corruption, and in acts of 'misappropriation, embezzlement, fraud or theft' people (or companies) can be regarded as victims if they are clearly disadvantaged by the corrupt transaction.¹⁸⁷ However, this category of victims does not directly participate in or witness the corrupt transaction. They are referred to as third-party victims in this monograph, although this does not imply that they cannot claim to be victims, but simply that their status as victims does not involve being directly exposed to the corrupt act or transaction.¹⁸⁸

However, because they do not directly participate in the corrupt transaction, they may not be aware that it has taken place. The degree to which they are conscious of having been disadvantaged, and therefore of being victims, will depend on whether the malfeasance has been exposed or whether they suspect that corruption was involved. This group of third-party victims may also be a source of information on corruption, although research that engages with them should acknowledge that their views might combine elements of perception and experience. In addition, particularly with this group of victims, there is not necessarily a correlation between the number of instances of corruption and the number of those who are disadvantaged, because more than one person (or company) may be disadvantaged by a single corrupt transaction. This suggests that data from this group may not lend itself to being used to quantify levels of specific kinds of corruption.

Beyond acts of bribery that constitute debit corruption, therefore, it needs to be acknowledged that many corrupt transactions remain invisible except to those who benefit from them. The suspicion that corruption has occurred does not prove that it has indeed taken place.¹⁸⁹ However, certain types of corruption can also be exposed by forensic means with data from the SIU, the only agency in the multi-agency system with a dedicated focus on corruption, potentially serving as a rich source of information on this kind of corruption. However, this data may largely reflect certain kinds of ‘low-hanging fruit’ that are relatively easy to detect, such as cases of social grant fraud that are detected by comparing the identification numbers of public servants with identification numbers on the social grant system. More generally,

corruption in the ‘misappropriation, embezzlement, fraud or theft’ category may involve high-volume repeat offending and is therefore likely to become visible and be exposed. Linked to this, it is possible that

It needs to be acknowledged that many corrupt transactions remain invisible except to those who benefit from them

very high numbers of cases in this category, particularly when individuals are involved in occasional or single instances of offending, are never detected. While the data, including quantitative data generated by bodies such as the SIU, may help our understanding of aspects of the problem of corruption, it cannot be regarded as representative. Those who use this data to analyse corruption should also bear in mind that cases revealed by bodies such as the SIU do not always involve government officials, even if they involve the defrauding of or theft from government agencies.

Data from the SIU may therefore help our understanding of corruption, although this should be qualified by the understanding that it is an indicator of anti-corruption activity shaped by the resources available to the agency and by tactical decisions on how to focus investigations, and that some corrupt activities may be more easily exposed by forensic methods than others. While in some circumstances it might be used to measure changing levels of certain forms of corruption, this should be done with caution. Data from the NACH and Corruption Watch can also be used to understand the nature of corruption, although it should primarily be understood to reflect types of corruption exposed through whistleblowing and to be affected by factors influencing whistleblowing activity.¹⁹⁰ Other data sources such as SAPS statistics should generally be disregarded as a source of data on corruption. Apart from the general question of what offence categories should be used as a source of information on corruption, there are other problems in using this data to understand corruption trends, including the fact that it does not distinguish crimes that involve government officials from those that do not.

Those using data from investigative, prosecutorial or other official agencies should then be aware that

... the information recorded by specialised enforcement agencies ... serves mainly as a source for describing methods of control rather than the misbehaviour being controlled. Neither can it be assumed that there is any uniformity in the meaning of data obtained in this way. A few agencies are reactive, and depend on complaints; others are proactive, but the level of enforcement is restricted by limited resources Much regulation is geared to using prosecution as a last resort – thus the number of prosecuted offenders says little about the theoretical level of crime There is a danger of double counting where the same behaviour is dealt with by different agencies Shifts in legislative mandates, and in the number, expertise, politics, and motivation of enforcers, makes a treacherous basis for studies of changes in offending patterns over time.¹⁹¹

Recently the government has claimed to be strengthening efforts to address corruption.¹⁹² Corruption was also a key focus in the manifestos of virtually all of the main parties contesting the 2014 elections, suggesting that there is widespread belief that the problem needs to be addressed more vigorously. The question then arises as to whether government and other resources invested in addressing corruption are translating into lower levels of corruption. Support for more in-depth research on this issue may well be forthcoming.

However, any research designed to measure corruption levels should take into account the multifaceted nature of corruption. As this monograph has argued, survey research on bribery should probably be understood as mainly representative of forms of bribery that constitute debit corruption. Despite their limitations though, dedicated and consistently implemented general population surveys and more focused surveys using rigorous research methods, could be used far more extensively to assess levels of and trends in certain types of bribery.

However, research of this kind generally focuses on specific forms of corruption, and it cannot be assumed that trends in one form of corruption are the same as trends in others. Furthermore, intensified control measures may focus on particular forms of corruption, while success in reducing forms of corruption that are more easy to detect and control may result in an increase in more sophisticated and less detectable forms of the phenomenon.

Notes

The author would like to thank Ellen Kamman for assisting with the analysis of SIU reports.

- 1 The terms 'forms', 'manifestations' and 'categories' are used interchangeably in this monograph, but should be distinguished from subcategories.
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- 3 R McCusker, Review of anti-corruption strategies, Australian Institute of Criminology, 2006, 4, www.aic.gov.au/documents/8/F/1/%7B8F179E8B-B998-4761-84B3-AD311D7D3EA8%7Dtbp023.pdf.
- 4 This is discussed in the section on 'procurement corruption'.
- 5 Prevention and Combating of Corrupt Activities Act (Act 12 of 2004). The Act is the main legislative instrument criminalising corruption in South Africa.
- 6 The issue is discussed further in the section on 'SAPS crime statistics and other criminal justice data', below.
- 7 E.g. see T Syed and D Bruce, Police corruption: towards a working definition, *African Security Review*, 7:1, 3–14.
- 8 I Chipkin, The politics of corruption: two competing definitions, Public Affairs Research Institute, October 2012, www.pari.org.za/wp-content/uploads/PARI-L.E.3-The-Politics-of-Corruption-Two-Competing-Definitions-Oct-20121.pdf.
- 9 E.g. see Department of Public Service and Administration, Public Service Anti-Corruption Strategy, 2002, 10–11, www.westerncape.gov.za/text/2004/4/psa_anti_corruption_strategy_2002.pdf.
- 10 P Rampedi, Why we rip off state – politicians and government officials force us to pay bribes, BEE companies say, *The Star*, 28 August 2012, www.iol.co.za/the-star/why-we-rip-off-state-1.1370745#U6QPbpSSwtA; P Holden, *The arms deal in your pocket*, Johannesburg: Jonathan Ball, 2008, 255–60.
- 11 Department of Public Service and Administration, Public Service Anti-Corruption Strategy, 2002, www.westerncape.gov.za/text/2004/4/psa_anti_corruption_strategy_2002.pdf.
- 12 Ibid., 7–8.
- 13 The term 'government official' refers to both politicians and civil servants.
- 14 PSC, *Profiling and analysis of the most common manifestations of corruption and its related risks in the public service*, 2011, 12, www.psc.gov.za/documents/2011/PSC%20Report-%20Profiling%20and%20Analysis%20of%20the%20most%20Common%20Manifestations%20of%20Corruption%20and%20its%20Related%20Risks%20in%20the%20Public%20Service.pdf.
- 15 Ibid., 15.
- 16 Ibid., 13.
- 17 Cases reported to the NACH have also been the subject of PSC reports on *Measuring the effectiveness of the National Anti-Corruption Hotline* published in 2007, 2009 and 2012.
- 18 PSC, *Report on financial misconduct for the 2009/2010 financial year*, 2011, 23, www.psc.gov.za/documents/2011/Report%20on%20Financial%20Misconduct%20for%20the%202009and2010%20Financial%20Year.pdf.
- 19 E.g. see PSC, *Overview on financial misconduct for the 2006/07 year*, 2008, 15, www.psc.gov.za/documents/2008/PSC%20Report-Financial%20Misconduct.pdf.
- 20 The report indicates that Corruption Watch received 3 223 reports during its first year of operation, 'of which 1 227 related to corruption as we understand it' (Corruption Watch, *Turn up the volume: first annual report*, 2013, 7, www.corruptionwatch.org.za/sites/default/files/CWAnniversaryReportLowRes.pdf). On p. 5 the report gives examples of the main forms of corruption linked to specific components of government.
- 21 Ibid.; Corruption Watch, *Corruption Watch: 2013 annual report*, 2014, www.corruptionwatch.org.za/sites/default/files/2013/Annual%20Report%20-%20Corruption%20Watch%20Connected.pdf. The figure of 1 312 cases is calculated from other figures provided in the two reports.
- 22 The definition given was 'the abuse of public resources to enrich or give unfair advantage to individuals, their family or their friends' (Corruption Watch, *Turn up the volume: first annual report*, 2013, 7, www.corruptionwatch.org.za/sites/default/files/CWAnniversaryReportLowRes.pdf).
- 23 In *ibid.*, this is referred to as 'Abuse of government resources by public official – procurement corruption'.
- 24 In *ibid.* the actual label used is 'the abuse of government resources in employment'.
- 25 Corruption Watch annual reports, cases described on the Corruption Watch website, cases listed in the PSC reports referred to, and a wide number of press reports.
- 26 SAPA, Govt corruption: R30bn could be lost – SIU, *News24*, 12 October 2011, www.news24.com/SouthAfrica/Politics/Govt-corruption-R30bn-could-be-lost-SIU-20111012.
- 27 Ibid.
- 28 See the case of Neo Africa and the Gauteng Department of Public Works in Corruption Watch, *Turn up the volume: first annual report*, 2013, 9,

www.corruptionwatch.org.za/sites/default/files/CWAnniversaryReportLowRes.pdf.

- 29 E.g. see *City Press*, Limpopo fraud: five get bail, 31 August 2012, www.citypress.co.za/news/limpopo-fraud-five-get-bail-20120831/; Corruption Watch, CW probe leads to tender suspension, 6 October 2013, www.corruptionwatch.org.za/content/cw-probe-leads-tender-suspension.
- 30 Corruption Watch, *Turn up the volume: first annual report*, 2013, 5, www.corruptionwatch.org.za/sites/default/files/CWAnniversaryReportLowRes.pdf.
- 31 SAPA, ECape MEC welcomes arrest of municipal boss for R12.5m fraud, *City Press*, 13 May 2013, www.citypress.co.za/politics/ecape-mec-welcomes-arrest-of-municipal-boss-for-r12-5m-fraud/.
- 32 Amabhungane Reporters, Oilgate 2: R1bn scandal rocks PetroSA, *Mail & Guardian*, 26 April 2013, <http://mg.co.za/article/2013-04-26-00-r1bn-scandal-rocks-petrosa/>.
- 33 *City Press*, Limpopo fraud: five get bail, 31 August 2012, www.citypress.co.za/news/limpopo-fraud-five-get-bail-20120831/.
- 34 SAPA, ECape MEC welcomes arrest of municipal boss for R12.5m fraud, *City Press*, 13 May 2013, www.citypress.co.za/politics/ecape-mec-welcomes-arrest-of-municipal-boss-for-r12-5m-fraud/.
- 35 P Rampedi, Why we rip off state – politicians and government officials force us to pay bribes, BEE companies say, *The Star*, 28 August 2012, www.iol.co.za/the-star/why-we-rip-off-state-1.1370745#.U6QPbpSSwtA.
- 36 K Pillay, Understanding tender corruption, part two, Corruption Watch, 16 October 2013, www.corruptionwatch.org.za/content/understanding-tender-corruption-%E2%80%93-part-two.
- 37 Personal account.
- 38 Prevention and Combating of Corrupt Activities Act (Act 12 of 2004).
- 39 Corruption Watch, Understanding corruption in tenders, 2014, 7–10, www.corruptionwatch.org.za/sites/default/files/Understanding%20tender%20corruption%20e-book_0.pdf; PSC, *Profiling and analysis of the most common manifestations of corruption and its related risks in the public service*, 2011, 13, www.psc.gov.za/documents/2011/PSC%20Report-%20Profiling%20and%20Analysis%20of%20the%20most%20Common%20Manifestations%20of%20Corruption%20and%20its%20Related%20Risks%20in%20the%20Public%20Service.pdf.
- 40 Corruption Watch, CW probe leads to tender suspension, 6 October 2013, www.corruptionwatch.org.za/content/cw-probe-leads-tender-suspension.
- 41 Unless one were to argue that some people in the private sector (such as directors of companies listed on the stock exchange) occupy positions that can be regarded as public.
- 42 CR Snyman, *Criminal law*, Durban: LexisNexis, 2008, 410.
- 43 ANC, Together we move South Africa forward – 2014 election manifesto, www.anc.org.za/2014/wp-content/uploads/2014/01/ANC-Manifesto-Booklet.pdf.
- 44 D Zinnbaue, Corruption and the private sector, Anti-Corruption Research Network, n.d., <http://corruptionresearchnetwork.org/resources/frontpage-articles/corruption-and-the-private-sector>.
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- 48 Ibid.
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- 50 L Ensor, SA now leading exporter of [cable] copper, *Business Day Live*, 8 August 2012, www.bdlive.co.za/articles/2012/02/29/sa-now-leading-exporter-of-cable-copper.
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- 54 See definition of the 'general offence of corruption' in PERCCA, sec.3, well as Corruption Watch, Corruption and the law in South Africa, part two, www.corruptionwatch.org.za/content/corruption-and-law-south-africa-part-two. See Corruption Watch, Submission to Competition Tribunal, www.corruptionwatch.org.za/sites/default/files/CompetitionTribunal17July2013-oral-submission-final_0.pdf.
- 55 E.g. see D Nelken, White collar and financial crime, in M Maguire, R Morgan and R Reiner (eds), *The Oxford Handbook of Criminology*, Oxford: Oxford University Press, 2007, 734.

- 56 See the section of this monograph on 'Are private sector or other civilian role-players always involved?'
- 57 Statistics South Africa, *Victims of Crime Survey 2012: reference period January to December 2011*, 2012, 45–46, <http://beta2.statssa.gov.za/publications/P0341/P03412012.pdf>.
- 58 Quoted in Corruption Watch, *The law for sale: endemic corruption in the Johannesburg Metropolitan Police Department*, 2012, 24, www.corruptionwatch.org.za/sites/default/files/finalreport24may.pdf.
- 59 Ibid. See also Transparency International, *Global Corruption Barometer 2013: report*, 2013, 34, http://issuu.com/transparencyinternational/docs/2013_globalcorruptionbarometer_en/37?e=2496456/3903358.
- 60 Corruption Watch, *More of your stories – extortion at every turn*, 20 August 2013, www.corruptionwatch.org.za/content/more-your-stories-extortion-every-turn. See also Corruption Watch, *Traffic tjo-tjo and HR nepotism on the increase*, 23 July 2013, www.corruptionwatch.org.za/content/traffic-tjo-tjo-and-hr-nepotism-increase.
- 61 Corruption Watch, *More of your stories – extortion at every turn*, 20 August 2013, www.corruptionwatch.org.za/content/more-your-stories-extortion-every-turn.
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- 63 P Rampedi, *Why we rip off state – politicians and government officials force us to pay bribes*, BEE companies say, *The Star*, 28 August 2012, www.iol.co.za/the-star/why-we-rip-off-state-1.1370745#U6QBpSswtA.
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- 72 See Corruption Watch, *Extortion scam at building site*, in *More of your stories – extortion at every turn*, 20 August 2013, www.corruptionwatch.org.za/content/more-your-stories-extortion-every-turn; Corruption Watch, *Parastatals in the grip of graft*, 4 July 2013, www.corruptionwatch.org.za/content/parastatals-grip-graft.
- 73 This may mean that in some instances procurement corruption may also involve extortion.
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- 75 Corruption Watch, *Corruption Watch opens police case against principal*, 16 August 2013, www.corruptionwatch.org.za/content/corruption-watch-opens-police-case-against-principal.
- 76 See Corruption Watch, *Channeling funds into personal bank accounts*, in *Turn up the volume: first annual report*, 2013, 5, www.corruptionwatch.org.za/sites/default/files/CWAnniversaryReportLowRes.pdf.
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- 78 PSC, *Profiling and analysis of the most common manifestations of corruption and its related risks in the public service*, 2011, 14, www.psc.gov.za/documents/2011/PSC%20Report-%20Profiling%20and%20Analysis%20of%20the%20most%20Common%20Manifestations%20of%20Corruption%20and%20its%20Related%20Risks%20in%20the%20Public%20Service.pdf. See also Corruption Watch, *Boozing with the state's property*, in *More of your stories – extortion at every turn*, www.corruptionwatch.org.za/content/more-your-stories-extortion-every-turn.
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- 80 Corruption Watch, *Turn up the volume: first annual report*, 2013, 5, www.corruptionwatch.org.za/sites/default/files/CWAnniversaryReportLowRes.pdf.
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Misconduct%20for%20the%20%202009and2010%20Financial%20Year.pdf.

82 Ibid.

83 Corruption Watch, *Misusing public property for personal gain*, 23 April 2014, www.corruptionwatch.org.za/content/misusing-public-property-personal-gain.

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About this monograph

This monograph investigates concerns about quantifying corruption in South Africa. There is no standardised system for classifying or analysing corruption, which makes the interpretation of available information very difficult. The monograph puts forward a more clearly defined system for categorising corruption. It uses this to consider the circumstances in which corruption becomes visible and to interpret corruption data from victimisation surveys and agencies such as the Special Investigating Unit, the South African Police Service and Public Service Commission.

About the author

David Bruce is an independent researcher and writer working in the fields of policing, crime and violence. From 1996 to 2011 he worked at the Centre for the Study of Violence and Reconciliation. He has a master's degree in public and development management from the School of Public and Development Management at the University of the Witwatersrand.

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The Institute for Security Studies is an African organisation that aims to enhance human security on the continent. It does independent and authoritative research, provides expert policy analysis and advice, and delivers practical training and technical assistance.

Acknowledgements



This monograph was made possible with support from the Ford Foundation and the Hanns Seidel Foundation. The ISS is grateful for support from the members of the ISS Partnership Forum: the governments of Australia, Canada, Denmark, Finland, Japan, Netherlands, Norway, Sweden and the USA.

ISS Pretoria

Block C, Brooklyn Court
361 Veale Street
New Muckleneuk
Pretoria, South Africa
Tel: +27 12 346 9500
Fax: +27 12 460 0998
pretoria@issafrica.org

ISS Addis Ababa

5th Floor, Get House Building
Africa Avenue
Addis Ababa, Ethiopia
Tel: +251 11 515 6320
Fax: +251 11 515 6449
addisababa@issafrica.org

ISS Dakar

4th Floor, Immeuble Atryum
Route de Ouakam
Dakar, Senegal
Tel: +221 33 860 3304/42
Fax: +221 33 860 3343
dakar@issafrica.org

ISS Nairobi

Braeside Gardens
off Muthangari Road
Lavington, Nairobi, Kenya
Cell: +254 72 860 7642
Cell: +254 73 565 0300
nairobi@issafrica.org

www.issafrica.org

