National Anti-Corruption Strategy
Diagnostic Report

LIMPOPO

NORTH WEST

GAUTENG

MPUMALANGA

SWAZILAND

FREE STATE

KWAZULU-NATAL

LESOTHO

NORTHERN CAPE

EASTERN CAPE

WESTERN CAPE

REPUBLIC OF SOUTH AFRICA

2030
NDP

german
cooperation
DEUTSCHE ZUSAMMENARBEIT

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DIAGNOSTIC REPORT

CORRUPTION AND ANTI-CORRUPTION

INITIATIVES IN SOUTH AFRICA

In support of the development of a National Anti-Corruption Strategy

October 2016

Contents

Acronyms

ACIMC	Anti-Corruption Inter-Ministerial Committee
ACTT	Anti-Corruption Task Team
AEPF	Anti-Intimidation and Ethical Practices Forum
AFU	Asset Forfeiture Unit
AGSA	Auditor-General of South Africa
ANC	African National Congress
AU	African Union
BAC	Business Against Crime
B-BBEE	Broad-Based Black Economic Empowerment
BEE	Black Economic Empowerment
BUSA	Business Unity South Africa
CEO	Chief executive officer
CPI	Corruption Perceptions Index
DBE	Department of Basic Education
DCoG	Department of Cooperative Governance
DPCI	Directorate of Priority Crime Investigation
DPLG	Department of Provincial and Local Government
DPME	Department of Planning, Monitoring and Evaluation
DPSA	Department of Public Service and Administration
DTI	Department of Trade and Industry
EA	Executive Authority
EthicsSA	Ethics Institute of South Africa
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre
FIFA	Fédération Internationale de Football Association
GCIS	Government Communication and Information System
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German agency for international cooperation – no official translation)
HR	Human Resource Management
HSRC	Human Sciences Research Council
ICAC	Independent Commission against Corruption of Hong Kong
IGI	Inspector-General of Intelligence
IODSA	Institute of Directors in Southern Africa
IPID	Independent Police Investigative Directorate
ISS	Institute for Security Studies
JCPS	Justice Crime Prevention and Security Cluster
JMPD	Johannesburg Metropolitan Police Department
KNAB	Corruption Prevention and Combating Bureau of Latvia

KPK	Corruption Eradication Commission of Indonesia
MECs	Members of the Executive Committee
MFMA	Municipal Finance Management Act
MPAT	Management Performance Assessment Tool
MPS	Municipal Police Services
MTSF	Medium Term Strategic Framework
NACF	National Anti-Corruption Forum
NACS	National Anti-Corruption Strategy
NBI	National Business Initiative
NDP	National Development Plan
NEOF	National Ethics Officers Forum
NICOC	National Intelligence Coordinating Committee
NPA	National Prosecuting Authority
NPC	National Planning Commission
NGO	Non-governmental organisation
NVCS	National Victims of Crime Survey
OCPO	Office of the Chief Procurement Officer
OECD	Organisation for Economic Cooperation and Development
PAIA	Promotion of Access to Information Act
PARI	Public Affairs Research Institute
PFMA	Public Finance Management Act
PRASA	Passenger Rail Agency of South Africa
PRECCA	Prevention and Combating of Corrupt Activities Act
PSC	Public Service Commission
PSETA	Public Service Sector Education and Training Authority
RSA	Republic of South Africa
SAA	South African Airways
SADC	Southern African Development Community
SADC-CNGO	Southern African Development Community – Council of Non-Governmental Organisations
SALGA	South African Local Government Association
SANDF	South African National Defence Force
SAPS	South African Police Service
SARS	South African Revenue Service
SCM	Supply chain management
SCOPA	Parliament's Standing Committee on Public Accounts
SIU	Special Investigating Unit
SMS	Senior Management Service
SOE	State-owned enterprise / state-owned entity
SSA	State Security Agency
TAU	Technical Assistance Unit (of the National Treasury)
UNCAC	United Nations Convention against Corruption

Chapter 1: Background and approach

1.1 Introduction

Government's commitment to reduce corruption in South Africa is articulated in the Medium Term Strategic Framework 2014–2019 (MTSF), the National Development Plan (NDP) and the National Security Strategy. The MTSF 2014–2019 requires the development of a national anti-corruption strategy and a supporting implementation plan, of which the scope of work is governed by Programme 2 of government's anti-corruption programmes, with executive leadership provided by the Anti-Corruption Inter-Ministerial Committee (ACIMC).

This diagnostic report aims to provide background information and an evidence base to guide the development of proposals for a national anti-corruption strategy. It therefore contains a review and situational analysis of corruption, and anti-corruption measures in South Africa. The document is largely based on a desk review and a select number of interviews as well as stakeholder consultations with representatives in the government, civil society and business sectors.

1.2 Objectives

The aim of this diagnostic report is to ensure that the envisaged strategy:

- *Is informed by a sound review and analysis of existing strategies implemented to date to combat corruption.*
- *Is built on successful past and current initiatives to ensure optimal and efficient use of resources, and takes into account reforms already initiated in key sectors/functions relevant to anti-corruption.*
- *Draws from international experience, yet speaks to local conditions (e.g. what enables corruption in the South African context and what is feasible in the current environment).*

The analysis in this respect is necessarily high-level given the wide scope of coverage of this report. Areas for further research are highlighted in the report.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

1.3   Scope of the report

The remainder of the document covers the following:

- Chapter 2 provides an overview of the prevalence and nature of corrupt activity in South Africa and the effects of corruption on South Africa's economy, social relations and institutions.
- Chapter 3 provides a review of the legislative framework, noting gaps in legislation, and successes and challenges in the implementation and enforcement of these across a range of sectors, as well as noting the country's progress towards meeting international anti-corruption obligations.
- Chapter 4 outlines the various entities mandated to play a role in combating corruption, and forums or bodies supporting this work. It provides high-level commentary on the existing capacity, independence and architecture of current anti-corruption mechanisms while exploring lessons from international experiences.
- Chapter 5 reviews the anti-corruption strategies developed and implemented in South Africa since 1994, and provides critical commentary on the appropriateness and successes of these strategies across various sectors.
- Chapter 6 summarises the implications of the findings of the report for the development of a national anti-corruption strategy.

Noting the NDP's call for a "whole government and society approach" (NPC, 2012: 449) to addressing corruption, the report discusses private sector involvement in corruption, how the business sector can support a reduction in corruption in the state and mechanisms for combating corruption in these sectors. This includes the development of anti-corruption compliance programmes within business. The report also looks at the civil society sector's involvement in corruption and participation in anti-corruption efforts.

Chapter 2 : Nature and extent of corruption

2.1. Defining corruption for the purposes of the report

Typically, **definitions of corruption** identify an act of private abuse or private appropriation of government or business/organisational resources as lying at the heart of the phenomenon of corruption.

The Prevention and Combating of Corrupt Activities Act of 2004 (PRECCA) stipulates that corruption occurs when any person directly or indirectly accepts or offers (or agrees to offer or accept) any form of gratification that will either benefit themselves or another person. They receive this gratification so that they will either act personally or influence another person to act in a manner that is illegal, dishonest, unauthorised, incomplete, or biased; or misuse or sell information or material acquired in the course of carrying out powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation; or act in a manner which amounts to the abuse of a position of authority; a breach of trust; or the violation of a legal duty or a set of rules, designed to achieve an unjustified result; or that amounts to any other unauthorised or improper inducement to do or not to do anything (Republic of South Africa, 2004). Gratification does not necessarily have to involve financial gain, but can include other gains (such as status, employment and so on) or avoidance of negative consequences (such as avoidance of loss, or avoidance of penalty). In terms of PRECCA, then, corruption is defined as **Acts that involve an improper/corrupt exchange between two or more parties.**

Corruption and various forms thereof have been classified/defined in various ways by international anti-corruption bodies and in academic literature, for example:

- *Petty corruption can be defined as the everyday abuse of entrusted power by low- and mid-level public officials at the interface of the state with citizens where basic goods and services are accessed, such as in clinics, police stations, social grant application offices or on public roads.*
- *Grand corruption occurs when acts committed at high levels of government have a distorting effect on policies and the functioning of state bureaucracy, creating opportunities for those with access to state power to benefit at the expense of the general public.*
- *Political corruption occurs when policies, institutions and rules are manipulated by political decision-makers in the allocation of resources in order to maintain or increase their power, status and wealth.*

CHAPTER 1: BACKGROUND AND APPROACH

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CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

In South Africa, as in many other countries, there is some debate about the definition of corruption. For the purposes of this diagnostic report, the **definition of corruption includes the acts defined under PRECCA, and broadens the definition slightly to the concept of "abuse of entrusted power or authority for private gain" that does not have to involve more than one-party (such as for example, theft of public monies, where there is only one witting party to this theft).**

Examples of corruption

The following reflect possible instances of corrupt behaviour:

- Infrastructure projects (such as roads) are directed towards regions that have the ability to maintain the ruling elite in power even when the sustainability of such projects has not been determined or the projects are not fiscally viable.
- State institutions are put under political pressure to approve and/or fast-track certain decisions that benefit politically connected businesses.
- A community leader receives an overseas holiday in order to manipulate public participation processes when a mining company seeks a prospecting licence, so as to make it appear as if an affected community gave consent.
- A Home Affairs official asks for a bribe in order to process the application for an identity document.
- A traffic officer takes a bribe from a motorist (or a resident offers to pay a bribe) who has just been caught exceeding the speed limit.
- A principal receives an undue benefit related to a tender at the school.
- Private sector companies collude to charge the state inflated prices, or to take part in practices such as cover-pricing.[2]
- A senior manager accepts a bribe to choose one service provider over another for the organisation's staff benefits.

The term "corruption" as generally used by people is not a neat technical term, and there is often a gap between the legal definition of corruption and other social or moral conceptions of corruption circulating in society. **Sometimes the use of the term "corruption" is a way for people to point out what they perceive as unfairness, bias or favouritism** in the allocation of public resources, appointments or promotions in public or private organisations, or for the provision of other services. This perception can arise from genuine instances of corrupt behaviour, or from other reasons, such as the existence of structures that perpetuate social or economic

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[2] These examples of corruption do not necessarily involve a witting government official. However, as noted by Corruption Watch, "It's corrupt because it's a conspiracy against the public. The public pays both as taxpayer and as consumer of public services ... Rigging bids for public sector tenders also undermine the very system – public tendering – designed to meet the constitutional requirements that public sector procurement be fair, transparent and cost-effective."(Corruption Watch cited in Bruce, 2014). Practices such as cover-pricing are included under the scope of criminalised behaviour in terms of the Prevention and Combating of Corrupt Activities Act. However, caution should be taken against defining corruption so broadly that it includes any form of financial crime, as this would stretch the scope of an anti-corruption strategy too broadly. Recommendations in this regard are included in Chapter 5 of the report dealing with the private sector, corruption and related anti-corruption measures.

inequality in society. In addition, lack of transparency in the processes through which resources, jobs or services are allocated or obtained in the public and private sectors often contributes to these perceptions, and this adversely affects the relationship of trust between citizens and the state as well as between clients and shareholders and large companies.

Furthermore, **people do not necessarily recognise themselves as "being corrupt"** in the act of favouring a family member for a government job, or even paying a bribe to expedite a process, especially when they were motivated by an "honourable" cause. Turning a blind eye, taking a bribe or committing fraud may neither feel like "abuse" nor for "private gain" when done to support one's family, or in the spirit of loyalty to a colleague. This relational or social character of corruption requires significant consideration in the development of anti-corruption strategies. This concept is further addressed in the concluding section of this report.

2.2. Manifestations and prevalence

Under National Party rule, a form of capitalism developed that blurred the boundaries between the party, private capital and the state. Academics have described "patronage"[3] in the development of white, and in particular, Afrikaner capital (O'Meara, 1996) and in the appointment of people to the public sector (Posel, 1999)[4] in this period. Furthermore, many of the homeland administrations were ruled through patrimonial networks that extended from the central apartheid state to local chiefs and public servants (Peires, 1992). A report commissioned by the National Anti-Corruption Forum (NACF) details examples of the entrenched corruption that was observed and prevalent under the previous dispensation (van Vuuren, 2006). Research suggests that in the early decades of apartheid, outright illegal activity, such as theft and fraud, were not common, as Afrikaner/white patronage was quite tightly controlled from the centre of the state and party. Corruption by and within the private sector in this era is well documented (van Vuuren, 2006), often occurring in relation to maintaining the apartheid system and sanctions-busting.

By the late 1970s and 1980s, as the apartheid state was exceedingly pressurised for reform and the system unravelled, highly unethical and sometimes downright illegal activity appears to have flourished in the top echelons of the state (Hyslop, 2005). In this era corruption took the form of, among others, patronage in the appointment of state posts, manipulation of procurement processes and tender fraud, grand theft of state resources, and high levels of wasteful spending by some government departments, in particular during the 1980s.

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[3] Patronage is generally accepted to mean the power to control appointments to office or the right to privileges, but is also used in this context as synonymous with favouritism, nepotism, partisanship, partiality, preferential treatment and "the old boy network".

[4] While we have a good sense of the overall character of corruption under Apartheid, we know too little about the detailed cases. An enormous amount of state documentation was destroyed by the apartheid government shortly before the transition to democracy: Bell and Ntsebeza (2001) noted that, "…tons of files, microfilm, audio and computer tapes and disks were shredded, wiped and incinerated. In little more than six months in 1993 … some 44 metric tons of records from the Headquarters of the National Intelligence Service alone were destroyed." (Cited in van Vuuren, 2006).

CHAPTER 1: BACKGROUND AND APPROACH

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CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

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The security structures and police were specifically implicated in unethical and corrupt activities, and the climate was ideal for these abuses given the levels of secrecy under which they operated (van Vuuren, 2006). The introduction of the National Security Management System in the 1980s further reduced the accountability of the state administration to the racially exclusive parliament (O'Meara, 1996).

These institutional legacies have to some extent remained, and have interacted with contemporary politics, as well as changes to the structure of society and the state bureaucracy to shape the nature of corruption in South Africa today. In the following sections the way in which corruption currently manifests in South Africa is looked at in more detail, and data on its prevalence is explored.

Corruption is usually a hidden phenomenon and attempting to determine its prevalence is therefore difficult. At present (despite the direction on data collection provided in 2002 through the Public Service Anti-Corruption Strategy) **accurate statistics on the manifestation and prevalence of corruption in South Arica remain a challenge**. This can in part be attributed to the following:

- Officially reported crime statistics cannot be used as the primary source of information about levels of particular crimes (such as those associated with corruption), as they are "contingenton someone being aware of the crime and reporting it, and on the report being recorded" (Bruce, 2014).

- Different understandings of what exactly constitutes "corruption", as outlined earlier in the document, complicate the picture and the formal recording of complaints with relevance to corrupt activity.

- An article published by the Institute for Security Studies shows that the way in which statistics are presented by criminal justice agencies, including the South African Police Service (SAPS), the Special Investigating Unit (SIU) and the National Prosecuting Authority (NPA), are not very detailed and are not standardised across these bodies. This limits researchers' ability to develop a clear picture of what kinds of crimes relevant to corruption are being reported or prosecuted, and at what rate. (Bruce, 2014)

- Data collected by various government departments and oversight bodies on compliance with regulations relevant to corruption is not consistently reported (and data is unevenly collected) and not readily accessible.

- Notwithstanding the obligation to report corruption (and various other offences) in terms of PRECCA, many companies and government entities still fail to report corrupt activity as a result of the stigma attached to admitting control and governance failures.

Improved information about cases reported (internal disciplinary cases and criminal cases), responses to these reports, as well as successes in prosecuting or instituting disciplinary action, are important for understanding trends pertaining to corruption, for monitoring the state and other sectors' impact on reducing corruption, and identifying areas of potential risk for corruption.

As a result of the limitations in data, this report draws on a range of indicators to establish a necessarily rough picture of the prevalence of corruption in the country.

This report draws from the following sources:
- International and domestic perception surveys of corruption and crime.
- International and domestic surveys of experiences of crime (including bribery).
- A perceptions survey on ethics in the public sector undertaken by the Ethics Institute of South Africa (EthicsSA), on behalf of the Department of Public Service and Administration (DPSA), the Department of Cooperative Governance (DCoG) and the South African Local Government Association (SALGA) in 2015.
- Financial data collected by international non-governmental organisations (NGOs), such as data on illicit financial flows collected by Global Financial Integrity.
- Reports by the Auditor-General (AGSA), Public Service Commission (PSC) and the DPSA on compliance with relevant regulations (in Human Resources (HR), Supply Chain Management (SCM) and the financial disclosure of assets) by public servants, local government employees and certain categories of elected officials.
- Data on public sector corruption contained in other relevant government reports such as those compiled by relevant government commissions, e.g. the Presidential Review Committee on State-Owned Entities (2012) and other reviews (such as the National Treasury's 2015 Supply Chain Management Review.
- Private sector, civil society and academic research reports that have aggregated quantitative data on illegal conduct by public servants and members of the private sector from secondary sources.
- In-depth research reports (involving quantitative and qualitative methods) on crime and corruption in particular sectors.
- Data on corruption in the public and private sectors as reported to corruption hotlines run by the state and civil society.

Transparency International annual compiles a global Corruption Perceptions Index (CPI) in terms of which a country's perceived level of corruption is expressed in scores and ranks. Scores are on a scale of 0 to 100 (a score of 0 means a country is considered very corrupt, and a score of 100 means a country is considered very clean), while ranks indicate a country's position in relation to other countries included in the index: the higher the rank, the "cleaner" a country is considered.

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In relation to other countries, South Africa's CPI score is 44 (2015 data), down from the past high of 51 in 2007, and its current ranking is 61 out of 167 countries (2015 data).[5]

Figure 1: Transparency International's Corruption Perceptions Index 2015: South Africa ranks 61 out of 167 countries

Transparency International, 2015a: http://www.transparency.org/cpi2015
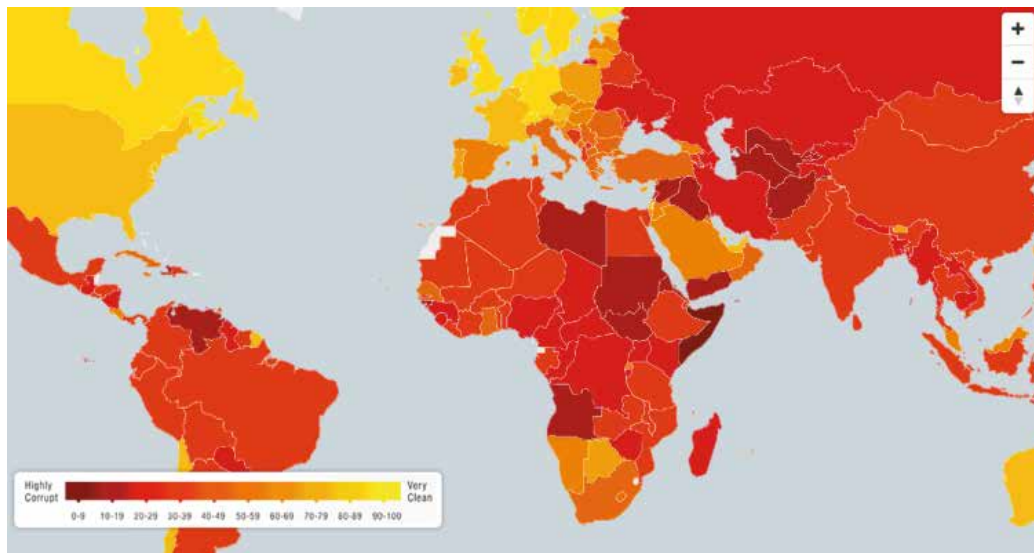
Figure 2: Transparency International, 2015b: htpps://www.transparency.org/research/cpi/

Source: Transparency International: https://www.transparency.org/research/cpi/

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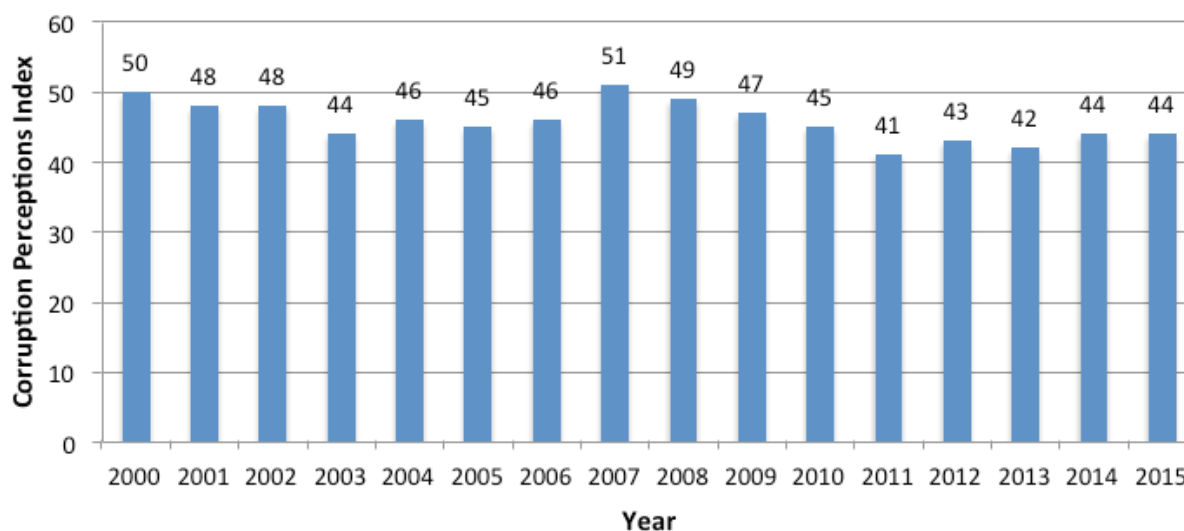
[5] "The Corruption Perceptions Index (CPI) ranks countries and territories based on how corrupt their public sector is perceived to be. It is a composite index – a combination of polls – drawing on corruption-related data collected by a variety of reputable institutions. The CPI reflects the views of observers from around the world, including experts living and working in the countries and territories evaluated." Source: Transparency International, 'Corruption Perceptions Index in detail' (webpage): http://www.transparency.org/cpi2013/in_detail#myAnchor2 (accessed May 2016).

A number of local surveys also produce data on perceptions of the prevalence of corruption in the country. A report issued by the Human Sciences Research Council (HSRC, 2012) that used data from the 2011 South African Social Attitudes Survey indicated that the vast majority of those surveyed (91%) believe that corruption is a serious problem in South Africa. In 2003, 9% of respondents put corruption in the top three most serious national challenges, which increased to 26% in 2011. In the latest Afrobarometer survey (undertaken in 2015), 64% of respondents stated that they felt that corruption had increased a lot over the last year, and 19% felt that it had increased slightly (Afrobarometer, 2016).

The National Victims of Crime Survey (NVCS) collects data on the percentage of people in South Africa who have experienced or been victim of a crime, inclusive of being subject to, or approached by a government official soliciting a bribe from them. "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 survey 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 driving licences." It also noted regional variations in the prevalence of bribery: "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" (Bruce, 2014). Transparency International's 2013 Corruption Barometer Survey finds much higher figures for bribery: 47% of South African adults who had accessed one or more of eight different services (police, education, the judiciary, health and medical services, registry and permit services, tax and customs, utilities tand land services) admitted to paying a bribe during the year prior to the survey; 36% of respondents 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" (Bruce, 2014).[6]

An ENSAfrica[7] corruption survey released in 2015 found that 24% of organisations have experienced an incident of bribery or other forms of corruption in South Africa in the past 24 months. Seventeen percent of organisations felt that they are highly exposed to bribery in other African countries, with 71% believing they are moderately exposed to bribery and corruption in Africa (Gillespie and Jele, 2015).

[6] The Institute for Security Studies publication qualifies that the Transparency International Survey (Corruption Barometer Survey 2013) had much smaller sample sizes than the NVCS and was carried out in a limited number of urban areas. The Corruption Barometer Survey surveyed 107 countries. In South Africa the sample size was 1 000 people (Bruce, 2014).

[7] Edward Nathan Sonnenbergs.

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CORRUPTION
FIGHTING CORRUPTION IS EVERYONE'S BUSINESS

Corruption in policing has been described as systemic in a study by Newham and Faull at the Institute for Security Studies (Newham and Faull, 2011). This corruption includes police soliciting bribes from members of the public, abuse or theft of state resources, interference in the case selection and finalisation of politically sensitive cases, or cases of people known to investigating or other officers, and so on (recent cases of executive interference in case selection, and the inappropriate use of intelligence capacity, are detailed in Chapter 4). Several cases of corruption have occurred at very senior levels in the police. [8] Corruption in policing has particularly negative effects because it undermines the state's ability to identify and respond with appropriate law-enforcement action to corruption across all sectors.

A survey of refugee and asylum seekers at South Africa's refugee reception offices (conducted by the African Centre for Migration and Society and Lawyers for Human Rights in 2014) suggests that corruption has been embedded in the **asylum management system**. The survey reported, "significant levels of corruption involving multiple actors, occurring at all stages of the asylum process, and continuing even after an individual had obtained refugee status. Results varied by office, but overall almost one-third of respondents experienced corruption [at a refugee reception office]" (Amit, 2015). Overall, 13% of respondents reported being asked to pay a bribe by a border official, 13% were not able to gain access to the refugee reception office because they did not pay a bribe, with this figure as high as 30% in the case of the Marabastad office in Pretoria; 12% had paid to renew a permit (24% in the Marabastad office) and 20% had been asked for a bribe to resolve the problem for which they visited the office (Amit, 2015). The report largely attributed the extent of corruption to inadequate resources dedicated to the asylum system that resulted in long turn-around times for administering relevant processes: these delays, and the insecurity they create for applicants, provide incentives for soliciting and paying bribes.

Corrupt activity at border posts can also take the form of bribes paid to customs officials to avoid **customs** duties and other taxes, or to smuggle illicit goods, or when members of the private sector commit fraud (with or without the knowledge of officials) in order to circumvent relevant customs duties and other regulations such as immigration, health and agricultural regulations.

At the beginning of 2013, a quarter of all complaints about corruption reported to civil society organisation Corruption Watch's "corruption hotline" were about **local government officials or politicians** (Corruption Watch, 2013).[9]

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[8] See for example: "A five-month investigation by the Public Protector and Special Investigating Unit (SIU) into the allegations found that both the Minister of Public Works … [and the National Commissioner of Police] had acted improperly and illegally by approving funds for the leases of two buildings without it going out to tender, and that police deliberately manipulated the needs analyses to align them with the [Minister of Public Works'] building." (Newham and Faull, 2011). The former national police commissioner was convicted of corruption under PRECCA (case: South Gauteng High Court – S v Selebi (25/09) [2010] ZAGPJHC 53 (5 July 2010)).

[9] Corruption Watch's CEO quoted in: Roane, 2013.

Some of these complaints may be related to perceptions of unfairness in the allocation of housing and municipal services that are not in fact as a result of corruption. **The AGSA findings also show widespread non-compliance by municipal employees and elected officials with legislation primarily the Municipal Finance Management Act (MFMA) intended to provide transparency and accountability in the use of public resources.** Despite an increase in the number of municipalities receiving unqualified audit findings in 2013/14 (AGSA, 2015b), the latest audit results available for local government, the AGSA reported irregular [10] expenditure of R11.4 billion in local government for 2013/14 (AGSA, 2015c). The majority of this was related to **deviations from supply chain management prescripts.**

Although clearly not all transactions included under irregular expenditure are "corrupt" (and corruption can take place that is not included under irregular, fruitless and wasteful, or unauthorised expenditure), this environment of widespread non-compliance potentially allows corruption to flourish. In the 2012/13 audit results, the AGSA recommended management investigations in cases of possible fraud or improper conduct in Supply Chain Management (SCM) processes in 38% of municipalities (AGSA, 2015b). The Auditor-General also noted that, "Even though prohibited by legislation, there was an increase in the value and extent of the contracts and quotations awarded to suppliers in which employees and councillors had an interest (R60 million at 72 auditees) and in which other state officials had a business interest (R3 731 million at 221 auditees)" (AGSA, 2015b). This highlights the importance of managing conflict of interest of all government employees.

Slightly more data is available on the nature of non-compliance and fraud in the public service (i.e. national and provincial government) – in part because the public service falls under the ambit of the PSC, which undertakes regular monitoring of compliance with anti-corruption measures.

Seven hundred and fifty cases of financial misconduct in terms of the Public Finance Management Act (PFMA) were finalised in the 2013/14 year, according to the (latest data provided by the PCS) (PSC, 2015). The PSC has noted that **many departments are failing to report these cases properly:** "Treasury Regulations … stipulate that the accounting officer of a department must inform amongst others, the PSC, of the outcome of any criminal proceedings instituted against any person for financial misconduct in terms of Section 86 of the PFMA … many departments fail to provide such information, thus the level of reporting on instituting criminal proceedings remains dismal" (PSC, 2015). As a result, it is difficult to assess a clear trend over the last few years.

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[10] Irregular expenditure is expenditure that was not incurred in the manner prescribed by legislation. Unauthorised expenditure is expenditure by departments that was not made in accordance with the approved budget. Fruitless and wasteful expenditure is expenditure made in vain and would have been avoided had reasonable care been exercised. See AGSA reports and website.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

One should note that these are figures only for finalised cases reported to the PSC and they may be a substantial undercount of cases identified, let alone instances of corruption – especially when considered in light of the extent of irregular expenditure picked up by AGSA audits.

Data from audits of the PFMA (i.e. the audit of national and provincial government) is shown below. While the number of departments receiving clean audits has increased over the last three years and the extent of fruitless and unauthorised expenditure has decreased, irregular expenditure has risen by more than inflation, and now stands at R25 billion (AGSA, 2015a).

Between 2009 and 2013, of the total irregular and wasteful expenditure, 75% was attributed to the contravention of SCM regulations (Brunette et al, 2014, based on AGSA reports 2009 to 2013).

Table 1: Audit results on irregular, unauthorised and fruitless and wasteful expenditure for all national and provincial public entities and departments

	Irregular	Unauthorised	Fruitless and wasteful
2010/2011	R16 514 000 000	R2 641 000 000	R1 031 000 000
2012/2013	R20 597 000 000	R2 284 000 000	R1 843 000 000
2014/2015	R25 682 000 000	R1 641 000 000	R936 000 000

Source: AGSA consolidated PFMA reports for the financial years shown.

A 2014 report by the Public Affairs Research Institute takes an in-depth look at **the procurement system** in the public service. Currently, there are multiple points through which corrupt activity in the procurement process can take place: this report details the implementation of a decentralised procurement system from about 2003. This system was introduced into a state administration quite uneven in administrative capacity, and in the extent to which departments were insulated from politics. The report further notes that currently, "some departments, or units within departments, procure effectively and efficiently" (Brunette et al, 2014: 45). Others do not. The current system includes formal exceptions to procurement rules designed to take account of special situations in which the standard rules would not allow the state to procure efficiently or effectively. This has given public servants and politicians across the state ample room forexercising discretion in procurement decisions, which they can "exercise for good or ill" (Brunette et al, 2014: 45).

In the introduction to the document on a new Public Service Integrity Management Framework for Government, the DPSA noted, **"non-compliance with legislation and weak enforcement mechanisms" and "general lack of concrete actions taken against transgressors",** and where sanctions are applied, these are unevenly done so.

DPSA further note that, **"no disciplinary action is ever taken against officials who fail to submit their financial disclosure forms as prescribed"** (DPSA, undated, circa 2014).
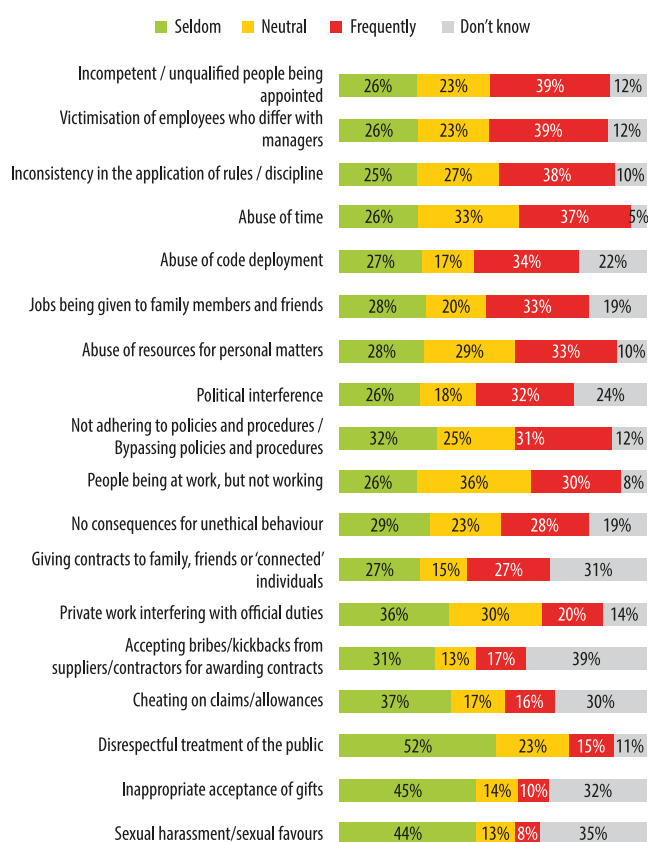
The Public Sector Ethics Survey results (2015) support the picture of non-compliance painted by the AGSA and PSC data. Local government employees' perceptions of non-compliance in their organisations are higher than those of employees in provincial or national government.[11] Half of the survey respondents felt that there were instances of people in their organisations not adhering to or bypassing policies and procedures, with 31% noting this happened often (25% chose the response "neutral" to this question). Over half (58%) felt that rules and disciplinary measures were inconsistently applied, with 38% noting this happened often (and 27% remaining neutral). (DPSA et al, 2015)

Further findings include:
- *54% of respondents believe jobs are frequently given to family and friends (64%in local government) and a third felt this happens often; with the same results for "abuseof resources for personal matters" (61% of local government).*
- *51% believe that in their organisation, contracts are sometimes given to friends, family or "connected individuals" (61% in local government) and 27% felt this happened frequently.*
- *39% indicated that they believed people in their organisation had been involved in bribery (50% in local government) and 17% felt this practice happened frequently.*
- *38% said that cheating on claims or allowances had happened in their organisation (48% in local government) and 16% felt this happened often.*

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[11] The Department of Public Service and Administration (DPSA), the Department of Cooperative Governance (DCoG), and the South African Local Government Association (SALGA) partnered with the Ethics Institute of South Africa (EthicsSA) to conduct the survey. The survey assessed organisational ethics at national, provincial and local government levels.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

Figure 2: Perceptions of the frequency with which the listed unethical or non-compliant practices occurred in respondents' organisation (survey of national, provincial and local government employees, 2015)

Legend: ■ Seldom ■ Neutral ■ Frequently ▢ Don't know

Practice	Seldom	Neutral	Frequently	Don't know
Incompetent / unqualified people being appointed	26%	23%	39%	12%
Victimisation of employees who differ with managers	26%	23%	39%	12%
Inconsistency in the application of rules / discipline	25%	27%	38%	10%
Abuse of time	26%	33%	37%	5%
Abuse of code deployment	27%	17%	34%	22%
Jobs being given to family members and friends	28%	20%	33%	19%
Abuse of resources for personal matters	28%	29%	33%	10%
Political interference	26%	18%	32%	24%
Not adhering to policies and procedures / Bypassing policies and procedures	32%	25%	31%	12%
People being at work, but not working	26%	36%	30%	8%
No consequences for unethical behaviour	29%	23%	28%	19%
Giving contracts to family, friends or 'connected' individuals	27%	15%	27%	31%
Private work interfering with official duties	36%	30%	20%	14%
Accepting bribes/kickbacks from suppliers/contractors for awarding contracts	31%	13%	17%	39%
Cheating on claims/allowances	37%	17%	16%	30%
Disrespectful treatment of the public	52%	23%	15%	11%
Inappropriate acceptance of gifts	45%	14%	10%	32%
Sexual harassment/sexual favours	44%	13%	8%	35%

Source: Public Sector Ethics Survey 2015 (DPSA et al, 2015). (Sample size =7954)

Members of the executive are ultimately responsible for ensuring that disciplinary measures are taken against staff who are not complying with relevant codes and regulations. In the 2008/2009 financial year, the PSC surveyed 12 national departments and 27 provincial departments in order to scrutinise the findings of the financial disclosure forms of their employees. The PSC identified conflicts of interest or instances of non-disclosure of financial interest or assets in all departments surveyed. The Executive Authorities (EAs) were duly informed in terms of PFMA regulations – yet only three of the EAs at national level provided feedback to the PSC, having consulted with the relevant employees. In the cases of provincial departments scrutinised, 9 of the 27 EAs provided feedback to the PSC having consulted with the relevant employees. For the 2010/11 financial year, the results of the surveyed departments were even more dismal: 4 out of the 22 EAs of national and provincial departments surveyed reported back to the PSC having duly consulted with relevant employees (PSC, 2013).

A report by the law firm Edward Nathan Sonnenbergs, based on **documented fraud and malfeasance cases** presented to parliament and contained in PSC reports, found that the amount involved was over R1 billion in 2011/12, an increase from R130 million in 2006/07. The report noted that although 88% of public officials tried for financial misconduct were found guilty, only 19% were fired (cited in Tamukamoyo and Mofana, 2013). This represents only those cases picked up by internal or external investigations. Forty-seven percent of departments do not have the minimum capacity required by regulations to investigate fraud or financial misconduct in their own departments (Ethics Institute, 2011 cited in Gomes Pereira, et al 2012).

Teacher union members and government officials have been implicated in **corrupt activity in South African schools** in relation to improper interference in the allocation of teaching and principal posts in public schools: the Department of Basic Education (DBE) in May 2016 released a report on investigations of these allegations (DBE, 2016). Corruption Watch recently published a report on corruption in schools, describing instances of theft of school governing body funds, illegal tender practice in the awards of tenders to service providers to the schools, nepotistic and other irregular conduct in the allocation of employment posts in schools and more. Just over half of the reports of corruption in schools received by Corruption Watch (1 128 reports) implicated principals, and the majority of schools reported by citizens were Section 21 schools (Corruption Watch, 2015d). Corruption in schools has been one of the most common forms of corruption reported to Corruption Watch's corruption reporting hotline (Corruption Watch, 2015d).

The data above on the public sector does not cover the **state-owned entities (SOEs)**. While SOEs are regulated by the PFMA, there is no consolidated publically available data published on these companies' compliance with financial management regulations across the SOEs (individually, SOEs are audited). The Minister of Finance estimates that the total government procurement spend is about R500 billion per year (Gordhan, 2016). While the majority of this is spent in national, provincial and local government, the procurement budgets for SOEs are substantial. Large capital and critical infrastructure development projects are undertaken by the SOEs – this fact alone makes the SOEs a space of high potential risk for corruption. A 2010 report on SOEs, commissioned by the Presidency, noted cases of corruption for that year alone in Transnet, Eskom and South African Airways (SAA) that implicated members of the executive (Klopper, 2010).[12] In the last year, the Public Protector found evidence of improper conduct in awarding tenders, maladministration and improper conduct in appointing senior staff in the Passenger Rail Agency of South Africa (PRASA).

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[12] Transnet Freight Rail fired its suspended CEO after a disciplinary committee found him guilty of corruption related to two procurement contracts. In February 2010, a former Eskom CEO was paid a performance bonus of R2.3m despite having been fired for poor performance in 2009. It was also revealed that his driver was paid R1m a year. The SAA Chairwoman announced in July 2010 that the company's board would institute action against the former CEO, with the purpose of recovering R30.8m (Klopper, 2010).

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

The Public Protector noted that, "The transactions investigated and related findings reveal a culture of systemic failure to comply with the SCM policy" (Public Protector, 2015a: 46). It also found evidence of corruption in the leasing of commercial property by the South African Post Office (Public Protector, 2015b).

The **Presidential Review Committee on State-Owned Entities** cited the African National Congress's (ANC) Committee on Schedule 2 SOEs stating that rising corruption is a problem facing these companies (Presidential Review Committee on SOEs, 2012). The Presidential Review has noted the need for improved governance in SOEs, "The governance, ownership policy, and oversight systems [of SOEs] were found to be inadequate. The quality of the board and executives' recruitment was found to be inadequate. There is no clarity on the role of the executive authority; boards; and the Chief Executive in the governance and operational management of SOEs." (Presidential Review Committee on SOEs, 2012: 8). Corruption Watch has noted a lack of "understanding of the responsibilities of ministers and the delineation between these and the responsibility of the boards of state-owned enterprises" and inadequate investigation into transgressions of laws regulating governance in SOEs (Corruption Watch, 2015).

Public sector and business involvement in corruption are often inextricably linked, although not all cases of **private sector involvement in corruption** involve government officials.

The Competition Tribunal's findings into **collusion** in the construction industry showed that collusive bidding for government tenders can involve "clandestine processes of which the government officials involved in the procurement process are unaware" (Bruce, 2014: 19). This collusion involved cover-pricing, i.e. when one or more companies submit inflated prices in order to not win the bid, so that another company can win it, which is defined as illegal in terms of PRECCA. There have in recent years been cases of collusion in the shipping industry, the airline industry, the sale of bread, furniture removal and others.[13] Some experts have noted that collusion is probably widespread in South Africa given the South African economy's long history of cartels (Lewis, 2016), dating back to interventions in the economy by the National Party aimed at developing Afrikaans business.

"Fronting"[14] in the development of Black Economic Empowerment (BEE) contracts with the state can also be considered corrupt practice. Fronting essentially constitutes fraud – as it involves the deliberate misrepresentation of facts to ensure preferential consideration in the allocation of

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[13] See the Centre for Competition Regulation and Economic Development (CCRED), University of Johannesburg, website: http://www.competition.org.za

[14] The Department of Trade and Industry (DTI) defines fronting as, "deliberate circumvention or attempted circumvention of the B-BBEE Act and the Codes", through practices such as the appointment of black people in senior positions in an enterprise, but who are effectively discouraged or inhibited from substantially participating in the core activities of an enterprise or from substantially participating in the stated areas and/or levels of their participation; or in cases where economic benefits received as a result of the B-BBEE status of an enterprise do not flow to black people as specified in the relevant legal documentation; and other practices. Source: DTI website: https://www.thedti.gov.za/

contracts with the state or other parties. Statistics on the prevalence of fronting or on the number of cases of fronting reported to government could not be found, but the Department of Trade and Industry (DTI) considered the issue to be of sufficient significance to amend the Broad-Based Black Economic Empowerment Act of 2013 (Act No. 53 of 2003) to make fronting an illegal activity.

South Africa is ranked 7th in the world in terms of the volume of **illicit financial flows**[15] from developing and middle-income countries. This figure is based on the highest average illicit financial flows between 2003 and 2014, which was $20, 922 billion (Global Financial Integrity, 2016). This has been linked to the fact that South Africa has a sophisticated financial sector and yet a good deal of criminal activity takes place in and through South Africa. Internationally, the majority of illicit financial flows are estimated to be as a result of tax evasion of some kind or another; about 5% are estimated to be as a result of theft of public resources and 35% are related to other criminal activity (Hartley, 2015). Data specific to the South African case could not be found.

The recent release of the "Panama Papers" by the International Consortium of Investigative Journalists provides some insight into the extent of monies flowing illegally across borders linked to tax evasion, bribery, illegal arms dealing and financial fraud (involving politicians, state officials, business people and corporates) (The International Consortium of Investigative Journalists, 2016).[16] Corruption and money-laundering are intrinsically linked: money-laundering is the process of concealing or legitimising illicit gains that were generated from criminal activity. The Papers have also highlighted the role of lawyers, tax specialists and people in other professions in supporting this illegal activity.

Corruption in sport is an issue that has recently been highlighted by investigations into senior members of the Fédération Internationale de Football Association (FIFA) – some of which have implicated South African actors in bribery related to securing votes for hosting the World Cup in the country in 2010 (Strydom, 2016). In addition, executives of South Africa's football bodies have been banned or otherwise sanctioned for involvement in match fixing.[17] Evidence of match fixing has also been found in cricket in South Africa, and other sports.

Several areas of society have not received enough attention in official and international donor reports on corruption. One of these includes corruption as it specifically affects citizens in rural areas in South Africa.

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15 Illegal movement of money or capital from one country to another.

16 The "Panama Papers" refer to the analysis and presentation of leaked data from the Panama-based law firm Mossack Fonseca. See: The International Consortium of Investigative Journalist, 'The Panama Papers: An Introduction https://panamapapers.icij.org/video/ (accessed April 2016).

17 Recently the chief executive of the South African Football Association, along with two other officials, was banned by FIFA after investigations by the body into match fixing during the 2010 Football World Cup. (Sowetan Live, 2016).

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

Corruption is difficult to discern in rural areas under the rule of traditional leaders. This is because jurisdiction, authority, and rules and procedures of governance remain contested between the state and traditional leaders. In a strict interpretation of definitions and laws, many practices that are prevalent in rural areas can be defined as corrupt, but are often considered germane to "traditional governance": the payment of annual "khonza" (tribute) fees levied by traditional councils/leaders; the levying of fees to get proof of residence letters required to apply for identity documents; the payment of fees and giving of gifts to traditional leaders by mining companies during application processes for licences and so forth. Moreover, in some areas that fall under the auspices of traditional leadership, there have been cases reported of the selling of land that ought to be and historically was allocated free of charge, for remuneration to the highest bidder. Much of the money generated from such transactions is collected on the pretext that it will be used for the benefit of the public in these traditional authority areas, yet it is rarely accounted for. Specific thought should be given to how corruption manifests and affects people in rural areas and this should in particular form part of the national dialogue on corruption.

There is little data on the issue of corruption in the funding of political parties. A 2011 report notes that, "In the absence of party funding regulation, wealthy interests [of business and other donors] are able to translate economic advantage into political power by exchanging party donations for government tenders and other forms of preferment." (Open Society Foundation et al, 2011). The extent to which this happens in South Africa is not clear, but a renewed public conversation about the issue of party-political funding is needed given the potential for corruption in this area.

2.3. Impact of corruption

There is no empirical data that accurately quantifies the impact of corruption, but some general conclusions relevant to South Africa can be drawn based on literature. Internationally, there is a wealth of literature on the negative impact of corruption on social and economic development (Okeahalam and Bah, 1999; Welsch, 2008; Mwansa, 1999; Gray and Kaufmann, 1998). Economists have shown that corruption raises transaction costs and financial risk with **negative consequences for investment** (Gray and Kaufmann, 1998). Corruption has been empirically linked to severe **failures in the delivery of social services** with damaging consequences for social development outcomes (Mwansa, 1999). Corruption can **erode the legitimacy of the state**, which can undermine the democratic process (Mwansa, 1999).

Corruption impacts directly on **service provision for citizens, especially the poor** (Camerer, 2009). A deterioration in the quality of public infrastructure (such as transport) and public services (such as education and health) caused by corruption more profoundly impacts on those who cannot afford private sector provision of this infrastructure and services. The poor also have fewer resources and less power to demand remedial action where corruption directly affects their access to public goods.

Collusion by the private sector in contracting with the state not only potentially inflates the prices paid by the state for goods or services, but it is also potentially damaging for **maintaining barriers to market entry** by emerging black business.

Where corruption is involved in large capital projects of the kind undertaken by several SOEs and the departments of public works, the loss of state funds can be substantial. However, this is not arguably the most pernicious of corruption's effects: where corruption is systemic in organisations or sectors it establishes incentives and lines of accountability (to leaders, for example those involved in networks of patronage) that run counter to the formal purpose of the organisation. This affects the organisation's ability to socialise its staff into following rules that support its formal mandate (Brunette et al, 2014). It undermines the development of the kind of cohesive organisational culture required to support effective decision-making in organisations. Corruption can therefore **negatively affect the orientation and administrative capacity of the state.** This effect of corruption, less acknowledged than the loss of public funds for service provision and infrastructure, arguably has far more damaging long-term consequences.

CHAPTER 1:
BACKGROUND AND APPROACH

CHAPTER 2:
NATURE AND EXTENT OF CORRUPTION

CHAPTER 3:
LEGISLATIVE FRAMEWORK

CHAPTER 4:
ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5:
SECTOR AND THEMATIC REVIEW

CHAPTER 6:
TOWARDS A NATIONAL ANTI-CORRUPTION
STRATEGY FOR SOUTH AFRICA

Chapter 3 : Legislative framework

3.1.   Introduction

This chapter details the legislative and other provisions already in existence to fight corruption in South Africa. It notes a number of gaps in the legislative framework, provides a brief review of the level and nature of enforcement of the current legislation, and summarises the country's performance on meeting its obligations in terms of international agreements.

3.2.   Current legislation and international obligations

The **Constitution:** The Constitution provides for the existence and oversight role of Parliament and its committees. It provides the basic framework for the courts, police service and public service. Furthermore, it establishes, or requires future establishment of, a number of further entities with a role in anti-corruption activities such as the Public Service Commission (PSC), the Public Protector, the National Prosecuting Authority (NPA) and the Auditor-General of South Africa (AGSA).

Acts establishing public bodies relevant to anti-corruption: Several Acts establish public bodies involved in combating corruption, including the Public Audit Act, 2004 (Act No. 25 of 2004), the Public Service Commission Act, 1997 (Act No. 46 of 1997), the Public Protector Act, 1994 (Act No. 23 of 1994), the South African Revenue Service Act, 1997 (Act No. 34 of 1997), the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), the South African Police Service Act, 1995 (Act No. 68 of 1995), the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996), and the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998, the enabling legislation for the Asset Forfeiture Unit). Most recently the Public Administration Management Act, 2014 (Act No. 11 of 2014) established the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit. Several laws also establish public bodies that indirectly contribute towards the fight against corruption, such as the Competition Act, 1998 (Act No. 89 of 1998) and the Consumer Protection Act, 2008 (Act No. 68 of 2008).

The **Prevention and Combating of Corrupt Activities Act, 2004** (Act No. 12 of 2004 – PRECCA): PRECCA is the centrepiece of anti-corruption legislation in South Africa. It criminalises corruption and defines corruption in a way that accords with common understandings of the term bribery.

- *PRECCA provides that corruption can be committed without the involvement of a state official. The crime of corruption in terms of the Act consists of a circumstance in which party A offers gratification to party B, or where party B asks for gratification, or accepts gratification. Second, and additionally, it consists in a circumstance where the aim of that gratification is to cause party B, or any other party to, in his or her official capacity, act in a manner that is illegal, dishonest, unauthorised, incomplete, or biased. Thirdly, the action that is deviant in such a way must be intended to provide a benefit to party A, party B or any other party. Gratification need not involve money; it can consist in any other benefit. Furthermore, gratification offered simply to expedite the performance of a routine government function – sometimes called a facilitation payment – also falls within the legal definition of corruption.*
- *The Act provides for a duty to report corrupt and related activities such as fraud and extortion, where a person in a position of authority knows or suspects, or ought reasonably to know or suspect, that these activities have occurred.*
- *The Act provides for the investigation of persons whose assets or lifestyle exceed past and present known income, if reasonable grounds exist for believing that these assets or lifestyle are maintained by corrupt or other illegal means.*
- *The Act also provides for the inclusion in a "register for tender defaulters" of individuals or businesses found guilty of corruption related to government tenders and contracts. In such circumstances the individual or business will be prevented from doing business with government for between five and ten years.*

Legislation dealing with whistle-blowers and witness protection: The Protected Disclosures Act, 2000 (Act No. 26 of 2000) is intended to protect whistle-blowers in an organisational setting who uncover illegal or dangerous activities from suffering occupational detriment. It specifies what avenues to follow when disclosing such information, and in protecting whistle-blowers from any retaliation from an employer. The Witness Protection Act, 1998 (Act No. 112 of 1998) establishes the structures, rules and procedures for the protection of people who have to testify in court. The Office for Witness Protection is located in the NPA.

Relevant Acts dealing with financial and organised crime: Several Acts covering financial and organised crime are relevant to the fight against corruption. These include, but are not limited to, the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and the International Cooperation in Criminal Matters Act, 1996 (Act No. 75 of 1996).

Promotion of Access to Information Act (PAIA), 2000 (Act No. 2 of 2000): The Act gives effect to provisions in the Constitution providing for access to information, including Section 32 of the Bill of Rights which declares that "everyone has a right of access to any information held by the state".

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

PAIA contains extensive provisions delineating the nature and extent of this right, including provisions regarding the publication of information held by government, and the procedures and rules surrounding requests for unpublished information. The provisions extend in substantial part to the private sector. The Act therefore establishes an important framework for facilitating transparency and public scrutiny of government and private sector behaviour.

Promotion of Administrative Justice Act (PAJA), 2000 (Act No. 3 of 2000): Administrative action in terms of the Act is action undertaken by national, provincial or local government, the police, army or parastatals that involves these entities making a decision (or failing to take a decision) that affects a person's rights. The Act gives effect to Section 33 of the Constitution, i.e. the right to administrative action that is lawful, reasonable and procedurally fair, as well as the right to be provided with written reasons in circumstances where one's rights are adversely affected by administrative action. Significantly, where corruption is suspected, in tendering for instance, this is an important mechanism for adversely affected parties to acquire more information.

Public finance management and procurement legislation: Legislation associated with setting out the "rules" for financial management, planning, reporting, oversight and accountability (and associated requirements for compliance) in the public sector are particularly important components of the anti-corruption framework, as they govern the way in which public monies are managed and accounted for. These include the Public Finance Management Act, 1999 (Act No. 1 of 1999, updated April 2010) (PFMA), which covers national and provincial departments and public entities and SOEs, and the Municipal Finance Management Act, 2003, (Act No. 56 of 2003) (MFMA), which covers local government. The Acts also provide for instances where the National Treasury may investigate non-compliance with the Acts, and in what way it may take steps to remedy such situations. The Acts also outline the responsibilities of "accounting officers", i.e. the head of a department in the case of national and provincial governments, the municipal manager in the case of local government, and the Chief Executive Officer (CEO) in the case of a public entity. The PFMA requires government departments to each develop and implement a Fraud Prevention Plan. According to the Act, fraud prevention plans have to be included in the risk management strategy of government bodies. The MFMA introduces risk management and fraud prevention as statutory requirements in local authorities. The Preferential Procurement Act, 2000 (Act No. 5 of 2000) sets out the framework for procuring entities to establish measurable specifications and conditions in accordance with which tenders can be evaluated and accepted.

Through requiring the use of objective criteria the Act aims to limit discretion, and thereby strengthen controls and improve monitoring of areas or processes vulnerable to corruption. Reforms to the procurement system are already underway, and new legislation is in the process of being drafted to support this (more details are provided in Chapter 5).

Additional legislation and codes regulating the conduct of public servants: The Public Service Act, 1994 (Act No. 38 of 1994), applicable to employees of national and provincial government, and the Public Service Regulations of 2016 contain, among others, provisions related to conditions of employment, terms of office, disciplinary mechanisms and termination of employment, as well as specific provisions to bolster anti-corruption and integrity management efforts, such as to prevent conflict of interest. All public service employees are expected to comply with the Public Service Code of Conduct as contained in the Public Service Regulations. The regulations prohibit the acceptance of gifts, prohibit employees from doing business with the state or being a director of a company doing business with the state, make it mandatory for public servants to report suspected corruption, prohibit nepotism (favouring of friends or family) in the conduct of their work, and require all members of the senior management service (SMS)[18] to disclose their financial interests to their respective ministers by April 30 each year for submission to the PSC. The executive authority is then to engage with the employee to ensure these conflicts are removed – and if they are not, the executive authority must institute disciplinary measures. The new Public Administration Management Act, 2014 (Act No. 11 of 2014) contains further provisions regulating public servants (and categories of municipal employees) conducting business with the state; provides for the establishment of the National School of Government (which has a potentially important role to play in the training relevant to anti-corruption); establishes a Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit; and provides for the Minister to set minimum norms and standards for public administration and to establish an Office of Standards and Compliance to ensure compliance with minimum norms and standards in the public service.

Other legislation and codes regulating the conduct of local government officials: Schedule 2 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) outlines a code of conduct for municipal staff members. Specific regulations to the Act outline how senior managers in local government should be recruited and appointed, as well as disciplinary mechanisms and termination of employment for senior managers.

Legislation and codes regulating the conduct of members of the executive: The Executive Members' Ethics Act, 1998 (Act No. 82 of 1998), which covers conflicts of interest (including the disclosure of financial interests) and other matters, requires the publication of a code of ethics applicable to cabinet members, deputy-ministers and Members of the Executive Committee (MECs) of provinces, as well members of the legislative arm of government. The Executive Ethics Code was proclaimed in 2000. Schedule 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) outlines a code of conduct that applies to all councillors.

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[18] Managers in the position of Director and upwards to the position of Director-General.

CHAPTER 1:
BACKGROUND AND APPROACH

CHAPTER 2:
NATURE AND EXTENT OF CORRUPTION

CHAPTER 3:
LEGISLATIVE FRAMEWORK

CHAPTER 4:
ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5:
SECTOR AND THEMATIC REVIEW

CHAPTER 6:
TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

Acts relevant to corruption that regulate the private sector and state-owned entities: Section 43 of the regulations of the Companies Act, 2008 (Act No. 71 of 2008) brings South African companies in line with the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery, which requires that certain measures be taken to combat and prevent corruption. The Act requires state-owned, listed and public companies, as well as companies of a certain size, to establish a social and ethics committee. The Committee is to monitor the company's progress and standing regarding the OECD recommendations on preventing corruption, including bribery. The Competition Act, 1998 (Act No. 89 of 1998) covers anti-competitive (or anti-trust) practices such as price fixing, market division, collusive tendering and abuse of a dominant market position. The extent of the applicability of this Act for dealing with corruption depends on the definition of corruption used. Certain activities prohibited under the Competitions Act are also covered under PRECCA: for example, if a company is involved in "cover pricing" this is defined as corruption under PRECCA and is prohibited under the Competition Act.[19] Collusion in the market to fix prices of goods sold to consumers, for example, is illegal in terms of competition legislation, though not defined as corruption under PRECCA.

Governance provisions for private companies and SOEs: The King Report and King Code on Corporate Governance, often referred to as the "King Code"[20] aims to support the leadership of companies to be economically, environmentally and socially responsible. It provides guidance for improving the transparency and stability of financial management of companies (including guidelines on risk management, the Constitution and performance of board members etc.), as well as on implementing affirmative action and social responsibility programmes. The King Code is not enforced through legislation, though legislation such as the Companies Act now incorporates some of the aspects covered in the code. The first two iterations of the code applied only to private companies; the third has been developed so that civil society can incorporate these governance codes into the management of their organisations. The final version of King IV was released in November 2016.

International conventions and treaties: South Africa is signatory to a range of international conventions and treaties, including the United Nations Convention against Corruption (UNCAC) (2003), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997), commitments under the G20 Anti-Corruption Working Group, the Financial Action Task Force (FATF), the African Union Convention on Preventing and Combating Corruption (2003), and the Southern African Development Community (SADC) Protocol against Corruption (2001).

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[19] When a company (company A) submits a bid with no intention of undertaking the work / winning the bid, having colluded with company B to ensure this price is higher than company B's, providing the illusion of competition, but concealing what may be secretly inflated industry prices. This is a form of corruption that involves only private sector players. See United States Department of Justice, 'Price fixing, bid rigging, and market allocation schemes' (webpage): https://www.justice.gov/atr/price-fixing-bid-rigging-and-market-allocation-schemes

[20] The King Committee on Corporate Governance has issued four King Reports that provide guidelines for the governance structures and operation of companies in South Africa, setting out what ethical and effective leadership entails. The reports are referred to as: King I (issued in 1994), King II (issued in 2002), King III (issued in 2009) and the most recent revision King IV (issued in 2016).

- *UNCAC is the only universal anti-corruption instrument that is legally binding on all parties to the Convention. The purposes of UNCAC are (a) to promote and strengthen measures to prevent and combat corruption more efficiently and effectively, (b) to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery and (c) to promote integrity, accountability and proper management of public affairs and public property.*
- *The focus of the OECD "anti-bribery" convention is contained in the title: it commits states to criminalise and implement measures against the act of bribing foreign officials in the process of conducting international business transactions.*
- *The African Union Convention aims to promote improved anti-corruption mechanisms and cooperation and harmonisation of anti-corruption measures across African states, as does the SADC Protocol in the case of SADC countries.*
- *The objectives of the Financial Action Task Force (FATF) are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money-laundering, terrorist financing and other related threats to the integrity of the international financial system. FATF is a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. The Financial Intelligence Centre (FIC) oversees South Africa's work towards developing and implementing policies or legislation in line with the FATF Recommendations.*
- *Other international instruments with a potential relevance to corruption include, among others, the United Nations Convention against Traffic in Narcotic Drugs and Psychotropic Substances and the Convention against Transnational Organised Crime, which carry provisions that deal with money-laundering.*

3.3. Gaps in legislation

Numerous international assessments have concluded that South Africa has a fairly comprehensive and sophisticated legislative framework against which to prosecute a wide range of activities defined as corrupt – including a dedicated act on bribery and other forms of corruption (see PRECCA).

A general legislative review should therefore not be one of the activities under a national anti-corruption strategy. To the extent that changes to the legislation are needed, it is suggested that these primarily emerge through the development of a strong body of case law, especially in the case of PRECCA. This means enforcement of provisions for administrative recourses as well as improvement of prosecution rates under Acts such as PRECCA.

CHAPTER 1:
BACKGROUND AND APPROACH

CHAPTER 2:
NATURE AND EXTENT OF CORRUPTION

CHAPTER 3:
LEGISLATIVE FRAMEWORK

CHAPTER 4:
ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5:
SECTOR AND THEMATIC REVIEW

CHAPTER 6:
TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

A few gaps in legislation nonetheless require (or are receiving) attention, of which the most notable are mentioned here.

The first pertains to the **development of legislation around beneficial ownership.**[21] The extent of illicit financial flows from South Africa has been noted in Chapter 2 (and how this money is associated with a range of corrupt and illegal behaviour). The African Union and the United Nations Economic Commission for Africa report on illicit financial flows from the continent notes that, "Transparency of ownership and control of companies, partnerships, trusts and other legal entities that can hold assets and open bank accounts is critical to the ability to determine where illicit funds are moving and who is moving them." (African Union et al, 2015). At the **Open Government Partnership** Africa Regional Meeting in Cape Town in May 2016, the South African government announced a National Action Plan that includes a commitment to create a public Beneficial Ownership registry in order to protect the integrity and transparency of the global financial and public procurement systems. Recent proposed amendments to the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) cover aspects of the declaration of beneficial ownership by companies. The development of new legislation or amendments to current legislation to provide for the disclosure of beneficial ownership will also need to inform regulations governing procurement if they are to make a meaningful impact on corruption in South Africa. For example, regulations should specify the beneficial owners for companies bidding for state contracts, and the capacity to trace beneficial ownership will need to be improved.

Secondly, concerns about the legal protection of whistle-blowers have been raised in a number of contexts. In 2012 the NDP noted that the **Protected Disclosures Act, 2000 (Act No. 26 of 2000)** "has several weaknesses". The scope of protection in the law is too narrow. It is limited to "occupational detriment", which needlessly restricts the application of the Act to whistle-blowers in a formal permanent employment relationship. It excludes all persons in other commercial relationships with the relevant organisation. In addition, the range of bodies to which a protected disclosure may be made is limited to the Auditor-General and Public Protector.

The NDP recommended that the scope of the Act should be widened and that regulations for the Act are developed, and that government departments develop policies to implement these (NPC, 2012).

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[21] "Beneficial ownership is enjoyed by anyone who has the benefits of ownership of a security or property, and yet does not nominally own the asset itself … According to the Financial Action Task Force on Money Laundering (FATF) … the term beneficial owner refers to the natural person(s) who ultimately owns or controls a legal entity and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement." Source: Wikipedia: https://en.wikipedia.org/wiki/Beneficial_ownership (accessed April 2016).

CHAPTER 1:
BACKGROUND AND APPROACH

CHAPTER 2:
NATURE AND EXTENT OF CORRUPTION

CHAPTER 3:
LEGISLATIVE FRAMEWORK

CHAPTER 4:
ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5:
SECTOR AND THEMATIC REVIEW

CHAPTER 6:
TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

> • *In November 2015, Cabinet approved the introduction of the Protected Disclosures Amendment Bill of 2015 in Parliament. The Bill now extends the application of the Protected Disclosures Act, 2000 (Act 26 of 2000) beyond the traditional employer and employee relationship. The amendments regulate joint liability, introduce a duty to investigate disclosures, provide for immunity against civil and criminal liability in certain circumstances and criminalise intentional false disclosures.*
>
> • *The OECD, (OECD, 2016) and civil society organisations have raised concerns that the* **Protection of State Information Bill[22]** *may affect protection for whistle-blowers, but these concerns have been addressed through further revisions of the Bill. Civil society has further argued that the clauses on "receiving state information unlawfully" are too widely drafted and could beinvoked to prosecute whistle-blowers who disclose classified information in the public interest (Right2Know, 2014). The State has argued that the Bill does not leave whistle-blowersunprotected in this regard, noting that "information relating to corruption, maladministration and corruption is excluded from classification" under the legislation (GCIS, undated).*

Further engagement and discussion around the legal requirements to ensure adequate protected disclosures in all contexts and around the protection of whistle-blowers as well as processes to improve and incentivise such reporting will be required. An extensive awareness-raising campaign around the implications of both these pieces of legislation once promulgated will be required to support the promotion of reporting of corrupt activities or practices.

Last, with relevance for the conduct of public servants, regulations to the Public Administration Management Act came into effect on 1 August 2016 and the implementation of these regulations will be crucial.

3.4. Enforcement of specific legislation

The Global Integrity 2010 report on South Africa gives the country a score of 88/100 for its "Legal Framework",[23] but South Africa scored 18 points lower for actual enforcement of legislation. Several institutional and other issues currently limit the effective enforcement of many of these laws supporting good governance and anti-corruption activities. The enforcement of specific laws is reviewed in the next section.

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[22] The Protection of State Information Bill aims to regulate the classification, protection and dissemination of state information, weighing state interests up against transparency and freedom of expression. The legislation has not been promulgated. Parliamentary Monitoring Group, State Information Bill (webpage), https://pmg.org.za bill/278/

PRECCA has thus far rarely been used to prosecute cases of corruption. Police are more likely to use legislation pertaining to fraud and other financial crimes than PRECCA (Newham, 2016). This may be due to lack of police training or prosecutorial expertise on how to develop cases for prosecution under the Act. Furthermore, the enforcement of PRECCA and other Acts dealing with financial and organised crime are affected by the capacity of the criminal justice system. This includes issues related to the level of independence afforded to relevant agencies, the capacity of overloaded courts to prosecute and so forth. This system is reviewed in more detail in Chapter 4.

On the **implementation of current legislation on whistle-blowing,** Transparency International has noted that substantial backlogs remain in respect of follow-ups to reports made to the national government and provincial hotlines (i.e. **whistle-blower reports**) (Transparency International, 2015). Furthermore, the OECD Working Group assessing compliance with provision on combating bribery notes that too little has been done to ensure that in practice whistle-blowers are provided with the protection outlined in legislation (OECD Working Group, 2016). As outlined by various reports produced under UNCAC, providing this protection requires a range of interventions, such as improved systems to provide for appropriate legal aid for whistle-blowers, ensuring that whistle-blowers can report anonymously to the greatest extent possible, and that their identities and the information they provide are recorded, stored and used in such a way that it does not unnecessarily increase the risk of harm to the whistle-blowers.

According to the 2012 Open Budget Survey, South Africa is one of the most **fiscally transparent** countries. The PFMA outlines requirements for departments to publically publish their revenue and expenditure, and this data is used by a number of civil society organisations to track government's use and prioritisation of public funds. Further, South Africa has a free media, which has contributed to the monitoring of abuse of public resources.

While the budget process remains transparent, **other areas of state practice are less transparent.** The public procurement prescripts are published on the National Treasury website and, under the new Office of the Chief Procurement Officer (OCPO), further information about large tenders is published on the site. However, there is still a need for a great deal more transparency in the development and finalisation of large procurement programmes, especially in the SOEs. This is explored further in Chapter 5.

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[23] Global Integrity Report, South Africa Score Card for 2010: https://www.globalintegrity.org/research/reports/global-interity-report/global-integrity-report-2010/gir-scorecard-2010-south-africa/ (accessed April 2016). The year 2010 is the last year for which a Global Integrity Report Score Card was produced for South Africa — since then, Global Integrity Report provides data from the African Integrity Indicators, which do not have an aggregate indicator for the gap between governance and anti-corruption legislation, and implementation of this legislation.

The **Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000) (PAIA)** has not been effectively implemented by many departments, as noted in the NDP. The NDP has recommended that a dedicated body is tasked with supporting improved access to government information for the public as envisioned under PAIA (NPC, 2012). Compliance with PAIA requirements also scored low in the Department of Planning, Monitoring and Evaluation's (DPME) Management Performance Assessment Tool, though there was an improvement in implementation in relation to the previous few years (DPME, 2014b). Currently, the state of record keeping in several government departments and municipalities is poor (Archival Platform, 2015), which affects departments' capacity to support PAIA. The PAIA Civil Society Network noted in 2014 that the private sector has not been as responsive as it should be to requests for information under PAIA. A report by the Network in 2014 noted that less than half of all requests submitted to the private sector had been responded to within the statutory timeframes (Kennedy, 2015).

Regarding enforcement of **legislation regulating the private sector,** large companies follow the King Code, and reporting in terms of the King Code has become standard. This has assisted in improving the transparency of private sector activity to some degree. However, as noted in Chapter 2, notwithstanding the **obligation to report corruption** (and various other offences) in terms of PRECCA, many companies still fail to report corrupt activity as a result of the stigma attached to admitting control and governance failures (Further details on the state of transparency are provided in Chapter 5).Further, while the majority of listed corporates in South Africa have implemented the **Companies Act's requirement to establish a social and ethics committee,** the focus of these committees has primarily been on good corporate governance and corporate citizenship, and fair labour practices, with only limited focus on anti-corruption compliance (Trialogue, 2005).[24]

The social and ethics committee is supposed to monitor the organisations' progress and standing with regard to the **OECD recommendations on reducing corruption as well as the United Nations Global Compact** (Principle 12 being the reduction of corruption). In practice, however, most companies are not familiar with the OECD recommendations; there is limited awareness of what is required in terms of anti-corruption compliance; and predominantly only companies with global anti-corruption compliance obligations are compliant with the Companies Act, 2008 (Act No. 71 of 2008). Some of these multinational companies have established dedicated, robust and generally mature compliance programmes. This is to ensure compliance with the United States Foreign Corrupt Practises Act and the United Kingdom Bribery Act as regulators in those jurisdictions take robust enforcement action against companies that pay bribes.

[24] Trialogue survey: http://trialogue.co.za/the-status-of-social-and-ethics-committees-a-trialogueey-survey/

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

FIGHTING **CORRUPTION** IS EVERYONE'S BUSINESS

Poor adherence to relevant legislation pertaining to government officials and politicians has already been outlined in Chapter 2, and in Chapter 5 this is explored further in the sector reviews. According to the Codes issued under the Executive Members' Ethics Act, 1998 (Act No. 82 of 1998), members are prohibited from doing business with the state, and the codes further regulate the conditions under which members' family members can benefit from business with the state. These are not being sufficiently enforced.

3.5. South Africa's progress on meeting international obligations

The United Nations Convention against Corruption (UNCAC) urges member states to implement a wide range of anti-corruption measures related to prevention, criminalisation and law enforcement, and contains provisions regarding international cooperation. In its 2013 review of South Africa's progress on implementing UNCAC, the Implementation Review Group made recommendations for improving the processes for managing and protecting witnesses in corruption cases, excluding people convicted of offences from holding public office, developing guidelines for implementing sections of PRECCA, considering a statutory prohibition for the obstruction of judges, strengthening anti-bribery laws as they effect acts of passive bribery of foreign officials, and strengthening international cooperation measures. There are now restrictions on people convicted of misconduct or illegal activity in the public service from rejoining the public service before a minimum stipulated time-period (see Public Service Regulations, 2016), though these restrictions have not been extended to all parts of the State. UNCAC's second cycle of review (that will focus on prevention of corruption and asset recovery) is to commence soon. Some of the elements that are due for assessment should be considered for inclusion in a national anti-corruption strategy.

The OECD Working Group on Bribery's report on its Phase 3 Assessment of South Africa's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention) (OECD, 2014) evaluates and makes recommendations on South Africa's implementation and enforcement of the Convention and related instruments. The Group conveyed serious concern about the insufficient law-enforcement responses to foreign bribery in South Africa. Despite South Africa's economic links to a number of countries with corruption risks, only a few foreign bribery allegations have been formally registered and investigated since South Africa became a party to the Convention in 2007. While a few cases are being investigated by South African authorities, there have been no prosecutions so far. The Working Group therefore recommended that South Africa significantly increase its efforts to detect, investigate and prosecute foreign bribery.

The Working Group noted South Africa's compliance with the Convention in making the establishment of social and ethics committees a statutory obligation for companies in the Companies Act. However, poor enforcement of corporate liability for foreign bribery is especially troubling in an economic environment where there has been a major growth in corporate activity, and where state-owned enterprises operating in sensitive sectors are allegedly involved in foreign bribery cases.

In a recent Transparency International report, "Exporting corruption, progress report Aug 20, 2015", which assessed enforcement of the OECD convention on combating foreign bribery in South Africa, South Africa was commended for having good anti-corruption laws, but criticised for its poor enforcement. The report further highlighted the following: "Although a number of changes have been implemented in response to the OECD Phase 3 Report [previous monitoring report], which has significantly increased the number of investigations, the lack of prosecutions of foreign bribery offences remains problematic. There have been welcome structural changes in the enforcement system for foreign bribery, but the South African criminal justice system as a whole is still acutely under-resourced. Given the complex nature of foreign bribery, expertise in investigating foreign bribery is limited. The Hawks (Directorate for Priority Crime Investigation) could also be vulnerable to political interference influencing the selection of cases" (Transparency International, 2015c).

A 2013 report by the Southern African Development Community Council of NGOs (SADC-CNGO) noted that across all countries in the region, implementation of **the SADC Protocol against Corruption** was poor, hampered in part by too little cooperation between SADC countries on issues of corruption (SADC-CNGO, 2013). It is not clear if cooperation has improved since then. South Africa is considered partially compliant with the **Financial Action Task Force (FATF) Recommendations,** and is currently considering amendments to the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) to bring the country further in line with the FATF Recommendations.

South Africa is also an active participant to the G20 Anti-Corruption Working Group and regularly provides its Accountability Report.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

FIGHTING CORRUPTION IS EVERYONE'S BUSINESS

Chapter 4 : Anti-corruption agencies and bodies

4.1. Introduction

South Africa follows a multi-agency approach to combating corruption: it does not have one entity solely focused on anti-corruption measures. In the following chapter the various bodies and forums mandated to play a role in reducing corruption and improving public accountability are detailed, as well as other stakeholders involved in anti-corruption activity, followed by a brief review of the successes and challenges of the current anti-corruption system. As noted in the NDP (NPC, 2012), there is much debate about whether or not South Africa should move towards establishing one dedicated, anti-corruption body as adopted by countries such as Singapore and Botswana. NDP recommendations in this regard are detailed and a review is undertaken of the international literature, drawing out lessons for South Africa.

4.2. Relevant forums and bodies

Organisations are listed in alphabetical order per category of organisations.

4.2.1. Criminal justice agencies and bodies undertaking criminal investigations

Asset Forfeiture Unit (AFU): The AFU is a unit in the NPA that focuses on the seizure of criminal assets and financial recovery of the proceeds of crime (in accordance with powers outlined in the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

Directorate for Priority Crime Investigation[25] (DPCI – the "Hawks"): The DPCI, also known as the Hawks, is a structure of the South African Police Service (SAPS). The DPCI has a specific mandate with regard to the investigation of complex cases, and investigates national priority offences and any other offence referred to it by the National Commissioner, with a focus on organised crime, serious corruption and serious commercial crime.

Financial Intelligence Centre (FIC): The FIC was created in terms of Section 2 of the Financial Intelligence Centre Act (FICA) (Act No. 38 of 2001) as the national centre for receiving, analysing and disseminating information on suspected money-laundering and terrorist financing. The FIC also collates compulsory reports by financial institutions and other bodies on financial data relevant for use in the fight against other crime in South Africa.

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[25] In July 2009 the fully independent body the Directorate of Special Operations (DSO) was replaced by the Directorate for Priority Crime Investigation (DPCI).

National Intelligence Coordinating Committee (NICOC): This Committee is mandated to ensure improved coordination between various bodies collecting crime and other forms of intelligence (for example, between Crime Intelligence in the SAPS and the SSA).

National Prosecuting Authority (NPA): The NPA has a constitutional mandate to institute and conduct criminal proceedings on behalf of the state, and also plays a role in directing related investigative work. In addition to the Asset Forfeiture Unit (AFU), the Office for Witness Protection and the Specialised Commercial Crimes Unit are also located in the NPA.

Special Investigating Unit (SIU): Established in accordance with the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996), the SIU is an independent statutory body for the purpose of combating corruption through investigations and litigation in cases of serious malpractices or maladministration in connection with the administration of state institutions, state assets and public money as well as any conduct that may seriously harm the interests of the public. The SIU conducts investigations pursuant to Presidential proclamation, and may refer cases (including corruption cases) to law enforcement agencies.

South African Police Service (SAPS): The SAPS's work is mandated by the South African Police Service Act, 1995 (Act No. 68 of 1995) that sets out powers to members of the police services, which include investigation of all crimes, among others corruption. Regarding the investigation of corruption within the police services, allegations about members below the rank of colonel are investigated at station level, while the DPCI investigates allegations of corruption regarding members above the level of colonel.

South African Revenue Service (SARS): SARS is empowered by the South African Revenue Service Act, 1997 (Act No. 34 of 1997) to collect all revenue due to the state, in order to ensure maximum tax compliance and provide a customs service. In addition, the Act empowers SARS to carry out lifestyle audits to ensure maximum tax compliance, and SARS has a unit that coordinates investigations on tax and customs corruption.

Specialised Commercial Crimes Unit in the NPA: Established in 1999, the Unit's focus is on corruption, fraud, cybercrime and money-laundering. A Special Director at the Unit leads a team of prosecutors and provides guidance to investigators. The Unit prosecutes complex commercial crime cases investigated by the Commercial Branch of the SAPS in dedicated courts. In terms of its 2012 Strategic Plan, corruption cases have also been prioritised.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

State Security Agency (SSA): The SSA is required to direct its collective attention in pursuit of national security and interests, which includes the combating of corruption. This is done through the provision of relevant intelligence, and other services, including for example, managing the vetting system for the recruitment of public sector personnel.

4.2.2. Constitutional and other public oversight bodies

Competition Commission: The Competition Commission is a statutory body constituted in terms of the Competition Act, 1998 (Act No. 89 of 1998). It is empowered to investigate, control and evaluate restrictive business practices, abuse of dominant positions and mergers to achieve equity and efficiency in the South African economy.

Independent Police Investigative Directorate (IPID): The aim of IPID is to ensure independent oversight over the SAPS and the Municipal Police Services (MPS), and to conduct independent and impartial investigations of identified criminal offences allegedly committed by SAPS and MPS members.

Inspector-General of Intelligence (IGI): The Inspector-General is to provide oversight on the intelligence and counterintelligence activities of the South African intelligence services, by determining their compliance with relevant legislation. The IGI also investigates complaints lodged by members of the public and members of the intelligence services on alleged maladministration or abuse of powers by the intelligence services.

Parliament's Standing Committee on Public Accounts (SCOPA) and Municipal Public Accounts Committees: SCOPA acts as Parliament's watchdog over how public money is spent by the Executive. Heads of government departments and institutions may be called by this committee to report and account for expenditure. The Committee can recommend that the National Assembly take corrective action. Similarly, municipalities are to establish Municipal Public Accounts Committees, the purpose of which is to strengthen the oversight arrangements in the municipalities and to ensure the efficient and effective use of municipal resources.

Parliament, provincial legislatures and local government councils: The national and provincial parliaments and the local government councillors are mandated to provide general oversight over the activities of government departments and agencies.

Public Service Commission (PSC): The PSC derives its mandate from sections 195 and 196 of the Constitution. The PSC is tasked to investigate, monitor and evaluate the organisation, administration and performance of the public service. The PSC manages the national anti-corruption hotline that allows people to anonymously report instances of perceived corruption or maladministration in a government department. Cases of possible corruption may then be referred to the relevant departments, or to relevant law-enforcement agencies. The PSC also investigates infringements of the Public Service Act, 1994 (Act No. 103 of 1994), monitors and reports to relevant departments on possible financial conflicts of interest by public servants, monitors the quality of anti-corruption strategies and promotes professional ethics in the public service.

Public Protector: The Public Protector is appointed by the President and empowered by the Public Protector Act, 1994 (Act No. 23 of 1994). The mandate of the Public Protector is to strengthen constitutional democracy by investigating and recommending redress for improper and prejudicial conduct, maladministration and abuse of power in state affairs or with respect to public money, or by government agencies and officials.

Oversight of members of the legislatures and parliament: The South African Parliament has established a Joint Committee on Ethics and Members' Interests, whose functions are to: implement a code of conduct for members; develop standards of ethical conduct; serve as an advisory and consultative body, both generally and to members; and review the code of conduct as needed. The Joint Committee has issued a Code of Conduct as well as a system for the disclosure of members' interests. Similar offices have been established in some of the provincial legislatures.

4.2.3. Dedicated coordinating bodies in government

Anti-Corruption Inter-Ministerial Committee: In pursuance of establishing a resilient system as directed by the NDP and MTSF, and to coordinate all anti-corruption responsibilities and structures under the new government administration, the Anti-Corruption Inter-Ministerial Committee (ACIMC) was established in June 2014. The ACIMC is mandated to coordinate and oversee the work of state organs aimed at combating corruption in the public and private sectors. The ACIMC is convened and chaired by the Minister for Planning Monitoring and Evaluation in the Presidency, and is comprised of the Ministers of Justice and Correctional Services, State Security, Police, Cooperative Governance and Traditional Affairs, Public Service and Administration, Finance, Home Affairs and Social Development. The ACIMC also provides strategic direction for the operational activities of the Anti-Corruption Task Team (ACTT).

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

Anti-Corruption Task Team (ACTT): The ACTT provides for coordination within government pertaining to efforts to reduce corruption and to expedite the effective investigation of priority corruption cases. The Team consists of representatives from the DPCI, NPA, AFU, SIU, SARS, the Office of the Accountant-General and the OCPO in the National Treasury, FIC, NICOC, the SSA, the Presidency, the Department of Justice and Constitutional Development, the Department of Public Service and Administration and the Government Communication and Information System (GCIS). The ACTT reports to the ACIMC on a regular basis.

4.2.4. Other relevant compliance monitoring bodies and departments with a mandate to support anti-corruption work and integrity management

Office of the Accountant-General (in the National Treasury): The Office of the Accountant-General is responsible for promoting and enforcing the effective management of revenue and expenditure in departments, as well as for monitoring the proper implementation of the PFMA and the MFMA. The Office of the Accountant-General is also mandated to conduct investigation in the public procurement processes in any sphere of government and recommend improvements.

Auditor-General of South Africa (AGSA): The AGSA has a constitutional mandate to strengthen democracy by enabling oversight, accountability and governance in the public sector. The AGSA audits and reports on the accounts, financial statements and financial management of all government entities.

Office of the Chief Procurement Officer (OCPO): The OCPO's function, as established by National Treasury, is to improve the transparency, fairness and cost-effectiveness of the procurement system in all spheres of government, and to support the proper utilisation of financial and other public resources and state assets. The OCPO is responsible for the following at National Treasury:

- *Endorsement of particulars on the Register for Tender Defaulters in terms of Section 28 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004). The National Treasury is empowered to determine the period of restriction from doing business with the public sector for a period not less than 5 years and not more than 10 years.*
- *Record keeping of restricted parties in accordance with the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000). The National Treasury maintains a Register of Restricted Suppliers prohibited from doing business with the public sector. This Act gives the Accounting Officer/Authority the power to restrict a supplier from doing business with the public sector if such a supplier obtained preferences fraudulently or if such supplier failed to perform on a contract based on the specific goals.*

Department of Cooperative Governance DCoG): The DCoG has a mandate to support anti-corruption work, to support good governance, and to improve financial management in local government.

Department of Public Service and Administration (DPSA): The DPSA sets norms and standards on ethics, integrity and anti-corruption activities for the public service and monitors government capacity in this regard. The DPSA also regulates aspects of the conduct of public servants and has a crucial role when it comes to the management of processes related to disciplinary investigations and proceedings being instituted against public servants. The DPSA is currently the lead department with regard to coordinating South Africa's commitment on international treaties aimed at combating corruption.

Other public ombuds offices: Some municipalities and the South African National Defence Force (SANDF) have ombuds offices that support fair administrative action, and therefore indirectly prevent corruption.

4.2.5. Relevant civil society and private sector bodies

Anti-Intimidation and Ethical Practices Forum (AEPF): The AEPF was launched in 2015 as a result of concerns among various professional bodies about corruption in the country and the increase in the intimidation of professionals who work in fields such as auditing, risk management and governance. Members of the Forum work to strengthen ethical standards in the professional arena and lobby for changes that will afford greater protection for whistle-blowers. The Forum works with the offices of the Auditor-General, the National Treasury, the Public Protector and Corruption Watch, and others.

Business leadership / organised business: These include organisations such as Business Unity South Africa (BUSA), Business Leadership, the South African Chamber of Commerce and Industry (SACCI), the National Business Initiative (NBI), Business Against Crime (BAC) and the Institute of Directors in Southern Africa (IODSA), that play a role in anti-corruption activities. For example, BUSA runs a Business Anti-Corruption Working Group that develops strategies for fighting corruption in the private and public sectors. IODSA promotes corporate governance, has supported the development of the King Code of Governance Principles and published the King Report on Governance in South Africa. The Johannesburg Stock Exchange is considering making reporting on anti-corruption compliance one of the pillars of sustainability reporting. Currently the NBI coordinates the application of the UN Global Compact in South Africa, including principle 10 on fighting corruption.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

Bodies regulating the conduct of the professions: A number of professional bodies and associations play an indirect role in combating corruption through aiming to regulate theconduct of their members and promoting ethical practices by their members in the private and public sectors.

Civil society organisations: Various organisations and movements play a role in anti-corruption activities, some of which focus on accountability, access to information, freedom of information, moral integrity and ethicsmy - all important ingredients in anti-corruption activities. Corruption Watch was launched in January 2012. It collects information from the public about corruption, undertakes investigation of allegations of corruption that Corruption Watch considers of national importance (such as corruption which affects access to basic rights like education and health care) and runs anti-corruption campaigns. This organisation also tracks transparency in corporate reporting on corruption. Corruption Watch is the accredited chapter of Transparency International. In 2015 a broad consortium of organisations and individuals from academia, civil society, faith-based organisations, the private sector and trade unions emerged under the Unite against Corruption umbrella.

National Anti-Corruption Forum (NACF): The NACF is a coalition formed by the public, business and civil society sectors and was established in 2001 with the aim of driving the national anti-corruption campaign. Its mandate is to contribute towards the establishment of a national consensus through the coordination of sectoral strategies against corruption, to advise government on the implementation of strategies to combat corruption, to share information and good practice on sectoral anti-corruption work and to advise sectors on the improvement of sectoral anti-corruption strategies (NACF 2012). It comprises various representatives of the civil society sector, including trade unions; the business sector, represented primarily by Business Unity South Africa; and government. Government is represented by the Ministries of Arts and Culture, Finance, Home Affairs, Justice and CorrectionalServices, Public Enterprises, Public Service and Administration, Cooperative Governance, State Security and Police. The Public Service Commission (PSC) serves as the secretariat of the NACF.

Other relevant business and civil society organisations: Various business civil society organisations, including trade unions, play a role in monitoring the use/abuse of state resources and instances ofillegal activity by corporates through providing ombuds and mediation services, mobilising members of the public, using litigation and other methods. There are also a number of research organisations that conduct and publicise research on corruption in the country, such as the Institute for Security Studies.

4.3. Review of the current anti-corruption system

In this section the focus is primarily on the work of those agencies and bodies specifically involved in investigating and prosecuting (or what some of the literature refers to as "combating") corruption, with particular emphasis on criminal justice agencies.

Successful prosecution of corrupt activity requires that certain conditions are in place, such as appropriate laws against which to prosecute; the independence of investigation and prosecution agencies from political interference; sufficient funding and specialist capacity to investigate; an institutional architecture that supports the sharing of information and cooperation between relevant agencies; measures that incentivise whistle-blowing and so on. In addition, this work is supported by an active civil society that mobilises against abuses of authority, free media and good access to government and other public information.

Several oversight bodies have developed a public reputation of independence, integrity and capacity: The AGSA is a trusted source of information about the financial health and integrity of public service and local government finances; the FIC is seen as a fairly well capacitated organisation assisting in the fight against financial crime; and South Africa's Office for Witness Protection has an impressive record of ensuring the safety of those taken into the Programme (Mortlock, 2015). Many civil society bodies are active in monitoring the conduct of state officials and the conduct of big business, and the Office of the Public Protector has developed a high profile in the last few years for investigating cases of abuse of public resources across the system, from unknown officials in small towns to very senior politicians.

The **Public Protector's constitutional powers** have recently been affirmed in a ruling by the Constitutional Court, which found that remedial action outlined in the Public Protector's reports must be complied with. (Constitutional Court, 2015)

The **Specialised Commercial Courts** have achieved success in prosecuting corruption. They have maintained a conviction rate above 90% since inception. The introduction of plea and sentencing agreements in section 105 A of the Criminal Procedure Act has facilitated early closure and finalisation of many complex white-collar crime cases, including those covering corruption. The AFU has been successful in seizing assets: in their latest annual report, the NPA reported that freezing orders to the value of R2.2 billion and recoveries of R1.5 million were obtained (relating to cases where the amount benefitted from corrupt activities was more than R5 million) (NPA, 2014/15).

CHAPTER 1:
BACKGROUND AND APPROACH

CHAPTER 2:
NATURE AND EXTENT OF CORRUPTION

CHAPTER 3:
LEGISLATIVE FRAMEWORK

CHAPTER 4:
ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5:
SECTOR AND THEMATIC REVIEW

CHAPTER 6:
TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

However, the data presented in Chapter 2 on the prevalence of corruption in the country suggests a need to fundamentally improve the efficacy of South Africa's anti-corruption bodies in reducing corruption. Various concerns have been raised about the system; these include: 1) the architecture of the anti-corruption system – and how to improve coordination between relevant agencies and bodies; 2) the independence of the anti-corruption agencies from executive interference; 3) whether additional resources should be dedicated to the anti-corruption agencies; 4) the capacity of the courts to prosecute corruption; and 5) whether a dedicated anti-corruption unit investigating corruption in the police is needed. Regarding the last point, this report found that such a unit is necessary – this is discussed in Chapter 5 (see the sectoral review of corruption in policing).

With regard to some of these issues listed above, the NDP:

- *Proposed that more funding is required for the investigative agencies – for additional skilled personnel and investigative technologies.*
- *Mooted the proposal of developing specialised teams of prosecutors and establishing dedicated courts to expedite corruption cases.*
- *Proposed "a review of the mandates and functions of all agencies with a view to some rationalisation".*
- *Noted that, "The autonomy of each agency should be reinforced to insulate them from political pressure."*
- *Proposed that the NACF be resurrected and more funding committed from the various sectors.*

The NDP has also noted that South Africa should strengthen judicial governance through making the criteria by which judges are selected clearer, improving training of judges, restructuring the Judicial Service Commission, and improving resourcing for legal aid by extending community service to law graduates (NPC, 2012: Chapter 14).

A 2012 review of the anti-corruption system in South Africa by the Basil Institute of Governance noted that, "the anti-corruption framework of the RSA has to ensure that the legal mechanisms that have created the bodies also enjoy appropriate checks and balances between the branches of power. This is to ensure that … these bodies enjoy autonomy while discharging their duties without the risk of having actual or perceived political interference [and], an appropriate level of oversight and accountability must be retained so as to ensure that these do not overstep in their authority." (Gomes Pereira et al, 2012).

Several issues have impacted negatively on the functioning of law-enforcement and prosecuting bodies and undermine public trust in the capacity and independence of the agencies tasked with fighting corruption in South Africa, and have reduced the country's ability and credibility to combat corruption.

The media, international assessments and civil society organisations have among others noted the following: a steady drop in numbers of cases investigated and prosecuted by the DPCI (as illustrated below); court rulings on and significant other indications of instability of leadership in the DPCI and the NPA; contentious decisions on the instituting of prosecution such as the recent court ruling that the NPA pursued malicious prosecution; suspicious burglaries at offices of civil society organisations pursuing litigation regarding the appointment of the DPCI head; and the suspected inappropriate use of state intelligence capacity.[26]

Figure 4: The number of arrests and convictions by the DPCI 2010/11 to 2014/15 and 6 months of 2015/16
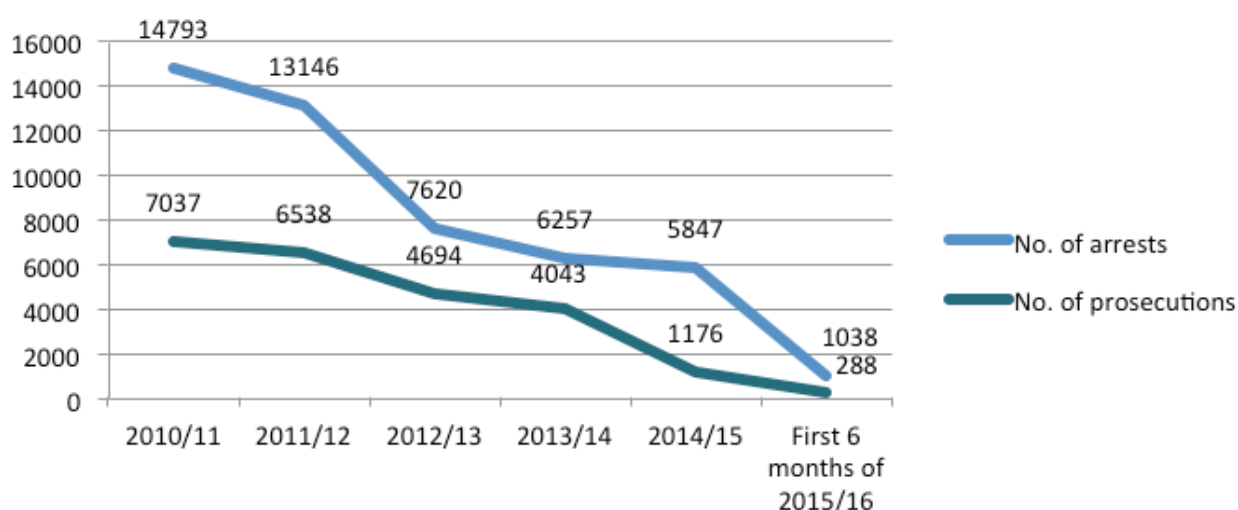
Source: Data presented by the Ministry of Police to the National Assembly, 2015.

On the issue of **independence**, civil society, academics and other researchers, and the NPC have raised concerns about executive interference by senior politicians in the cases selected for investigation and prosecution in the DPCI and the NPA. In particular, since the disbanding of the Directorate of Special Operations (DSO – "Scorpions"), there have been concerns raised by civil society about the independence of its successor, the DPCI.[27]

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[26]   Interview with Gareth Newham, Head of Institute for Security Studies' Governance, Crime and Justice Division, April 2016. See also articles on the independence of the DPCI on Corruption Watch's website and other media sources. See the recent coverage of the Sibiya case heard in the Johannesburg Magistrate's Court in 2016. (Bateman, 2016)
[27]   See for example, Corruption Watch, 2015c; Tamukamoyo and Mofana, 2013; and de Vos, 2015.

CHAPTER 1:
BACKGROUND AND APPROACH

CHAPTER 2:
NATURE AND EXTENT OF CORRUPTION

CHAPTER 3:
LEGISLATIVE FRAMEWORK

CHAPTER 4:
ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5:
SECTOR AND THEMATIC REVIEW

CHAPTER 6:
TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

A 2011 Constitutional Court ruling found that the state has a constitutional obligation to establish and maintain an independent body to combat corruption and organised crime, and that the DPCI lacked this structural and operational independence (Constitutional Court of South Africa, 2011).

The relevant legislation was amended by Parliament in response to the Constitutional Court ruling, but the amendments were found by the Court to be insufficient and the Court made some clauses of the amended legislation void (Constitutional Court, 2014).[28]

International reviews of successful anti-corruption agencies in other countries such as Australia, Singapore, Hong Kong and Botswana show that they have all developed mass-based support for reducing corruption only after they prosecuted senior officials, politicians and associated business people. This is not currently happening in South Africa, and **political corruption** – as defined in Chapter 2 – is receiving far too little attention. While ongoing prosecution of lower-level officials is vital to ensuring greater compliance with regulations and reducing fraud and corruption in the public and private sectors, political corruption must also be more substantially addressed.

At the beginning of this chapter the many institutions and bodies mandated to play some role in the fight against corruption in the country were outlined. Due to the vast number of role players with varying capacities and mandates this environment is complex and there are **challenges for coordinating the work of the various bodies and across sectors.**

Although the **National Anti-Corruption Forum (NACF)** was initially a very positive development in the anti-corruption landscape, it has not been very active since the fourth National Anti-Corruption Summit in 2011. By the time of the last Summit, the NACF was no longer involving the participation of senior politicians and business people (with more junior office holders sent to participate in their place). Unless the Forum is **supported by the attendance of very senior officials, business and civil society leaders,** it is unlikely to develop momentum (Lewis, 2016).

Regarding **coordination within the government sector** – sufficiently effective mechanisms for sharing intelligence and collaborating on projects and strategy development have not yet been developed.

In July 2010 the Justice Crime Prevention and Security (JCPS) Cluster was tasked with the establishment of a task team to fast-track investigations and prosecution. The Anti-Corruption Task Team (ACTT) was formed in October 2010 to give effect to this.

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[28] Constitutional Court press release concerning the majority judgement of the Court, 2014: "The Constitutional Court held that certain defects highlighted in Glenister II have not been cured. These include: the unconstitutionality of the provisions relating to the extension of tenure of the National Head of the DPCI; the undue political interference in the operations of the DPCI through ministerial policy guidelines; and the untrammeled power of the Minister of Police to remove the Head of the DPCI. The remedy employed by the Court was to sever those parts of specific sections that were found to be inconsistent with the constitutional obligation to create an anti-corruption unit that enjoys adequate structural and operational independence." (Constitutional Court, 2014).

The JCPS Cluster identified the need to associate government's output relating to investor perceptions and corruption more closely. In 2014, Minister in the Presidency, Mr Radebe, announced an expansion in the mandate of the ACTT, which now operates through five main programme areas – communication and awareness; intelligence coordination, policy and strategy development; public sector policy and strategy development; vulnerable sector management; and crime operations and resolutions (Minister Radebe, 2014).

The role and functions of the **ACTT** have evolved since its original inception, for example from a reactive law enforcement task team to one with prevention responsibilities. This has implications for the stature and permanence of the ACTT, as well as how it is constituted and the manner in which it plans, coordinates, budgets for and executes its activities. Similarly, this has implications for the manner in which constituent departments and institutions integrate ACTT-supportive activities into their own internal planning, budgets, resource allocation as well as performance and accountability mechanisms. The **functioning and structure** of the ACTT requires review as part of the review of the overall institutional mechanisms to fight corruption.

Some commentators have argued that a single, well-resourced anti-corruption agency with powers to develop legislation, investigate corruption, and prosecute (as established in Hong Kong, Singapore, Botswana and other mentioned examples) would reduce the problems of coordination and provide a concentration of resources with which to more effectively investigate and prosecute corruption. The NDP, though, has cautioned that one single agency is less resilient against political interference and pressure, noting that, "if the lone anti-corruption body faces political capture, the independence of the entire system is compromised. A multiplicity of agencies provides the checks and balances that are essential in the South African context …" (NPC, 2012: Chapter 14). The Institute for Security Studies supports this position.[29] Furthermore, the NPC cautions that the institutional conditions that made for the successes of the famous single anti-corruption agencies of Hong Kong and Singapore, for example, are very different to the conditions pertaining to South Africa.

The next section undertakes a brief review of single anti-corruption agencies in other countries, and explores the possibilities for replicating a similar structure in South Africa.

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[29] Interview with Gareth Newham, Head of Institute for Security Studies' Governance, Crime and Justice Division, April 2016.

CHAPTER 1:
BACKGROUND AND APPROACH

CHAPTER 2:
NATURE AND EXTENT OF CORRUPTION

CHAPTER 3:
LEGISLATIVE FRAMEWORK

CHAPTER 4:
ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5:
SECTOR AND THEMATIC REVIEW

CHAPTER 6:
TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

4.4. Lessons from international experience for South Africa's anti-corruption architecture[30]

4.4.1. A single agency or not?

Over the last few decades countries have increasingly "centralised anti-corruption strategy through the establishment of specialised anti-corruption agencies" (Kuris, 2012). Kuris notes that this consensus "is reflected both in the priorities of academic experts and international donors and in the mandates of international law" (Kuris, 2012). Single, multipurpose anti-corruption agencies tend to have some of the following functions: investigation; prosecution; education and awareness-raising; prevention; and coordination (UNDP, 2005). The functions granted to a specific agency often have more to do with historical development than any deliberate choice of model (UNDP, 2005).

A handful of anti-corruption agencies have proved effective. The cases of Hong Kong, Singapore and New South Wales in Australia are often cited. The literature also identifies anti-corruption agencies in Latvia (Kuris, 2012), Lithuania (Kuris, 2012), Indonesia (Kuris, 2012) and Botswana (UNDP, 2005) as relatively effective. However, a number of reviews argue that most anti-corruption agencies established in middle income and developing countries have been ineffective (Heilbrunn, 2004; see also de Sousa, 2009 and Kuris, 2012; Williams and Doig, 2007 cited in Heeks, 2011). A 2012 review which explored the possibility of replicating the single agency model in South Africa noted, "It is noteworthy that the centralised multi-purpose agencies of Hong Kong, Singapore, and even Latvia and Lithuania, which are often cited as examples of good models –and sometimes acclaimed by international experts and the literature – function in a very specific context (OECD, 2008). Efforts to copy this model in bigger or federal states, or to countries with endemic corruption, and ones with other important differences (in comparison to countries like Singapore), have so far brought mixed results. Often success and failures are not related to the type of agency but rather to external circumstances that have to be adequately measured (Gomes Pereira et al, 2012).

Essentially: models of successful agencies have not been easily replicable because of the specific contexts in which these agencies operate and the particular history of their creation and evolution (UNDP, 2005).

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[30] Parts of this section of the report are taken from a review by Public Affairs Research Institute (PARI) commissioned by the (then) Technical Assistance Unit of the National Treasury (TAU, 2012).

Literature suggests that the structure and institutional arrangements of these more successful agencies have varied quite widely – in terms of agencies' reporting lines, checks on powers, internal organisational structure, the relationship of the agency to other institutions such as the judiciary and the police, the manner in which senior agency staff are appointed and more.

Regarding the issue of cooperation, the OECD has noted that, "Even where a single law enforcement specialised body has jurisdiction to investigate and prosecute corruption, institutionalised coordination with other state control bodies is needed, e.g. tax and customs, financial control, public administration" (OECD 2008, cited in Gomes Pereira et al, 2012).

Reviews have also noted how long it took to develop effective anti-corruption strategies even in the more successful countries. The capacities of Hong Kong's Independent Commission against Corruption (ICAC) took 26 years to develop (UNDP, 2005).

Furthermore, Heilbrunn (2004) notes that "the more functions a commission seeks to fulfil, the greater its demand for revenues." The "universal model" – a single anti-corruption unit with strong powers to investigate cases of crime and non-compliance with regulations, as well as other functions such as education – demand very large budgets. Countries that have attempted to replicate this model without substantial funding have been unsuccessful. However, funding sources do not need to only come from the central fiscus – bodies that are empowered to bring enforcement action against companies that are implicated in bribery can bring in significant revenue from the penalties imposed on countries. This is potentially the case in South Africa.

Where single agencies have been given independence, and have sufficient budget and institutional capacity, they have made large strides in combating corruption. In the case of South Africa, Corruption Watch has noted that if the conditions are not yet appropriate for a move to a single agency, there are various options for strengthening the architecture of the system, by broadening the mandate of investigating agencies, for example the SIU and DPCI, while ensuring their mandates in relation to each other are distinct, and then increasing their independence through, for example, more transparent mechanisms for appointing senior leaders (Corruption Watch, 2013). The SIU has suggested that if a single agency model is not adopted, "a lead institution takes responsibility for coordinating all anti-corruption role players at both policy and operational levels" (O'Brien, 2013). Furthermore, consideration should probably be given to reincorporating prosecution powers into one of the agencies tasked with investigating corruption.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

When these functions of investigation and prosecution are combined, investigations can be conducted in such a way that they maximise the chances of successful prosecution (i.e. prosecution-guided investigation).

4.4.2. International lessons from successful agencies

Even if the single agency model does not offer very clear advantages for South Africa in the current context, some of the experiences of the more successful agencies are still relevant for South Africa, even with the current multiagency approach. Some of these are explored below.

Successful agencies established a good degree of insulation from politics, provided in part by establishing independent oversight of the agencies' work. The institutional arrangement intended to ensure accountability needs to be developed differently in each country case, taking into consideration the relative independence of the bodies tasked with oversight. Hong Kong's ICAC has its activities scrutinised by four independent committees, including representatives from civil society (UNDP, 2005). Accountability in successful agencies was also established through carefully drafted rules for the selection and removal of agency leadership. In the case of Indonesia for example, the flat, simple hierarchy of Indonesia's anti-corruption agency, KPK[31], is headed by five commissioners who report annually to the president, the parliament and the state auditor (Kuris, 2012). KPK commissioners are confirmed by parliament, voting from a list "generated by the President with the help of a selection committee appointed by the justice ministry and composed of government and private individuals" (Kuris, 2012).

While the institutional and structural arrangements of successful agencies have varied widely, getting this right has been key to their impact. In the case of Indonesia, for example, to limit inter-agency rivalries with other organisations such as the police and the accountant general's office, all KPK investigators and prosecutors are seconded from the police and the Attorney-General's Office on four-year contracts (Kuris, 2012).

The examples of Hong Kong, Indonesia and Lithuania show that successful agencies build capacity through "ample resources, professional and well-compensated personnel, and strong, watertight procedures of operation" (Kuris, 2012). In Indonesia, "Rather than make early arrests to satisfy the public demand for quick action, the commissioners made a controversial early decision to focus on institution building" (Kuris, 2012).

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[31] Komisi Pemberantasan Korupsi – the Corruption Eradication Commission of Indonesia.

Latvia's Corruption Prevention and Combating Bureau (KNAB)[32], also considered a relatively successful agency, went for quick wins, making its first arrest four months after establishment. When faced with "pushback" from corrupt officials and oligarchs, the lack of sound internal procedures nearly saw the reputation of KNAB destroyed (Kuris, 2012).

Once agencies begin to build a successful track record they are inevitably met with a strong pushback from those implicated in, or supported by, corrupt groups. At these points, public support is essential (Heilbrunn, 2004; Kuris, 2012; de Sousa, 2009). In the cases of Indonesia and Latvia public support was the only factor that allowed an anti-corruption agency to prevail over high-level opposition (Kuris, 2012). This involved courting the public and organised civil society directly. However, Heilbrunn (2004) notes that governments that have established successful anti-corruption commissions have done so in response to demands for reform from a broad base of domestic constituents rather than generating this support once successful.

The cases of Hong Kong and Latvia suggest that the agencies' major achievements were not so much in the number of successful arrests and prosecutions, but in the manner in which these successes were used at strategic points to push for more fundamental reforms to reduce corruption. These included changes to legislation and changes to the structure of key institutions of accountability. In the case of Latvia, for example, Kuris notes that, "Over several years, KNAB slowly built cases against the powerful oligarchs and the parties they financed … the public outcry against corruption, galvanised by KNAB's casework and [an earlier dissolution of parliament in the wake of a corruption scandal] built legislative momentum for reform. The reforms … included criminalisation of campaign finance violations, an end to secret confirmation votes in most cases, judicial reforms to expedite trials, whistle-blower protections, and the lifting of parliamentary immunity for administrative offenses" (Kuris, 2012).

The international experience suggests there is no specific configuration of investigatory and prosecuting functions that stands out as working best. Apart from the technical (policing and legal) skills required, anti-corruption agencies tend to stand and fall on the basis of their perceived fairness and independence in the eyes of a broad coalition of support across sectors.

[32] Korupcijas novēršanas un apkarošanas birojs (KNAB) - Latvia's Corruption Prevention and Combating Bureau.

CHAPTER 1:
BACKGROUND AND APPROACH

CHAPTER 2:
NATURE AND EXTENT OF CORRUPTION

CHAPTER 3:
LEGISLATIVE FRAMEWORK

CHAPTER 4:
ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5:
SECTOR AND THEMATIC REVIEW

CHAPTER 6:
TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

STOP CORRUPTION
KNAB
CORRUPTION
FIGHTING CORRUPTION IS EVERYONE'S BUSINESS

Chapter 5 : Sector and thematic review

5.1. Introduction

This chapter reviews progress on implementing the resolutions of the National Anti-Corruption Summits of the NACF (which affected a broad range of sectors and fields) followed by a review of the strategies and other mechanisms developed for combating corruption in particular sectors. Progress on implementing the strategies and programmes is explored, and the appropriateness of these in light of the factors enabling corruption in these areas is assessed. Recommendations are made for strengthening anti-corruption approaches (with a focus on prevention), with relevance for developing a national anti-corruption strategy.

Strategies aimed at reducing corruption and supporting ethical practice (1994–2015)
Various strategies, campaigns and frameworks have been developed with the aim of reducing corruption in the public and private sectors. These include the:

- *National Crime Prevention Strategy, 1996.*
- *Resolutions of the National Anti-Corruption Summits (1999, 2005, 2008 and 2011).*
- *Public Service Anti-Corruption Strategy, 2002, and mechanisms resulting from the Strategy, such as the development of guidelines for minimum anti-corruption capacity in public service departments and entities; and the development of the Financial Disclosure Framework for managers in the public service.*
- *Batho Pele Programme in the public service, first developed in 1997 and relaunched under a dedicated campaign in 2004.*
- *Development of a Public Service Integrity Management Framework.*
- *Local Government Anti-Corruption Strategy, 2006, and updated 2015.*
- *Development of provincial anti-corruption strategies by some provinces.*
- *Sector-specific strategies that have been developed in the police service and others sectors.*
- *Proposals for reducing corruption outlined in Chapter 14 of the NDP.*
- *King Code of Governance Principles in South Africa, which provides clear guidance for limiting and reducing corrupt practice in all organisations, and in particular has an impact on the private sector, as does BUSA's Code of Good Corporate Citizenship, and the OECD recommendations for reducing corruption, incorporated into Regulation 43 of the South African Companies Act, 2008 (Act No. 71 of 2008).*

5.2. Sector review

5.2.1. Resolutions of the National Anti-Corruption Summits

The Summits brought together delegates from government, organised business, professional bodies, religious bodies, labour unions, NGOs, donor countries, the media and academics. The first Summit led to the development of the National Anti-Corruption Forum (NACF) in 2001. The National Anti-Corruption Programme was developed in 2005 to support the implementation of several of the resolutions made at the 2005 Summit, and the public and private sectors committed funds to support the programme. The resolutions of the Summits outlined commitments for the government, business and civil society sectors.

The resolutions emerging out of the 1999 Summit covered the following – undertaking a legislative review, establishing new coordinating structures (within government and across non-governmental sectors) to support the fight against corruption, undertaking awareness raising on issues of corruption, developing dedicated courts for prosecuting corruption, improving whistle-blower protection, developing a blacklist of companies involved in corruption, establishing an anti-corruption hotline, and ensuring disciplinary action against persons found to be involved in corruption in government. The Summit committed civil society and business sectors to monitor and report on corruption in their sectors as well (NACF, 1999).

Resolutions adopted on completion of the Second Summit in 2005 included those adopted in the first summit, with the addition of specific resolutions related to: developing better mechanisms to share information on corruption and anti-corruption measures across sectors; developing regulations pertaining to a cooling-off period for employees leaving the public sector; strengthening capacity in asset recovery in line with UNCAC recommendations; undertaking research on the extent to which the Executive in government undertakes work on anti-corruption resolutions developed by Parliament; improving and extending the scope of the financial disclosure framework for public representatives and senior managers in the public sector; and encouraging civil society and business to undertake similar initiatives (NACF, 2005). The NACF was mandated with driving the implementation of the Summit resolutions.

The resolutions of the Third Summit in 2008 covered the same ground as the first two, with the addition of more specific and concrete resolutions regarding private sector corruption (including resolutions on reducing anti-competitive behaviour and improving reporting on corruption by the private sector), reviewing the efficacy of the Protected Disclosures Act, the development of regulations on transparency in party-political funding, and ensuring enforcement of international anti-corruption instruments (NACF, 2008).

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

The 2011 Summit committed sectors to undertaking thorough critical reviews of the anti-corruption work done in their sectors thus far, implementing outstanding resolutions from the previous Summits, committing additional resources where necessary, and ensuring access to relevant information in the fight against corruption. It also noted that the NACF should explore the possibility of an independent, dedicated anti-corruption body of some kind (NACF, 2011).

Review of progress

A large number of the concrete resolutions from the Summits have been implemented; some were implemented very speedily, while others have only been implemented in the last few years. Two central challenges remain:

- *Important laws and formal accountability mechanisms have been developed as a result of the Summit and other stakeholder resolutions. However, compliance with these instruments remains too low to make a meaningful impact on combating corruption.*
- *There is still a need to improve substantial coordination and collaboration across sectors and within government organisations tasked with playing a role in combatting corruption and supporting accountability (as outlined in Chapter 4).*

In more detail:

- The Protected Disclosures Act, 2000 (Act No. 26 of 2000) was promulgated to provide a level of legal protection for whistle-blowers. As noted in Chapter 3, amendments to the Act are currently underway to improve the coverage of the Act.
- The establishment of the AFU has strengthened asset recovery, and in 2010 the Asset Recovery Inter-Agency Network of Southern Africa was established to support cooperation on asset recovery in a regional context, with strong focus on SADC. However, as mentioned in Chapter 4, there are still major challenges with regard to coordination in SADC.
- Special courts for prosecuting corruption have not been established, and in 2012 the NDP proposed this in its chapter on corruption (NPC, 2012). However, dedicated financial crime courts have had a good success rate in prosecuting cases.
- A national anti-corruption hotline was developed in 2004 and is now managed by the PSC. While the hotline has been actively used to report cases of possible corruption and maladministration in the public service, the PSC has noted poor follow-up by departments in dealing with these cases. (PSC, 2014)[33]

[33] A 2014 PSC report noted, that, "According to the CMS, two thirds of cases of alleged corruption reported on the NACH are still outstanding. The problem appears to be a lack of investigative capacity and the fact that departments do not have appropriate structures or specialised units to deal with cases of alleged corruption as required by the Minimum Anti-Corruption Capabilities, as mandated by Cabinet. The PSC has also noted that there are cases which require only verification against departmental records, but departments do not provide such feedback on cases." (PSC, 2014: 3).

- A database of restricted suppliers and tender defaulters is now maintained on the National Treasury's website. However, research on the public procurement system undertaken in 2014 showed that SCM officials do not always check suppliers applying for tenders against the list before awarding contracts and are not reporting all cases of non-compliance they know of to the National Treasury (Brunette et al, 2014). Currently there are no listings on the Register for Tender Defaulters.

- While clauses in the Public Administration Management Act covered the introduction of a cooling-off period for public sector employees leaving the public sector, these clauses were omitted from the final version, i.e. the Act of 2014.

- The financial disclosure framework for public sector officials has been extended, despite the PSC reporting major problems with enforcing compliance with the framework (PSC, 2015).

- While transparency in corporate reporting by the private sector (under good governance principles) has improved, there is too little specific reporting on private sector involvement in the corruption, and greater transparency in corporate reporting is still needed (further details on this subject are provided in section 5.2.7. on combatting corruption in the business and civil society sectors).

- There is still much debate and difference of opinion in South Africa about whether political parties should declare the sources of their funding. At present, "while in South Africa political parties [do] have to account for funds provided by the state purse through the Public Funding of Represented Political Parties Act, funding from other sources remain[s] secret" (Thamm, 2015).

5.2.2. Public Service

Public Service Anti-Corruption Strategy and other mechanisms implemented in the public service
The Public Service Anti-Corruption Strategy was developed in 2002 by a team led by the DPSA. Covering all those working in national and provincial government departments and entities, it advocated a mix of preventive and combative measures. It proposed a review of the legislative framework surrounding corruption, and the consolidation of this framework into a new corruption act. It suggested that departments ensure a minimum capacity to fight corruption, and pointed to the need for mechanisms for the coordination of the numerous government entities involved in anti-corruption initiatives. The strategy called for the improvement of management policies and practices related to areas such as the management of employment, discipline, procurement, risk, information and finances.

CHAPTER 1:
BACKGROUND AND APPROACH

CHAPTER 2:
NATURE AND EXTENT OF CORRUPTION

CHAPTER 3:
LEGISLATIVE FRAMEWORK

CHAPTER 4:
ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5:
SECTOR AND THEMATIC REVIEW

CHAPTER 6:
TOWARDS A NATIONAL ANTI-CORRUPTION
STRATEGY FOR SOUTH AFRICA

FIGHTING CORRUPTION IS EVERYONE'S BUSINESS

It called for the establishment of a comprehensive system of professional ethics, as well as greater stakeholder participation and greater access for reporting on suspected cases of corruption by whistle-blowers. It called for the blacklisting of businesses and individuals prohibited from doing business with the state; and that all these initiatives should be underpinned through ongoing awareness, training and education programmes (DPSA, 2002).

In 2003 Cabinet approved the implementation of the Minimum Anti-Corruption Capacity Requirements. Within a period of one year of the publication of the MACC, departments were expected to have put these measures in place to strengthen the capacity required to prevent and combat corruption. These include departments establishing fraud prevention plans, developing systems for detecting and reporting corruption, investigating allegations of corruption, and instituting disciplinary measures against those found guilty of corruption, as well as forwarding cases to law enforcement.

As noted in Chapter 3, all members of the senior management service are required by the Financial Disclosure Framework to disclose all their registrable financial interests.

The Batho Pele Programme was launched in 2004. It aimed to build a more citizen focused and compliant public service. The Eight Principles of Batho Pele ("People First") outline principles that should guide the work of all public servants. The programme involved the dissemination of information to citizens about their rights to fair and professional treatment by public servants, and awareness-raising sessions with public servants.

The DPSA has recently introduced the Public Service Integrity Management Framework. The Framework includes the strengthening of policies on the acceptance of gifts, tightens up the regulations on the disclosure of financial interests and assets of state employees, places restrictions on remunerative work outside the public service, makes proposals on a cooling-off period for post-employment in the public sector (although it does not make these mandatory), and establishes Ethics Officers to be appointed in departments. Claimed contradictions between stipulations regarding the acceptance of gifts contained in the Senior Management Service Hand book and in PRECCA also need to be resolved.

Since 2015 the DPSA has convened an annual National Ethics Officers Forum (NEOF) to support the implementation of measures for integrity management in government departments.

Publication of regulations for the Public Administration Management Act will supersede the Public Service Integrity Management Framework. This Act further regulates public servants conducting business with the state; provides for the establishment of the National School of Government (which has a potentially important role to play in the training relevant to ethics management and anti-corruption); establishes a Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit; provides for the Minister to set minimum norms and standards for public administration; and establishes an Office of Standards and Compliance to ensure compliance with minimum norms and standards in the public service. The importance of this Act is that it regulates employees in all three spheres of government.

Several of the programmes outlined in the Public Service Anti-Corruption Strategy have been implemented. A dedicated Act on corruption has been developed (PRECCA). Progress has been made on developing regulations and codes that can act as guides for the conduct of public servants. Just over half of the departments in the public service have now established minimum anti-corruption capacity as outlined by regulations (Ethics Institute, 2011 cited in Gomes Pereira, et al 2012). However, there is still insufficient access and effective protection for whistle-blowers; and blacklisting of prohibited businesses is not undertaken (Brunette et al, 2014).

The data (from the PSC and AGSA) outlined in Chapter 2 has shown that compliance with regulations intended to reduce corruption is far too low. There is a lack of proper reporting to the PSC by senior officials and members of the executive, compromising efforts to reduce corruption. Even where public servants are found guilty of corruption, disciplinary action against these employees is lacking and very few are dismissed from employment. Irregular expenditure continues to increase as shown by AGSAresults. This report has already highlighted that corruption is enabled in an environment of fairly widespread non-compliance with regulations, laws and standard operating procedures in general – i.e. not just those procedures specifically focused on "ethical practice" such as policies on gifts, but also policies on Human Resource Management (HR), in SCM and finance. The Public Sector Ethics Survey showed that there is still some need for improving public sector employees' knowledge of policies and procedures regarding the acceptance of gifts and private work, and the public sector code of conduct – 88% knew of their organisations' code of conduct, 79% and 77% knew about policies on gifts and private work outside government respectively (DPSA et al, 2015).

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

Two thirds indicated that lack of understanding of policies and procedures contributed to people not following these rules (this referred to broader policies in the organisations, such as in SCM and HR, and not just in the case of policies on gifts etc.).

An even larger percentage (74%) felt that pressure from politicians contributed to staff not following policy and procedures – this figure was 73% for pressure from managers (DPSA et al, 2015).

Table 2: Reasons for people not adhering to policies and procedures (survey of national, provincial and local government employees, 2015)

Questions / Dimension	Percentage
Pressure from politicians	74
Pressure from managers	73
Policies not being understood	66
Employees not seeing the value of the policies	64
Time constraints	61
There being too many policies	58

Source: Public Sector Ethics Survey 2015 (DPSA et al, 2015). (Sample size =7 954. Showing percentage of respondents indicating affirmative to each response – respondents could choose more than one option)

Many of the mechanisms instituted to reduce corruption in the public service have assumed a causal link between knowing the content of regulations or codes of conduct and compliance with these – or changes in behaviour. Knowledge is only the first step in behaviour change. Alternatively, reducing corruption in the public service is assumed to require a shift in the "values" and "ethics" of public servants, where values are conceptualised as something that can be provided through training in the same way as, for example, that training on computer programmes can – through explaining to people what moral practice entails. This somewhat naïve assumption decouples the development of ethical practice (and the conditions of behaviour change) from the institutional environment in which people work and from wider social norms and practice. This may be one of the reasons that the Batho Pele programme, aimed at building a more citizen focused and compliant public service, has not been particularly effective.

Greater attention is needed on how to change the incentives that shape behaviour in the public service (and public sector more widely). Important observations in this regard include:
- The appropriate role of education and training in reducing corruption in the public

service (and public sector more widely), and the role of professionalising key occupations – such as HR and SCM.

- The role of the PSC in reducing corruption in the public sector.
- The importance of procurement reform: this will be discussed in a dedicated section on procurement further on in the chapter.

Research on the nature of non-compliance in the public service suggests that training should indeed be a central area of focus for an anti-corruption strategy, but this focus should be on the development of competencies and skills sets related to building operational capacity, not primarily on providing training on what ethical conduct entails (there is some place for this kind of training, but it should not be the primary focus) (PSETA, 2015). For example, skills development initiatives that support an improvement in compliance in planning and SCM in particular can reduce poor spending by departments and increase relevant state bodies' chances of identifying what is in fact illegal activity (versus poor management of resources) (see text box below). There is much evidence to suggest that improvements in organisational efficiency reduce opportunities for corruption and vice versa (TAU, 2012).

Case for improving planning skills and capacity in the Public Service

A report by the Public Affairs Research Institute to the Technical Assistance Unit (TAU) of the National Treasury in 2012 on corruption in the public service, made the case for the importance of strong capacity in the planning function to support improvements in compliance: "(Strategic) planning and budgeting (or more accurately, non-financial and financial planning) is where many of the problems around both non-compliance and the creation of opportunities for corruption appear to originate. Effective operational compliance has three minimum components: 1) an accurately costed and detailed plan for achieving a particular output (or set thereof) by a particular target date; 2) detailed and regular reporting against the financial and non-financial components of that plan; and 3) an oversight function which regularly compares (b) with (a) … Unfortunately, in the public sector … the aim of the planning exercise is more often the production of a plan, rather than the generation of an effective operational tool." (TAU, 2012: 70). Many public servants lacked the experience and skills to develop such budgets and plans (not aided by the fact that detailed templates and guidelines for such work is limited). Consequently: "In this environment it is often difficult for managers, internal auditors and others charged with oversight to determine whether or not what is supposed to be happening is actually happening. It is also difficult to build a performance management and accountability framework onto a planning framework that allows for vague and unclear objectives" (TAU, 2012: 57)

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

Training in the areas noted above could be part of the short-term focus of an anti-corruption strategy in the public service. Over the longer term, capacity should be developed in the National School of Government to assist in the development of a cadre of professional public servants.

In South Africa training for public servants has generally taken the form of short courses, often outsourced to a wide variety of service providers (PSETA, 2013). A striking feature about public service training in a number of countries (such as China, France, India, South Korea and Mauritius) is that it is provided to groups who travel together through the ladder of learning ("cohort training"). One effect of this "'group pathway" and lengthy form of training is to produce a sense of camaraderie and common purpose (PSETA 2013). The National School of Government has a potential role to play in the future in providing such training, and building links with universities to support networks of practice. Developing a strong in-house teaching body and strong curriculum content will be essential for the School to play a meaningful role in building a professional cadre of managers. Specific interventions to support training for HR is vital for supporting anti-corruption and integrity work.

The DPME's Management Performance Assessment Tool (MPAT) "assesses the quality of management practices", with a focus on compliance measures in four areas: Financial Management, Strategic Management, Governance and Accountability, and Human Resource and Systems Management (DPME, 2013). The latest available results are from 2013. The DPME has noted that, "the overall picture presented on the compliance of national and provincial departments with the minimum requirements stipulated in the legislation, regulations and guidelines is not a positive one. There are areas where departments appear to be achieving reasonable levels of compliance, namely, in Strategic Management and to some extent in annual reporting compliance. Compliance levels in certain elements of Human Resource, Systems Management and Supply Chain Management are below what is required for a well-functioning and capable public service" (DPME, 2012).

In its latest MPAT report, the DPME noted that there has been, "slow and incremental performance improvement" in MPAT scores, which is encouraging. (DPME, 2014b).

Analysis of the 2012 MPAT data showed that of the four management areas, the HR component of MPAT has the largest and most direct influence on departments receiving higher performance ratings on external assessments such as the Auditor-General's findings (DPME, 2013). In its latest report, the DPME noted that, "The stagnation of the total average [MPAT score] in 2014 is concerning as HRM [Human Resource Management] consistently falls below the required 'fully competent' (level 3 and above) score at 2.3." (DPME, 2014b).

An effective and autonomous HR function is important for improving government performance and integrity. Specific programmes to professionalise the HR function in the state are important for developing a more professional cadre of public servants in general, and for building bureaucratic autonomy. The DPSA, PSETA, the National School of Government and the PSC are key role players here. Improved training on SCM for public servants is also needed, and initiatives in this regard are being led by the OCPO, which is discussed in the section below on procurement reform.

Training is specifically needed in the area of enforcement of integrity management in government departments and municipalities. Developing standardised training for ethics officers and personnel responsible for detecting and responding to indicators of fraud, or other forms of financial, dishonesty or corruption related activities, is important. This kind of training might include information about what constitutes common red flags for corruption in procurement and other financial systems.

Given the level of indebtedness of some public servants and the risk that this might leave employees vulnerable to the financial enticement of a bribe, or more likely, to engage in theft or other forms of financial misconduct, improved skills development and counselling or support on managing personal finances may be also valuable (under employee wellness programmes).

A renewed conversation is needed about the role and mandate of the PSC. Over the past 17 years, the PSC has played a valuable role in monitoring the conduct of public servants, and to a lesser extent the executive, but it lacks authority or an enforcement mandate to ensure compliance by departments and politicians with its findings. With due consideration of the experience of the PSC since the beginning of democracy, it is now necessary to initiate a public discussion on the role the PSC could play in supporting the development of an autonomous and professional public service. Proposals might include: the involvement of the PSC in the recruitment, selection and promotions of the SMS.

Over the long term, proposals for debate could also include the introduction of competitive, competency-based examinations for entrance into the public service.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

These have been an important institution in many countries for the development of a professional public service – first in China, in Japan, in Germany and many other countries since (Brunette et al, 2014). Such examinations serve to improve the status of jobs in the public service and support training and improved technical skills. Entrance examinations could be phased in over a period of time, beginning with knowledge testing of relevant legislation and codes, then moving slowly towards standardised competency-based examinations as training institutions for public servants mature.

5.2.3. Local government

Local Government Anti-Corruption Strategy and other anti-corruption measures
As with the public service, various anti-corruption measures have been introduced – some of these outlined in Chapter 3 – including codes of conduct for councillors and officials as well as minimum anti-corruption capacity required in municipalities.

The (then) Department of Provincial and Local Government (DPLG) published the 2006 Local Government Anti-Corruption Strategy. In 2015 the Strategy was revised, citing poor enforcement of relevant legislation and codes developed as part of the 2006 Strategy as contributing reason for the revision. The 2015 Strategy comprises the following programmes:

- *Facilitating a national dialogue on governance and ethical leadership in municipalities.*
- *Implementing basic public participation responsibilities.*
- *Developing and promoting good practice in community oversight.*
- *Driving an anti-corruption awareness campaign.*
- *Implementing the Public Service Integrity Management Framework in municipalities.*
- *Developing a community of Integrity Management Practitioners.*
- *Building trust and accountability through effective investigation and resolution.*
- *Developing municipal capability to manage investigations and the consequences of these.*
- *Improving oversight of investigations and consequence management (Department of Cooperative Governance (DCoG), 2015).*

Specific actions are listed under each of the focus areas above, such as undertaking training and developing a database of professionals that can assist with disciplinary action against corrupt employees. The Local Government Anti-Corruption Strategy review has just been completed and it is therefore too early to undertake a review of implementation.

Citizens' experience of local government is of central importance in shaping public perceptions about corruption in South African society more generally. Corruption can be experienced by citizens in, for example, bribes solicited from or paid to traffic police; the unfair (or perceptions of unfair) allocation of housing; and bribes for employment in government programmes.

Research by Corruption Watch explored the prevalence of corruption in the Johannesburg Metropolitan Police Department (JMPD), which is responsible for traffic policing, policing municipal by-laws and preventing crime. Using data from the 2010 NVCS they estimated that one in four motorists in Johannesburg had been asked for a bribe by the JMPD (Corruption Watch, 2012b).

Regarding local government municipalities are all to have established Municipal Public Accounts Committees to strengthen council oversight to ensure the efficient and effective use of municipal resources. Not all municipalities have established these, and based on audit results, from the AGSA they are not functioning effectively.

Compliance with regulations and policies regarding anti-corruption and ethical practice is arguably even lower among municipal staff than at national and provincial level. The Public Sector Ethics Survey shows that a higher proportion of local government employees perceive non-compliant and unethical practice in their organisations than is the case in the public service (DPSA et al, 2015). AGSA results show that councillors and municipal employees are generally not appropriately disciplined for non-compliance.

Several issues, specific to the local government environment, affect the generally poor results that have been achieved through anti-corruption measures already implemented in this sphere of government. A 2015 report by PARI, commissioned by SALGA, details research into the causes of poor audit outcomes in the 60 municipalities receiving the poorest audit outcomes in the country (Ledger, 2015). The report found that councillors in these municipalities do not actively drive the process to improve the audit outcome, with a "misallocation" of this responsibility to the Chief Financial Officer. This contributes to high turnover of staff in this crucial position. Further, councillors in these municipalities generally have low levels of financial and management skills – too low to exercise meaningful oversight over officials. Regulations introduced by the National Treasury to improve oversight have tended to focus on the establishment of compulsory institutions (such as an Audit Committee), rather than fixing the systems and processes by which municipalities manage their day-to-day finances and supply chain.

CHAPTER 1:
BACKGROUND AND APPROACH

CHAPTER 2:
NATURE AND EXTENT OF CORRUPTION

CHAPTER 3:
LEGISLATIVE FRAMEWORK

CHAPTER 4:
ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5:
SECTOR AND THEMATIC REVIEW

CHAPTER 6:
TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

The regulatory system assumes that all municipalities have the ability to effectively implement legislation through appropriate processes and systems. Apart from a dearth of skill, the smaller municipalities do not have adequate administrative systems to support effective and comprehensive internal financial controls. Corruption in this sphere mostly manifests in the form of procurement fraud, theft, misuse of government assets and other types of unethical conduct or undesirable behaviour. Further, corruption in these municipalities creates incentives not to improve systems like record keeping and wider information management (Ledger, 2015). In essence, poor administrative systems in the municipalities and weak financial skills combine to create an enabling environment for corruption, and in turn corruption undermines and disincentivises the development of administrative capacity.

The administrative capacity of municipalities and the degree to which they are insulated from political battles for state resources and posts is arguably even more uneven than in the public service. Employment prospects in many small towns are dismal and contracting with or being employed by the state is one of the few avenues for generating income. The AGSA has noted councillors' involvement in irregular financial activity.[34] The research cited above on the causes of poor audit outcomes in the worst performing municipalities noted that in some of the smaller towns, networks involved in corruption can also operate through municipal officials who are often better educated and able to conceal illegal activity from councillors who are insufficiently financially literate, limiting councillors' ability to play an oversight role (Ledger, 2015). This does not mean the large metros are immune to corruption, but that slightly different circumstances might be driving corruption in small towns versus large metropolitan areas, subsequently a somewhat differentiated anti-corruption strategy will need to be developed for different categories of municipalities.

Further, in certain smaller and large municipalities, politics and the leadership in state administrations are unstable: municipalities have become sites of struggles for political and official position and the resources associated with these. This can be seen in what many commentators refer to as "factionalism" in party politics, which negatively affects the democratic process.[35] Clearly improved compliance with financial regulations and a reduction in corruption has to be ensured to secure monies for capital investment and infrastructure maintenance, ensure housing is fairly allocated, small businesses receive a fair chance to contract with the state, and basic services delivered equitably.

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[34] The latest MFMA Audit report noted that the AGSA has, "seen little improvement in the past four years in addressing uncompetitive or unfair procurement processes and the high prevalence of awards being made to suppliers in which employees, councillors and state officials have an interest. Furthermore, little progress has been made in complying with legislation relating to awards made to close family members of employees and councillors." (AGSA: 2015b: 17).

[35] For discussion on factionalism and corruption in local government see: Dawson, 2014; Jolobe, 2014; and von Holdt, 2013.

However, research on the state of small municipalities cautions against any further interventions that increase the reporting burden of municipalities. Research commissioned by SALGA shows that, "the lion's share of [small municipalities] operating budgets are being directed towards administrative and oversight compliance, rather than the delivery of services"– up to 71% of budgets in rural municipalities (Ledger, 2015 and MDB, 2012 cited in Ledger, 2015: 31). However, audit outcomes remain poor. The underlying systems that can support improved compliance are not being sufficiently targeted.

The revised Local Government Anti-Corruption Strategy makes several recommendations for increasing the monitoring role of the DCoG and other organisations such as SALGA. The research cited above suggests that this monitoring should not rely on additional self-reporting from local government on compliance with relevant legislation, which creates an even heavier reporting burden for small municipalities. A more targeted approach that directly tackles possible instances of corruption could be taken. Consideration could be given to developing an approach similar to the OCPO (or some other office with a legal mandate) that could undertake random forensic audits, of a small percentage of municipalities per year, to reveal cases of financial misconduct and criminal activity. (The AGSA has a small forensic team, but this is not its main focus). The findings of the forensic audit process would need to be followed up with disciplinary or criminal sanction, where relevant, if they are to be effective. A major programme to develop the administrative systems of municipalities should also be developed.

In larger municipalities that experience less of a regulatory burden, anti-corruption measures might include participation by local civil society organisations and local organised business to improve transparency and increase pressure for improved compliance and ethical conduct. Some successful campaigns by civil society in this regard are mentioned in the concluding section of this chapter.

In the 1990s, when state reformers and civil society developed the legislation and structures for local government, they envisioned this sphere of the state as being at the heart of the democratic process. A public debate is needed on how to rejuvenate the structures intended to support democracy and accountability through citizen participation in local government.

The suggestions made above regarding the public service apply equally to municipal employees and councillors in local government, i.e. around training regimes and the focus of training, and the possible role of the PSC, which could play some role in improving oversight over local government.

CHAPTER 1:
BACKGROUND AND APPROACH

CHAPTER 2:
NATURE AND EXTENT OF CORRUPTION

CHAPTER 3:
LEGISLATIVE FRAMEWORK

CHAPTER 4:
ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5:
SECTOR AND THEMATIC REVIEW

CHAPTER 6:
TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

There have been initiatives to increase standardisation of the codes and frameworks across local government and to bring some of these in line with the public service. Arguably more could be done to standardise systems and guidelines to aid in monitoring the conduct of officials and councillors.

5.2.4. Corruption and the procurement system

State procurement accounts for approximately 42% of the national, provincial and local government departments' combined budget, much of this accounted for by the departments of education, health and public works. Between 2009 and 2013, spending on procurement grew by an average of 10% annually.[36]

The introduction of a decentralised procurement system in 2003 followed recommended good practice prescribed by organisations such as the World Bank at the time. It also sought to make procurement accessible to small and medium enterprises (under the previous regime, large, white-owned enterprises benefited from a highly centralised procurement system) (Brunette et al, 2014). However, the decentralised system underestimated the nature of the South African public administration system inherited from apartheid. South Africa has a long history of a bureaucracy weakly insulated from political interference. Different departments also differ substantially in their administrative and financial capacity to support a decentralised system. Currently politicians have a level of discretion to appoint and manage some senior staff. These factors have interacted to allow space for a fair degree of corrupt activity in the SCM system (Brunette at al, 2014).

A national anti-corruption strategy should include mechanisms which aim to ensure greater compliance with regulations that govern the extent to which members of the executive can influence or even manipulate the awarding of state contracts, as well as the compliance with the conditions under which family members of the executive can benefit from state contracts.

Important reforms led by the OCPO are already being made to the procurement system in South Africa, aimed at creating a more transparent and professionalised public procurement regime.

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[36] In 2012/13, the budget of national, provincial and local government combined was R876.6 billion; R372.9 billion or 42% of this was allocated to procurement. This does not include expenditure figures from other areas of government, such as the parastatals. (Procurement figures established from the budget allocated to Goods and Services and payments for capital assets in the Revised Estimates of National Expenditure, (Brunette et al, 2014).

Procurement reform

In accordance with OCPO's review of supply chain management, its mandate includes:

- *Rationalising the regulations, business processes and templates pertaining to SCM.*
- *Improving supporting platforms for SCM, including the development of an Integrated Financial Management System (IFMS).*
- *Supporting appropriate cooperation between the public and private sectors in support of more effective state procurement.*
- *Monitoring procurement activity by departments and instituting mechanisms aimed at supporting greater transparency in the procurement process (improvements in the internal audit function, and supporting civil society's ability to monitor integrity in the SCM process.*
- *Improving the professionalisation of the occupations in the SCM function, which also includes the development of new training courses and qualifications (National Treasury, 2015).*

There are two major shifts in the management of procurement: first, more goods and services are being procured under transversal contracts, and second, the Treasury is aiming to build the public sector's capacity to undertake "strategic sourcing" (National Treasury, 2015).

It is suggested that South Africa's national anti-corruption strategy should support these reforms as a central component of its approach. The centrality of reforms to the procurement regime has been highlighted by the NDP in its chapter on dealing with corruption.

The section above on local government noted that reforms relevant to municipalities should ideally take into account the current capacity of small municipalities to report to central and provincial departments, and should not increase the regulatory burden, but seek to target forensic investigations and administrative support programmes.

The Minister of Finance's 2016 Budget Speech also signalled plans to improve oversight of the procurement of the SOEs (Gordhan, 2016). A programme for reducing corruption in the SOEs should be a central component of a national anti-corruption strategy, given the opportunity for corruption in SOEs, due to their large infrastructure and other procurement budgets.

No consolidated data on SOEs' financial integrity and procurement compliance exists (of due diligence undertaken for local government and the public service). Developing this kind of data could aid in building greater transparency and accountability of the SOEs.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

It is noted that irregular expenditure in local and provincial government has increased; the number of clean audits has increased; and fruitless, wasteful and unauthorised expenditure has decreased. Over the last five years, media and civil society have taken a keen interest in the AGSA's results. This may have contributed to improved audit outcomes in some areas by shaming departments not receiving clean audits, and enhancing the status of those improving their compliance. Should such data be provided year on year for SOEs, civil society monitoring, combined with other state-driven reforms, could begin to support improved transparency and accountability of SOEs, their boards and executive oversight. In addition, the application of international and regional conventions on anti-corruption should also apply to the commercial activities of SOEs (such as the OECD Convention of Combating Foreign Bribery).

Tighter regulations may be needed to ensure that provincial and local governments do not use the establishment of public companies as a way to circumvent regulations aimed at ensuring the transparent and effective use of state resources.

5.2.5. Policing/Law enforcement

Apart from the issues pertaining to the high-level crime-fighting agencies of the DPCI and the SIU, the rank and file of the police services (i.e. the SAPS and metropolitan police services) requires a dedicated set of programmes for reducing corruption, specifically in view of the importance of creating trust in law enforcement to combat corruption and due to the sheer size in terms of personnel numbers. In their monograph on police corruption in South Africa, Newham and Faull (2011) detailed the numerous and interrelated challenges to reducing corruption *in the police* service: from the extent to which police are exposed to bribery due to the prevalence of illegal and informal markets in the South African economy and the historical legacies of secrecy developed under the apartheid regime, to the historical challenges of bringing together employees from the fragmented apartheid policing and security system. The uneven training system did not support the development of sufficient professional and ethical officers. Recruitment, promotion and disciplinary processes still do not function adequately. Newham and Faull (2011: 25) note that at the same time as integrating the various apartheid era police forces, new systems for internal control were introduced. This complex transformation of the police service "led to a deterioration in the levels of police discipline and supervisory control".

In 2011 the Anti-Corruption Strategy[37] for the Police was published. The White Paper on Policing, (2016) omitted specific proposals for reducing corruption in the police service and did not make reference to the 2011 Strategy.

At present, no dedicated fully-fledged unit exists within the police to combat corruption by members of the SAPS and concerns have been raised about the independence of the DPCI and the oversight unit, IPID, from political interference (see Chapter 4). Such a unit did exist in the police, but was closed, along with a range of other specialised investigative units.[38] Resuscitating some kind of dedicated unit is critically important – at present, corruption cases are registered at local police stations. This system does not appear to be working, as local constabularies lack relevant expertise and complainants struggle to register complex commercial cases. These then have to be transferred to the Specialised Commercial Crimes Unit or fraud branches, and dockets are often lost.

In a 2011 Institute for Security Studies publication on the police, Newham and Faull note that, "Typically, police management will respond to incidents or allegations of corruption as a problem of a few 'bad apples' who must be punished or removed from the organisation. Yet, international research and commissions of inquiry into police corruption consistently emphasise that corruption is more a manifestation of organisational weaknesses than a challenge of bad employees" (Newham and Faull, 2011: v). They propose "establishing effective systems to receive and deal with public complaints, through dedicated internal capacity to investigate allegations of police abuse and criminality" (vi); undertaking work to improve the organisational culture of the police service through, for example, improved training programmes (especially for managers) and open discussions about ethics in the organisation; and mobilising community support to report their experiences of corruption with the police. The Institute for Security Studies recommended that the quality and length of training for police should be improved. Consideration should be given to modules dealing directly with unethical behaviour and corruption.

Section 2(1)(b) of the Special Investigating Units and Special Tribunals Act, 1996, (Act No. 74 of 1996, "the SIU Act") provides for the establishment of a Special Tribunal, which would effectively function as a dedicated "special" court that would adjudicate on civil disputes arising out of the investigations of the Special Investigating Unit (SIU).

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[37] The White Paper contains a short section on "Integrity and Corruption", it reads as follows, "Professional police uphold institutional integrity, are knowledgeable about the la and their roles, carry out their functions competently, and understand their responsibility to serve communities. The professional and personal integrity and the individual and collective conduct of appointed members of the SAPS are to be above reproach. The overarching policing philosophy must be geared towards entrenching the essential features of democratic policing in our every-day approach to crime prevention and community safety. The demand is for honest, efficient and professional policing. A further element of building a professional police service is dealing with and rooting out corruption. The Police Advisory Council that operated between 2006 and 2008 found that SAPS had insufficient capacity to investigate corruption, that codes of conduct and ethics were not adhered to, and that disciplinary issues were not dealt with timeously. This has been compounded by the inability to effectively implement the various anti-corruption strategies that have been developed over the years. Dealing with this requires a coherent organisational response through, among others, ensuring that general disciplinary hearings occur fairly and regularly. Leadership and management must thus implement a multifaceted approach to integrity management in support of building a professional police service." (Civilian Secretariat for Police: 2016: 22-23).

[38] South Gauteng High Court. 2010. The State versus Selebi (25/09) [2010] ZAGPJHC 53 (5 July 2010)).

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

A Special Tribunal was established in 1996, but it became obsolete following a number of judgments that found that the SIU did not have locus standi in iudicio to institute civil cases before the Special Tribunal. The SIU Act was, however, amended in October 2012 to address this issue and the amended SIU Act clearly provides for such locus standi in iudicio.

The SIU has since amended its focus and now has a particular focus on instituting civil proceedings flowing from its investigations. These matters are currently instituted in the various relevant Divisions of the High Court and it is anticipated that the number of such civil cases will grow rapidly over the next few years. A major difficulty, however, is the major delay in having matters set down for hearing. The waiting lists are simply too long and, without intervention, matters of huge public interest and huge values could be delayed for one or even two years.

A Special Tribunal would function exactly like the High Court and have the same rules governing fairness. It would, however, not have long waiting lists and matters could be set down as soon as they are ready for trial. This would greatly benefit public interests.

5.2.6. Corruption affecting citizens in rural areas

As noted, there is little research on how corruption particularly affects citizens living in rural areas, including those living in areas governed by traditional leadership. This probably requires some public debate about the nature of governance, accountability and lack of accountability in these areas prior to the development of specific programmes.

Residents of small towns will be affected by corruption in municipalities as outlined in the sections above. In those areas under traditional leadership, research has pointed to the need for a land management system to ensure that land intended for communal ownership and use under the custodianship of traditional leaders, is not effectively privatised by chiefs selling or demanding inappropriate payment for use of land. Further, research has detailed cases of traditional leaders privately benefiting from the sale of land for mining rights, i.e. without the benefits of this going to the broader community (Cousins, 2014).

5.2.7. Combating corruption in the business and civil society sectors

Progress on enforcing compliance with corruption reporting requirements, and other clauses under the Companies Act have been mentioned briefly in the previous chapters. There has been progress in improving corporate transparency through the King Code, but further commitment from the private sector in combating corruption is needed.

Government and organised business are encouraged to initiate *p*rogrammes to improve awareness of the anti-corruption compliance requirements *c*ontained in Regulation 43 of the Companies Act. Initiatives are needed to bring the informal business sector, as well as unlisted and smaller companies into the national dialogue on corruption.
The NDP noted that, "Consideration must be given to establishing a structure to which private sector non-compliance with the law can be reported", and consideration of requirements for businesses to include corruption cases in their annual reports (NPC, 2012).

King IV was released for public comment in March 2016 and the final content should be considered as part of the process of developing the draft National Anti-Corruption Strategy.

Under the NACF, the business sector proposed *d*eveloping integrity pacts to be used in public contracting. The pact is an agreement between government and bidders "for a public contract that stipulates that neither side will pay, offer, demand or accept bribes, collude with competitors to obtain the contract, or engage in such abuses while executing the contract" (NPC, 2012: 449). The NDP has encouraged this kind of initiative. Arguably, companies will take anti-corruption compliance more seriously if they see visible enforcement by government, coupled with significant penalties for non-compliance (as has happened to the various cartels implicated in price fixing by the Competition Commission) as a deterrent measure.

In this regard, government could draw on the *s*uccessful components of the United States Foreign Corrupt Practises Act (FCPA) and the United Kingdom Bribery Act. The United Kingdom has created a new corporate offence described as failure by a commercial organisation to prevent bribery. This forces corporates to create proactive anti-corruption compliance programmes.

Recently, global regulators have initiated an anti-corruption compliance culture within private sector companies through the robust enforcement of specific legislation.

CHAPTER 1:
BACKGROUND AND APPROACH

CHAPTER 2:
NATURE AND EXTENT OF CORRUPTION

CHAPTER 3:
LEGISLATIVE FRAMEWORK

CHAPTER 4:
ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5:
SECTOR AND THEMATIC REVIEW

CHAPTER 6:
TOWARDS A NATIONAL ANTI- CORRUPTION
STRATEGY FOR SOUTH AFRICA

CORRUPTION
STOP IT
FIGHTING CORRUPTION IS EVERYONE'S BUSINESS

The United States government, for example, rigorously pursues the bribery of foreign government officials by private sector companies and imposes substantial fines on companies implicated in bribery scandals (this is done via negotiated settlements, i.e. without criminal court convictions). This model has been emulated in the United Kingdom where the Serious Fraud Office is responsible for enforcement action against companies that breach the United Kingdom Bribery Act. The British legislation, like South Africa's, addresses public and private corruption. However, the British government has gone further by creating a corporate offence known as "the failure by a commercial organisation to prevent bribery". This obliges companies associated with the United Kingdom to proactively put measures in place to manage the bribery risk to ensure that they have a defence against this new "corporate offence". The Ministry of Justice in the United Kingdom has issued very clear guidelines to corporates in respect of what they regard as "adequate procedures" to prevent bribery, which, if properly put in place, will constitute a defence against a charge of failing to prevent bribery (United Kingdom Ministry of Justice, 2010). The United Kingdom Regulator utilises deferred prosecution agreements as an incentive for companies to enter negotiations where bribery violations are alleged. These initiatives are having a dramatic effect on multinational private sector companies.

In South Africa, effective enforcement and significant penalties for violations of such legislation could potentially not only create a strong deterrent effect, but generate significant revenue for the fiscus and may even be applied to funding anti-corruption agencies and activities, similar to the model already being used for the Criminal Asset Recovery Account (CARA). If South Africa were to take this route, government would need to issue very detailed compliance guidelines to avoid uncertainty as to what is required. Furthermore, the advantage of this kind of approach is that it would not add to the already heavy burden of cases facing the South African court system. Further research on the viability and appropriateness of this kind of approach for South Africa is needed.

As noted, anti-competitive behaviour by the private sector can all be included under the heading of corruption. However, a very broad definition of corruption as any form of financial crime or activity that could impact on the public purse might be so broad as to make the term meaningless. Anti-competitive behaviour is very clearly defined in law and specific bodies are dedicated to dealing with these forms of unethical and criminal behaviour. Anti-competitive behaviour is monitored and investigated through institutions like the Competition Commission and the Competition Tribunal. An anti-corruption strategy which chooses to include anti-competitive behaviour in its ambit should clearly state why this is the case, given the already effective work of these dedicated institutions.

The Competition Commission has won international recognition for its work. The national anti-corruption strategy should therefore not include detailed sectoral plans for dealing with anti-competitive behaviour, but outline how it might work and interact with these institutions to combat certain forms of procurement fraud (like cover-pricing) and then focus on dedicated programmes for improving reporting on corruption by the private sector, and dealing with bribery and other forms of corruption.

A topic for debate for the development of the Anti-Corruption Strategy is whether the fines and other sanctions imposed by the Tribunal are nearly sufficient to act as a deterrent against collusive behaviour by firms.

It should also be noted that civil society organisations are not immune to corruption. Cases have been reported of the misuse of trade union funds, and fraud and other forms of misrepresentation by community-based organisations and NGOs in their dealings with the state. Civil society is arguably by nature fragmented and diverse, and developing a common platform for civil society to engage on the issues of corruption in the sector is difficult.

A few prominent civil society organisations and trade unions could take the lead in developing integrity pacts similar to those proposed for the business sector, or initiate regional and national dialogues on their own role in eradicating or supporting corruption.

5.2.8. A note on corruption in other sectors

Various other sectors experience corruption in ways very specific to those sectors. In the education sector, corruption related to fraud, theft and deviations from procurement legislation have been found in several school governing bodies around the country. Corruption in health and social development also manifest in specific ways, requiring dedicated sector-specific strategies. An analysis of all of these sectors is beyond the scope of this diagnostic report. However, many of the institutional conditions giving rise to corruption in these sectors are similar to those outlined for the sectors above. A national anti-corruption strategy should provide a conceptual framework and set of principles that can inform the development of specific programmes in each of these sectors.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

5.3. Role of civil society, organised business and ordinary citizens in improving state accountability

Civil society (including formal NGOs, social movements and community-based organisations, trade unions, and religious groups) and organised business have an important role to play in supporting government's anti-corruption initiatives. Civil society is already playing a role in monitoring government spending and integrity. And in some municipalities, coalitions of organised business and civil society have been vocal in placing the spotlight on local government corruption.

Government could *use this capacity in quite targeted ways to support very specific reforms it is undertaking to improve integrity and reduce corruption*. For example, civil society and organised business can be brought into supporting reforms in the procurement system. Organisations that are trained on the nature of the reforms and the compliance expected from government institutions and private sector companies can assist government departments in providing pressure for compliance. Some interesting models can be drawn from non-governmental groups such as the Social Justice Coalition in the Western Cape. The DPME has been experimenting with supporting citizen-based monitoring tools for improved service delivery.

Corruption Watch recently ran a **successful campaign on corruption** in schools. The organisation's corruption reporting hotline had picked up hundreds of reports of corruption in schools – primarily centred on misuse or theft of school governing body funds by principals, and to a lesser extent parents, working with principals.

Corruption Watch investigated a selection of the reports, and found that many principals had not faced disciplinary action despite being reported to provincial departments of education. Some had been moved to others schools. Corruption Watch worked with concerned parents and teachers to have teachers removed, or otherwise disciplined. The schools campaign received a good deal of public attention and cooperation – which Corruption Watch attributes to giving a "human face" to the problem of corruption (Corruption Watch, 2015a).

Partnering with established civil society organisations to develop these kinds of campaigns further may be valuable in improving "awareness" of the effects of corruption, and of the mechanisms (such as hotlines) available to citizens to report corruption. Civil society organisations are often better placed to run these kinds of awareness campaigns than government, in part because of the legitimacy many of them have in the eyes of the public to make comment on issues of moral and ethical conduct.

Further, high-level campaigns on corruption in general are not proposed – campaigns should have a clear thematic focus whichallows people to identify in quite specific ways with the issues being raised.

On the subject of reporting corruption and protection of whistle-blowers: In order for corruption reporting hotlines to work effectively, sufficient investigative and/or referral capacity should be provided to run these hotlines, and the public should be shown examples of high-profile cases of corruption being prosecuted as a result of the information provided to these hotlines, they will not be effective. Data on the public sector hotline is instructive in this regard: the Public Sector Ethics Survey shows that 52% of respondents in the Public Service did not know if there was a hotline they could report suspected corruption to. Furthermore, of those who knew about it, only 33% felt safe to report corruption, and just under a third (29%) felt that something would be done about the case if they reported it to the hotline (DPSA et al, 2015). The need for improved whistle-blower protection has already been noted – this is essential for incentivising citizen participation in the fight against corruption.

5.4. Political party funding

Civil society groups such as "My Vote Counts" and the Open Society Foundation have argued that transparency about party funding sources is essential to support democracy in South Africa. The Open Society Foundation has noted that, "In the absence of party funding regulation, wealthy interests [of business and other donors] are able to translate economic advantage into political power by exchanging party donations for government tenders and other forms of preferment." (Open Society Foundation et al, 2011). A renewed public conversation about the issue of party-political funding is needed given the potential for corruption in this area.

5.5. Future forms of corruption and areas of greatest risk

The manner in which corruption manifests is likely to shift with changes in technology, environmental issues, changes in politics and society more generally. Cybercrime is likely to become an issue of more central concern in the fight against corruption in the near future. Noteworthy in this regard is also the emphasis on cybersecurity matters in the draft King IV code. These will require further consideration.

As noted, the issue of beneficial ownership is already receiving increasing policy attention by FATF and other international bodies that aim to reduce corruption, money-laundering, aspects of organised crime and so forth.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

In the area of local government, scarcity of land in urban areas may see greater corruption around the allocation and zoning of land; and corruption in the development of infrastructure projects related to water provision for residential communities and mining areas may also become a fundamental dynamic shaping regional politics and the nature of the state in South Africa. As part of an anti-corruption strategy, the potential future areas of risk for corruption should be mapped and researched.

Chapter 6 : Towards a National Anti-Corruption Strategy for South Africa

6.1. Summary of findings

6.1.1. Nature, prevalence and impact of corruption in South Africa

- Apart from the loss of state revenue for development and service delivery, corruption erodes the capacity of the state – this is particularly of concern given the uneven levels of capacity in government, shaped in part by South Africa's apartheid history. Corruption can erode the legitimacy of the state, which can undermine the democratic process.

- Public perceptions assessed over the last 15 years show that citizens feel that corruption has increased. These perceptions are a very rough indicator of corruption in the country, but they are important for indicating levels of trust between the state and citizens.

- Public surveys show that instances of bribery are common in some services in which the public interfaces with government officials – this is the case in traffic policing, policing and home affairs, and to a lesser extent in local government.

- Corruption is considered endemic in some sectors – this is the case in policing, which in turn affects the state's ability to combat corruption.

- Data on investigations of corruption and data on convictions of cases involving corruption or corrupt activities and practices are inconsistently reported. Furthermore, data on compliance with regulations relevant to corruption is inconsistently collected and reported by government agencies, and not sufficiently consolidated; and private sector reporting of corruption remains too low. Improving the collection and reporting of these kinds of statistics is important: this will aid in monitoring the impact of efforts aimed at reducing corruption, and it will aid in identifying areas of potential risk for corruption.

- AGSA results show continuing rising irregular expenditure (despite an improvement in the number of clean audits) in local government and the public service. Further, PSC data points to high levels of non-compliance with SCM, HR and other integrity-related codes and regulations. An environment of non-compliance enables corruption and makes it hard to detect.

- Too little data exists on compliance and integrity in the SOEs, but continuing scandals in a number of the large SOEs around board and management instability, and procurement and appointment irregularities are cause for concern, especially given the substantial procurement budget of these entities. SOEs should be given particular consideration in a national anti-corruption strategy.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

- Private sector involvement in corruption has taken the form of collusion, bribery (locally and in business dealings in other African countries) and fraud in procuring with the state. Too little reporting by the private sector on corruption in the sector takes place, and efforts by the private sector to improve reporting and develop integrity frameworks are required.
- Corruption manifests and is enabled slightly differently across different sectors in the country and a national anti-corruption strategy should take a somewhat differentiated (or "sectoral") approach to make a meaningful impact on corruption.

6.1.2. Legislative framework and its enforcement

- A comprehensive and generally sophisticated legal framework has been developed for combating corruption in South Africa.
- A general legislative review is not needed as part of a national anti-corruption strategy. To the extent that changes to the legislation are needed, it is suggested that these emerge primarily through the development of a strong body of case law, especially in the case of PRECCA. Training for personnel in the criminal justice system may be needed to increase the use of the Act.
- A few gaps in legislation require attention, as outlined by the NDP and reports of South Africa's progress on meeting obligations on relevant international anti-corruption instruments. Improved protection for whistle-blowers is currently being looked at under amendments to relevant legislation.
- Beneficial ownership is currently being considered under amendments to the Financial Intelligence Centre Act. South Africa must improve its legislation regarding beneficial ownership, and amend other regulations accordingly (such as regulations pertaining to state procurement).
- Implementation of PAIA and PAJA needs to be improved.
- Improved institutional mechanisms for supporting whistle-blowers are needed.
- Chapter 2 has shown that compliance with laws regulating public servants and members of the executive has been disparate, uneven and very weak in parts of the state.
- In terms of South Africa meeting its obligations to international anti-corruption instruments, this diagnostic report has identified that better collaboration between governments in SADC is needed (in terms of the SADC Protocol) and enforcement of the OECD convention on combating foreign bribery has been weak.
- South Africa is currently preparing for the 2nd Cycle of the UNCAC Implementation Review and work done domestically towards the strengthening of the country's anti-corruptionpolicies, inclusive of a national anti-corruption strategy and practical recommendation, should be considered against this context.

    There should be a cross-correlation between the activities proposed by a national anti-corruption strategy and the requirements for full UNCAC implementation.

6.1.3. Anti-corruption architecture and system

- Some oversight bodies have developed a public reputation of independence, integrity and capacity, including the AGSA, the FIC, and the Public Protector. The Specialised Commercial Crimes Courts have achieved success in prosecuting corruption and the AFU has been successful in seizing assets. South Africa is considered to have good investigative skills in its elite criminal justice agencies.

- However, a central issue of concern is that the independence of the criminal justice agencies tasked with investigating and prosecuting corruption is not being effectively maintained. Chapter 4 detailed examples of executive interference in selecting cases for investigation and prosecution, as well as in the process of investigation and prosecution, and in the inappropriate use of intelligence capacity in this regard. Effective independence is needed to improve the appetite for pursuing senior politicians, officials and business people, and building public confidence in government's commitment to reducing corruption. Improving the transparency and rigour of the processes for selecting and dismissing senior leaders in these organisations could go along way in building public trust.

- There are real challenges to collaboration and information sharing across sectors. The NACF is no longer active, limiting cross-sectoral collaboration in developing anti-corruption mechanisms. Should it be revived, it will require the active participation of very senior leaders from all sectors if it is to have an impact.

- Regarding coordination within government, the development of the ACTT appears to have assisted somewhat with improving coordination within government, but structural and functional impediments hamper optimal cross-agency collaboration. Interventions to shift these incentives are needed, and it is proposed that a review of the structure and legal standing of the ACTT is undertaken.

- There is much debate about the appropriateness of a single corruption-fighting body in South Africa (as adopted in countries like Singapore, Botswana and in Hong Kong), and whether this would solve the coordination challenges just outlined and concentrate capacity. Even if a single corruption-fighting body is not developed in South Africa, there are several lessons from successful agencies of this kind for the South African case. These include the need to guarantee effective independence and appropriate oversight of the agencies, ensure they are given sufficient budget and that they then pursu high-profile corruption cases to build their work. Prosecution-led investigations (supported by agencies that have both the investigation and prosecutions in one unit) may have higher chance of successful convictions.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

6.1.4. Sector and thematic review

- The South African government has initiated a range of programmes aimed at reducing corruption and supporting ethical practice in state organisations. Much of the focus of this work has been in local government, and in the public service especially.

- Some of this earlier work, such as the Public Service Anti-Corruption Strategy, supported the development of anti-corruption laws and integrity frameworks. There is now a generally clear set of rules and values articled for guiding the conduct of public servants and members of the executive.

- Despite the existence of many public servants and politicians committed to serving the public, compliance with these regulations and codes has been generally weak. This is especially the case in SCM, HR and in compliance with frameworks for disclosing business and other financial interests. On average, the executive has not ensured compliance with these frameworks and regulations.

- The SOEs have not been a primary focus of anti-corruption mechanisms, despite much public discussion about the need for improved governance. The need for including SOEs as an important part of a new national anti-corruption strategy has been identified, and it is proposed that improved consolidated and publically available data on SOEs' financial integrity, and procurement as an important component of this, be generated.

- The latest Local Government Anti-Corruption Strategy includes some very practical and implementable actions for improving compliance and reducing corruption in municipalities. However, it also sees a central role for national government to play in monitoring local government implementation of anti-corruption measures. Research cited above suggests that whatever form this monitoring takes, it should not add to the heavy reporting burden facing municipalities (this reporting has not seen an increase in compliance to relevant codes and regulations). Rather, monitoring should become more targeted, and should rely less on self-reporting. Random forensic auditing of samples of municipalities or other organisations was proposed as a possible route.

- In the 1990s, when state reformers and civil society developed the legislation and structures for local government, they envisioned local government being at the heart of the democratic process.

- A public debate is needed about how to rejuvenate the structures in local government intended to support democracy and accountability through citizen participation.

- In policing, this diagnostic report highlighted the need for a dedicated unit within the SAPS focused on investigating corruption within the SAPS, specifically in view of the size of the organisation. It also highlighted the need for improving the quality and length of training for police and to improving the recruitment regime for the police service.

- The Diagnostic underscored the point that corruption is not simply an issue of (im)moral conduct, but is shaped by the organisational, social and political contexts in which people act. Strategies that assume that corruption is simply a problem of "bad apples" (Chipkin, 2013; Newham and Faull, 2011) will make little impact on the systemic institutional factors enabling corruption.

- In this regard, the recommendations proposed for reducing corruption aim to build on existing initiatives currently being implemented in the state. This includes reforms aimed at improving the long-run capacity of the state, some of which are not commonly included under the rubric of anti-corruption.

- These include reforms to the procurement system – both in terms of plans to improve transparency, procurement planning and in terms of professionalising the SCM. Supporting the reforms to the procurement system currently underway should be a central component of a national anti-corruption strategy. This includes greater tranparency in the allocation and management of government tenders, supporting civil society and organised business to assist in monitoring compliance with regulations by the state and private sector, and the professionalisation of the SCM function in government.

- A central aim of a national anti-corruption strategy must include ensuring compliance with regulations that govern the extent to which members of the executive have a say in the awarding of state contracts, and compliance with the conditions under which family members of the executive can benefit from state contracts.

- Professionalising the HR function in the public sector is also key. There are nascent plans in this regard in the DPSA, and PSETA has made professionalising the SCM and HR a core component of its work to build a capable and ethnically orientated state. The National School of Government and the PSC are important role players in this regard.

- Further, a renewed public conversation about the role of the PSC in developing a professional and autonomous public service would be very valuable.

- Regarding the role of civil society: Civil society organisations are already playing a role in monitoring government spending and integrity. Government could use this capacity in quite targeted ways to support specific reforms it is undertaking to improve integrity and reduce corruption. For example, civil society can be brought in to help government monitor the implementation of reforms to the procurement system.

  Civil society organisations could also be supported to run targeted campaigns on corruption in particular sectors (high-level campaigns on corruption in general are not proposed – campaigns should have a clear thematic focus which allows people to identify in quite specific ways with the issues being raised).

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

- Improved reporting by business on corruption is needed. Further, recent innovations in the United Kingdom and United States around combating bribery and other forms of corruption in the private sector have relevance for South Africa. These have revolved around developing clear guidelines stipulating the minimum capacity expected in companies to reduce exposure to bribery, and then utilising mechanisms like deferred prosecution agreements as an incentive for companies to enter negotiations where bribery violations are alleged. These initiatives are having a dramatic effect on multinational private sector companies in these countries. Further research on the viability of this approach for South Africa would be valuable. Where sufficient evidence exists to prove bribery or other forms of corruption, this should be pursued.
- The issue of transparency in party-political funding should also be placed on the agenda for public discussion.
- The manner in which corruption manifests is likely to shift with changes in technology, environmental issues, changes in politics and society more generally. As part of an anti-corruption strategy, the potential future areas of risk for corruption should be mapped and researched.

6.2. Conceptual approach: towards systemic change

At the heart of the fight against both public and private sector corruption should be a strategy to prevent corruption through building the autonomy and efficiency of state institutions in the country, and building the independence of the crime-fighting bodies. In this sense autonomy means, a state in which its employees and political office holders see their commitment first and foremost to the citizens of the country and to implementing policy in the service of social and economic transformation, and not to private or party interests (where these deviate from formal policy).[39] The term professionalisation is often used to incorporate this disposition, but also incorporates the concept of improving pubic servants' skills.

Particular institutions are vital to developing this orientation and expertise. In Chapter 5 it was noted that corruption is not simply an issue of (im)moral conduct, but is shaped by organisational, social and political contexts. Knowledge about regulations and ethics frameworks is only the first step towards behaviour change. Behaviour change is supported through long-term incremental changes to specific institutions – both formal and informal.

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[39] The extent to which a state bureaucracy is relatively insulated from personal or particularistic interests has been shown to be important for shaping not just the extent of corruption in a country, but the fortunes of countries' development prospects and the nature of their politics (see Levy, Brian, 2014).

These include, for example, changes to procurement regimes (how the system is designed for example); and changes to recruitment, promotion and training regimes governing key areas of the public sector, i.e. shifting the incentives and constraints under which public servants and politicians operate, and then building institutions that provide public servants with a sense of professional identity (through, for example, long-term cohort training) – incrementally impacting on the norms and values into which public servants are socialised. This diagnostic report has included several recommendations for professionalising key functions in the public service, and has outlined developments in the procurement regime aimed at improving transparency.

Developing this orientation not only impacts on instances of public sector corruption, but also on the state's ability to deal with private sector corruption (whether through regulating practices of private sector collusion, or reducing the room for tender fraud). In the case of dealing with private sector involvement in corruption, the same concept applies: developing integrity pacts for the private sector would be a welcome development, but more significant interventions are needed to change the incentives and risk governing private sector behaviour. Suggestions in this regard were made in Chapter 5.

In conclusion, the diagnostic has outlined a range of challenges for reducing corruption in the country – many of these relate to uneven or weak implementation of relevant legislation or policies, rather than the absence of appropriate laws. South Africa has a generally robust legislative framework for fighting corruption. Further, it has some very strong investigative skills in senior police ranks in South Africa; it has a range of oversight bodies committed to promoting integrity in public and private sectors; a generally clear set of rules and values for guiding the conduct of government employees and members of the executive in the government sector; organised business and civil society have shown earlier commitments to collaborating on anti-corruption efforts which can be revived; and South Africa has a free media and an active civil society to support efforts to build accountability. The national anti-corruption Strategy should thus aim to support improved coordination between the role-players in the fight against corruption, and to tackle the systemic causes of corruption in the country.

CHAPTER 1: BACKGROUND AND APPROACH

CHAPTER 2: NATURE AND EXTENT OF CORRUPTION

CHAPTER 3: LEGISLATIVE FRAMEWORK

CHAPTER 4: ANTI-CORRUPTION AGENCIES AND BODIES

CHAPTER 5: SECTOR AND THEMATIC REVIEW

CHAPTER 6: TOWARDS A NATIONAL ANTI-CORRUPTION STRATEGY FOR SOUTH AFRICA

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National Anti-Corruption Strategy
Diagnostic Report

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STOP
ACT
I KNOW

~~CORRUPTION~~

FIGHTING CORRUPTION IS EVERYONE'S BUSINESS

Together we move South Africa forward

Department of Planning, Monitoring and Evaluation
ADDRESS:
330 Grosvenor Street
Pentagon House
Hatfield, Pretoria, 0028
Telephone: 012 312 0000