NACAC

National
Anti-Corruption
Advisory Council

# NATIONAL ANTI-CORRUPTION ADVISORY COUNCIL

## Final Report
## To the President, the Cabinet, and the Country

**AUGUST 2025**

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

NACS
National Anti-Corruption Strategy

PSC

german cooperation
DEUTSCHE ZUSAMMENARBEIT

Implemented by:
giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

State Secretariat for Economic Affairs SECO

UNODC
United Nations Office on Drugs and Crime

# TABLE OF CONTENTS


**EXECUTIVE SUMMARY** 4

NACAC's work and achievements 4
NACAC's key recommendations 5

**FOREWORD** 10

**LIST OF ABBREVIATIONS** 11

**INTRODUCTION** 13

**CHAPTER 1 - THE STORY OF NACAC** 16

NACAC's mandate 18
NACAC's way of working 18

**CHAPTER 2 - CORRUPTION IN SOUTH AFRICA: BACKGROUND AND CONTEXT** 20

Drivers of corruption 21
Types of corruption 21
The impact of corruption 23
Responses to corruption 24

**CHAPTER 3 - THE OFFICE OF PUBLIC INTEGRITY** 27

Establishing the Office of Public Integrity and Anti-Corruption 28
Building on the successes of the Special Investigating Unit 33
Mandate 33
Functions 34
Powers 36
Transitional arrangements 38

**CHAPTER 4 – COMMUNICATION: MOBILISING SOCIETY** 39

NACS communication strategy 40
National anti-corruption dialogues 40
The OPI's role in taking the NACS communication strategy forward 45

**CHAPTER 5 - STRENGTHENING LAW ENFORCEMENT AGENCIES** 47

Introduction 48
Mandates and a new coordination mechanism 49
Independence and integrity 57
Resources 62
Harnessing artificial intelligence and digital tools 63

**CHAPTER 6 - NACAC'S ADVISORIES** 67

NACAC Advisories to the President 68

Advisory 1: Implementation of the recommendations of the Zondo Commission (Appendix D.1). 68
Advisory 2: Public support for whistleblowers (Appendix D.2) 69
Advisory 3: Regarding the implementation and roll out of the National Anti-Corruption Strategy (Appendix D.3) 69
Advisory 4: Strengthening the Political Party Funding Act to manage corruption risks and improve transparency in South Africa (Appendix D.4) 70
Advisory 5: Appointment of a retired judge as Whistleblower Protector of South Africa (Appendix D.5) 70
Advisory 6: Strengthening anti-corruption elements of the Public Procurement Bill (Appendix D.6) 71
Advisory 7: Electoral Matters Amendment Bill (Appendix D.7) 72

NACAC Monitoring of NACS implementation 73
NACAC Monitoring of Zondo recommendations 73

**CHAPTER 7 - THE WAY FORWARD** 78

NACS implementation 79
Who will champion the NACS? 79
The way forward 80
Table of immediate and short-term actions 81

**APPENDICES** 83

# Executive summary

The National Anti-Corruption Advisory Council (NACAC) presents its final report, marking the culmination of three years of work to advise on the fight against corruption in South Africa. This report comes five years after the adoption of the National Anti-Corruption Strategy (NACS), both of which are critical interventions in the ongoing struggle against corruption, an existential threat to our democracy.

As a relatively young democracy, South Africa has courageously exposed corruption through several commissions of inquiry and media and civil society. The investigations and findings of the Commission of Inquiry into State Capture (the Zondo Commission) in particular have provided significant information and guidance, forming a crucial framework for the next phase of the anti-corruption programme.

The NACS is premised on the principle that **preventing corruption** through robust governance, transparency, and accountability should be given greater emphasis to mitigate corruption risks, thereby reducing the need for costly reactive measures. NACAC's work has remained true to this guiding principle, acknowledging, too, that combating corruption is not the sole responsibility of any single government department or agency, but rather a collective task for **'all of government and all of society'.**

## NACAC's work and achievements

Since its appointment in September 2022, NACAC, comprised of diverse members from civil society, academia, labour and traditional leadership, has worked hard to address the mandate given to it by the President.

NACAC executed this mandate through a comprehensive approach, including:

- **In-depth research and analysis:** NACAC commissioned extensive research that supported the analysis of legislative and systemic weaknesses that enable corruption, and the understanding of the nature and characteristics of 'systemic corruption' detailed in the Zondo Commission's reports. This thorough analysis has enabled the crafting of tailored solutions.

- **Stakeholder engagement:** NACAC engaged widely with stakeholders from all levels of society, consulting government institutions, law enforcement agencies (LEAs), academics, and civil society experts. Learning journeys to countries like Kenya, Serbia, Lithuania, and Hong Kong provided valuable insights from the tackling of similar challenges globally.

- **Strategic Advisories:** A core part of NACAC's work involved drafting and submitting a series of Advisories to the President. These Advisories provided specific proposals on critical areas, including:

  - **Implementing Zondo Commission recommendations:** Advising on strategic and systemic implementation, including acknowledging and supporting whistleblowers, preventing retaliation, and exploring mechanisms for incentivised disclosures. It also covered principles for appointments to state-owned entities (SOEs), transparency in public procurement, balancing public and private sector accountability, and resourcing LEAs.

- **Public support for whistleblowers:** Highlighting the urgent need for robust protection and support mechanisms for whistleblowers, calling for legislative reforms to criminalise retaliation and establishing independent bodies for managing disclosures and providing comprehensive support (legal, medical, physical, and psycho-social).

- **NACS implementation:** Advising on embedding the NACS as the principal framework across all government levels and departments, with a strong emphasis on monitoring and evaluation.

- **Strengthening electoral integrity:** Proposing legislative amendments to the Political Party Funding Act (PPFA) and the Electoral Matters Amendment Bill (EMAB) to enhance transparency and reduce corruption risks associated with political party funding, ensuring accountability to the electorate rather than donors.

- **Public procurement reforms:** Recommending revisions to the Public Procurement Bill to align it with anti-corruption objectives, focusing on institutional arrangements, preferential procurement, professionalisation of procurement officers, and the integration of e-procurement systems.

- **National anti-corruption dialogues:** NACAC successfully hosted two multi-sectoral national dialogues in 2023 and 2024. The 2023 dialogue, attended by President Cyril Ramaphosa and Chief Justice Raymond Zondo, underscored the momentum gained in the fight against corruption and the collective determination to build an ethical society. The 2024 dialogue specifically engaged youth, leading to their own anti-corruption pledge and focusing on vital topics such as strengthening whistleblower protections, transforming public procurement, enhancing law enforcement capacity, and fostering professionalisation in the public sector.

- **Monitoring and evaluation:** NACAC considered progress in the implementation of the NACS and the Zondo Commission recommendations, observing significant steps taken, including critical legislative amendments. While progress has been achieved, NACAC's work has provided crucial insights into areas needing acceleration and further attention.

NACAC discussed the complex drivers of corruption in South Africa, identifying historical economic inequality, weak public sector governance, political patronage networks, and the pervasive influence of problematic social norms. NACAC's work was informed by an understanding of the corrosive impact of corruption on the economy, public services, trust in institutions, and the proliferation of organised crime. This comprehensive understanding informed the design of targeted and effective anti-corruption actions, emphasising the importance of proactive prevention measures alongside robust enforcement.

## NACAC's key recommendations

NACAC's final report outlines the path forward, with several key recommendations designed to build a more resilient anti-corruption architecture in South Africa.

## Establishment of the Office of Public Integrity and Anti-Corruption (OPI)

NACAC's key recommendation is the **establishment of the OPI** as a permanent, independent, overarching anti-corruption body. This body should be **entrenched in Chapter 9 of the Constitution,** signalling society and government's serious commitment to combating corruption as a way to safeguard constitutional democracy. **The Minister of Justice and Constitutional Development should be responsible for driving this process to speedy resolution.**

- **Absorption of the Special Investigating Unit (SIU):** The OPI should **absorb the mission, powers, and resources of the SIU,** enabling it to become operational immediately with a proven investigative and recovery capability. This move will provide an operational foundation, leveraging existing skilled investigators and institutional knowledge, and avoiding duplication.

- **Mandate:** The OPI's mandate would be to **prevent, investigate, and remedy systemic corruption** involving government and other organs of state, enhancing transparency, accountability and integrity in their operations. This includes conducting systemic anti-corruption audits, inquiries and investigations, providing policy guidance, protecting and supporting whistleblowers, and leading social mobilisation and public education programmes. The OPI must also approach its work with a deep understanding of the gendered nature of corruption, addressing issues like sexual corruption.

- **Functions and powers:** The OPI will perform investigative functions, including risk mapping, systemic audits, and civil investigations. It will coordinate the implementation of the NACS across all sectors and actively remedy systemic corruption risks by developing standards, providing advice, and training staff across all organs of state. Crucially, the OPI will **protect and support whistleblowers,** managing disclosures, ensuring their safety, and taking action where retaliation takes place. To support its independence and effectiveness, the OPI should have **control over its budget and human resources,** allowing it to recruit a multi-disciplinary team with specialised skills. It should have the power to **convene public hearings and pursue investigations** with powers to summon witnesses, access classified materials, conduct inspections, and seize evidence. Furthermore, the OPI should be empowered to **institute civil proceedings for the preservation and forfeiture of assets,** playing a vital role in recovering stolen public money. Its recommendations arising from audits and investigations should be **binding,** although available to judicial review, and enforceable by court order. The OPI's governance system, led by a council appointed through a transparent public process, must safeguard its integrity and independence.

- **Interim arrangements to protect and support whistleblowers:** The SIU should be empowered and resourced to provide protection and support to whistleblowers on an urgent basis until such time as the OPI takes over this function.

## Strengthening LEAs

NACAC has made crucial recommendations to strengthen existing anti-corruption LEAs, ensuring a coherent and effective multi-agency system.

- **Rationalising mandates:** NACAC recommends **reorganising the mandates of key LEAs.** A **strengthened Investigating Directorate Against Corruption** (IDAC) should be solely responsible for investigating and prosecuting serious corruption and serious commercial crime. The Directorate for Priority Crime Investigation (DPCI) should focus exclusively on organised crime. This clarification aims to eliminate overlaps, enhance focus, and improve effectiveness. **An interministerial task-team of the Justice Crime Prevention and Security (JCPS) Cluster, chaired by the Minister of Justice and Constitutional Development, should be established to lead this rationalisation process and should be required to report progress to the public each month.**

- **Coordination mechanism:** A **case management committee (CMC)** should be established, comprising senior representatives from IDAC, the National Prosecuting Authority (NPA), DPCI, South African Police Service (SAPS), Independent Police Investigative Directorate (IPID), and the OPI. **Chaired by the National Director of Public Prosecutions,** the CMC will coordinate investigations, allocate cases, and monitor progress, ensuring seamless collaboration and collective accountability.

- **Senior leadership appointments:** NACAC recommends introducing statutory, transparent procedures for appointing senior leaders in the criminal justice system (CJS) to ensure ethical, qualified, strong leaders. The proposed reforms include legislated timelines, independent expert-led selection committees, public disclosure of shortlisted candidates, and the establishment of a National Police Board (NPB) to advise on SAPS leadership appointments, with these processes codified in law to safeguard against future manipulation.

- **NPA independence and resourcing:** A comprehensive **overhaul of the NPA's legislative framework is urgently needed** to ensure its financial and institutional independence. This includes granting the NPA control over its budget and human resources, reforming the appointment processes for senior leadership through public consultation, and improving conditions of service to attract and retain critical skills. NACAC is also calling for increased resourcing for the NPA's specialised units – IDAC, Specialised Commercial Crime Unit (SCCU), Asset Forfeiture Unit (AFU) – and the court system to effectively handle corruption cases. **The Department of Justice and Constitutional Development (DOJ&CD), of which the NPA is a programme, should initiate and drive this process.**

- **The SAPS:** NACAC recommends a **comprehensive reform programme** with high-level political commitment for: the establishment of an independent NPB to oversee a SAPS Integrity and Professionalisation Strategy, legislative amendments to strengthen accountability mechanisms, targeted lifestyle audits, and strengthening the Anti-Corruption Investigation Unit's (ACIU) capacity and independence. Additional measures include enhanced data-driven monitoring, robust disciplinary processes, the integration of ethics into performance systems, and stronger promotion of corruption-reporting channels. Collectively, these reforms aim to restore credibility, deter misconduct, and embed a culture of integrity within SAPS. **The Ministry of Police should initiate and drive this process.**

- **Security for personnel and witnesses:** Given the high rate of violence against investigators, **more resources should be urgently provided to protect law enforcement and auditing staff and witnesses.** Mechanisms extending these protections to civil investigations and oversight personnel, such as investigators, prosecutors, and forensic auditors, should be instituted with equal urgency. A collective effort by the SAPS, NPA, DPCI and SIU is required in this regard.

- **Leveraging technology:** NACAC strongly advocates for the **integration of digital technologies and advanced analytics** into law enforcement institutions to support the shift towards an intelligence-led, risk-based enforcement model. This should include artificial intelligence (AI)-driven anomaly detection tools and a **comprehensive anti-corruption data sharing framework** to overcome fragmented data practices. Furthermore, the report highlights the growing threat of deepfakes and AI-generated content to democracy, recommending that LEAs be equipped with detection tools and training to verify digital evidence. **A high-level inter-departmental task-team of the JCPS Cluster comprising Directors-General of the cluster and/or relevant and appropriate Chief Directors and Heads of LEAs and supporting institutions and/or their relevant and appropriate executives should be established to lead the development of an AI and data analytics strategy for immediate implementation by the LEAs.**

## Broader anti-corruption initiatives

Beyond institutional reforms, NACAC's recommendations extend to societal mobilisation and legislative enhancements:

- **Strategic communications strategy:** A strategic communications strategy is essential to mobilise society against corruption. This involves driving social behaviour change communication, adopting a gender-transformative approach, including youth in messaging, and establishing a **National Communications Partnership (NCP)** led by the OPI to coordinate collective action across government, civil society, and the private sector. **In the interim, the SIU should intensify their current anti-corruption communications efforts, drawing on the findings of NACAC's research, and coordinate these efforts with other sectors. Once the OPI is established it will take over this communication function.**

- **Embedding NACS implementation:** Under the **leadership of the Minister of Justice and Constitutional Development,** executive authorities of all government departments and entities, at all levels, should **embed an anti-corruption and integrity-building framework** within their operations, complete with corresponding monitoring and evaluation mechanisms. This will ensure that implementation of the NACS becomes an integral part of daily government business.

- **Legislative amendments:** Urgent amendments are recommended for the Political Party Funding Act, Public Procurement Act, Electoral Amendment Act and the SAPS Act to address public integrity risks, enhance transparency in political financing and public procurement, and to improve the coherence of the SAPS Act, respectively.

NACAC's work has laid a **strong foundation for South Africa's future anti-corruption efforts.** While the full realisation of the OPI and other reforms will require sustained political will and significant effort, NACAC urges government to move forward with these proposed courses of action as quickly as possible. Strong and speedy action is vital for strengthening our young democracy and building a future free from the scourge of corruption and state capture.

*Figure 1: Members of NACAC with President Ramaphosa after a meeting to present the work of NACAC*

# Foreword

It is with a deep sense of responsibility and hope that I present this final report of the NACAC. Since our appointment in September 2022, NACAC has been entrusted with a critical mandate: to advise the President and the nation on implementing the NACS 2020–2030, and to shape South Africa's comprehensive response to the recommendations of the Zondo Commission.

In workshops and national dialogues – including events held on International Anti Corruption Day and youth and gender sessions – we deliberately positioned citizens not only as beneficiaries of reform but as key changemakers. Our engagements have been informed by extensive consultations with civil society, law enforcement, academia, and local communities – within South Africa and through international study visits to places such as Hong Kong, Kenya, and the Balkans.

Drawing on these engagements, our mid-term report of March 2024 proposed the creation of an OPI – a constitutionally entrenched body with broad investigatory powers, civil recovery tools, oversight duties, and a mandate to mobilise public education and participation. The OPI is intended to integrate the strengths of the existing SIU, while offering greater independence, continuity, and capacity to address the prevention of systemic corruption.

Our proposals are grounded in the STIRS criteria – specialisation, training, independence, resources, and security of tenure – laid down in the landmark Glenister judgments. We emphasised the need for an institution insulated from political interference but still empowered to collaborate with other bodies – such as the NPA and Public Protector – within a strengthened anti-corruption architecture.

This final report captures the culmination of NACAC's full term: our research-based recommendations, our public and sectoral dialogues, and our clear message to government and the South African people. It sets out why preventive measures must be given a much stronger focus, and why we must tackle corruption as a structural and societal challenge – not merely a moral failing.

I would like to thank all members of NACAC and our many partners – including civil society, academia, local communities, and international peers – for their collaboration and insights. We submit this report in the belief that a revitalised, democratically accountable, and transparently governed state is not only possible – it is essential.

To those who read this report – government officials, members of parliament, students, civic leaders, and concerned citizens – I urge you to engage with its findings. Let us transform critique into action; let us ensure this report becomes a living blueprint that inspires reform, builds integrity, and restores public trust.

Chairperson, National Anti Corruption Advisory Council

# List of abbreviations

| | |
|---|---|
| African Policing Civilian Oversight Forum | APCOF |
| Annual Performance Plans | APP |
| Anti-Corruption Investigation Unit | ACIU |
| Artificial Intelligence | AI |
| Asset Forfeiture Unit | AFU |
| Association of Anti-Corruption Agencies in Commonwealth Africa | AAACOA |
| Auditor General of South Africa | AGSA |
| Case Management Committee | CMC |
| Civilian Secretariat for Police Service | CSPS |
| Criminal Justice System | CJS |
| Deferred Prosecution Agreements | DPAs |
| Department of Justice and Constitutional Development | DOJ&CD |
| Department of Planning, Monitoring and Evaluation | DPME |
| Directorate of Priority Crime Investigation | DPCI |
| Directorate of Special Operations | DSO |
| Directors of Public Prosecution | DPPs |
| Deutsche Gesellschaft fuer Internationale Zusammenarbeit | GIZ |
| Electoral Matters Amendment Bill | EMAB |
| Ethics and Anti-Corruption Commission | EACC |
| Financial Action Task Force | FATF |
| Financial Intelligence Centre | FIC |
| Futures Literary Laboratory | FLL |
| G20 Anti-Corruption Working Group | ACWG |
| Global Organised Crime Index | GOCI |
| Human Sciences Research Council | HSRC |
| Independent Electoral Commission | IEC |
| Independent Police Investigative Directorate | IPID |
| Information and Communication Technologies | ICTs |
| Institute for Security Studies | ISS |
| Investigating Directorate Against Corruption | IDAC |
| Law Enforcement Agencies | LEAs |
| Justice Crime Prevention and Security Cluster | JCPS |
| National Anti-Corruption Advisory Council | NACAC |
| National Anti-Corruption Strategy | NACS |
| National Communications Partnership | NCP |
| National Development Plan | NDP |
| National Director of Public Prosecutions | NDPP |
| National Economic Development and Labour Council | NEDLAC |
| National Police Board | NPB |
| National Prosecuting Authority | NPA |
| Non-Trial Resolution | NTR |
| Office of Public Integrity and Anti-Corruption | OPI |
| Organisation for Economic Cooperation and Development | OECD |

# List of abbreviations continued

| | |
|---|---|
| Political Party Funding Act | PPFA |
| Prevention and Combatting of Corruption Act | PRECCA |
| Prevention of Organised Crime Act | POCA |
| Promotion of Access to Information Act | PAIA |
| Protection of Personal Information Act | POPIA |
| Public Affairs Research Institute | PARI |
| Public Procurement Anti-Corruption Agency | PPACA |
| Public Procurement Office | PPO |
| Public Service Commission | PSC |
| South African Law Reform Commission | SALRC |
| Senior Management Structure | SMS |
| Serious Fraud Office | SFO |
| South African Police Service | SAPS |
| South African Revenue Service | SARS |
| Sexual Offences and Community Affairs | SOCA |
| Specialised Commercial Crime Unit | SCCU |
| Special Investigating Unit | SIU |
| State Owned Enterprises/Entities | SOEs |
| State Security Agency | SSA |
| Theory of Change | ToC |
| United Nations Convention Against Corruption | UNCAC |
| United Nations Office of Drugs and Crime | UNODC |

# Introduction

South Africa's struggle against corruption is unfolding in a complex socio-economic landscape, shaped by the legacies of apartheid-era exclusion and structural inequality. While economic power and opportunity remain unevenly distributed, and many – particularly among the black majority – continue to face barriers to quality education, healthcare, housing, water, and employment, there have been significant strides made since 1994.

Institution-building is a long-term project. Over the past three decades, South Africa has expanded access to basic services, built democratic institutions, and made notable progress in delivering housing, electricity, and social grants to millions. Yet, despite these gains, the full promise of inclusive growth, meaningful economic participation, and social justice remains unrealised. This is due to factors such as governance challenges, persistent corruption, and policy approaches that have struggled to meaningfully transform the underlying economic structure.

It is in this context that corruption has become systemic. The revelations of large-scale state capture under previous administrations exposed how public institutions and state-owned enterprises were repurposed for private gain, draining billions from the public purse. This entrenched corruption continues to divert resources away from vital social and economic programmes, weakening public trust in institutions and eroding the rule of law.

The impacts of corruption are not felt equally across South Africa's population. With high levels of poverty affecting a significant share of the population, the poor are especially vulnerable to the failures of basic service delivery and the diversion of resources meant for social development. Women, who are more likely to live in poverty and to rely on public services and social grants, often bear the brunt of dysfunctional service delivery and diminished state capacity. Corruption in sectors like housing, healthcare, and social welfare perpetuates cycles of poverty and deepens the gendered dimensions of structural inequality.

The persistence of corruption undermines the state's ability to function as an effective agent of development. The National Development Plan (NDP) envisions a capable state that can drive inclusive economic growth, reduce inequality, and expand opportunities for all. Yet, widespread graft compromises governance, weakens oversight bodies, and distorts policy implementation, stalling progress towards these goals. Institutionalising democracy therefore needs to incorporate anti-corruption mechanisms.

It is within this context that the NACS 2020–2030 was developed to provide a national framework to tackle corruption more strategically and systematically. The NACS emphasises that corruption is not just about unethical individuals but about systemic weaknesses in governance and accountability systems that must be addressed at all levels. It outlines measures to strengthen institutions, improve oversight, promote transparency in political and public life, and ensure consequences for wrongdoing. Importantly, it calls for stronger partnerships between government, civil society, and the private sector to build an active citizenry that asserts public integrity, demands accountability and protects whistleblowers.

The NACS also highlights how corruption worsens poverty and exclusion by siphoning resources away from critical social and economic programmes. It recognises that addressing corruption entails advancing economic transformation and social justice. By safeguarding public resources and ensuring that services reach those who need them most, the NACS aims to restore trust in the state and support the broader goals of reducing inequality and building an inclusive society.

In September 2022, the President appointed the NACAC to advise on the implementation of the NACS and the design of a new anti-corruption institution. From the start, NACAC has been conscious that it is working in the interests of the people of South Africa and it is for their benefit that it exercises its mandate.

It is time to act on this will of the people, and to strengthen the government's response to corruption. Senior government leaders have committed to making progress against corruption, embracing a pro-integrity culture, and working to embed systems to safeguard against corruption.

Translating these commitments into concrete action is especially important in this new phase of South Africa's maturation as a democracy. Low-growth and heightening social insecurity demand the highest levels of probity in the governance of the new wave of loan-based investments into growth-driving public infrastructure and the economy.[1] Exposing and neutralising organised crime networks that have corroded the delivery of public goods and services and which endanger our people daily is all the more urgent.

NACAC's term of office has not been without challenges, many of which are inevitable when working in the field of anti-corruption. Anti-corruption councils around the world have always worked in difficult circumstances and generated controversy, and probably always will.

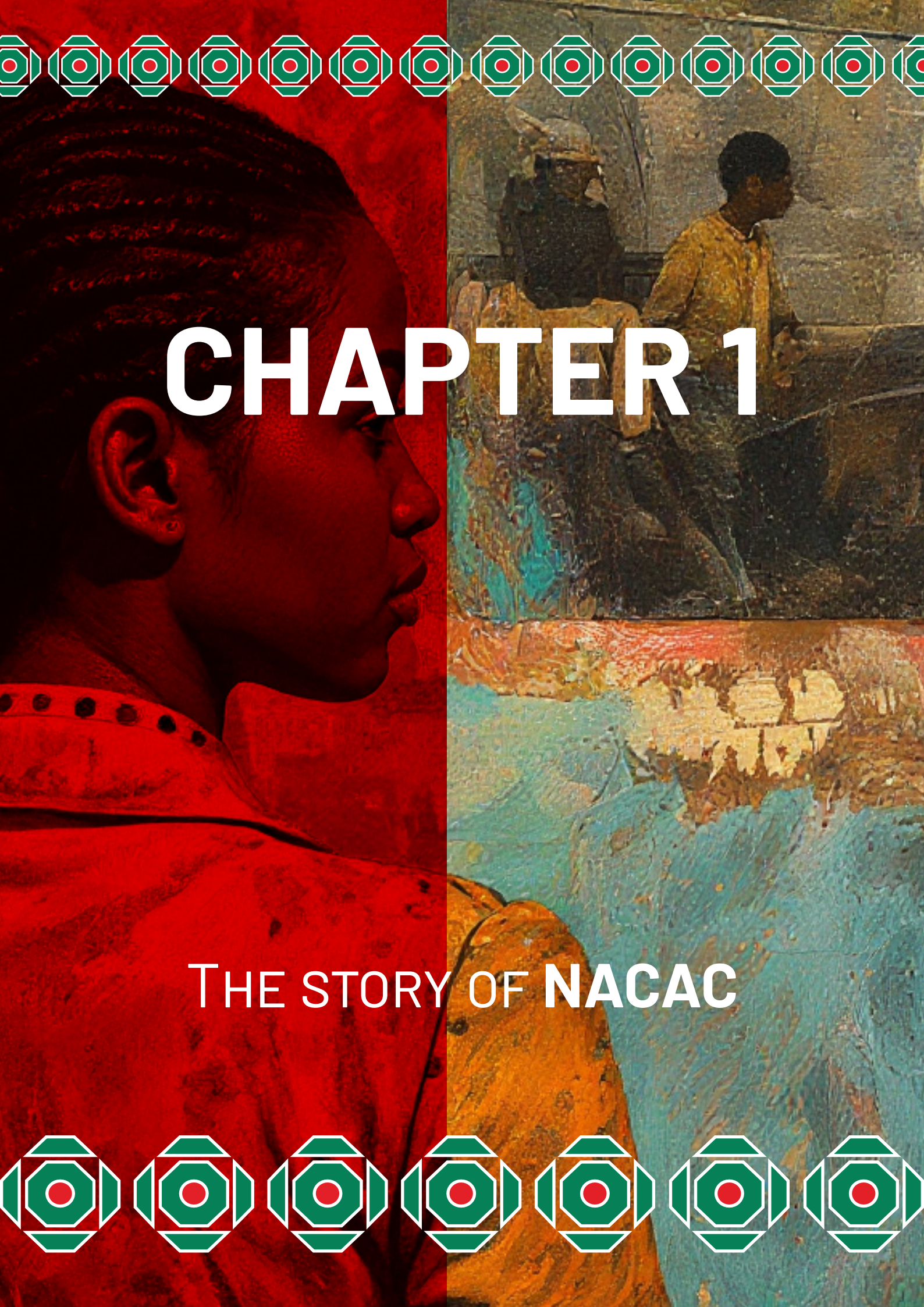
NACAC was established to advise the President on how to make good on South Africa's aspiration for concrete actions that will make a material difference in the fight against corruption. Understandably, South Africans are watching NACAC expectantly, waiting for its recommendations. However, NACAC was appointed to advise the President. As such, its recommendations have not yet been made public. NACAC delivered its Advisories and its two reports – the mid-term report and this final report – to the President for his consideration.

This report has three main objectives, namely:

- to describe how NACAC carried out its mandate;
- to outline NACAC's proposal for a dedicated, independent anti-corruption institution, operating within a strengthened framework of LEAs; and
- to present recommendations made in NACAC's Advisories to the President.

[1] World Bank. 2025. Driving inclusive growth in South Africa: Quick wins with competitive markets and efficient institutions . https://www.worldbank.org/en/country/southafrica/publication/driving-inclusive-growth-in-south-africa-quick-wins-with-competitive-markets-and-efficient-institutions

The report is made up of seven sections. After the Introduction, Chapter 1 tells the story of the NACAC, describing its mandate and way of working. Chapter 2 gives necessary background information about corruption in South Africa. Chapter 3 describes the new anti-corruption agency – the OPI. Chapter 4 explains the NACAC's communication and society mobilising efforts. Chapter 5 sets out essential measures for strengthening existing LEAs. Chapter 6 summarises NACAC's Advisories and recommendations, and Chapter 7 sets out the way forward. More detailed information is provided in comprehensive appendices, which include research reports and the full Advisories to the President.



# CHAPTER 1

## THE STORY OF **NACAC**

The story of NACAC began when President Cyril Ramaphosa, following a public call for nominations, appointed nine Councillors to advise him on improving South Africa's response to corruption.

NACAC was composed of individual members drawn from civil society, academia, labour, private sector, and traditional leadership, broadly representative of society and giving effect to the all-of-society and all-of-government approach to combatting corruption. NACAC members collectively brought decades of experience in areas of anti-corruption, public service and social justice, and this diversity of voices allowed for robust discussion and a balancing of views.

Professor Firoz Cachalia (Chair)

Inkosikazi Nomandla Dorothy Mhlauli (Deputy Chair)

Mr Nkosana Dolopi

Ms Thandeka Gqubule-Mbeki

Adv. Nokuzula Gloria Khumalo

Mr David Lewis

Mx Sekoetlane Phamodi

Ms Kavisha Pillay

Ms Barbara Schreiner

## NACAC's mandate

The President appointed NACAC with a mandate to:

- Advise on the effective implementation of the NACS by government, civil society and the private sector, including the design of the new anti-corruption agency described in the NACS;
- Advise key role-players on the overarching thrust of the NACS, namely the six pillars upon which it is premised;
- Advise on the strengthening of South Africa's anti-corruption architecture;
- Host the national anti-corruption summit(s), bringing together government, civil society, business, and academia, to set the country's anti-corruption agenda and evaluate progress in the implementation of the NACS;
- Advise on public awareness about corruption in all its facets; and
- Advise on the implementation of the recommendations of The Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State (the Zondo Commission) from a strategic and systemic perspective.

NACAC prioritised key aspects of its mandate, while addressing other tasks as its resources allowed. NACAC's most important contribution has been to lay the groundwork for South Africa's new anti-corruption agency. This new, independent, overarching institution will play a leading role in the country's anti-corruption effort, in collaboration with existing LEAs, which need to be strengthened to better address corruption.

This work supports South Africa's compliance with its international obligations. The United Nations Convention against Corruption (UNCAC) requires countries to ensure the existence of a body or bodies that prevent corruption (Article 6), and that specialise in combating corruption through law enforcement (Article 36). It provides that countries shall give these institutions enough independence and resources to carry out their work. NACAC is committed to supporting the government to fulfil these obligations.

## NACAC's way of working

Civil society partnered with government in a rich multi-stakeholder process over many years to develop the NACS. NACAC built on this foundation of anti-corruption work by civil society, citizens and many ethical government officials. NACAC also drew on the valuable work of the Zondo Commission – a unique South African accomplishment on the road away from corruption and towards greater integrity.

NACAC established several workstreams, some of which established reference groups that brought together external experts on a specific topic. Reference group members provided inputs and contributed to the development of advisories. NACAC adopted a consultative approach to its work, engaging with a large number of organisations involved in the anti-corruption struggle in South Africa. NACAC commissioned research from institutions, worked closely with leaders of LEAs, and consulted academics and other experts. It held workshops to engage with stakeholders and sector experts and went on learning journey-exchanges with international counterparts.

These numerous engagements allowed NACAC to obtain deep and varied evidence for its advice to the President. Despite NACAC's efforts, engagement with some stakeholders, notably the DOJ&CD and the SAPS, proved difficult. More details on NACAC's work are in Appendix T.

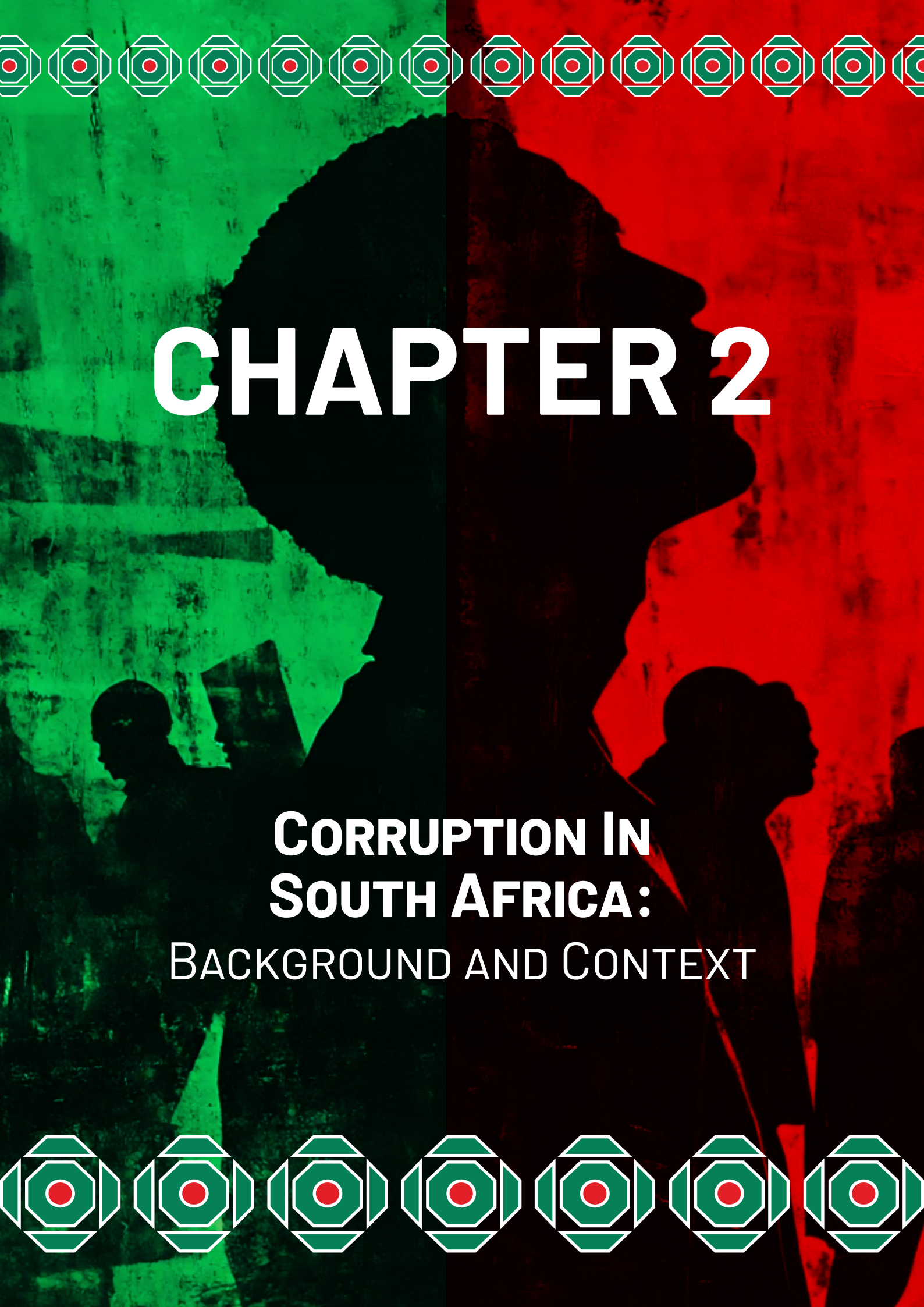
NACAC's decisions were taken at plenary meetings on a consensus-based approach, underpinned by full and robust discussion by Councillors. Advisories to the President were approved by the full Council before submission to the President.

NACAC delivered its mid-term report to the President in May 2024. The mid-term report (Appendix G) described the work and key milestones achieved by NACAC in executing its mandate, from its inception in 22 September 2022 to 31 March 2024. The report was also presented to the State Capture Commission Steering Committee on 16 September 2024, and to the JCPS Cluster on 5 November 2024. The Ministry of Justice and Constitutional Development was asked to champion the recommendation for the OPI and to ensure that these recommendations were considered by the JCPS Ministerial Cluster.

For Phase 2 of its work (May 2024 – August 2025) NACAC prioritised three areas of work, setting up three workstreams focused on:

- Refining the proposal for the proposed OPI;
- Strengthening of the existing anti-corruption LEAs; and
- Communications for an all-of-government and all-of-society approach to combatting corruption.

NACAC would like to thank all those who have contributed their time and support to the work of NACAC (Appendix U), including the secretariat staff; members of the reference groups; members of government, civil society and the private sector; Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ); the United Nations Office of Drugs and Crime (UNODC); and other development and technical assistance partners such as the Public Affairs Research Institute (PARI), the Dullah Omar Institute, the African Policing Civilian Oversight Forum (APCOF), and the Institute for Security Studies (ISS). Special thanks is due to the Public Service Commission (PSC) which co-hosted the national dialogues. Thanks too to Prof. Chris Stone of Oxford University for his support and advice, and to Colette Ashton and Tersia Lewis for their hard work in pulling this report together.



# CHAPTER 2

## Corruption In South Africa:

### Background and Context

# Corruption In South Africa: Background and Context

Understanding corruption is essential to designing effective remedies. As such, NACAC commissioned research on the drivers and types of corruption in South Africa.

## Drivers of corruption

There are various drivers of corruption in South Africa, including economic inequality, poverty and a legacy of state corruption from colonial and apartheid governments. There are other drivers such as weak institutions and political patronage networks. While government is the 'demand side' of corruption, the private sector is the 'supply side'. Research shows that social norms – peoples' expectations about how others think they should behave – are also a strong driver of corrupt behaviour.[2]

The Human Sciences Research Council (HSRC) survey on social norms and behaviour change (Appendix N) found that public trust in government is declining. Many South Africans believe that accepting bribes is permissible. Only 45% of respondents said that they would report corrupt behaviour. Fear emerged as a factor and a clear majority of the population sampled felt that reporting corruption could bring retaliation from the community in which they lived. Many people thought that inadequate law enforcement was part of the problem.

There is a lack of 'primary empirical research' into corruption in South Africa – which makes it difficult to understand the drivers of corruption in depth.[3] This is a challenge for reformers, "because understanding local contextualities is crucial to effective anti-corruption design and implementation".[4] More robust empirical research into the drivers of corruption, particularly at provincial, local, and sector-specific levels, is needed to inform policy in South Africa in future.

## Types of corruption

### State capture

Corruption manifests in many forms. One particularly destructive form of corruption which South Africa has experienced is state capture. The Zondo Commission defined state capture as a systematic project where a group of actors, inside and outside of the state, conspire to redirect state resources for their own gain. This process involves weakening or exploiting key state institutions and public entities, manipulating public narratives and undermining oversight mechanisms.[5] State capture left in its wake many damaged institutions vulnerable to systemic corruption.

2 C. Scharbatke-Church & D. Chigas. 2019. Understanding Social Norms: A Reference Guide for Policy and Practice. The Fletcher School: Tufts University. www.kpsrl.org/sites/default/files/2019-11/SN_CorruptionRefGuide_AUG2019-linked.MR__0.pdf

3 T. Amanquandor. 2024. Limitations of the international approach to anti-corruption: a systematic review of South Africa's compelling case of failing anti-corruption. Crime, Law and Social Change, Vol 82. Pp 493-516. www.link.springer.com/article/10.1007/s10611-024-10152-y

4 T. Amanquandor. 2024. Limitations of the international approach to anti-corruption: a systematic review of South Africa's compelling case of failing anti-corruption. Crime, Law and Social Change, Vol 82. Pp 493-516. www.link.springer.com/article/10.1007/s10611-024-10152-y

5 Judicial Commission of Inquiry into State Capture Report. Part VI, Vol 2. Pp 5-40. www.statecapture.org.za/site/files/announcements/670/OCR_version_-_State_Capture_Commission_Report_Part_VI_Vol_II_-_CR.pdf

## Systemic corruption

State capture is one manifestation of systemic corruption. Corruption is systemic when it is deeply embedded in the structures and functioning of an organisation, institution, or society. It occurs when corruption is not limited to isolated cases but becomes a regular, normalised, and pervasive feature in an organisation, sector or society. Systemic corruption does not always involve criminal acts and is not necessarily punishable through criminal law. It is always unethical, but not always criminal. It is widespread in South Africa.

Systemic corruption involves hidden networks of public and private actors that distort and capture democratic and state processes to facilitate the misuse of public authority for their own personal and political advantage. These networks are governed by unwritten rules and are held in place by rewards (including promotion) or punishments (including bullying and even death threats). Systemic corruption has eroded the value systems of state institutions, turning their purpose from *ubuntu* to personal and political gain (see Appendix B, p 9).

Taking account of definitions by the World Bank, Transparency International, UNODC and the Anti-Corruption Resource Centre, systemic corruption has the following key characteristics:

- **Commonplace and institutionalised:** Systemic corruption describes environments where corrupt practices have become commonplace, institutionalised, or normalised (also called 'legal corruption').
- **Political decay:** Corruption becomes integral to the system, often involving those in power shaping the system to serve corrupt ends.
- **Everyday experience:** Systemic corruption refers to environments where corruption, such as bribery, is a common experience for the population in their interactions with the state.
- **Collective norm:** Systemic corruption can function as a collective norm, tolerated or even encouraged by those in power, and supported by low levels of trust that others will behave non-corruptly (see Appendix B, p 10).

## Frontline corruption

Systemic corruption may include frontline corruption, including corruption in access to public services such as health, police services and education. Frontline corruption refers to corruption or the abuse of power at the point where the public interact daily with the state, such as clinics, schools, police stations, licensing departments, or grant offices. It typically involves informal payments, favours, or coercion, demanded by public officials in exchange for basic services where access should be a matter of right.

While often dismissed as "small-scale" or "petty", frontline corruption can be systemic in nature. It reinforces inequality, weakens trust in public institutions, and entrenches exclusion – particularly for the poor, marginalised, or politically disempowered people who may not be able to offer gratification to unlock access to public goods, services or opportunities they should otherwise be able to access freely or by operation of established procedures. Additionally, it can distort political behaviour by entrenching patronage networks, eroding accountability, and undermining democratic participation. Over time, frontline corruption shifts the very terms on which the public relate to the state, from one of rights and services to one of survival, favours, and transactions. And frontline corruption – as the examples cited above illustrate – also targets some of the largest procurement budgets in the public sector.

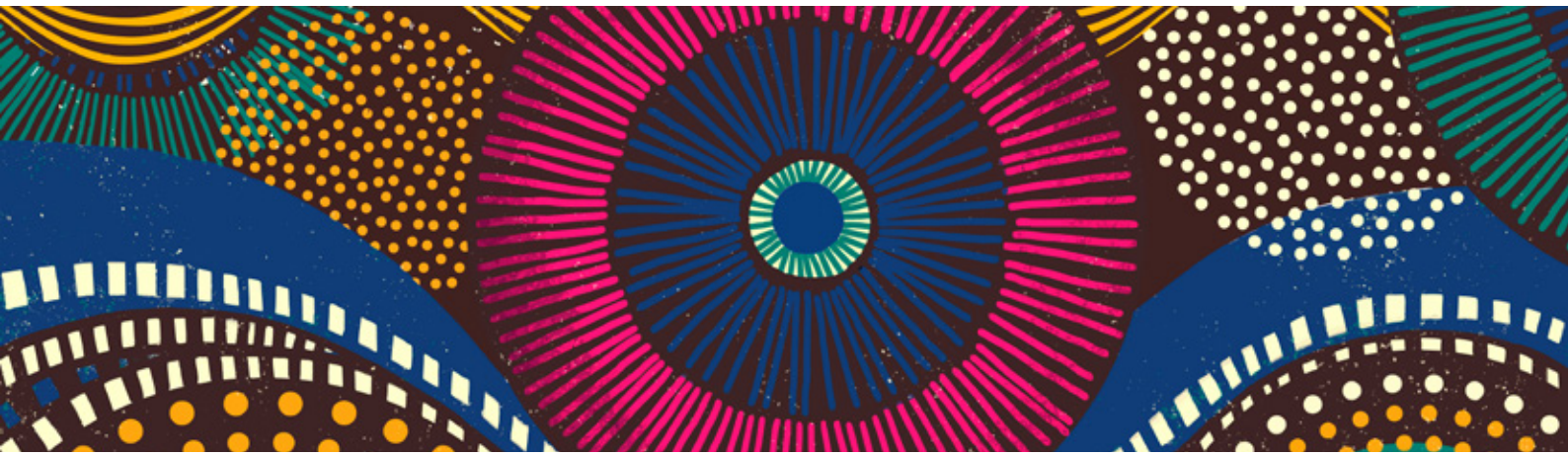
## The impact of corruption

Regardless of how one defines corruption, its impact is highly corrosive. Corruption in South Africa has caused far-reaching damage, impacting on the economy, the ability of state institutions to effectively carry out their service delivery functions, confidence in the private sector and the country's reputation, as well as public trust. Financial losses as a result of corruption are starkly illustrated by the Zondo Commission's investigations.

The Commission estimated the total amount of money spent by the state which was 'tainted' by state capture to be around R57 billion.[6] Other estimates which take a wider view place the figure in the region of R1.5 trillion in losses to the budget, debt servicing costs, lost tax revenue collection, project overspends, and losses from the value of South African bonds and listed companies.[7] A South African Reserve Bank economist estimated that the economic impact of state capture in South Africa amounted to 4% of GDP growth.[8]

Failure to control economic crime and corruption has additional consequences. In 2023 South Africa was added to the Financial Action Task Force's (FATF) list of "Jurisdictions under Increased Monitoring" or grey list. Being on the grey list signals that a country needs to address weaknesses in its anti-money laundering and counter terrorism finance frameworks and makes doing any business in the country more difficult, so that the country becomes less competitive. It comes with significant reputational damage and damages sentiment towards the economy.

In the past two years, South Africa has taken significant steps to improve these frameworks and the country is likely to exit the grey list in October 2025. This positive development will bring a measure of economic relief.



6 Public Affairs Research Institute. 2022. The Zondo Commission: A bite-sized summary. P 6. https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf

7 Marianne Merten. Daily Maverick. 2019. State capture wipes out third of SA's R4.9-trillion GDP – never mind lost trust, confidence, opportunity. https://www.dailymaverick.co.za/article/2019-03-01-state-capture-wipes-out-third-of-sas-r4-9-trillion-gdp-never-mind-lost-trust-confidence-opportunity/

8 News24. 2024. Damage from state capture 'worse than suspected' – SARB. https://www.news24.com/business/damage-from-state-capture-worse-than-suspected-sarb-20190606

However, the proliferation of organised crime, which is facilitated by corruption, sees South Africa scoring poorly for criminality syndicated activities by ENACT's Global Organised Crime Index (GOCI). South Africa has become a major transit and destination country for drug trafficking, and crimes such as kidnappings and extortion are on the rise. Local and foreign criminals seek and find refuge in the country and are able to evade arrest through bribery of border and police officials.[9]

As mentioned, the differentiated impact of corruption means that women, youth, people living with disabilities, and those with fewer resources and those highly dependent on public services, such as poor rural and urban households, often bear a disproportionately higher burden. The health sector is an example of a sector where corruption is rife in both the private and public sector. Rampant procurement corruption, corrupt employment practices, theft and medical claims fraud have reduced access to healthcare for the most vulnerable in society.

The extent of the harm done by corruption was acknowledged by the President at the inaugural National Dialogue on Anti-Corruption in 2023, where he said:

> "Corruption has wounded our democracy and shaken people's faith in our institutions. If corruption is not arrested, the greatest damage will not be in the funds stolen, the jobs lost or the services not delivered. The greatest damage will be to the belief in democracy itself."[10]

## Responses to corruption

There is currently impunity for perpetrators of serious corruption in South Africa.[11] Continued impunity for powerful and politically exposed people implicated in corruption is responsible for eroding public trust in government. NACAC regards the current crisis in law enforcement as a threat to the stability and future of South Africa. Making recommendations to strengthen anti-corruption enforcement was therefore a key focus area of NACAC.

Prosecution of complex, systemic corruption in particular requires significant financial and human resources, and can take years. It is globally recognised that a law enforcement approach to addressing corruption is necessary, but not sufficient, and must be paired with a strong preventive strategy.

Corruption prevention is as important as anti-corruption enforcement. It helps to tackle corruption before it can result in serious negative consequences and addresses its root causes. The UNCAC, the Organisation for Economic Cooperation and Development (OECD) Anti-Bribery Convention, the NDP, and the NACS all emphasise the importance of corruption prevention. The NACS is premised on the approach that prevention must be emphasised at least as strongly as reactive measures. Six of the NACS's seven strategic objectives have a direct corruption prevention focus.

Corruption prevention refers to the proactive measures and strategies implemented to deter, detect, and eliminate the root causes of corruption before it can occur or cause significant harm. Corruption prevention methods include:

[9] ENACT. Africa Organised Crime Index. 2023. Increasing criminality, growing vulnerabilities. https:enact-africa.s3.amazonaws.com/uploads/pages/1708078753063-2023-11-24-oci-africa-final.pdf

[10] President Cyril Ramaphosa. 2023. Keynote address: National Dialogue on Anti-Corruption. https://www.thepresidency.gov.za/keynote-address-president-cyril-ramaphosa-national-dialogue-anti-corruption-birchwood-hotel-gauteng

[11] National Prosecuting Authority. 2021. Annual Report. P 8.

**1. Promoting transparency and open government through, for example,**

- **Access to information laws:** Ensuring public access to government records and decision-making processes.
- **Open budgets and spending:** Publishing budgets, procurement data, and government contracts.
- **Public disclosure of assets:** Requiring officials to declare assets, incomes, and interests.

**2. Strengthening accountability through, for example,**

- **Internal controls:** Establishing clear procedures, checks and balances, and oversight within institutions.
- **Codes of conduct and ethics:** Implementing clear rules for public officials' behaviour.
- **Independent oversight bodies:** Strengthening agencies tasked with anti-corruption oversight including auditors-general.
- **Whistleblower protection:** Providing safe channels and legal protection for reporting wrongdoing.

**3. Improving governance and institutions through, for example,**

- **Professionalisation of the civil services:** Merit-based recruitment and promotion to reduce patronage and nepotism.
- **Institutional capacity building:** Training public servants on ethics, integrity, and anti-corruption measures.
- **Streamlining bureaucracy:** Simplifying overly complex procedures to reduce opportunities for corruption.

**4. Promoting civic engagement and public awareness through, for example,**

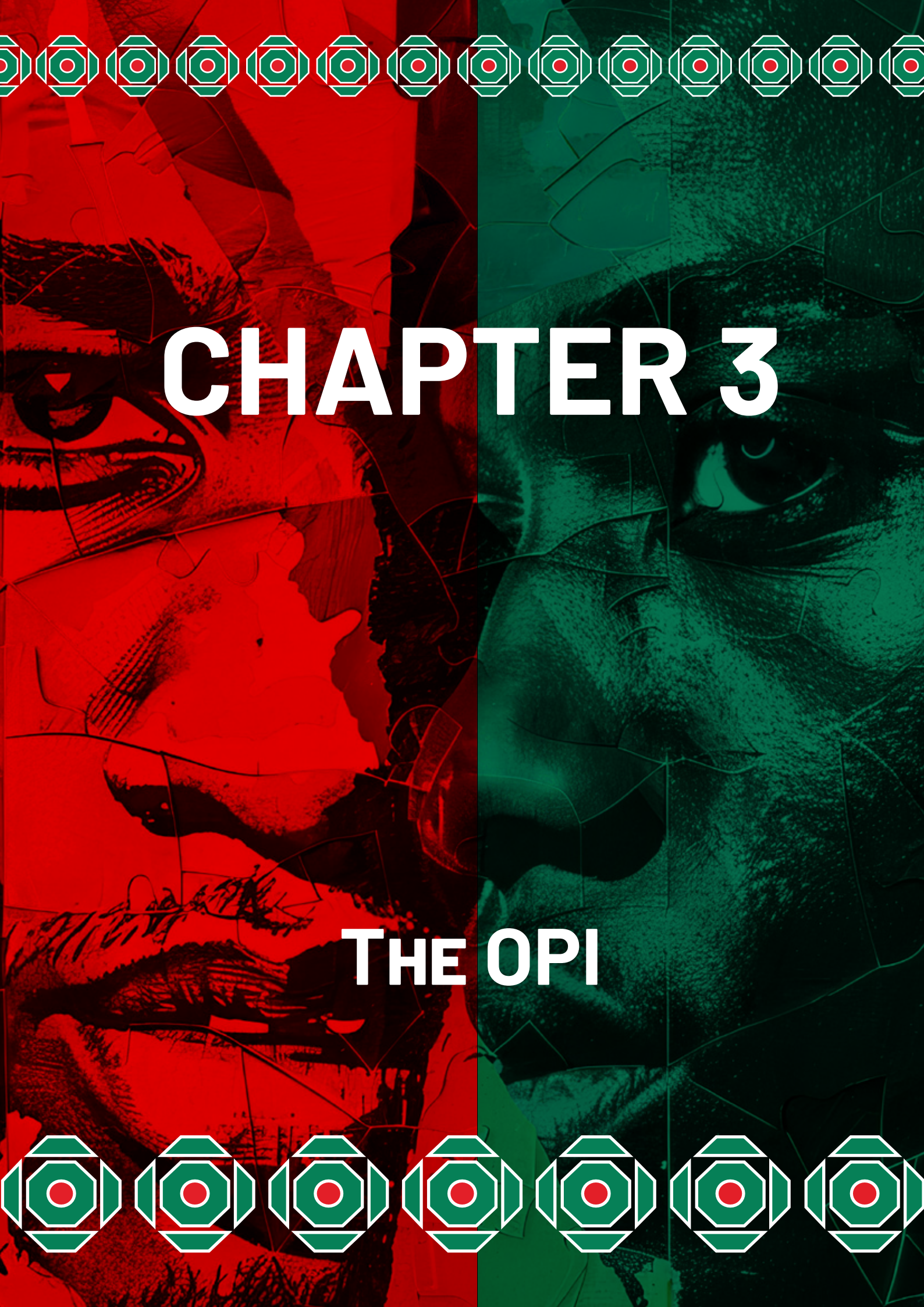
- **Civic education campaigns:** Informing citizens about their rights and how to report corruption.
- **Engaging civil society and media:** Supporting investigative journalism and NGOs in monitoring corruption.
- **Social norms change:** Engaging with officials and the public in programmes to change pro-corruption social norms.

**5. Risk management and corruption proofing through, for example,**

- **Corruption risk assessments and remedial action:** Identifying sectors or processes most vulnerable to corruption and implementing remedial action.
- **Audit and monitoring systems:** Routine audits and performance monitoring of public programmes.

As a signatory to UNCAC, South Africa is obliged to give effect to the provisions of the Convention. In terms of articles 6 and 36 of UNCAC, state parties have an obligation to establish a body or bodies that are dedicated to preventing corruption. These bodies must be able to discharge their functions in an independent manner. Independence means these bodies must discharge their functions without any undue influence from anyone. States have an obligation to provide the necessary material resources and specialised staff, as well as the training that such staff may need to carry out their functions. The African Union Convention on Preventing and Combatting Corruption and the Southern African Development Community Protocol Against Corruption, both of which South Africa is a signatory to, entail similar obligations.

It is important for South Africa to fully comply with these international obligations given the leading role it continues to play in global and continental anti-corruption structures. In December 2024, South Africa assumed the chairmanship of the G20, and with that, leads the G20 Anti-Corruption Working Group (ACWG). South Africa also currently chairs the Association of Anti-Corruption Agencies in Commonwealth Africa (AAACOA), an organisation that works to strengthen anti-corruption efforts across Commonwealth African countries and will keep the chairperson's seat throughout the 2025-2026 term.



# CHAPTER 3

## The OPI

## Establishing the OPI

The Zondo Commission recommended that:

> "...a permanent Commission be established the main function of which will be to investigate, publicly expose acts of state capture and corruption in the way that this Commission did over the past four years, make findings and recommendations to the President. Such a Commission could be called the Anti-State Capture and Corruption Commission."[12]

The Zondo Commission also recommended that:

> "Government introduce legislation for the establishment of an independent Public Procurement Anti-Corruption Agency (PPACA)... as an independent body subject only to the Constitution and the law; which has jurisdiction throughout the Republic; which is impartial and must perform its functions without fear, favour or prejudice; which is financed from: money that is appropriated by Parliament for the Agency; fees payable to the Agency by all tenderers for public procurement contracts; money received from any other source."[13]

NACAC considered these recommendations and the requirements of the UNCAC, which requires countries to:

> "ensure the existence of a body or bodies to prevent corruption... implement and coordinate anti-corruption policies, increase and disseminate knowledge about corruption prevention, and oversee preventive measures."

The UNCAC provides that these bodies must have independence and sufficient resources to carry out their functions free from undue influence.

NACAC considered the international standards for anti-corruption bodies known as the Jakarta Principles and studied the Constitutional Court's judgments in the *Glenister* cases. It conducted research on appropriate institutional arrangements and discussed options with the heads of government institutions, including the Public Protector of South Africa, the PSC, and the SIU. NACAC consulted former Chief Justice Zondo and legal officers of the State Capture Commission, LEA heads from the NPA and DPCI, as well as experts from academia and civil society.

NACAC learned much from study tours to Kenya, Serbia, Lithuania and Hong Kong (see Appendices P, Q and R) allowing us to interact with institutions – new and old – that have tackled related challenges across our continent and elsewhere in the world.

---

12 Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State. 2022. Volume 4: Summary of Recommendations. P 186. https://www.statecapture.org.za/site/files/announcements/672/OCR_version_-_State_Capture_Commission_Report_Part_VI_Vol_IV_-_Recommendations.pdf

13 Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State. 2022. Volume 4: Summary of Recommendations. P 17. https://www.statecapture.org.za/site/files/announcements/672/OCR_version_-_State_Capture_Commission_Report_Part_VI_Vol_IV_-_Recommendations.pdf

*Figure 3: Learning journey to Hong Kong. March 2024*

*Figure 4: NACAC members engage with members of the Ethics and Anti-Corruption Commission on the learning journey to Kenya. 2023*

Based on this work, NACAC recommends the establishment of a permanent, independent, overarching anti-corruption body.

**Recommendation 1 – Establish a new anti-corruption agency as a permanent, independent institution in terms of Chapter 9 of the Constitution.**

NACAC recommends that the OPI is established as a Chapter 9 institution with the mandate to prevent, investigate and remedy systemic corruption involving government and other organs of state and to enhance transparency and integrity in their workings.

This recommendation is in alignment with the NACS, which states:

> "This overarching body will drive strategy roll-out and coordinate all the anti-corruption activities in the country. It is premised on an integrated operational model with cross-sectoral collaboration, in line with the country's whole-of-government and whole-of-society approach to combating corruption." (NACS, P 51)

This strategic intent of the NACS was reiterated by President Ramaphosa in his 2021 State of the Nation Address, where he explained that he is relying on NACAC to "oversee the initial implementation of the strategy and the establishment of an independent statutory anti-corruption body that reports to Parliament".

## Systemic corruption poses a serious challenge to democracy

NACAC's mid-term report described how South Africa "face[s] challenges to our democracy from systemic corruption that are distinct from challenges elsewhere and are particular to our society, our history, and our continuing struggles."[14] Drawing from the findings of the Zondo Commission and engagements with social partners including the leadership of the LEAs, NACAC concluded that "the institutional mechanisms of our young democracy have failed and been harmed most dramatically. Corruption has affected the functioning of public institutions and impacted negatively on public welfare and the delivery of public services."[15]

The preamble to the Prevention and Combatting of Corrupt Activities Act (PRECCA) expounds on the corrosive effects of corruption on social and political life, and the duty of the state to take all necessary measures to fight corruption effectively and efficiently as part of its obligation to respect, protect, promote and fulfil the rights enshrined in the Bill of Rights.

The PRECCA, along with other legislation, provides for a suite of LEAs responsible for **reacting** to corruption through a multi-agency approach. The continued prevalence of systemic corruption despite the existence of this law enforcement architecture is a clear indication that a complementary **preventive** institution is also required to reduce corruption.

14 NACAC. 2024. Mid-Term Report to the President, the Cabinet and the Country. P 7.

15 NACAC. 2024. Mid-Term Report to the President, the Cabinet and the Country. P 9.

## Why a Chapter 9 institution?

In *Glenister II* the Constitutional Court held:

> "SA needs an agency dedicated to the containment and eventual eradication of the scourge of corruption. We also agree that the entity must enjoy adequate structural and operational independence to deliver effectively and efficiently on its core mandate."[16]

Establishing the OPI as a Chapter 9 institution responds to two imperatives. Firstly, it signals the seriousness with which society and government view corruption and the risk it poses to our constitutional democracy. A proper response to this risk requires the establishment of an institution with a **dedicated** rather than merely incidental mandate of corruption prevention. This institution should have extensive powers of intervention such as the other Chapter 9 institutions which support and strengthen constitutional democracy. This would be in keeping with the seriousness with which the drafters of PRECCA viewed the risk that corruption poses to South Africa's constitutional democracy.

Secondly, establishing the OPI as a Chapter 9 institution would provide legal safeguards for its **independence** and would mitigate the risk of executive interference by removing the institution from the direct sphere of influence of an executive authority. It would depoliticise the OPI's mandate and functions by making it accountable to parliament. Most importantly, entrenching the OPI as a Chapter 9 institution would require a two-thirds majority in parliament to disband it. This would help to protect the OPI from suffering the same fate as the Directorate of Special Operations (DSO or 'Scorpions'), founded in terms of mere statute, which was dissolved with a simple parliamentary majority in 2009.[17]

Chapter 9 of the Constitution provides for a range of institutions supporting constitutional democracy that have related and sometimes overlapping mandates that are, for various reasons, not always properly fulfilled. NACAC's proposal to introduce a new Chapter 9 institution was not made lightly. NACAC concluded that it would enable existing Chapter 9 institutions with overlapping corruption investigation mandates to carry out their primary mandates which would complement the OPI's dedicated mandate to prevent, investigate and remedy **systemic corruption.**

In taking the establishment of the OPI forward, if its establishment as a Chapter 9 institution will significantly delay its establishment, the option exists to establish it as a statutory body with the intention to transform it into a Chapter 9 institution when the correct circumstances arise. Attention will also have to be paid to ensuring that the proposed functions and powers are in no way constrained by its Chapter 9 status.

16 *Glenister v The President of the Republic of South Africa* 2011 (7) BCLR 651 (CC), Para 2.

17 Berning, J. & Montesh. M., 'Countering corruption in South Africa: The Rise and Fall of the Scorpions and Hawks.' SA Crime Quarterly No. 39. Pp 3-11. https://issafrica.s3.amazonaws.com/site/uploads/CQno39March12.pdf

## Urgency of action

The establishment of a permanent anti-corruption body is urgent. The NACS, adopted in 2020, anticipated that "[i]t will take some time, possibly up to two years, before a permanent body will be in place, with the required legislation passed, and appointments and budgets finalised."

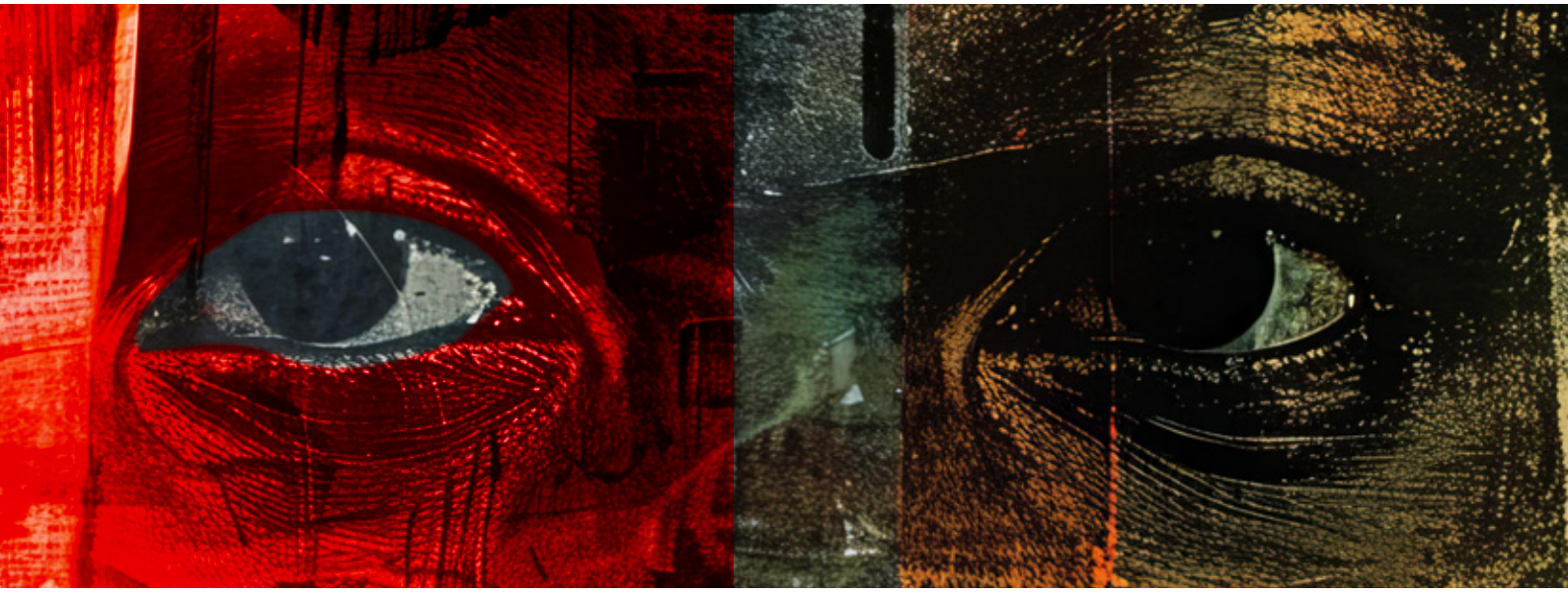
The establishment of the new anti-corruption body is therefore already **overdue** and swift action is required by the DOJ&CD to draft the necessary legislation for the OPI and to expedite its processing through parliament.

**Recommendation 2 – Retain and strengthen the multi-agency approach to anti-corruption enforcement**

NACAC recommends that South Africa should retain its multi-institutional architecture rather than consolidating all anti-corruption powers and functions in a single institution. This is in line with international law, standards and good practice. For this to be effective, it is necessary to strengthen existing bodies tasked with anti-corruption functions, and the cooperation between them – strategically locating the OPI within a multi-agency framework of organisations with **complementary** powers and functions. The effective functioning of the multi-agency system requires clear mandates, effective coordination and cooperation between agencies.

South Africa has a successful model of inter-agency cooperation in the Fusion Centre. This initiative proved that a **collaborative**, intelligence-driven, and multi-agency approach is essential for effectively investigating and prosecuting complex financial crimes, including corruption and fraud. The Fusion Centre brings together key institutions like the NPA, SIU, SAPS, Financial Intelligence Centre (FIC), and South African Revenue Service (SARS), and others to share data, expertise, and resources, resulting in faster case resolution and successful convictions.

The OPI should adopt this collaborative and multi-disciplinary approach which is critical to dismantling systemic corruption without duplicating or encroaching on the distinct and successful capability the Fusion Centre has modelled. Further to this, the OPI should continue to have a relationship with the Fusion Centre which incorporates the role the SIU has played thus far.



## Building on the successes of the SIU

**Recommendation 3 – The OPI should absorb the mission, powers, and resources of the SIU, maintaining its full portfolio of work, thus enabling the OPI to be operational with immediate effect and adding to its functions, powers, staff, and resources.**

Absorbing the SIU into the OPI will:

- enable the OPI to move forward swiftly and avoid the costs and inefficiencies of adding an entirely new state institution to the existing array;
- provide an operational foundation with already-skilled investigators, legal experts, and digital forensic capacity;
- enable continuity by embedding existing tools, systems, and institutional knowledge;
- accelerate the functionality of the OPI, reducing the lead time required for capacity development;
- ensure the OPI enters the system with proven investigation and recovery capability, leveraging the SIU's existing case load, infrastructure, and footprint;
- avoid duplication and streamline mandates, avoiding parallel investigations and overlapping mandates between the OPI and the SIU.

Until the OPI has been established, all lawful and practical measures should be taken to **empower the SIU** to start implementing the relevant and appropriate aspects of the OPI mandate and functions.

## Mandate

**Recommendation 4 – The mandate of the OPI should be to prevent, investigate and remedy systemic corruption involving government and other organs of state and to enhance transparency and integrity in their workings.**

The OPI should have a mandate to prevent systemic corruption by:

- leading social mobilisation, **behaviour change,** public awareness and education programmes;
- conducting **systemic audits** into public institutions either as a function of a request or special projects determined by itself – systematic reviews of institutional policies and practices guided by risk-based frameworks appropriate to the institution, industry and/or sector;
- conducting **civil investigations** into systemic corruption, either through a Presidential Proclamation or of its own accord and in line with the mandate given to it by new enabling legislation;
- providing policy guidance and **binding directives** on corruption-risk reduction measures to any and all organs of state;
- protecting and supporting **whistleblowers**, ensuring that those who expose corruption are safeguarded from retaliation; and
- conducting research.

Social mobilisation, behaviour change, and public awareness and education should be key components of the OPI's strategy to prevent systemic corruption. The OPI should lead efforts to foster integrity and anti-corruption values from a young age, engaging with educational institutions, communities, and the private sector. The OPI should partner with government, civil society and private institutions to provide guidance on changing social norms across society.

## Functions

To fulfil its mandate, NACAC recommends that the OPI should be empowered and appropriately resourced to perform a range of functions related to the prevention of systemic corruption. The key functions are outlined below. Full details on the proposed functions are given in Appendix A.

**Recommendation 5 – The OPI should perform the following functions: civil investigations, risk mapping and systemic audits into government institutions, policies, and practices.**

The OPI should conduct investigations into systemic corruption involving government or any organs of state. Investigations should be triggered either by proclamation of the President of the Republic of South Africa, or by a decision of the OPI. Currently, the SIU's ability to undertake investigations and litigate for preservation and civil forfeiture orders depends on a presidential proclamation. This poses serious and inherent risks for the independence of the organisation and the anti-corruption role it plays. The ability of the SIU to achieve the exemplary track-record it has even through the state capture years is not because but in spite of this arrangement. We therefore propose that in addition to acting on the basis of a presidential proclamation, **the OPI should be able to undertake investigations of its own accord.**

Investigating systemic corruption effectively requires predictive analysis using data-driven methods potentially empowered by AI. This will enable the OPI to compile **risk maps** of public institutions, and their exposure to corruption risk. Systemic audits will enable the OPI to assess and determine the nature, scope and drivers of these risks, and issue recommendations to mitigate them and prevent loss. This may include recommending and enforcing consequence management measures.

The OPI should perform the following functions:

- develop frameworks and measures to monitor, inspect, detect and expose corruption risk, and enhance transparency and accountability in government and other organs of state;
- conduct audits into the corruption risk of institutional policies and practices in government and other organs of state; and
- conduct audits into systemic corruption involving government or any organs of state.

**Recommendation 6 – The OPI should coordinate the implementation of the NACS.**

NACAC recommends that the OPI should drive the long-term roll-out of the NACS. It should advise the government on policy measures to advance the NACS, to educate and mobilise the public, to gather and analyse data relevant to corruption and anti-corruption, and to develop relevant frameworks and measures to prevent, investigate and remedy corruption.

This is in line with the NACS which calls for the new anti-corruption agency to "drive the long-term roll-out of the strategy and all its related programmes". Neither the NACS nor NACAC imagines that the OPI would undertake all the activities required to drive the NACS on its own, but it is anticipated that the OPI will drive the implementation of this strategy across the whole of government and society and monitor its implementation and effectiveness.

**Recommendation 7 – The OPI should remedy systemic corruption in government institutions or organs of state.**

NACAC recommends that the OPI should partner with government institutions to remedy systemic corruption in various ways. It should:

- develop and issue standards and guidelines for organs of state to mitigate systemic corruption risk and/or promote integrity;
- provide advice to organs of state in the field of remedying systemic corruption and promoting integrity;
- train staff of government institutions to uphold integrity measures; and
- recommend the development of government policies and legislation for mitigating the risk of systemic corruption and promoting integrity.

**Recommendation 8 – The OPI should protect and support whistleblowers.**

The protection of whistleblowers is an integral part in the fight against corruption and upholding our democracy. Positioning the OPI to play an oversight role in ensuring that the Zondo Commission's recommendations on the protection of whistleblowers are implemented would demonstrate a decisive and urgent commitment to protecting those who expose corruption, reinforce the OPI's institutional integrity, and elevate it as a trusted defender of public interest. Restoring public confidence, fostering a culture of accountability, and ensuring that disclosures are not silenced by fear or intimidation is essential.

A whistleblower protection and support function should be located in the OPI. It should:

- receive and review whistleblower disclosures and refer these to the appropriate authorities;
- lead whistleblower protection and support functions across government in line with relevant whistleblower legislation;
- receive and manage dedicated resources for the protection and support of whistleblowers;
- advise on and support the implementation of any national, provincial or local policy and legislation, as well as institutional policies and practices, on the appropriate treatment of disclosures, and protection and support of whistleblowers.

NACAC understands the plight of whistleblowers and takes their struggles seriously. Interim arrangements for their support and protection should be put in place urgently. The SIU currently supports whistleblowers, including through its institutional partnership with civil society organisation Whistleblower House. The SIU should be empowered and resourced to protect and support whistleblowers on an urgent basis until the OPI is established.

## Powers

The OPI's powers must be carefully framed in law to ensure that it has the authority to investigate systemic corruption while avoiding an overly broad scope that allows it to pursue any matter arbitrarily.

**Recommendation 11 – The OPI should have powers to conduct investigations into systemic corruption.**

The OPI should have the powers necessary to conduct investigations into systemic corruption. These include:

- powers of search and seizure;
- powers to summon and interview witnesses under oath;
- powers to undertake joint operations with LEAs; and
- powers to publish reports on its investigations.

**Recommendation 12 – The OPI should be empowered to convene public hearings/public inquiries into systemic corruption.**

The Zondo Commission recommended the establishment of a permanent commission to investigate and expose acts of state capture and corruption, hold public hearings, and make findings and recommendations to the President. NACAC supports this recommendation and proposes that the OPI be given the necessary authority to convene public hearings/public inquiries into systemic corruption. This is a tested model in South Korea, for example, where the Anti-Corruption and Civil Rights Commission has used public hearings to promote transparency in systemic corruption cases.

**Recommendation 13 – The OPI should be empowered to apply to a court of law or a competent tribunal for asset recovery orders.**

Recovering stolen public money should be a top priority for the OPI, including the value of assets acquired through corrupt, irregular or unlawful conduct uncovered in the course of an inquiry into systemic corruption. For the OPI to recover money lost to corruption effectively, it requires strong asset recovery powers.

NACAC recommends that the OPI be granted powers to make civil applications for the preservation and forfeiture of assets. These should be aligned and exercised in collaboration with those of the AFU and subject to the provisions of the Prevention of Organised Crime Act (POCA).

The OPI should be empowered in law to apply for restraint, preservation or recovery orders, or any other relief necessary to protect property, which includes assets in South Africa and other countries, and any interest on or proceeds of these assets.

**Recommendation 14 – The OPI should have powers to issue binding recommendations for remedial action pursuant to its systemic audits or civil investigations.**

NACAC recommends that the OPI's recommendations arising from its public inquiries, audits and investigations of systemic corruption should be binding on the institution in the same way those of the Public Protector are.

The OPI should be empowered to supervise the implementation of those recommendations, apply to a court to enforce the implementation of the recommendations, and institute other civil proceedings incidental to its mandate.

**Recommendation 15 – The OPI should be funded in ways that support its independence, enable its resilience, and reflect its importance to the fiscus.**

NACAC recommends that the OPI should receive funds from the following sources:

- parliamentary appropriations;
- government institutions and organs of state for services rendered;
- a proportion of assets recovered;
- disbursements from the Criminal Asset Recovery Account; and
- appropriate donors, in ways that uphold the independence and integrity of the OPI.

**Recommendation 16 – The OPI should have independence over its human resources.**

NACAC recommends that the OPI should have statutory authority to create an organisation and to employ staff with expertise in particular areas. The OPI should have the power to independently recruit a multidisciplinary team with skills in forensics, data analysis, law, and public administration. The OPI should have the powers to set its own pay structures in order to be able to recruit suitably qualified staff. This approach aligns with global good practices, as seen by the UK's Serious Fraud Office (SFO) and Kenya's Ethics and Anti-Corruption Commission (EACC).

The OPI should have powers to obtain professional advice and assistance from organisations or persons it deems appropriate, including from the private sector.

**Recommendation 17 – The OPI's governance system must safeguard its integrity and independence.**

NACAC recommends that the governance system of the OPI must safeguard its integrity, and the appointment criteria for the head of the OPI should safeguard its independence.

NACAC recommends appointing a council of between five and nine members as the governing body of the OPI, with a CEO serving as the accounting officer, in line with the Constitution and the Public Finance Management Act. These members must be fit and proper persons, with suitable qualifications and experience, and with a record of honesty, integrity and outstanding service to society within the scope of the OPI's mandate and functions.

The OPI Council should be appointed by the President on the recommendation of parliament, following a rigorous process that is open to public scrutiny and participation. There should be similarly robust procedures in place for the removal of members.

This model, consistent with other Chapter 9 institutions, ensures clear separation between strategic oversight and operational execution, enhancing both accountability and efficiency. This should be embedded in the appointment procedures.

The chairperson of the OPI should direct the work and staff of the OPI. The OPI should appoint a chief financial officer who will be the accounting officer. The OPI should also appoint other executives as necessary for the proper performance of its mandate. Internal governance mechanisms should be set up to ensure there are sufficient checks and balances inside the organisation and the integrity of the OPI remains above reproach.

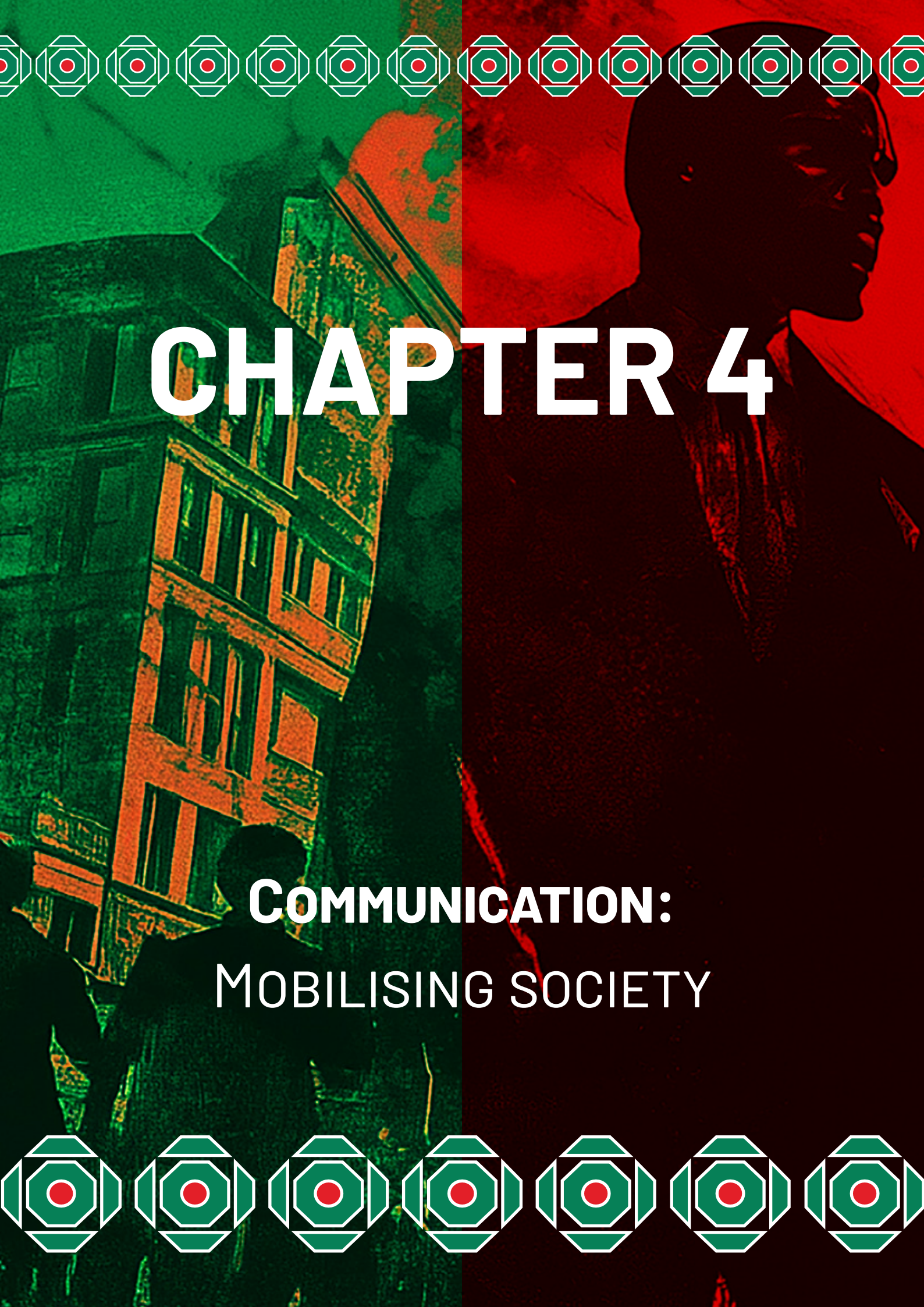
## Transitional arrangements

NACAC concludes that courageous, visible and sustained political leadership is necessary to implement its recommendations. NACAC urges government to take the following steps to build institutional alignment and momentum for implementation:

- Mandate the Minister of Justice and Constitutional Development to drive and oversee implementation of NACAC's recommendations regarding the OPI within the next three years.
- Empower the SIU to undertake the functions of the OPI not requiring legislative amendments in the transitional period.
- Dedicate substantial public resources to establish and sustain the functions of the OPI.

NACAC's detailed proposals for the establishment of the OPI are attached as Appendix A.
The research report commissioned by NACAC on the OPI is attached as Appendix B.

*Figure 5: NACAC members present the OPI proposal to the Presidency, represented by Minister of Justice and Constitutional Development, Ms Mmamoloko Kubayi – Union Buildings, Pretoria. July 2025*



# CHAPTER 4

## COMMUNICATION:

## MOBILISING SOCIETY

# Communication: Mobilising society

This chapter explains the importance of communication as an anti-corruption strategy to change value systems. It provides information about NACAC's work in this area and tells the stories of NACAC's public engagements. Finally, it sets out the role of the OPI in taking the communication strategy forward.

In NACAC's appointment letter, the President expressed the key principle that informs NACAC's work: **Combatting corruption is a task for 'all of government/all of society'.**

Combatting corruption is not a task for a single public agency – it is a task for all government departments and all public agencies which are obliged to embed the anti-corruption struggle in their daily work. Fighting corruption is not a task for government alone. It is a task for all of society and must be taken up by all people of South Africa in their homes, schools, workplaces, in their trade unions, their businesses, and their sports clubs.

Communication is key to mobilising the support of citizens for anti-corruption agencies. Anti-corruption fighters will have no reason to fear the wrath of the powerful if they enjoy the support of a well-informed public.

## NACS communication strategy

In 2022 a comprehensive communications and engagement strategy was developed to support the implementation of the NACS. This strategy mapped key stakeholder groups as well as their information needs and communications preferences. It also proposed umbrella messaging and a whole-of-society approach that aimed to build a culture of integrity and active citizenry. The NACS takes a long-term view, providing a communication and engagement framework, considering all sectors of society as key target audiences.

The NACS communication strategy has a dual focus: to build an identity for NACS and anti-corruption work, and to create a whole-of-society anti-corruption movement. It is based on four communication cornerstones: awareness, education, prevention and mobilisation.

NACAC picked up on the importance of communication and the mobilisation of society, both in relation to its own work and in relation to the longer-term fight against corruption. The sections below set out the work done by NACAC in relation to communication and mobilisation as well as the recommendations for a longer-term programme.

## National anti-corruption dialogues

One of NACAC's mandate areas was to host anti-corruption summits to revive multi-sectoral dialogues on corruption challenges and anti-corruption collaboration, a practice which had ceased a decade ago.

NACAC hosted several preparatory events for the national dialogues. There were two anti-corruption roadshows in North West and Limpopo provinces, hosted by the respective Premiers' offices.

*Figure 6: NACAC Deputy Chairperson, Nkosikazi Mhlauli, engages community members in the North West. 2023*

NACAC members also participated in a Futures Literary Laboratory (FLL) organised by GIZ, together with government departments, civil society, and academics, to explore the intersection of gender and corruption in preparation for the national anti-corruption dialogue on December 9, 2024. A FLL is a learning by doing collective intelligence process that involves getting participants to describe and imagine different kinds of futures in the context of a particular topic. The topic of this particular lab, "The Future of Gender and Trust in Governance in 2040", was chosen to engage participants in exploring the intersection of gender and corruption in South Africa. The year 2040 is significant as it marks 20 years since the launch of the NACS. Through the lab, participants engaged with different ways of using the future, imagining probable, preferred as well as strange and unexpected futures and generated a list of recommendations. See Appendix H for a full report on this exercise.

In November 2024 NACAC partnered with the Ahmed Kathrada Foundation and the Youth Coalition to host South Africa's first **Youth Anti-Corruption Dialogue,** where the youth developed their own anti-corruption pledge (See Appendix L).

*Figure 7: Youth Anti-Corruption Dialogue Attendees. November 2024*

Encouraging wider collaboration with and support for organisations empowering young people is critical. The inclusion of ethics and social values courses in the national school curriculum, a programme in the NACS, has yet to be designed and implemented.

## NACAC's two national dialogues, in 2023 and 2024

NACAC hosted two national dialogues. The 2023 National Dialogue was held on 8 and 9 November 2023 in Boksburg under the theme: "Together Building a Corruption-Free Society – Xelela Abanye, Bolella ba Bangwe, Vhudzani Vhanwe, Byelani Vanwani, Tell Others". It was attended by President Cyril Ramaphosa, Chief Justice Raymond Zondo, cabinet ministers, leaders of LEAs, representatives from the National Economic Development and Labour Council (NEDLAC), foreign dignitaries, civil society organisations, the media, and hundreds of South Africans.

The President's keynote address emphasised the need to strengthen the shared determination to build an ethical society:

> "While there is a long road ahead, the fight against corruption is gaining momentum. [...] We meet here as diverse constituencies, but with a common purpose. We are here to identify the further measures we need to take to build a South Africa that does not allow for corruption or capture. We are here to strengthen our shared determination to build an ethical society founded on the values of our democratic Constitution."[18]

Justice Zondo highlighted the need to protect whistleblowers and incentivise them in cases where money was recovered, saying,

[18] UNODC Regional Office for Southern Africa. 2023. The South African movement toward anti-corruption reform. https://www.unodc.org/rosaf/stories/2023/November/the-south-african-movement-toward-anti-corruption-reform.html

"Whistleblowers helped to stop State Capture. Everybody talks about the protection of whistleblowers, but all of you would be aware the commission went beyond that, recommending we incentivise them to blow the whistle..."[19]

The **2024 National Dialogue** was hosted by the Presidency, NACAC, and the PSC on 9 and 10 December in Boksburg, under the theme: "Uniting with youth against corruption: Shaping tomorrow's integrity". The event was attended in person by around 500 people, with many more online.

Day one featured panel-led group discussions on the following topics, aligned with the NACS pillars:

- Improving whistleblowing in South Africa and mainstreaming gender and youth into anti-corruption strategies (Pillar 1)
- Professionalisation of the public service (Pillar 2)
- Ethical governance and consequence management (Pillar 3)
- Credible, transparent procurement system (Pillar 4)
- Strengthening anti-corruption agencies (Pillar 5)
- Protecting vulnerable sectors and improving service delivery (Pillar 6)

Day two featured the launch of the NACAC Mid-Term Report, which outlined NACAC's progress, recommendations and vision for combatting systemic corruption in South Africa.

The outcomes and resolutions of two days of vigorous discussions were:

1. **Establishing the OPI**
   Participants endorsed the expedited establishment of the OPI as a Chapter 9 institution with Constitutional protections, to address systemic corruption, issue binding recommendations and lead preventive measures through public education and institutional capacity building.

2. **Strengthening whistleblower protections**
   The critical role of whistleblowers in exposing corruption and the need for urgent legislative reforms to strengthen protections was emphasised. Measures proposed included expanding the scope of the Protected Disclosures Act, criminalising retaliation and establishing independent bodies to manage disclosures and provide support. Public education campaigns were recommended to destigmatise whistleblowing and foster a culture of integrity.

3. **Transforming the public procurement system**
   The National Treasury's commitment to implementing an e-procurement system to address procurement, a key vulnerability in governance, was commended, with stakeholders emphasising the need for improved transparency, community oversight and the blacklisting of corrupt suppliers.

[19] Schreiber, S. Business Day. 2023. Pay whistleblowers, Zondo urges government. https://www.businesslive.co.za/bd/national/2023-11-09-pay-whistleblowers-zondo-urges-government/

4. **Enhancing the capacity and independence of anti-corruption agencies**
   In light of the significant resource constraints faced by anti-corruption agencies, recommendations included increased funding, enhancing forensic capabilities and establishing a dedicated unit with the NPA to prosecute complex corruption cases. Inter-agency cooperation, guided by a streamlined case management system, was recognised as critical to the fight against corruption.

5. **Professionalisation of the public sector**
   To establish a capable and developmental state, participants emphasised the necessity of mandatory ethics training, competency-based recruitment, and reforms in performance management.

6. **Inclusive anti-corruption strategies**
   Crafting gender sensitive anti-corruption policies and programmes, involving youth through innovative means such as social media, and empowering marginalised communities to engage in governance were recognised by participants as vital for tackling systemic inequalities and fostering ethical governance.

7. **Safeguarding vulnerable sectors and communities**
   Participants recognised that the impact of corruption on at-risk sectors – including health, education, and local government – highlights the necessity for targeted oversight and reform. Increased public engagement, enhanced mechanisms for service delivery, and greater accountability are critical priorities.

The dialogue laid the groundwork for a cohesive, action-oriented anti-corruption agenda by uniting stakeholders across sectors, underscoring the urgency of safeguarding South Africa's democratic and developmental future. See Appendix F for the full reports on the National Dialogue.

*Figure 8: National Dialogue. December 2024*

## The OPI's role in taking the NACS communication strategy forward

**Recommendation – The OPI should be responsible for the implementation of a national communication, education and behaviour change programme and should have an experienced and appropriately resourced communication capability.**

Research and consultations conducted by NACAC highlighted that future anti-corruption awareness-raising, behaviour change, communication, and education work should be driven by the OPI and should:

- be designed in accordance with behavioural psychology and social norms theory;
- reach communities in their own languages;
- include youth in anti-corruption awareness programmes; and
- adopt a gender-transformative approach.

The anti-corruption communication effort must inform and mobilise all of government and all of society. This cannot be done using the conventional approach – a small communications team informing society through a media liaison channel alone. This is a strategic function with social and behavioural change goals. It requires an experienced and appropriately resourced capability empowered with the capacity, creativity, independence and resources to drive major social and behavioural change communications campaigns that are capable of shifting the value system of South Africa's diverse public.

The OPI should be empowered to build on the NACS communication strategy and develop a plan that incorporates innovation to move beyond traditional messaging in order to shift attitudes and behaviour, increase knowledge so that corruption is better understood, and showcase success in order to build trust and affirm the intention of the majority of citizens to live with integrity. The strategy should be carefully targeted and tailored, using different channels and messages reflective of the lived experiences of individuals.

This communication work would cover the four elements of the NACS communication strategy. One of the mandate areas of the OPI would be to drive **social behaviour change communication,** a process of building an idea into a norm using a circle of communication that frequently includes peer opinion, information, education, and dialogue. Encircling audiences with layered messaging across various touchpoints helps to shift perceptions and attitudes and ultimately drive behaviour change.

A clear, well-researched theory of change (ToC), a planning and evaluation framework that maps out how and why a desired change is expected to happen in a given context, will enable the development of indicators that are aligned to each stage of change, making it possible to measure progress, assess effectiveness, and adapt strategies as needed. Without a strong ToC, monitoring and evaluation efforts risk missing the nuances of behaviour change or focusing on the wrong metrics.

However, no single institution can shift the needle on corruption and achieve social and behaviour change. We need society-wide ownership and participation. By enabling shared ownership, content development and amplification through an inclusive, values-driven partnership model led by the OPI, we can have a whole-of-society impact.

This communication effort should have **five strategic pillars:**

**Pillar 1: A bold and targeted communications approach** to address the 'corruption fatigue' and disengagement of the majority of South African residents;

**Pillar 2: Multi-channel communications strategy and audience segmentation** to address low awareness, trust gaps, and knowledge deficits by using mediums and messengers that audiences trust and are comfortable using;

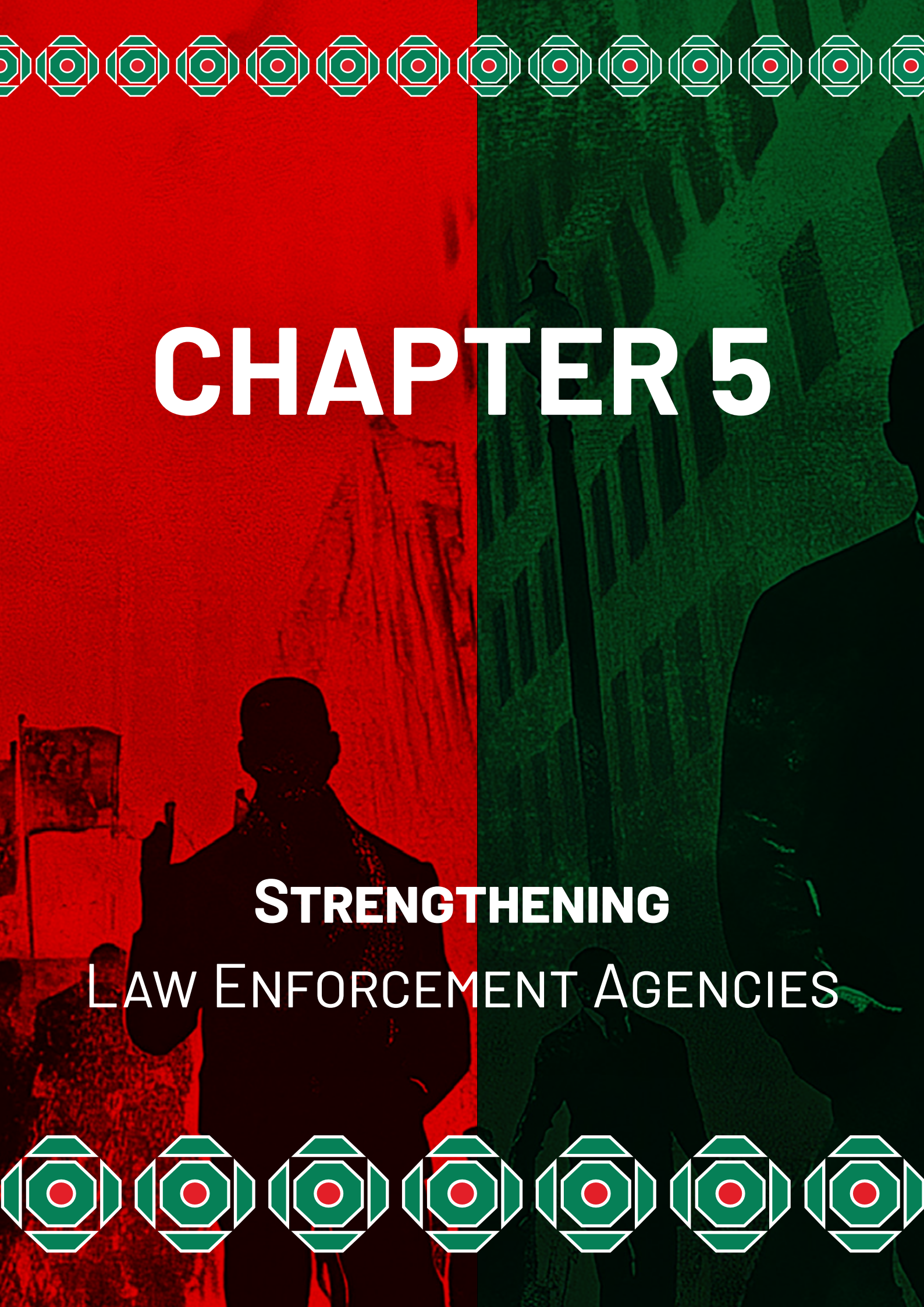
**Pillar 3: Operationalising a NCP,** under the leadership of the OPI, bringing together key communication partners from government, the private sector, the trade unions, civil society, and other relevant stakeholders to ensure solutions to the resourcing, coordination, legitimacy and fragmentation challenges that often plague similar processes. Until such time as the OPI has been established, the SIU should drive this partnership and the communication programme;

**Pillar 4: Lifelong engagement approach** to prevent shallow impact, campaign fatigue, lack of sustained change and moral and ethical erosion and to ensure engagement with children from a young age;

**Pillar 5: Well-resourced and professionally led** to address operational capacity, coordination failure, lack of data, and funding instability, and ensure that the approach is implemented as intended.

The success of this ambitious communication and behaviour change plan will depend on ensuring the programme is delivered by a well-resourced team of skilled social and behavioural change practitioners, researchers, and creatives, and in an enabling environment that supports credibility, coherence, and sustained public engagement.

Further information about how the OPI will drive the anti-corruption communication and behaviour change effort is contained in a detailed report entitled "Supporting the establishment of the Office of Public Integrity and a National Anti-Corruption Movement" which is attached as Appendix O.



# CHAPTER 5

## Strengthening
## Law Enforcement Agencies

## Introduction

South African citizens believe that their LEAs have not risen to the challenge of protecting the country against corruption.[20] This is also the view of international organisations; the FATF and the OECD Working Group on Bribery both state that South Africa needs to improve its prosecution rate for corruption cases. [21]

Prosecuting corruption is a uniquely difficult task for law enforcement institutions across the world. The legal system is ill-suited to prosecute complex commercial crimes beyond a reasonable doubt where the benefits are hidden by teams of professional enablers in multi-layered corporate structure across national borders – and there are no willing witnesses to the crime.[22] In South Africa, this problem is greater because LEAs were intentionally harmed by perpetrators of state capture, who benefitted from weakening the rule of law. [23]

NACAC has engaged in intensive research and consultation with local and international experts and heads of LEAs. NACAC has concluded that there are serious weaknesses at the heart of our CJS and the time has come to address these challenges.

NACAC's key research findings concerned problems with the mandates, resourcing, independence, and integrity of LEAs. Overall, a picture emerges of problematic legislative mandates, structural challenges, and weak financial and human resource capacity.

NACAC welcomes the promulgation of the Terms of Reference for the Judicial Commission of Inquiry into Criminality, Political Interference, and Corruption in the Criminal Justice System arising from the specific allegations made public by Lieutenant General Nhlanhla Mkhwanazi on 6 July 2025 (the 'Madlanga Commission'). This commission should provide valuable insights into problems in the SAPS.

20 Human Sciences Research Council. 2024. Tracking Social Norms and Behaviour Change In South Africa: Measuring Attitudes To Corruption. https://hsrc.ac.za/press-releases/dces/corruption-and-behaviour-change-tracking-social-norms-and-values-in-south-africa/

21 Financial Action Task Force. 2025. South Africa. https://www.fatf-gafi.org/en/countries/detail/South-Africa.html; OECD Working Group on Bribery. 2016. Implementing the OECD Anti-Bribery Convention Phase 3 Report South Africa. https://www.oecd.org/en/publications/implementing-the-oecd-anti-bribery-convention-phase-3-report-south-africa_7b6204d0-en.html

22 C. Ashton. 2024. SA must look beyond prosecution for anti-corruption remedies that work. https://issafrica.org/iss-today/sa-must-look-beyond-prosecution-for-anti-corruption-remedies-that-work

23 Public Affairs Research Institute. 2022. The Zondo Commission: A bite sized summary. P 3. https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf

NACAC's recommendations cover four focus areas:

1. **Mandates and coordination mechanism**

   The mandates of some LEAs are uncertain, overlapping, and overbroad. There is a need for clear and aligned legal frameworks that are harmonised across sectors and levels of government to avoid gaps, contradictions, or unresolvable overlaps. For these reasons NACAC has made recommendations directed at clarifying the mandates of each agency and NACAC has also placed great emphasis on the coordination of case management between the agencies.

2. **Independence and integrity of LEAs**

   Independence and integrity are essential for LEAs to effectively combat corruption and uphold the rule of law. Without operational and institutional independence, agencies are vulnerable to political interference, selective enforcement, or protection of powerful interests, which undermines public trust and the legitimacy of their actions. Integrity policies and practices ensure that officials within these agencies adhere to ethical standards, resist bribery or undue influence, and apply the law impartially. Together, independence and integrity create the conditions for credible investigations, fair prosecutions, and consistent accountability – key elements in preventing impunity and fostering public confidence in justice systems.

3. **Resources**

   The capacity allocated to address South Africa's core problem of corruption is inadequate. It is essential to enhance the capacity of all existing agencies, and to make better use of existing resources. In the same way that there is a need for policy coherence, there needs to be coherence in the allocation of resources.

4. **Harnessing information and communication technologies (ICTs) including AI**

   Traditional investigative methods are no longer sufficient to confront a form of corruption that is systemic, networked, and increasingly embedded within digital infrastructures. LEAs require new tools, and capabilities that leverage technology strategically, ethically, and at scale. These should include appropriate digital technologies, including AI.

## Mandates and a new coordination mechanism

Responsibility for investigating corruption and commercial crime is presently assigned to the SAPS, the DPCI, the NPA, and the IPID.

The DPCI is responsible for investigating serious corruption, serious commercial crime, and organised crime. The NPA, through its specialised directorate, the IDAC, is responsible for investigating and prosecuting serious corruption.

Corruption deemed insufficiently serious to merit the attention of the DPCI and IDAC is investigated at SAPS station level and prosecuted by the regional divisions of the NPA. The Crime Intelligence unit of SAPS plays, or should play, a critical role in the investigation of serious corruption and organised crime. The SIU is responsible for conducting civil investigations into corruption and maladministration.

## Vague and overlapping mandates

Research shows that the mandates of the various LEAs are overlapping, and some are poorly defined in their governing statutes.[24] The agencies' performance metrics are competing and not designed to promote cooperation. This contributes to turf wars between the agencies, which decreases the effectiveness of the multi-agency system.

The mandate of the **DPCI** is of particular concern. Research shows that it is overbroad and unmanageable.[25] While the DPCI is currently mandated to be the agency responsible for investigating serious corruption, it is also charged with investigating serious commercial crime and organised crime as well as a wide range of other 'priority' crimes, ranging from treason to terrorism related offences, from sedition to mercenary activities. [26]

The Constitutional Court in *Glenister II* found that the DPCI's mandate in the SAPS Act is confusing and unsuited to an anti-corruption agency:[27]

> "Sections that provide for the jurisdiction of the DPCI are scattered in different parts of the SAPS Act. This makes it difficult to identify the offences that the DPCI is empowered to prevent, combat and investigate. Section 17D is headed 'Functions of Directorate'. One might justifiably assume that all the functions are set out under that section. Regrettably, one has to look elsewhere for the definition and the list of national priority offences. Ordinarily, all the definitions are to be found in section 1 of an Act. Although section 1 of the SAPS Act does define several concepts, 'national priority offences' is not one of them. It is instead located in section 17A which in turn refers to section 16 which sets out national priority offences. The complication does not end there. For other offences that constitute national priority offences, section 16(2)(iA) points to the Schedule to the Act. It should be evident from the discussion of other aspects of the Act, like the suspension and removal of the National Head, as well as the extension of tenure that the quality of drafting could use some improvement."[28]

24 African Policing Civilian Oversight Forum & Dullah Omar Institute. 2025. *Strengthening Law Enforcement Agencies in Combatting Corruption: Mandates and Resourcing.* Pp 5-7.

25 African Policing Civilian Oversight Forum & Dullah Omar Institute. 2025. *Strengthening Law Enforcement Agencies in Combatting Corruption: Mandates and Resourcing.* P 15.

26 Parliamentary Question 3964: Internal Question Paper 45-2023: 17 November 2023. www.static.pmg.org.za/RNW3964-2023-12-18.pdf

27 *Glenister v The President of the Republic of South Africa* 2011 (7) BCLR 651 (CC). Para 233.

28 *Glenister v The President of the Republic of South Africa* 2011 (7) BCLR 651 (CC). Para 93.

The court also expressed its concern at the inclusion of national priority offences which "do not deserve the attention of an anti-corruption agency if that agency were to pay adequate attention to its core mandate." It held: "We point out in this regard that the DPCI is not, in itself, a dedicated anti-corruption entity."[29]

The DPCI is responsible for investigating serious corruption, serious commercial crime, organised crime and a host of other 'priority crimes'. Research shows that the overwhelming preoccupation of the DPCI is with violent organised crime such as drugs, people and arms smuggling, and cash-in-transit heists, with a relatively small proportion of its attention devoted to investigating serious corruption.[30]

The lack of mandated focus on fighting corruption means that, in practice, the DPCI does insufficient investigation of corruption. The DPCI must be at the centre of any effort to refine and reallocate the mandates of the LEAs. There is an urgent imperative to focus institutional attention and resources on the investigation and prosecution of serious corruption.

The mandates assigned to the DPCI and IDAC currently overlap, since both agencies are mandated to investigate serious corruption. This results in inefficiencies, conflicts and duplication of efforts. It does not support the effective cooperation required to make the multi-agency system function optimally. NACAC recommends a reordering of these mandates in order to overcome these difficulties.

NACAC examined alternative options for reorganising the allocation of mandates. In its process of consideration, NACAC engaged with the staff of some of the LEAs, researchers in the field of policing and security, and civil society experts. Based on these engagements and on empirical research,[31] NACAC finalised its recommendations without the benefit of consulting the SAPS, which did not make itself available to meet with NACAC. NACAC recognises that the Madlanga Commission may make findings that influence the debate on the SAPS and welcomes this prospect.

After a process of research and consultation, NACAC concluded that the IDAC should have a mandate to investigate and prosecute serious corruption and serious commercial crime and the DPCI should have a mandate to investigate organised crime. This recommendation will have far-reaching implications for the LEAs.

29 *Glenister v The President of the Republic of South Africa* 2011 (7) BCLR 651 (CC). Para 233.

30 African Policing Civilian Oversight Forum & Dullah Omar Institute. 2025. *Strengthening Law Enforcement Agencies in Combatting Corruption: Mandates and Resourcing.* P 13.

31 See for instance Kinnes, I. & Newham, G. Freeing the Hawks: Why an anti-corruption agency should not be in the SAPS. SA Crime Quarterly. Pp 33-40. https://issafrica.s3.amazonaws.com/site/uploads/CQno39March12.pdf; and African Policing Civilian Oversight Forum & Dullah Omar Institute. 2025. *Strengthening Law Enforcement Agencies in Combatting Corruption: Mandates and Resourcing*

**Recommendation 1 – Reorganise the mandates of the LEAs as follows: the IDAC should be solely responsible for investigating and prosecuting serious corruption and serious commercial crime; the DPCI should be solely responsible for investigating organised crime.**

The DPCI's responsibility and resources for investigating serious corruption and serious commercial crime should be transferred to IDAC, with IDAC simultaneously relieved of responsibility for prosecuting any crimes other than those categorised as serious corruption and serious commercial crime. The DPCI should retain responsibility for investigating organised crime as well as the other serious crimes listed in Section 16(2)(iA) of the schedule to the SAPS Act.

This would resolve the current overlap in the designated responsibilities of both the DPCI and IDAC for investigating serious corruption and serious commercial crime, locating all responsibility for investigating these categories of crime in IDAC.

It will eliminate the greatest shortcoming of the present model, namely the DPCI's focus on organised crime at the expense of serious corruption. This will allow the DPCI to focus on organised crime, as recommended by researchers.[32]

There are interconnections and overlaps between organised crime and serious corruption. They are both types of financial crimes, usually involving secretive networks. Corruption facilitates organised crime and perpetrators may belong to the same networks. However, policing commercial crimes and corruption demands a different investigative and prosecutorial skill set and institutional ethos from policing organised crime. As such, different agencies are required to deal with these different crime types.

## Resourcing the IDAC

NACAC recommends that IDAC should be given far greater resources and capacity. It should be empowered to investigate and prosecute any politician or public official above the level of senior middle management (i.e. the rank of chief director or the equivalent and above) and their networks. It should also investigate and prosecute complex corruption emanating from the private sector involving powerful companies or business people.

In the short term the resources in the DPCI dedicated to tackling corruption should be allocated to the IDAC, which should be rebranded and launched within six months to signal the seriousness with which the current administration takes the issue of addressing corruption. IDAC should have its own intelligence capability, and like SARS or the SIU, be freed from the salary and recruitment constraints of the public sector. It should be able to recruit or contract the best available legal, forensic and analytical skills and have dedicated security for its staff and access to the NPA Witness Protection Programme.

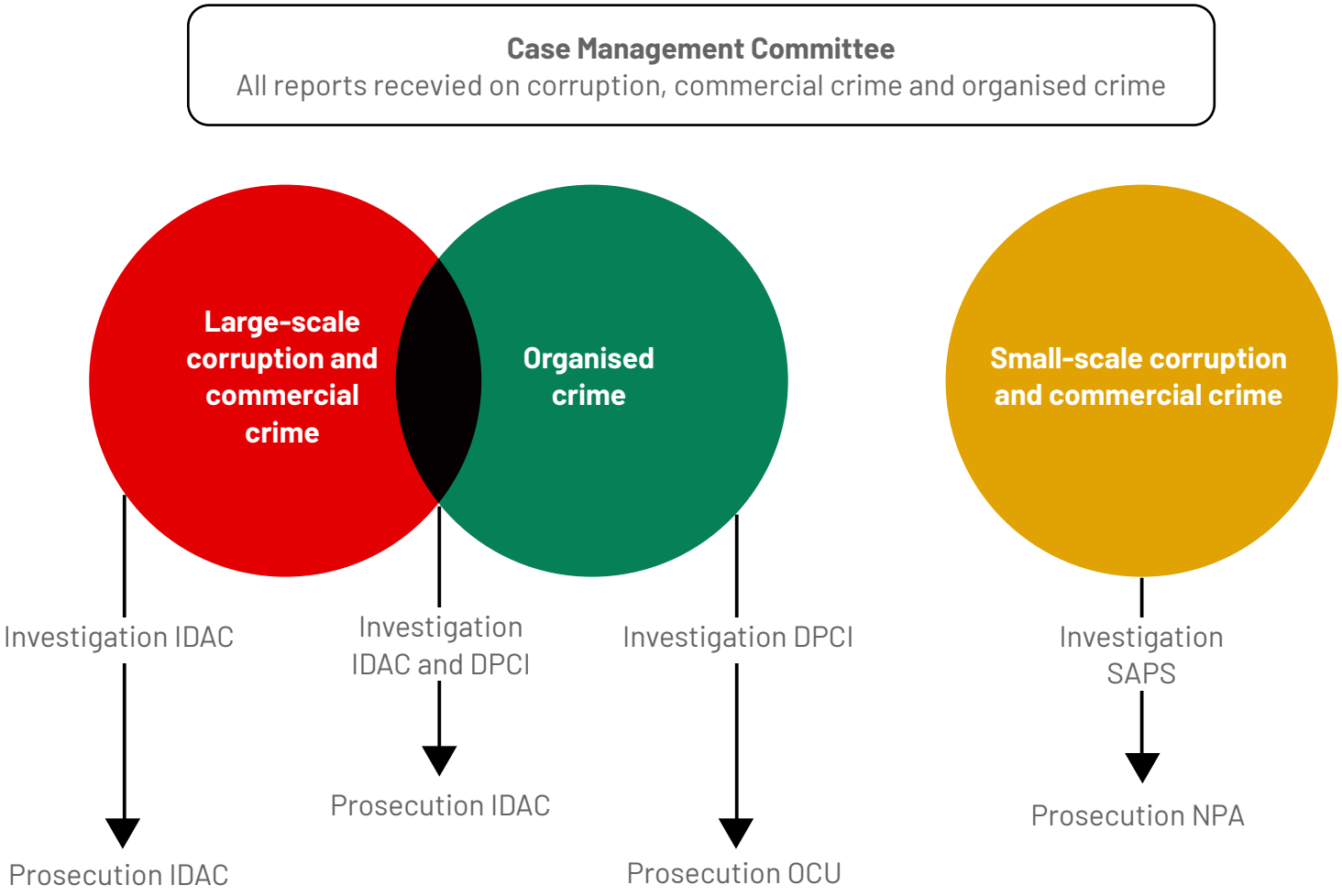
[32] Kinnes, I. & Newham, G. Freeing the Hawks: Why an anti-corruption agency should not be in the SAPS. SA Crime Quarterly. Pp 33-40. https://issafrica.s3.amazonaws.com/site/uploads/CQno39March12.pdf

## Focusing the SAPS

The DPCI should remain in its current form and be fully resourced to tackle transnational or national **organised crime.** The DPCI should have no less than 5000 investigators and the necessary intelligence, legal, forensic, and analytical capability.

The SAPS should ensure that within each district there are dedicated anti-corruption investigation teams that are able to focus on **corruption** occurring within the provinces. These teams should investigate corruption in government institutions and organs of state by officials below the level of senior middle management i.e. chief directors, or the equivalent thereof.

### Chart 1: Reorganised mandates of law enforcement authorities




This chart illustrates NACAC's recommendation that the IDAC should have a mandate to investigate and prosecute serious corruption and serious commercial crime and the DPCI should have a mandate to investigate organised crime. The SAPS should investigate small-scale corruption and commercial crime.

**Recommendation 2 – Establish a Case Management Committee (CMC) to coordinate the investigation and prosecution of corruption.**

NACAC recommends that a coordinating structure – the CMC – should be established comprising senior representatives of IDAC, the NPA, DPCI, SAPS, IPID, and OPI.

The boundaries of serious corruption, serious commercial crime, and organised crime are porous – there are overlaps and similarities between these crime types. For these reasons NACAC places great emphasis on the coordination of case management between the LEAs in these types of cases. The LEA coordination mechanism – the CMC – should determine which agency or agencies are responsible for investigating a particular case.

## Institutionalisation of the CMC

A permanent secretariat responsible for serving this structure should be established by, and located in, IDAC. Since the NPA should play a leadership role in guiding other agencies, the CMC should be chaired by the National Director of Public Prosecutions (NDPP). NACAC recommends that the CMC secretariat located in IDAC should be responsible for receiving and recording all reports alleging corruption, commercial crime and organised crime.

Upon receipt of the reports the CMC secretariat should undertake an initial **filtering** exercise distinguishing between reports of corruption, commercial crime and organised crime. It should also distinguish the reports of serious corruption and serious commercial crime from less serious crimes of these categories. The outcome of this filtering exercise should be reported to the following meeting of the CMC with the outcome of the meeting deciding the allocation of reported matters to the respective agencies represented there. A deadlock in the CMC should be resolved by decision of the chairperson, who should be empowered to provide **strong leadership.** Subsequent meetings of the CMC should receive reports of progress made in the investigation and prosecution of each allocated report.

The agencies entitled to participate in the CMC should be: the DPCI, NPA, SAPS, IPID, and the OPI. Agencies that are in possession of information often important for the investigation and prosecution of serious corruption – for example the SARS, the Financial Intelligence Centre (FIC) and the Auditor General of South Africa (AGSA) – should be invited to the CMC on an 'as-needed' basis. The CMC should be provided for in statute. Given the role assigned to the **NPA**, which should provide the secretariat and **chair** the committee, the NPA Act should be amended for this purpose.

There are interfaces between serious corruption and serious commercial crime – and both categories of crime will be investigated and prosecuted by IDAC. An internal IDAC coordination mechanism should be established to assign responsibility for the investigation and prosecution of each report of serious corruption and serious commercial crime to the respective units within IDAC. In addition, serious corruption and serious commercial crime reports have to be distinguished from less serious reports, the latter to be assigned to SAPS.

Reports of corruption, serious and less serious, should be submitted to the secretariat of the CMC located in IDAC. The secretariat should distinguish reports concerning serious corruption from those concerning less serious corruption. NACAC recommends that this initial filtering be based entirely upon the seniority of the local, provincial or national public official or politician implicated in the alleged corruption. The initial filtering should also recommend a preliminary allocation of serious corruption, serious commercial crime, and organised crime between IDAC and the DPCI.

The outcome of this initial filtering exercise should be reported to the CMC. All reports on less serious corruption should be submitted to a designated CMC official in the office of the SAPS Commissioner, who should filter the reports received by the province in which the alleged corruption has occurred. The reports should be submitted to the relevant provincial SAPS Commissioner.

Allegations of corruption committed by SAPS officials should be submitted to the CMC and filtered as per the proposals above with the rank of implicated official determining the allocation between serious and less-serious corruption.

Although the OPI will not, strictly speaking, be a LEA, NACAC has nevertheless included it in the ranks of the LEAs because its key preventive function will be to conduct inquiries into systemic corruption, that is corruption within a public institution so pervasive as to suggest managerial and governance shortcomings that render the institution in question vulnerable to corruption. Although its principal remedial findings should be aimed at correcting these managerial and governance shortcomings, NACAC has recommended that the OPI be included in the LEA coordination mechanism because:

- in the course of enquiring into systemic corruption, the OPI will frequently encounter evidence of criminal conduct which it would be obliged to refer to the LEA coordinating mechanism for possible further investigation and prosecution;
- in order to effectively inquire into systemic corruption, the OPI will be given investigative powers enforced, where necessary, by the criminal justice authorities, viz. the power to compel testimony and to conduct search and seizure operations;
- NACAC has recommended that the OPI be designated responsible for coordinating the 'all of government/all of society' approach to combatting corruption. For this reason too, it is important that the OPI be a member of the mechanism coordinating the anti-corruption LEAs. This would enable the OPI to play a mediating role between the public and the LEAs.

**Recommendation 3 – Align the performance metrics of the LEAs to reward cooperation, not competition.**

NACAC recommends that the performance incentives system governing the LEAs should reward cooperation between agencies, and excellence within them.

The imperative to focus institutional attention and resources on the investigation and prosecution of serious corruption requires a multi-disciplinary approach. In addition to law reform, there is another, complementary way to support the emergence of a culture of cooperation instead of competition among LEAs.

The potential of **incentives** to motivate behaviour change in organisations should be maximised. Currently incentive structures for LEAs set different agencies targets for reclaiming the same proceeds of crime. For example, the AFU, SARS and SIU compete to recover the same assets. Performance metrics incentivise competition between agencies, causing sub-optimal inter-agency cooperation and turf wars. These performance metrics should be revised to encourage the inter-agency cooperation that is essential for the effective functioning of the multi-agency approach.[33] Incentives such as promotion should be directly linked to performance and integrity in order to maximise the performance of staff in these institutions. [34]

**Recommendation 4 – The Terms of Reference of the Madlanga Commission should be amended to include a focus on crime intelligence.**

NACAC commends the President's establishment of the Madlanga Commission of Inquiry into the SAPS.

While each of the various components of SAPS plays an important role in combatting corruption, NACAC recommends that the Madlanga Commission should pay special attention to the dire state of crime intelligence because of the critical role played by that division in the investigation of corruption.

NACAC recommends further that the Madlanga Commission should consider the possibility of establishing dedicated crime intelligence units in the agencies responsible for investigating serious corruption and organised crime.

The exact ambit of crime intelligence is not defined in legislation. The Crime Intelligence division in the SAPS appears to be responsible for security vetting and risk assessments, and the generation of intelligence reports. SAPS Crime Intelligence has two sub-programmes, being Crime Intelligence, and Intelligence and Information Management. It is unclear the extent to which there is a focus on corruption.

Many of the posts in Crime Intelligence were inappropriately filled during the period of state capture. It may be advisable for all persons currently occupying these posts first to be vetted. Given that it is Crime Intelligence itself that carries out such vetting, this poses a conundrum.

[33] C. Ashton. 2024. Rethinking anti-corruption in South Africa: Pathways to reform. P 16. https://issafrica.org/research/southern-africa-report/rethinking-anti-corruption-in-south-africa-pathways-to-reform

[34] C. Ashton. 2024. Rethinking anti-corruption in South Africa: Pathways to reform. P 21. https://issafrica.org/research/southern-africa-report/rethinking-anti-corruption-in-south-africa-pathways-to-reform

Particular concern has been expressed regarding the dysfunctionality of Crime Intelligence. This unit is meant to provide a critical service to the policing units fighting corruption. Not only does it appear that Crime Intelligence has performed woefully in its function, but corruption within the division has reached epidemic proportions. NACAC was advised by people with deep knowledge and familiarity with fighting corruption and organised crime that the Crime Intelligence division should be disbanded and reconstructed afresh. Whilst NACAC has not gone this far, NACAC recommends that the Madlanga Commission accords priority attention to investigating Crime Intelligence. NACAC has also recommended that consideration be given to permitting IDAC and the DPCI to establish appropriately resourced, dedicated, internal crime intelligence units.

## Independence and integrity

**Recommendation 5 – Provide statutory processes to ensure transparent, merit-based appointments of ethical senior leaders in the criminal justice system.**

Urgent attention must be given to the processes – or lack thereof – governing the appointment of senior officials in the NPA and the SAPS. At present the appointment of the NDPP and the SAPS Commissioner are at the sole discretion of the President. There is an urgent necessity to ensure that the processes of appointment to these positions are fair, transparent and merit-based.

It has been well established and contained in the submissions to the Zondo Commission that there was an abuse of appointments of top managers to various LEAs.[35] The purpose thereof was to ensure that these institutions could protect those involved in state capture and to persecute those who were trying to hold those responsible for corruption accountable. This was achieved through appointing those perceived to be loyal to former President Zuma into the top management echelons of criminal justice agencies. In some cases these individuals were later found by the courts or inquiries not to have the necessary expertise, skill or integrity to fulfil the functions of the posts they hold. Another tactic was to appoint people in acting positions who could be removed if they did not comply with instructions.

These top managers would replicate this flawed process by appointing personnel throughout the organisation, based on their perceived loyalty and not ability. Many professional members of the SAPS, NPA, DPCI, and other agencies left as they found the working conditions and interference in their jobs intolerable. The consequences of this included declining capabilities and performance as these agencies became negatively affected by toxic organisational cultures characterised by a lack of transparency, accountability, bullying and mediocracy. While there has been much work undertaken to address this in the NPA and DPCI, this is not yet the case in the SAPS and IPID. Both organisations remain negatively impacted by this period as no clear programme of reform and institutional strengthening has occurred.

[35] Institute for Security Studies and Corruption Watch joint submission to the Zondo Commission: State Capture and the poitical manipulation of criminal justice agencies. 2019. https://issafrica.org/research/books-and-other-publications/state-capture-and-the-political-manipulation-of-criminal-justice-agencies

It is necessary to put in place a mechanism whereby the process to fill top leadership positions in the CJS begins at least one year in advance of the positions becoming vacant. Amendment of legislation should be instituted to require that posts are filled before incumbents retire or complete their term of office. This will not pertain where the incumbents leave for other reasons outside of the control of the executive authority. A stipulated timeframe for filling posts under such conditions should be included in legislation.

The processes for selecting candidates to occupy top leadership positions in the CJS agencies should follow a similar process as that used to appoint the NDPP Advocate Shamila Batohi. In this instance, President Ramaphosa required that the post be advertised and appointed a high-level panel to interview the candidates despite the fact that no law mandated this process.

While NACAC accepts the final decision-making role of the President, NACAC recommends that it be exercised on nomination from an appropriately composed **selection committee** comprising independent subject matter specialists and senior human resource practitioners. A selection committee of experts should be assembled on each occasion there is a senior appointment. The purpose of this committee should be to make recommendations to the President.

The selection committee should make its nomination on the basis of a shortlist of candidates who have responded to widely circulated advertisements which specify a detailed job description and the qualification requirements for the post in question. Should the President reject the selection committee's nominee, he/she must provide reasons to the committee which must be required to recommence its search for appropriate candidates. In all these appointment processes the CVs of the shortlisted candidates must be placed on the websites of either the NPA or SAPS, depending on the post advertised.

With respect to SAPS, the Minister of Police should investigate the form of an appropriate structure – taking into account the recommendation in the 2012 NDP that a **NPB** should be established. The proposed NPB should advise the President on senior leadership appointments for the posts of National Commissioner, Deputy National Commissioners, Provincial Commissioners and Divisional Commissioners – from the level of brigadier up.

To ensure that this process remains the practice in the long term and to protect these institutions from potential future attempts at capture, it is necessary to codify the processes in law as per amendments to the relevant legislation. This should be a legally required process for all senior managers to be appointed in the SAPS, DPCI, NPA, SARS, FIC, SIU/OPI, IPID, and other key criminal justice agencies.

**Recommendation 6 – Overhaul the legislative framework of the NPA to provide for greater operational independence.**

In any democracy, the police and the prosecutorial agency require **operational independence** to take policing and prosecutorial decisions without fear or favour. But these agencies are vested with extraordinary powers and they must therefore also be accountable for the exercise of these powers.

The entire accountability architecture of the state hinges on an effective, efficient, independent, and accountable NPA. Success in investigating and prosecuting high-level corruption matters remains elusive. Lacking institutional and financial independence, the effective functioning of the NPA is a core challenge and must be addressed to improve law enforcement capability.

NACAC recognises that the overall governance of the NPA compromises its independence and, by extension, that of the IDAC to prosecute corruption cases effectively. NACAC has made recommendations to strengthen the independence of the NPA in line with the criteria for independence set out in the Jakarta Principles for Anti-Corruption Agencies and the Constitutional Court's leading judgment in *Glenister II.*

At present the NPA is not an independent agency. It is a mere programme of the DOJ&CD. The NPA's budget and many HR decisions are controlled by the DOJ&CD – this is a serious constraint on the NPA's ability to function effectively and independently.

To combat corruption more effectively, an overhaul of the legislative framework of the NPA is needed in the following areas:

- its **financial independence;**
- the appointment and removal of the senior echelon;
- conditions of service of staff to attract and retain critical skills; and
- setting standards for accountability and transparency.

In support of the preceding:

- Special consideration should be given to mechanisms such as independent or special prosecutors in cases of corruption involving members and former high members of the executive.
- Significant delegation or expansion of the prosecuting role to other players would be required, as well as significantly better allocation and support of judicial officers in courts hearing these matters, and efficient management of their time. There is an urgent need to bolster the independence, accountability, and effectiveness of the NPA, to protect whistleblowers from physical violence – not just in the employment relationship, and not only when they are to give evidence in court.

NACAC concludes it is urgent that legislation provides:

- The establishment of a system to brief counsel in private practice to prosecute certain matters.
- Clarification of the mandate of the Investigating IDAC. It should be granted a large ring-fenced discretionary budget for the procurement of ad-hoc specialist skills.
- Term limits that apply to directors of public prosecution (DPPs), and the removal of the age limit of 65.
- That the NPA should be required to respond with a decision to referrals for prosecution for corruption from other agencies within specified time limits, and it should be required to maintain a register of all referrals for prosecution.
- Protection for whistleblowers and related persons, even if they are not to testify in court. Whistleblower protection must be effective and perceived to be effective.

**Recommendation 7 – Implement integrity mechanisms to ensure that the SAPS becomes a professional organisation characterised by high levels of integrity.**

As the country's single largest law enforcement agency, SAPS plays a crucial role in engendering public trust in the government's efforts to tackle corruption. Currently, and for the past three years, only 22% of the public have any level of trust in the SAPS. [36]

All indications are that corruption is widespread and endemic across all functions and at all levels of the organisation. Unless a clear programme of organisational reform to address this and instil a culture of professionalism and integrity is undertaken and seen to be so by the public, any government-driven initiative to tackle corruption in South Africa will be stillborn.

International experience shows that the most effective way to tackle police crime and criminality is to have well resourced, dedicated and protected **internal investigation units.** If they are staffed by carefully screened, experienced detectives, they can be the most effective structure for both ensuring accountability for, and therefore deterrent against, police crime and corruption.

To ensure that the SAPS becomes a professional organisation characterised by integrity, NACAC recommends:

1. The Minister of Police, the Portfolio Committee for Police, and the Civilian Secretariat for Police Service (CSPS) should emphasise the need for a coherent, integrated and effective response to police corruption to be prioritised – employing the **'tone from the top'** leadership strategy.

2. That the Minister of Policy consider the establishment of an independent, multi-sectoral **NPB** with appropriate and credible expertise as recommended by the 2012 NDP, with a mandate to assist with the development and oversight of a SAPS integrity and professionalisation strategy. The NPB should be comprised of a task team of five experts which will make recommendations to the CSPS on professionalism and integrity in the SAPS. The NPB should be given the necessary secretarial and other required support from the CSPS.

3. This strategy should be co-developed with and implemented by the SAPS top management structure and rigorously monitored and assessed by the NPB, which reports to the Minister of Police, who in turn reports to parliament on its implementation and impact.

4. The SAPS Act should be amended to establish the NPB and describe its functions. The SAPS Act should also support the strategy to support clear measures that improve police transparency and ensure regular independent reviews of the effectiveness of accountability mechanisms.

5. An appropriate agency such as the SIU/OPI or SARS should undertake **lifestyle audits** and risk assessments of SAPS top managers. The SAPS Integrity Management Component must be capacitated to undertake a variety of integrity enhancement measures including targeted lifestyle audits and risk assessments at ranks below top management. Oversight should be provided by the CSPS.

36 HSRC Survey. 2024. Tracking Social Norms and Behaviour Change. Appendix N.

6. Regarding allegations of corruption against the senior management structure (SMS) of SAPS, including the ranks brigadier and above, the SMS cannot and should not investigate allegations of corruption against themselves. Such investigations should be taken on by IDAC as per the recommendations made above.

7. The SAPS SMS should take full responsibility for investigating allegations of corruption at the levels of colonel and below. This requires improved internal capability in the **Anti-Corruption Investigation Unit (ACIU)** to drive integrity processes in SAPS. The SAPS internal ACIU should be strengthened so that it at least has the resources and capacity of the SAPS Anti-Corruption Unit (ACU) that existed between 1996 and 2002. In addition, it should have its own intelligence capability and be able to undertake proactive integrity tests where there is reasonable suspicion of police corruption. All personnel admitted to the unit should be thoroughly vetted. MOUs should be developed where necessary to address the sharing of information with IDAC, DPCI and IPID. The unit should function independently but fall under the authority of the national commissioner for accountability purposes.

8. Available data on police corruption should routinely be analysed to identify police units, components, functions or divisions that are linked to allegations of corruption so that investigative resources for addressing police corruption can be targeted effectively.

9. An integrated **police corruption monitoring system,** providing coherent information on reported allegations of police corruption and on the outcome of disciplinary processes and criminal investigations related to police corruption, should be established. For this purpose, clear and straightforward guidelines should be developed for reporting and recording police corruption that must be adhered to by the SAPS and other bodies involved in investigating police corruption. These reports should be submitted to the relevant parliamentary portfolio committee and be made publicly available.

10. The amended SAPS Act must provide for the above capacity and be clear that failure by SAPS members to cooperate with the work of ACIU and the SAPS disciplinary structures is considered serious misconduct and can result in a dismissal.

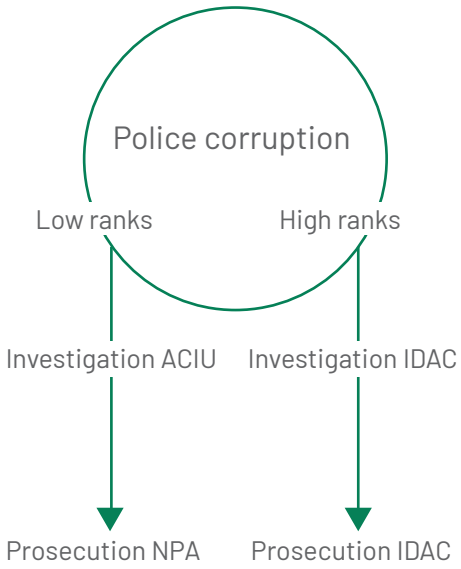
11. Where a SAPS member resigns following allegations of corruption, the investigation and **disciplinary processes** must continue until a verdict is reached, irrespective of whether the subject SAPS member cooperates or not. If a negative finding is achieved for serious corruption, this person should be disqualified from serving in any public sector post for life. No pension or other payouts should be received by any person facing allegations until the disciplinary process is completed.

12. The NPA should establish **dedicated prosecutorial capacity** with experienced prosecutors who are tasked with any prosecution related to serious police criminality or corruption. These cases must be prioritised and expedited to send a message that this form of corruption is recognised as particularly egregious.

13. The SAPS **Code of Ethics and Conduct** should be integrated into performance management or promotions assessments. SAPS supervisors should assess the attitudes and conduct of those they assess. If the supervisor raises concerns, then a review of the SAPS member should be undertaken by the SAPS Human Resource Management Division or the SAPS Integrity Management component.

14. The public profile of systems for **reporting** police corruption should be promoted more vigorously – both outside the SAPS and internally.

**Chart 2: Investigating police corruption**




This chart illustrates the principle that high-ranking SAPS officials should not be empowered to investigate allegations of corruption against themselves; and that the internal integrity function of the SAPS should be capacitated to investigate allegations of corruption against lower-ranking SAPS officials.

## Resources

It is necessary to enhance the capacity of all existing agencies, and to make better use of existing resources. In the same manner that there is a need for policy coherence, there needs to be coherence in the allocation of resources which is informed by need and evidence. The capacity allocated to the core problem of the country is inadequate, yet there are real budget constraints.

**Recommendation 8 – Give the NPA more operational control over its budget**

NACAC recommends that the NPA should have its own budget vote and accounting officer. The NPA should control its own budget, staffing and salary decisions and allocations to units of the NPA, such as Sexual Offences and Community Affairs (SOCA) and SCCU.

The salary structure within the NPA should be reviewed and adjusted to be more in line with equivalent positions in the SIU. At the same time, consideration should be given to raising the requirements for appointment as a prosecutor to the NPA. It should be possible for the NPA itself to address vacancies not filled within one year by short-term procurement processes involving contracts.

Consideration should be given to adopting a funding model for anti-corruption agencies in which they retain a portion of funds they recover to invest in institutional capacity.

**Recommendation 9 – Strengthen the resourcing and operational capability of the court system to combat corruption.**

The courts are a key component in our constitutional democracy. Yet their resourcing is fractured and insufficient, and there appears to be inadequate attention paid to their optimal operation. Courts do not have enough judicial officers.[37]

Court infrastructure challenges contributing to court delays should urgently be addressed. A thorough critical review of the operation of the courts towards maximising efficiency should be carried out.

A new model of prosecution should be discussed and consulted upon, which permits either the appointment of special counsel in sensitive matters, or that, as a matter of course, provides for the briefing of prior-approved counsel in private practice by the prosecuting authority (the Commonwealth model).

**Recommendation 10 – Provide more security to protect law enforcement staff and witnesses.**

NACAC recommends that, given the high rate of violence against investigators, more resources should urgently be provided to protect investigators and witnesses.

NACAC also recommends that greater attention be given to effective human resource management including workplace conditions and the management of disciplinary and grievance procedures.

## Harnessing AI and digital tools

The fight against corruption in South Africa must evolve to meet the sophistication and scale of the threat it faces. Traditional investigative methods are no longer sufficient to confront a form of corruption that is systemic, networked, and increasingly embedded within digital infrastructures. LEAs require new tools and capabilities that leverage technology strategically, ethically, and at scale.

Through the 2023 Indata Workshop, convened by NACAC, NACAC engaged with law enforcement practitioners, government departments, Chapter 9 institutions, the banking sector, and civil society organisations to consider how digital innovation can transform the anti-corruption landscape.

[37] African Policing Civilian Oversight Forum & Dullah Omar Institute. 2025. *Strengthening Law Enforcement Agencies in Combatting Corruption: Mandates and Resourcing*. P 62.

**Recommendation 11 – Integrate AI and advanced analytics into law enforcement institutions.**

NACAC proposes that a key component of the national anti-corruption architecture going forward must include the coherent and integrated use of AI and advanced analytics.

## An intelligence-led model

South Africa's enforcement model must shift from being primarily reactive to becoming intelligence-led and risk-based. This shift requires the integration of AI-driven anomaly detection tools that can proactively identify suspicious patterns across government systems, particularly in procurement, budgeting, licensing, and human resource management.

Machine learning models, trained on historical data including tender records, pricing benchmarks, supplier networks, beneficial ownership registries, and financial transactions, can flag outlier behaviour in real time. These red flags, such as inflated pricing, supplier collusion, irregular payments, or conflicts of interest, should be automatically referred to dedicated corruption analysts embedded within law enforcement units.

Rather than waiting for complaints or whistleblower reports, this model allows LEAs to intervene earlier and disrupt corrupt schemes before they cause significant loss.

## Data sharing: risks and responses

One of the most consistent findings from the Indata workshop was that South Africa's ability to conduct cross-agency, multi-sectoral anti-corruption intelligence and investigations, is hampered by fragmented, inconsistent, and overly restrictive data sharing practices. Corruption cases often stall because key evidence, such as beneficial ownership, financial transaction data, or procurement records, sits in silos or cannot be lawfully accessed by investigators in a timely manner.

The barriers are both legal and institutional. The Protection of Personal Information Act (POPIA), while critical to safeguarding privacy, has been inconsistently interpreted by different departments and state entities, leading to a culture of risk aversion, where data is withheld even when lawful sharing is permissible. In some cases, information that could be vital for investigations is classified unnecessarily or bound up in bureaucratic procedures.

**Recommendation 12 – Develop an anti-corruption data sharing framework governed by principles of necessity, proportionality, transparency, and accountability.**

This framework should:

- Define lawful pathways for sharing data between designated anti-corruption agencies, in line with POPIA and Promotion of Access to Information Act (PAIA).
- Include mandatory data-sharing protocols and timelines, especially for procurement, company ownership, and financial records relevant to investigations.
- Be overseen by the Information Regulator to ensure that data requests are lawful, necessary, and free from undue influence.

## The threat of deepfakes and AI-generated content

One of the emerging digital threats to the anti-corruption and law enforcement ecosystem is the proliferation of deepfakes and AI-generated content. These technologies, which use advanced machine learning models to synthetically create or manipulate images, audio, and video, pose a serious challenge to investigative integrity, public trust, and democratic institutions.

Globally, deepfakes have been used to harass whistleblowers, intimidate journalists, impersonate public figures, and discredit corruption investigations. In South Africa, where political contestation is high and trust in public institutions is brittle, the use of AI-generated content to impersonate investigators, fabricate evidence, or engineer public confusion could be devastating.

NACAC recommends that this growing risk be recognised as a priority issue across the anti-corruption and security architecture. Specific measures should include:

- Equipping LEAs with AI detection tools and training to identify and validate potentially manipulated content.
- Develop technical guidelines for verifying the integrity of digital evidence, including chain of custody, metadata preservation, and tamper-detection mechanisms, particularly in high-profile corruption cases.
- Establish a small, inter-agency advisory group on AI and disinformation threats, which can be activated when there is a suspected incident involving synthetic media that could affect an investigation or public trust.
- Build public awareness about the risks of deepfakes and AI-generated disinformation, so that citizens are equipped to critically assess content and avoid being manipulated by coordinated smear campaigns or falsehoods.

If left unchecked, the use of deepfakes could significantly hamper anti-corruption efforts, not only by confusing the public, but by polluting the evidentiary environment investigators rely on. As AI-generated deception becomes easier and cheaper to produce, South Africa must proactively develop the institutional and legal capacity to respond, or risk seeing corruption disguised behind a veneer of digital illusion.

## Ethics and training

Technology, no matter how advanced, cannot compensate for weak institutions or a lack of integrity. The successful use of AI and digital tools must be underpinned by a strong ethical framework, institutional safeguards, and public accountability. All systems deployed for anti-corruption work must be transparent, auditable, and subject to regular review by independent experts.

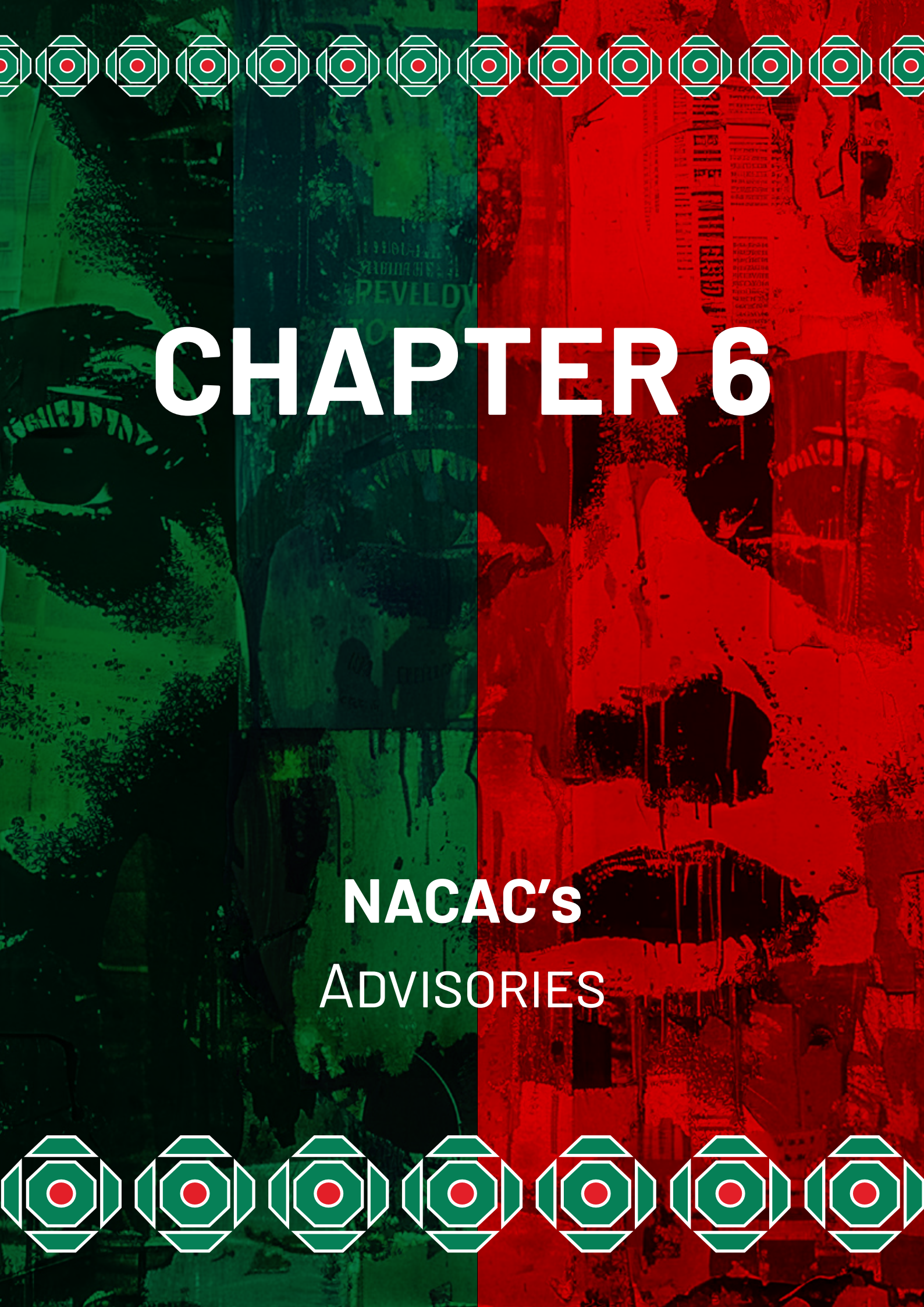
Equally essential is investing in human capability. The state currently lacks sufficient technical expertise in digital forensics, data science, and cybersecurity within its anti-corruption institutions. NACAC recommends that all LEAs build strategic digital forensics and advanced analytics capacity. In parallel, an AI literacy programme should be introduced for prosecutors, investigators, and compliance officers to build a foundational understanding of how digital systems can support case-building, asset tracing, prosecution, as well as identifying deepfakes and digitally manipulated evidence.

## Conclusion

South Africa's anti-corruption institutions must move beyond 20th-century tools to confront 21st-century crimes. The digitalisation of public services and financial flows creates both risk and opportunity. NACAC concludes that, with the right safeguards and investment, technology can become a force multiplier in the state's efforts to detect, disrupt, and deter corruption.

But digital systems are only as ethical and effective as the institutions that wield them. South Africa must build this future deliberately: by embedding transparency, investing in technical capability, safeguarding rights, and coordinating across sectors. The alternative is clear: corruption will adapt faster than our institutions can respond.

*Figure 9: NACAC Members with Heads of South Africa's LEAs. L-R: Adv. Gloria Khumalo, Mx Sekoetlane Phamodi, Adv. Andy Mothibi (SIU), Prof. Firoz Cachalia, Lt. Gen Godfrey Lebeya (DPCI) and Adv. Rodney de Kok (NPA) on a learning visit to Hong Kong. March 2024*



# CHAPTER 6

## NACAC's Advisories

## NACAC Advisories to the President

During its three years of existence, NACAC researched and drafted Advisories to the President on a number of topics including procurement reforms and measures to protect whistleblowers. The focus and key recommendations from the advisories produced by the NACAC workstreams are summarised below. The full advisories are attached as appendices.

### Advisory 1: Implementation of the recommendations of the Zondo Commission (Appendix D.1).

One of NACAC's key mandate areas was to advise the President on the implementation of the recommendations of the Zondo Commission from a strategic and systemic perspective. NACAC's first Advisory to the President focused on this topic and made specific proposals for consideration by the President.

Viewing the Zondo Commission Report recommendations from an integrated perspective, NACAC proposed that grand corruption and state capture should be prevented and combatted using the framework of the NACS strategic pillars. NACAC also proposed that a monitoring system with timeframes and a decision register against each of the Commission's recommendations should be created.

This Advisory also began NACAC's efforts to advocate for and advise on whistleblower protection. It called on the President to acknowledge the role of whistleblowers, civil society activists and journalists in exposing corruption; to denounce retaliation against whistleblowers in the workplace; to establish a temporary discretionary fund to support bona fide whistleblowers in dire need; and appoint a temporary "Protector of Whistleblowers" in the form of a retired judge to deal with the most serious violations of whistleblower rights.

NACAC also advised that a reconfigured Whistleblower Act be passed to address a number of issues: to criminalise retaliatory action; to extend the number of bodies that a bona fide whistleblower could make a disclosure to; and to create stiffer penalties for corporate violation of whistleblower legislation. NACAC recommended that the new Act should extend protections further than the narrow confines of the employer-employee relations stipulated in labour law and the current Protected Disclosures Act, thus making the Act an important cog in South Africa's human rights law. The new Act should establish a fund from which whistleblowers could draw and provide a framework for legal immunity for whistleblowers.

NACAC recommended that the framework for whistleblower protection in South Africa should align with international good practice, e.g. for example the UNCAC. It should include a mechanism for incentivised disclosures and an Independent Whistleblower Ombud's body with the capacity to provide legal, medical, physical and psycho-social support.

This Advisory also proposed that the Zondo Commission's recommendations on "appointments to the boards and executives of SOEs" be translated into principles and procedures that would apply across the board beyond the SOEs. It made recommendations on: measures to improve transparency in public procurement; a balanced response to corruption in the private and public sectors; and the resourcing of LEAs. Lastly it highlighted the need to address issues of poverty, unemployment and inequality as part of the struggle against corruption and the importance of ethical leadership and behaviour change at the societal and individual level.

## Advisory 2: Public support for whistleblowers (Appendix D.2)

This standalone Advisory on whistleblower support further developed the proposed actions in the first Advisory. NACAC expressed concern about the socio-political environment in South Africa which allows for the ongoing harassment, retaliation, victimisation and threats to the lives, livelihoods and dignity of whistleblowers.

Key recommendations in this report included public communication in support of whistleblowers by the President as well as Cabinet endorsement of consequences for those engaged in acts of retaliation and victimisation. NACAC urged the President to consider public recognition of whistleblowers and awarding national orders of merit to whistleblowers.

## Advisory 3: Regarding the implementation and roll out of the NACS (Appendix D.3)

NACAC recommended that Cabinet and all political principals in national, provincial and local government should champion the process of implementing the NACS throughout government. Government should use the NACS as the framework for the development and implementation of all anti-corruption and integrity-building programmes and projects and develop the capability for embedding the NACS in the Mid-Term Strategic Framework of the 7th Administration.

NACAC called on executive authorities of all government departments and entities, including state-owned and municipal entities, to lead the alignment of their respective organisations' anti-corruption and integrity-building activities with the NACS. They should detail their progress in their organisations' annual performance plans (APPs), ensuring that NACS related reporting on identified outputs are also embedded in their APPs.

Crucially, NACAC advised Cabinet to assign responsibility for cluster-level cooperation, coordination and performance management of NACS programmes to an appropriately suited department and allocate sufficient capacity and resources for the department to perform this function. This would ensure effective implementation of the NACS. NACAC recommended that the Department of Planning, Monitoring, and Evaluation in the Presidency is allocated responsibility for fulfilling this function.

## Advisory 4: Strengthening the PPFA to manage corruption risks and improve transparency in South Africa (Appendix D.4)

The Zondo Commission exposed evidence that political parties were sometimes accountable to their donors rather than to their electorate. NACAC reviewed the PPFA and found that the 2019 PPFA contained vulnerabilities for corruption and undue influence. NACAC proposed legislative amendments aimed at strengthening transparency and reducing vulnerabilities for corruption and undue influence in the context of party funding.

NACAC recommended that the PPFA should not include the Corrupt Donation Crime as a separate offense. Instead it should reference section 13 of PRECCA which already criminalises corrupt donations. Further recommendations included: amendments to the existing thresholds for disclosure and caps on donations should be postponed until sufficient evidence is available to make informed decisions regarding more appropriate thresholds and caps; donations of amounts exceeding the Section 9(1)(a) threshold should be required to be disclosed directly to the Independent Electoral Commission (IEC); and natural persons and juristic entities should be prohibited from circumventing the Section 8(2) cap by making multiple donations through related juristic entities.

NACAC also proposed a requirement that all private monetary donations to political parties be deposited directly into the bank account specifically created for donations. NACAC recommended that donations made to internal party leadership contests should be subjected to the same disclosure thresholds and prescribed maximum caps as those applied to political party funding. It recommended that it should be mandatory for political party investment vehicles to disclose sources of investment income. It also recommended that donations received by independent candidates should be regulated and guidelines set for how they receive money from public funds.

NACAC also advised that the Political Party Funding Unit within the IEC be adequately resourced and staffed to effectively conduct oversight, monitor donations, and investigate complaints.

## Advisory 5: Appointment of a retired judge as whistleblower protector of South Africa (Appendix D.5)

NACAC continued its work aimed at addressing the hardships experienced by whistleblowers. It noted that the existing framework has failed to provide sufficient protection for whistleblowers. This Advisory focused on a proposal for a specialist institution that is closely attuned to the experiences and needs of whistleblowers. It proposed that the institution should be headed by a retired judge and made suggestions for the characteristics, mandate, and resourcing of such an institution.

The Advisory identified the essential features that the proposed institution would need to have, including: a clearly defined whistleblower protection mandate; independence; adequate resources; and a single focus on protecting whistleblowers. The institution should be headed on a full-time basis by a retired judge, appointed through a legitimate and transparent process who would enjoy security of tenure.

The institution's functions would include: certifying a whistleblower's status; carrying out any risk assessment and making any necessary referrals based on these assessments; assisting whistleblowers to obtain interdicts in the case of retaliation; instructing institutions to take protective actions in favour of whistleblowers; providing financial assistance to whistleblowers in financial distress; and conducting research in order to make policy recommendations on whistleblower protections.

Mindful of the urgency of the plight of whistleblowers, NACAC proposed a two-phase process for the formation of the institution: an interim phase in which the President would establish the institution and appoint the retired judge to lead it, followed by a permanent institution as set out in the Advisory.

## Advisory 6: Strengthening anti-corruption elements of the Public Procurement Bill (Appendix D.6)

This Advisory focused on the Public Procurement Bill that was before Parliament in January 2024. The Bill had been revised and passed by the National Assembly but had yet to be considered by the National Council of Provinces.

This Advisory expressed the opinion that the Bill which had been passed did not properly address the recommendations of the Zondo Commission on procurement corruption, and could still open the doors for graft. It expressed concerns about the procedure of passing the Bill and the limited nature of the parliamentary participation process. Significant changes had been made to the Bill in relation to preferential procurement during the parliamentary process, and there had been very limited consultation on these changes.

The Advisory explained where revisions to the Bill would be required in order to align it with the anti-corruption objective that is the heart of the NACS. It drew on research and expert knowledge to make recommendations on: institutional arrangements in procurement; preferential procurement; creation of a procurement officer's profession; whistleblowing and supplemental information disclosure to the state and transparency (procurement methods and open data standards).

NACAC recommended that the Public Procurement Bill be amended to: enable the establishment of an independent Public Procurement Regulatory Authority; simplify and clarify the clauses on preferential procurement and exclusions; establish a Procurement Professional Body and accreditation system; align the beneficial ownership provisions with recent amendments to the Companies Act; limit 'confidential information' to what is non-disclosable under PAIA and the Constitution; conform to public participation legislation process for major changes in the Public Procurement Bill; refer to disclosure of corruption and procurement fraud; encourage procurement information disclosures as a countenance to procurement corruption; and introduce e-procurement which integrates vetting of tendering entities.

The Public Procurement Bill was signed into law on 18 July 2024.

## Advisory 7: Electoral Matters Amendment Bill (EMAB) (Appendix D.7)

This Advisory recognised that sufficient financial support for political parties is essential for maintaining and enhancing the vitality of South Africa's democracy. NACAC also expressed the view that adequate public funding is essential and that political parties should be able to raise funds from private sources. However, it noted the risk that unregulated influence of money in South African politics presents to our constitutional democracy and our ability to end state capture and undue influence by private actors in policy making process, regulatory bodies and procurement systems.

Following the adoption of the EMAB by the National Assembly and National Council of Provinces, NACAC remained concerned that a legal gap would mean that political parties and independent candidates would not be legally obligated to reveal their funding sources, nor would there be any imposed upper limits on the donations they can receive. The Advisory also identified grounds on which the EMAB could be challenged, including that:

- Information on the private funding of political parties and independent candidates is essential for the effective exercise of the right to make political choices and participate in elections;
- Information on private funding of political parties and independent candidates must be recorded, preserved, and made reasonably accessible;
- The detection of corruption in political processes requires transparency; and
- The prevention of undue influence of private actors and corruption in political processes requires upper limits.

The President was advised to assent the EMAB passing into law, but to specify an alternative commencement date for the sections of the Bill concerning disclosure thresholds and donation limits. To avoid a lacuna, protect the integrity of our electoral process, and mitigate risks of corruption, NACAC recommended that the sections of the Bill addressing disclosure thresholds and donation limits become effective at a later date (on 1 July 2024). This approach would have ensured a seamless transition and reinforces the legal framework governing political financing in the interim period.

*Figure 10: NACAC members meet with President Cyril Ramaphosa and Minister of Justice and Constitutional Development Ronald Lamola. Cape Town. 2023*

## NACAC monitoring of NACS implementation

A key part of NACAC's mandate was to advise the President on the effective implementation of the NACS by government, civil society and the private sector.

NACAC has done the groundwork for the future implementation of the NACS. Much of this work has been done in collaboration with partners from all sectors, whose contributions have demonstrated the whole-of-society approach in action. The support of development partners and technical assistance providers has made in-depth research to ensure evidence-based policy making possible.

NACAC observed that, while the NACS is being implemented at a slow pace, many significant steps have already been taken, including the following legislative amendments:

- The Judicial Matters Amendment Act (Act 15 of 2023) makes technical and practical amendments to various laws administered by the DOJ&CD;
- The Electoral Matters Amendment Act (Act 14 of 2024) incorporates changes to the PPFA;
- The National Prosecuting Authority Amendment Act (Act 10 of 2024) creates a permanent IDAC and empowers this statutory body to undertake search and seizures and effect arrests.
- The General Intelligence Laws Amendment Bill, disestablishes the State Security Agency to address the abuse of intelligence services in processes of state capture.
- Amendments to PRECCA – including a new offense of failure by companies to prevent corruption, along with an affirmative defence that the company had put adequate preventive measures in place.

A comprehensive NACS implementation progress report is attached as Appendix E.

## NACAC monitoring of Zondo recommendations

Another important component of NACAC's mandate was to advise the President on the implementation of the recommendations of the Zondo Commission from a strategic and systemic perspective.

President Cyril Ramaphosa submitted a comprehensive 60-point action plan to Parliament in October 2022, outlining the government's response to the recommendations made by the Zondo Commission. The Presidency provided detailed reporting on implementation in reports published in 2023 and 2025.

NACAC commissioned a research report from the PARI assessing government's progress in implementing the President's 60 commitments. The research report contrasts the Zondo Recommendations against the President's 60 commitments and assesses government's progress towards implementation. The full report can be found in Appendix S and some of its key findings are summarised below.

## Individual accountability

Investigations and prosecutions are ongoing, but the justice system is facing significant challenges related to capacity, independence and institutional architecture. The President has other mechanisms available to hold implicated members of the Executive accountable, such as those set out in provisions of the Constitution and the Executive Members Ethics Act and Code. It is both inappropriate and unnecessary to await the outcome of protracted investigations and prosecutions. Monitoring and communicating effectively with the public about state capture-related cases is critical for building trust in government and democratic legitimacy.

## Law enforcement

*A permanent IDAC:* The establishment of IDAC as a permanent unit with investigative powers within the NPA was an important step towards properly capacitating the NPA. It is now essential that this key piece of legislation is supported by adequate resources.

*NDPP appointment process:* There has been an extended delay by the government in effecting an amendment of the NPA Act to clarify the requirements for a 'transparent and open' process for the selection of the NDPP. Government's undertaking has apparently changed to now afford the President the discretion to include a relatively informal practice in 'guidelines' rather than the promised binding legislative amendment.

*Progress towards NPA independence:* It has long been recognised as deeply problematic that the DOJ&CD exercises control over the NPA to an extent which compromises the NPA's independence. The government has not set out a timeframe within which urgent reform of the NPA will be undertaken.

PARI reports that the DOJ&CD stands out as having been especially slow to respond to the pressing needs for institutional and legislative reform. It has also failed to provide the NPA with appropriate practical operational support by facilitating unhindered access to the SCC database.

*Capacity and performance:* The NPA's budget is controlled by the DOJ&CD. Despite some improvements, recent austerity measures resulted in negative personnel growth. The IDAC is severely under-capacitated, contributing to the slow progress of state capture investigations and the absence to date of successful high-profile prosecutions. Dependency on unduly slow-moving executive and legislative branches of the state exacerbates the pressures facing LEAs.

## Anti-corruption architecture

Government's slow response to NACAC's mid-term report, and failure to release it, has left unresolved issues of coordination regarding the allocation of cases between the NPA, the DPCI and the wider SAPS, as well as the SIU. While the National Priority Committee on Organised Crime exists to, amongst other things, coordinate this work, there is no higher-level strategic oversight of that structure.

There is also an urgent need (as with public procurement and personnel practices) for an integrated digital case management system. The Integrated Justice System, under development for over two decades, has not yet been established, which has major implications for efficiency and oversight of the CJS.

## Money laundering and financial crime

Significant progress has been made to strengthen South Africa's anti-money laundering regulatory environment and to re-align with FATF standards. The creation of the beneficial ownership register is an especially important step forward.

## Reform of appointment processes

The evidence uncovered by the Zondo Commission clearly demonstrates the importance and urgency of the reform of appointment processes for senior leaders. It is unclear what progress has been made since 2022 and why the government has missed its promised deadline to introduce legislation in mid-2023 – a delay of over two years.

## Procurement system reforms

The Public Procurement Bill has been enacted, though regulations to bring the legislation into effect are still being developed. The Act implements several of the Zondo Commission's recommendations but does not adequately address the fragmentation in the public procurement regulatory framework and defers important policy decisions, best embodied in statute law, to yet unpublished regulations.

## Intelligence services reforms

The Zondo Commission found that the security and intelligence services were politicised and compromised at the highest level so that those involved in the state capture project could proceed with their illicit activities with impunity. The Zondo Commission made many recommendations concerning, inter alia, improving financial controls and accountability, and improving oversight.

The General Intelligence Laws Amendment Act was enacted in March 2025, fulfilling the President's commitment to disestablish the State Security Agency (SSA) and establish two separate entities responsible for foreign and domestic intelligence. The Act contains a number of provisions to improve oversight.

The Act has not yet commenced and the restructuring is still in progress; the SSA is still in operation as a single intelligence agency. In the interim the President has reported that the SSA has implemented many of the recommendations concerning various controls and internal processes.

The Act improves oversight of the intelligence function, but critical weaknesses in the legislative and regulatory framework remain. Some provisions in the Act are overly broad and could enable abuse, and civil society has raised important concerns about the powers and reach of intelligence agencies.

## Whistleblower protection measures

The draft Whistleblower Protections Bill is yet to be published for public comment, so it is unclear whether its provisions will adequately strengthen the whistleblower protection regime. The extended delay in finalising this vital legislation is a matter for profound concern. No reasons have been put forward for the failure to finalise these reforms to date, and any draft bill still has to undergo lengthy public consultation and legislative processes. Reform of the whistleblower protection regime has been a consistent demand from civil society organisations and has been highlighted by NACAC as a top priority.

## Professionalisation of the public administration

The Zondo Commission found that the ability to 'strategically position' political associates in key posts within the public administration was the 'essential mechanism' of state capture. The President positioned the 'National Framework towards the Implementation of Professionalisation of the Public Sector' (adopted in 2022) as an important instrument to address the Commission's concerns. The framework contains various reforms to ensure a clearer regulation of the respective roles of politicians and administrators.

The Public Service Amendment Bill takes steps towards separating the political and administrative spheres and is a much-needed step in the journey towards a depoliticised public service. The Public Service Commission Bill is another positive development in the professionalisation of the public administration, in that it strengthens the independence of the PSC and extends oversight of the PSC to the local government sphere.

The legislation currently under deliberation in Parliament represents a partial or incomplete implementation of the promised reforms aimed at depoliticising the public administration. The commencement of lifestyle audits for members of the Executive constitutes welcome progress.

It is vital that integrated digital infrastructures and data collection standards are developed for the whole of the public administration (including in local government and public entities) to support enhanced oversight of personnel practices by the policy holders and Parliament. Further, it will be important to ensure that the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit in the Department of Public Services and Administration has the necessary resources and legal authority to effectively implement its mandate.

## State-owned entities

Government has positioned the National State Enterprises Bill as the significant instrument to address governance challenges in SOEs. The Bill takes the important step of establishing a shareholding company into which the large SOEs will be transferred. The extent to which the Bill will in fact address the challenges is unclear. It includes some robust corporate governance provisions but does not satisfy the urgent need for far-reaching reform.

## Private sector accountability

The Zondo Commission exposed the central role played by private sector actors in corruption and state capture, through direct involvement in corrupt deals and as 'professional enablers'. To enhance accountability, the Commission recommended: amending PRECCA to criminalise the failure of persons or entities to prevent bribery; and introducing legislation for Deferred Prosecution Agreements (DPAs) to tackle economic crimes.

Both the Companies Act and PRECCA have been duly amended but official guidance/policy on how the new provision in PRECCA is to be applied in practice needs to be developed and adopted. The South African Law Reform Commission (SALRC) has published a discussion paper on 'non-trial resolution' (NTR) – of which DPAs are a subset. The SALRC review on NTRs should be finalised without delay, and the development of a principled NTR framework promulgated in legislation should be a priority. In the interim, in order to uphold the rule of law, the NPA developed and published a Corporate Alternative Dispute Resolution Directive, which provides for a simple, but lawful form of NTR for corporate corruption.

## Parliamentary oversight

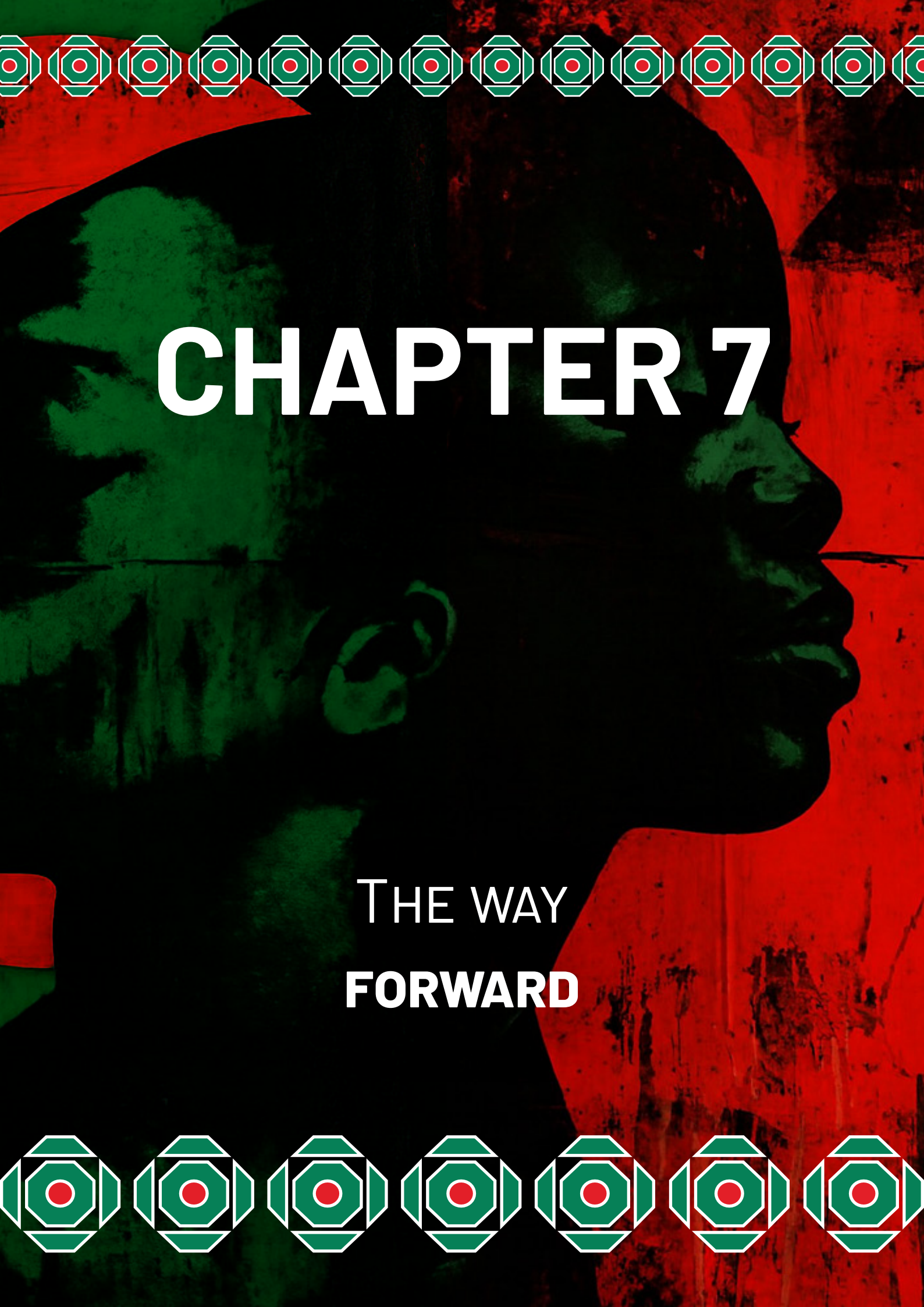
The Zondo Commission found that Parliament had failed to fulfil its oversight mandate due to the lack of political will from the (then) majority party. The report found that Parliament's oversight powers and the tools available to it were generally sufficient, but that these were not used effectively. The report made specific recommendations on improving oversight, including reforms to mitigate the negative impact of the political environment.

The President limited his commitments to recommendations concerning the interface between Parliament and the Executive, acknowledging the need to determine whether the existing processes of reporting and accountability through the Leader of Government Business are 'sufficient and appropriate'. The 2025 progress report noted that engagements on these issues have taken place. Parliament developed its own response and implementation plan. It has adopted some of the Zondo recommendations but decided against adopting many others, finding that it has sufficient powers and further intervention was unnecessary.

*Figure 11 Councilor Sekoatlane Phamodi*

## Conclusion

In summary, the Presidency's efforts to monitor the implementation of the Zondo recommendations are a positive initiative by government. While progress has been made in some areas, civil society should remain vigilant to ensure that the achievements of the Zondo Commission are not forgotten, but remain a landmark on the road towards institutionalising integrity in our young democracy.



# CHAPTER 7

## The way **FORWARD**

## NACS implementation

Section 8.2 of the NACS requires a "review of this strategy, which encompasses its supporting implementation plan, will be undertaken under the auspices of the overarching body". This means that a comprehensive multi-stakeholder review at the NACS five-year mark is currently due.

Due to time and resource constraints, NACAC was unable to undertake this important task, which would highlight work to be urgently undertaken and present the opportunity to mainstream gender and youth aspects more strongly into the strategy.

Going forward, the role of civil society organisations, traditional leadership, academia and the media in awareness-raising, creating an active and informed citizenry and driving improved accountability will be important. The private sector should invest in the institutionalisation of the NACS, which will contribute to ethical governance and improvements in the procurement system. The protection of vulnerable sectors will continue to be important. Other priorities for the future should be ensuring the professionalisation of the public sector, demonstrable consequence management, and strengthening our LEAs.

## Who will champion the NACS?

This does, however, bring us back to the question of who will take responsibility for the overall implementation of the NACS and be assigned the task to champion, drive and coordinate the actions of all these role-players. As indicated, the DOJ&CD had been requested to assist the NACAC to advance the OPI recommendations through government's clusters. The challenge is that the focus of the DOJ&CD is the JCPS Cluster, while the NACS pillars include activities across all the governance clusters and sectors.

To date, the Department of Planning, Monitoring and Evaluation (DPME) has served as a NACS nodal structure, working closely with NACAC to develop the NACS Implementation Plan and monitoring the implementation of the NACS within government. It would therefore be expedient for the DPME to continue the work on the monitoring of the implementation of the NACS. However, NACAC recommends that the Minister of Justice and Constitutional Development be given the mandate to drive the implementation of the NACS and the establishment of the OPI.

Proposals for critical additional work to be undertaken, together with the duty bearers, are contained in the NACS progress report, Appendix E.

### Gender and corruption

The OPI should also approach its work with an understanding of the gendered nature of corruption. In this regard, the OPI must raise awareness of aspects of corruption not recognised in the NACS, including sexual corruption.[38] Simply put, sexual corruption occurs when a person with entrusted authority abuses this authority to obtain a sexual favour. It is rife in South Africa. In the interim, it is important for the Department of Justice and Constitutional Development to pick up on these critical gender issues.

NACAC has considered extensive research on gender and corruption, including whether anti-corruption legislation is adequate to address sexual corruption (see Appendices H and J). With a sound evidence base now in place, mainstreaming gender into anti-corruption programming should follow to ensure improved responses to and outcomes of these programmes.

## The way forward

The NACAC's recommendation for an OPI will not be realised overnight and while the discussions for the planning and operationalisation of this structure are underway, the task of comprehensively addressing systemic corruption and driving corruption prevention work must gather pace.

Losing momentum would send a signal to citizens that the threat corruption poses to our democracy has not been prioritised. The President may therefore need to consider keeping the NACAC in place until the OPI is set up or for the remainder of the NACS lifecycle. Should the NACAC be kept in place to continue work already begun, it will require a dedicated budget for the remuneration of NACAC members and a properly resourced secretariat.

The NACAC engagement with the Portfolio Committee on Justice and Constitutional Development surfaced the idea of integrating elements of the 21st Constitutional Amendment Bill and NACAC's proposals for the development of the OPI. The DOJ&CD should be assigned to explore and consult on this idea.

NACAC urges the nation to move forward with the proposed course of action as set out in this document as quickly as possible, while there is still time and hope for our young democracy to escape the scourge of corruption and capture.

[38] Defined by the International Association of Women Judges as "a form of corruption occurring when sexual acts are demanded or required from women, men and gender non-conforming people in order to obtain a public (or private) service or benefit".

## Table of immediate and short-term actions

| Focus area | Recommendations | Process owner(s) | Timeline |
|---|---|---|---|
| 1. Establish the **OPI** | 1. Conclude the OPI consultation process, draft enabling legislation and advance it through parliament. | DOJ&CD | Immediate |
| | 2. Develop business case including the organisational design and budget. | DOJ&CD | Immediate |
| | 3. Ensure approval of the OPI budget. | DOJ&CD | Short-term |
| | 4. Undertake the process to equip the OPI to carry out an expanded SIU mandate including whistleblower protection, public enquiries, strategic corruption prevention functions, and strategic communication campaign. | DOJ&CD | Short-term |
| | 5. Establish a NCP to advocate for public participation in collective action. | SIU/OPI | Short-term |
| 2. Strengthen **LEAs** | 1. Share NACAC's research reports and recommendations with the Madlanga Commission, highlighting the urgent need for the Commission to inquire into the operations of SAPS Crime Intelligence. | Presidency | Short-term |
| | 2. Undertake the process to rationalise and reorganise the mandates of the LEAs. | SAPS/DPCI/ NPA/IDAC | Immediate |
| | 3. Establish a CMC to coordinate the investigation and prosecution of corruption. | IDAC | Immediate |
| | 4. Overhaul the legislative framework of the NPA and allow the NPA operational control over its budget. | DOJ&CD | Immediate |
| | 5. Develop and implement a plan to provide increased security to protect law enforcement staff and witnesses. | SAPS/DPCI/ NPA/IDAC | Short-term |
| | 6. Develop a strategy to integrate AI and advanced analytics into law enforcement institutions and develop an anti-corruption data sharing framework. | Justice, Crime Prevention and Security Cluster | Immediate |
| | 7. Establish appropriate procedures for improving ethics and accountability in SAPS as per the recommendations of this report | Minister of Police | Immediate |

| Focus area | Recommendations | Process owner(s) | Timeline |
|---|---|---|---|
| 3. **Whistle- blower protection and support** | 1. The SIU should be empowered and resourced to provide interim protection and support to whistleblowers on an urgent basis.<br>2. Finalise amendments to strengthen the Protected Disclosures Act and expedite its processing through Parliament.<br>3. Publicly recognise whistleblowers and award national orders of merit to them. | SIU<br><br>DOJ&CD<br><br>Presidency | Immediate<br><br>Immediate |
| 4. Strengthen anti-corruption elements of **public procurement** | 1. Ensure all reports of procurement corruption and fraud are referred to the relevant law enforcement bodies.<br>2. Establish a procurement professional body and accreditation system.<br>3. Clarify principles and approach to guide open data and transparency requirements. | Public Procurement Office (PPO)<br>PPO<br><br>PPO | Immediate<br><br>Short-term<br><br>Immediate |
| 5. Embed **NACS implementation** within departments | 1. Take the lead in assigning responsibility for cluster-level cooperation, coordination and performance management of NACS programmes and allocate sufficient capacity and resources to perform this function.<br>2. Champion the NACS and the development and implementation of anticorruption and integrity-building programmes.<br>3. Ensure alignment of organisational anti corruption and integritybuilding activities with the NACS and ensure that NACS-related reporting on identified outputs are embedded in the annual performance plans. | DOJ&CD<br><br>DOJ&CD<br><br>Executive authorities | Immediate<br><br>Immediate<br><br>Immediate |
| 6. **Legislative amendments** | 1. Commence the process of amending legislation to strengthen the Public Procurement Act, Political Party Funding Act and Electoral Amendment Act, as per NACAC advisories and recommendations. | DOJ&CD | Short-term |

# APPENDICES


Appendix A Final Recommendations on the Establishment and Implementation of the Office of Public Integrity

Appendix B Establishing the Office of Public Integrity and Anti-Corruption

Appendix C Strengthening Law Enforcement Agencies in Combatting Corruption: Mandates and Resourcing

Appendix D NACAC Advisories

Appendix E NACS Progress Report

Appendix F National Dialogue on Anti-Corruption

Appendix G NACAC Mid-term Report

Appendix H The Future of Gender and Trust in Governance in 2040: Futures Literacy Laboratory Report

Appendix I Legal Framework on Sextortion / Sexual Corruption in South Africa

Appendix J Sextortion: Gendered Corruption Key Findings

Appendix K Sexual Corruption in South Africa

Appendix L Youth Anti-Corruption Dialogue

Appendix M Whistleblower Protection Conference

Appendix N Anti-Corruption Social Norms & Behaviour Change

Appendix O Communication, Prevention & Public Education: Supporting the Establishment of the Office of Public Integrity & a National Anti-Corruption Movement

Appendix P Learning Journey 2023 Kenya Report

Appendix Q NACAC GIZ Hong Kong Report

Appendix R Report: Eastern Europe Learning Journey

Appendix S Independent Assessment for the National Anti-Corruption Advisory Council of the 60 Presidential Commitments to implement the State Capture Commission Recommendations

Appendix T The NACAC's Work

Appendix U Acknowledgements

Appendix V Enhancing Corruption Investigation and Prosecution in South Africa

Appendix W Enhancing Corruption Investigation Institutions in South Africa

Appendix X Review of the Implementation Plan and M&E Framework of the National Anti-Corruption Strategy - recommendations to strengthen reporting and accountability

NACAC

National
Anti-Corruption
Advisory Council

# NATIONAL ANTI-CORRUPTION ADVISORY COUNCIL

## Final Report
## To the President, the Cabinet, and the Country

**AUGUST 2025**

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA
NACS National Anti-Corruption Strategy
PSC
german cooperation
DEUTSCHE ZUSAMMENARBEIT
Implemented by: giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra
State Secretariat for Economic Affairs SECO
UNODC United Nations Office on Drugs and Crime

THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA

# National Anti-Corruption Advisory Council

PRESENTS THE

## FINAL REPORT

**TO THE PRESIDENT, THE CABINET, AND THE COUNTRY**

**AUGUST 2025**

# PART 2: APPENDICES

# APPENDICES

Appendix A Final Recommendations on the Establishment and Implementation of the Office of Public Integrity

Appendix B Establishing the Office of Public Integrity and Anti-Corruption

Appendix C Strengthening Law Enforcement Agencies in Combatting Corruption: Mandates and Resourcing

Appendix D NACAC Advisories

Appendix E NACS Progress Report

Appendix F National Dialogue on Anti-Corruption

Appendix G NACAC Mid-term Report

Appendix H The Future of Gender and Trust in Governance in 2040: Futures Literacy Laboratory Report

Appendix I Legal Framework on Sextortion / Sexual Corruption in South Africa

Appendix J Sextortion: Gendered Corruption Key Findings

Appendix K Sexual Corruption in South Africa

Appendix L Youth Anti-Corruption Dialogue

Appendix M Whistleblower Protection Conference

Appendix N Anti-Corruption Social Norms & Behaviour Change

Appendix O Communication, Prevention & Public Education: Supporting the Establishment of the Office of Public Integrity and a National Anti-Corruption Movement

Appendix P Learning Journey 2023 Kenya Report

Appendix Q NACAC GIZ Hong Kong Report

Appendix R Report_ Eastern Europe Learning Journey

Appendix S PARI Report

Appendix T The NACAC's Work

Appendix U Acknowledgements

Appendix V World Bank Report: 'Enhancing corruption investigation and prosecution in South Africa.'

Appendix W World Bank Report: 'Enhancing corruption prevention in South Africa.'

Appendix X National Anti-Corruption Strategy (NACS) Monitoring & Evaluation Framework

# Appendix A Establishing the Office of Public Integrity and Anti-Corruption

**Final Recommendations on the Establishment and Implementation of the Office of Public Integrity**

1. **MANDATE OF THE OPI:**

NACAC recommends that Cabinet advance legislation to establish an Office of Public Integrity and Anticorruption (OPI) as a new permanent, independent institution with the mandate to **prevent, investigate and remedy systemic corruption** involving government and other organs of state and to **enhance transparency and integrity** in their workings.

2. **FUNCTIONS OF THE OPI**

To fulfil its mandate, NACAC recommends that the OPI, at a minimum, be empowered and appropriately resourced to perform the following functions:

1. **Develop** appropriate and relevant **frameworks and measures** by which it can **monitor, inspect, detect and expose** corruption risk and enhance transparency and integrity in government and other organs of state. Such measures may include but not be limited to:
2. **Gathering, storing and processing of data** relevant to the assessment of corruption risk and its mitigation, including establishing and maintaining data repositories and systems supporting this purpose;
3. **Conducting** national, provincial and local **inquiries and public hearings** into allegations of systemic corruption and its impacts on victims.
4. **Conduct systemic audits** into the corruption risk of institutional policies and practices in government and other organs of state, including those of their officials and functionaries. Such systemic audits may be triggered by:
    1. **Voluntary submission** of the government institution or organ of state, as the case may be;
    2. **Proactive** thematic, sectoral or institutional projects determined by the OPI.
5. **Conduct civil investigations** into systemic corruption involving government or any organs of state. Investigations may be triggered by:

1. Proclamation of the President of the Republic of South Africa; or
2. *MeroMeru motu*[1] on reasonable suspicion of systemic corruption stemming from reports, analytical insights and/or preliminary inquiries in the day-to-day course of its work.

1. *MeroMeru motu* investigations must be authorised by the Chairperson of NACAC.

6. **Protect public property and recover assets or the value of assets** acquired through corrupt dealings that are the subject of a civil investigation.
7. **Remedy systemic corruption risks and their drivers** in government institutions or organs of state, by

[1] Mero motu is a Latin term that means "**on his mere motion**." It refers to doing something voluntarily, without any suggestion or influence from another person.

1. developing and issuing **standards, guidelines and practice notes** guiding institutional policy or practices for mitigating systemic corruption risk and promoting public transparency and integrity;
2. **informing, advising on or recommending the development of appropriate national, provincial or local government policy or legislation** for mitigating systemic corruption risk and promoting public transparency and integrity, including participating in their proceedings, investigations and inquiries;
3. **giving or receiving advice from** relevant regulatory or supervisory authorities on the implementation and enforcement of institutional policy or practices for mitigating systemic corruption risk and promoting public transparency and integrity;
4. **participating in the proceedings, investigations and inquiries** of relevant regulatory or supervisory authorities pertaining to corruption, the mitigation of corruption risk and promotion of public transparency and integrity;
5. **coordinating and conducting training and development programs** on corruption risk mitigation and the promotion of public transparency and integrity for the staff of government institutions and organs of state.
8. **Cooperate and collaborate** with other agencies, organs of state and any foreign government or international organisations in the prevention and investigation of systemic corruption.
9. **Coordinate implementation of the National Anti-Corruption Strategy (NACS)** by public, private and civil society sectoral partners to reinforce an all-government and all-society response to corruption including by:

1. Convening social partners to identify, align and implement priority projects and initiatives;
2. Assessing and reporting on the implementation and impact of the NACS and its priority projects and initiatives;
3. Convening periodic national, provincial and local public integrity dialogues in collaboration with relevant social partners and stakeholders;
4. Leading the periodic review and update of the NACS through a national consultative process.

10. **Coordinate and oversee the receipt, review and referral of whistleblower disclosures across government** and organs of state. This should include but not be limited to:
    1. receiving, reviewing and referring of whistleblower disclosures to the relevant and appropriate authorities;
    2. leading whistleblower protection and support functions across government in line with relevant whistleblower legislation;
    3. receiving and managing dedicated resources for the protection and support of whistleblowers;
    4. advising on and supporting the implementation of any national, provincial or local policy and legislation, as well as institutional policies and practices, on the appropriate treatment of disclosures and protection and support of whistleblowers.
11. **Lead public education and social and behavioural change programs** that will, over time, build a societal values-base that is intolerant of corruption.

3. **POWERS OF THE OPI**

In order to fulfil its mandate, NACAC recommends that the OPI be vested with the following powers:

1. Supporting cross-cutting operational functioning of the OPI:
1. Power to raise, receive and manage funds enabling the fulfilment of its mandate and functions including from:
1. Parliamentary appropriations;
2. Government institutions and organs of state for services rendered;
3. Asset recovery as a proportion of assets recovered provided for in legislation;
4. Disbursements from the Criminal Asset Recovery Account; and
5. Donors, paying due regard to the real or perceived independence and integrity of the OPI.
2. Power to appoint staff and to determine an appropriate remuneration and rewards structure.
3. Power to obtain professional assistance or advice from such persons or organizations as it considers appropriate, including from the private sector.
4. All powers necessary or expedient for the efficient and effective execution of its functions, under the Constitution, its legislation or any other written law.
2. Supporting mandate to develop and implement frameworks and measures to monitor, inspect, detect and expose corruption-risk
1. Power to **conduct inquiries and public hearings** including attendant powers to:
1. summons witnesses at those hearings;
2. direct the production of records or other physical or digital evidence in conjunction with those hearings
3. Supporting its mandate to conduct systemic audits:
2. Power to **access and analyse materials classified** as restricted, confidential or secret, such powers being regulated by the relevant legislation.
3. Power to **undertake *in situ* inspections** of the physical and digital records and operational processes of government institutions and organs of state without prior notice for the purposes of assessing systemic corruption risk.
4. Supporting its mandate to conduct civil investigations:
1. Powers to **access and analyse materials classified** as restricted, confidential or secret, such powers being regulated by the relevant legislation.
2. Powers of **search and seizure** authorised through statute and actioned through a warrant granted by a Special Tribunal or court of law upon application by the OPI in *ex parte* proceedings.
3. Power to **direct the production of** records or other physical or digital **evidence** relevant to an investigation.
1. Power to petition a Special Tribunal or court of law to enforce a directive for the production of records or other physical or digital evidence relevant to an investigation.
4. Power to **summons and interview** witnesses relevant to an investigation **under oath**.
1. Power to petition a Special Tribunal or court of law to enforce a summons directing a witness to participate in an interview under oath.
5. Power to **refer evidence of criminal conduct** discovered in the course of investigations and/or systemic audits to any relevant and appropriate law enforcement agency for further investigation.

6. Power to **collect**, under the explicit direction of a prosecutor assigned by the NPA, **evidence of criminal conduct and prepare a criminal docket** for referral to the relevant and appropriate law enforcement agency for ongoing investigation and/or for prosecution by the NPA.
7. Power to **undertake joint-operations** with the relevant and appropriate law enforcement agencies.
8. Power to **prepare and publish reports on its investigations** including its methods, findings and requisite remedial action.
5. Supporting its mandate to protect public property and recover assets acquired by corrupt dealings:

1. Powers to institute civil proceedings for purposes of the preservation or recovery of public property, or to freeze or confiscate proceeds of corruption or those related to corruption that is the subject of an investigation or systemic audit.
2. Powers to institute civil proceedings for the payment of compensation for or recovery of the value of public property that has been disposed of or has depreciated in value.

6. Supporting its mandate to remedy systemic corruption risks and their drivers

1. Power to set out **binding remedial action** to government institutions or organs of state subject to a civil investigation or systemic audit, as the case may be, directing the implementation of institutional policy or practices for mitigating systemic corruption risk and promoting public transparency and integrity;

1. **supervising** the **implementation** of such **remedial action**;
2. petitioning a Court to **enforce** the **implementation** of such **remedial action**.

2. Powers to **institute and/or initiate other civil punitive proceedings** to punish and deter further corruption or unethical conduct.

## 4. STATUS OF THE OPI

1. NACAC recommends that the OPI be established as an institution supporting constitutional democracy under Chapter 9 of the Constitution to assure the conformity and preservation of its status and institutional arrangements with the STIRS criteria established in the Glenister Judgments of the Constitutional Court, which now form part of South Africa's constitutional law, and which give the fullest expression to South Africa's treaty obligations and public international law. NACAC further recommends that the OPI's mandate, powers and functions be elaborated in comprehensive legislation.
2. Acknowledging the complexity and uncertainty of the prescribed process for making a constitutional amendment as would be required to give effect to Recommendation 4.1, above, NACAC recommends, as a last resort, the establishment of the OPI as a statutory body with the following arrangements:

1. The same principles outlined in Recommendation 5, below, continue to apply.
2. The OPI legislation be subject to amendment or abrogation by a resolution supported by a special majority of the National Assembly.

## 5. ESTABLISHMENT OF AN OPI

NACAC recommends that the OPI be established as follows:

1. The OPI is set up as a Council of not fewer than five (5) but not more than nine (9) fit and proper persons with—

1. appropriate qualifications relating to the objects of the OPI;
2. a credible record of expertise and experience relating to the objects of the OPI;
3. an impeccable record of honesty, integrity and service to society.
2. The Council must comprise:
1. one (1) Chairperson who must be appointed in a full-time capacity to the OPI; and
2. not fewer than four (4) and not more than eight (8) ordinary members who may be appointed in either a full- or part-time capacity to the OPI;
3. The Chairperson of the OPI must direct the work of the OPI and the staff of the OPI.
4. The Council and its Chairperson must be appointed by the President on the recommendation of a resolution supported by a majority of the National Assembly following an open, transparent and participatory public process.
5. Council members must each be appointed for an uninterrupted term of five (5) years which may be renewed for not more than one additional five-year term.
6. Removal of a member of the Council must follow a legislated procedure which includes a transparent and public inquiry conducted by the National Assembly followed by a majority vote of the Assembly or, in the case of the removal of the Chairperson or the dissolution of the entire Council, a special majority vote of the Assembly supporting a motion to this effect.
7. The Council must appoint a Chief Executive Officer as head of the administration and accounting officer. The Council may appoint other such executive officers and staff as required to fulfil the administrative functions supporting the mandate and objects of the OPI.
8. The Council may establish one or more committees necessary for the proper performance of its functions. These committees may consist of members of the Council, staff of the OPI, representatives of government institutions and organs of state, and members of the public.
9. NACAC further recommends that the OPI must have a Special Tribunal or dedicated court of law for the purposes of adjudicating civil proceedings emanating from any investigation or systemic audit of the OPI.

6. **TRANSITIONAL ARRANGEMENTS**

1. NACAC recommends that, in the transitional phase, such legal measures as are necessary be enacted to empower the Special Investigating Unit (SIU) to perform these functions as the precursor to the OPI, thus enabling the intended functions of the OPI to be operationalised with immediate effect.
2. NACAC recommends that upon its establishment and the appointment of its council, the OPI absorbs the resources of the SIU, including the full portfolio of work aligned with the mandate, functions and powers of the OPI.
3. NACAC further recommends that the establishment of the OPI be given the necessary priority by Cabinet and Parliament to be concluded within the next three (3) years.

Limina
Reimagine Learning

# Establishing the Office of Public Integrity and Anti-Corruption

## A Consulting Report

2030 NDP

german cooperation
DEUTSCHE ZUSAMMENARBEIT

Implemented by:
giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

State Secretariat for Economic Affairs SECO

NACAC
National Anti-Corruption Advisory Council

# Table of Contents


04 **Executive Summary**

06 **1. Introduction**

1.1 Problem Statement and Rationale

1.2 Purpose and Scope

1.3 Research Methodology

09 **2. Systemic Corruption**

2.1 Understanding and Defining Systemic Corruption

2.2 Systemic Corruption in South Africa

2.3 Experiences from Other Countries

19 **3. Analysis of Legal Frameworks**

36 **4. Establishing the OPI**

46 **5. Organisational Structure**

5.1 From SIU to OPI

5.2 Skill Sets for Top-Leadership

52 **6. Project and Change Management (GTAC)**

57 **7. Financial Considerations**

7.1 The Anticipated Costs of the OPI Establishment

7.2 Potential Funding Solutions

61 **8. Performance Measurement**

62 **9. Conclusion**

64 **10. Bibliography**

# Executive Summary

This report outlines key findings and recommendations developed by Limina researchers as mandated by the contracting partner, GIZ, and the beneficiary of the report, the National Anti-Corruption Advisory Council (NACAC). It addresses the anticipated establishment of the OPI – the Office of Public Integrity and Anti-Corruption – and is based on NACAC's initial recommendations set out in its Mid-Term Report from May 2024.

The establishment of the OPI is a pivotal step in South Africa's fight against systemic corruption. The OPI is designed to provide a comprehensive and coordinated approach to combating corruption, leveraging the strengths of existing institutions while introducing new mechanisms to enhance effectiveness and accountability.

The report proposes the following definition: '*Systemic corruption refers to the pervasive presence of corrupt practices within an organisation or economy. It implies that corruption is the norm, and encountering an honest officer would be surprising. Systemic corruption often involves private sector players and can include elements of political corruption, where senior government officials initiate or support corrupt activities for personal political and/or financial gain. This political dimension can create hidden networks that guide institutions in their routine corrupt behaviour. Systemic corruption can encompass both major and minor incidents and may not always be illegal.*' This definition is important as it helps distinguish occasional and systemic corruption and consequently allows for proper inter-agency cooperation.

The report highlights the urgent need for a dedicated, independent, and well-resourced institution to lead the fight against systemic corruption, promote ethical governance, and ensure accountability across all spheres of government and public administration. The OPI's mandate will encompass a wide range of powers and functions, including investigations, public education, policy advisory, and corrective actions, all aimed at addressing systemic corruption comprehensively.

The integration of the Special Investigating Unit (SIU) into the OPI is a strategic move that allows for the immediate commencement of operations, utilising the existing infrastructure and expertise of the SIU. This integration will be managed carefully to ensure a smooth transition, with a focus on maintaining the integrity and effectiveness of both entities. For this, the report explains the processes of strategy development as well as project and change management.

The OPI's success will depend on several critical factors, including strong leadership, adequate funding, and effective coordination with other anti-corruption agencies. The proposed governance structure, with clear roles and responsibilities, will ensure that the OPI operates with the necessary independence and authority. The emphasis on public awareness and education is crucial, as it fosters a culture of integrity and empowers citizens to participate actively in the fight against corruption.

Financial considerations are crucially important, and the OPI will require a sustainable funding model to support its operations. The proposed mix of government funding, retained portions of recovered funds, and service fees will provide a balanced approach to financial sustainability. Performance measurement and oversight mechanisms will be integral to the OPI's operations, ensuring transparency, accountability, and continuous improvement.

The establishment of the OPI will be carried out in a phased approach to ensure swift commencement of operations while laying the groundwork for a robust and independent institution. The initial phase involves a proclamation within the current SIU framework providing for the immediate start of OPI operations. This is immediately followed by an amendment of the SIU Act. After that, the development of dedicated legislation to formally establish the OPI as a statutory body will be the next phase. The final phase aims to transition the OPI into a Chapter 9 institution, ensuring its independence and constitutional protection. The report details all phases, highlights advantages and challenges and provides for a technical brief on aspects that should be included in an OPI legislation.

The OPI's mandate will include the power to conduct investigations into systemic corruption, either through a Presidential Proclamation or on its own accord. The OPI will work closely with the National Prosecuting Authority (NPA) and the South African Police Service (SAPS) to ensure swift and effective prosecution of corruption cases. The OPI will also have the authority to initiate civil recovery actions, including claiming damages and recovering proceeds of corruption.

Public awareness and education will be key components of the OPI's strategy to combat systemic corruption. The OPI will lead efforts to foster integrity and anti-corruption values from a young age, engaging with educational institutions, communities, and the private sector. The institution will also implement a whistleblowing mechanism, ensuring that those who expose corruption are safeguarded from retaliation.

The OPI's success will be measured through a comprehensive performance measurement framework, including oversight and accountability mechanisms, impact assessments, performance audits, and public feedback. These measures will ensure that the OPI operates transparently and effectively, continuously improving its efforts to combat systemic corruption.

In summary, the OPI is positioned to play a crucial role in South Africa's multi-agency anti-corruption landscape. By addressing systemic corruption through a multi-faceted approach, the OPI will contribute to restoring public trust, enhancing institutional integrity, and promoting a culture of accountability. The successful implementation of the OPI will require commitment and collaboration from all stakeholders. It will incur initial expenses, but will be beneficial in the long run, caring for the political, economic, and societal development of the country.

# 1. Introduction

In deepening and strengthening the efforts of ridding corruption in South Africa, the National Anti-Corruption Advisory Council (NACAC) was formed to provide strategic guidance and independent oversight on the implementation of the National Anti-Corruption Strategy 2020 - 2030 (NACS)[1]. The NACS envisions a corruption-free South Africa by 2030, built on integrity, transparency, active citizenry, and strengthened anti-corruption systems across government, business, and civil society. Part of the responses towards achieving the NACS objectives was the urgent need for a dedicated, independent, and well-resourced institution that can lead the fight against systemic corruption, promote ethical governance, and ensure accountability across all spheres of government and public administration.

In its May 2024 mid-term report (as revised), 'one of the principal tasks in terms of the mandate of the NACAC is the formulation of a proposal to the President and Cabinet regarding the creation of a new permanent institution, to play a leading role in the nation's work against corruption, in collaboration with existing law enforcement'[2] - which is the Office of the Public Integrity & Anti-Corruption (OPI). The report further details recommendations for the establishment of the OPI.

Through the collaboration between the Department of Planning, Monitoring and Evaluation (DPME) and GIZ's Transparency, Integrity, and Accountability Programme (TIP), this research team was commissioned to support the implementation of the NACAC's proposal by conducting in-depth research into the establishment of a permanent anti-corruption body, the OPI. This paper/research seeks to provide an independent view in terms of the design and authority of the OPI and the possible route to its establishment in terms of the NACAC recommendations in line with the NACS.

[1]NACS 2020 - 2030
[2]NACAC: Mid-Term Report, May 2024

## 1.1 Problem Statement and Rationale

In his keynote address, President Ramaphosa, at the 2023 National Dialogue on Anti-Corruption, asserted that 'corruption has wounded our democracy and shaken people's faith in our institutions. If corruption is not arrested, the greatest damage will not be in the funds stolen, the jobs lost, or the services not delivered. The greatest damage will be to the belief in democracy itself'[3]. Given the entrenched and pervasive nature of systemic corruption, addressing it requires a coordinated, systemic approach. The proposed OPI reflects this by being strategically structured to combat systemic corruption across all spheres of government, ensuring integration, consistency, and focused action in the fight against corruption. The establishment of the OPI is in direct response to the NACS committing governments to the establishment of 'an independent statutory/constitutionally entrenched state body that will report to Parliament'[4] as a matter of urgency.

## 1.2 Purpose and Scope

The purpose of this paper is to present research findings on the available options for the establishment of the OPI in line with the NACAC's recommendation as indicated in its 2024 mid-term report. It presents the reader with a holistic view in terms of the required considerations and preparations. The scope of the research is set out in the Terms of Reference (ToR)[5] for the Research on Anti-Corruption Institutional and Governance architecture concluded between GIZ and Limina. The most important expectations in the research were stipulated in the ToRs as follows:

a. Conduct an analysis and mapping of anti-corruption mandates and functions as contained in existing laws and regulations governing
   - all the law enforcement agencies (SIU, NPA, IDAC, DPCI, SAPS, IPID)
   - institutions supporting democracy (the Auditor-General [AGSA], Public Protector [PPSA] and Public Service Commission PSC])
   - National Treasury, public service and local government departments in relation to the Public Finance Management Act (PFMA), Municipal Finance Management Act (MFMA), Public Service Act (PSA), Public Administration Management Act (PAMA) and the Municipal Structures and Systems Acts.

b. Identify the administrative, legal and financial implications of existing mandates and functions if the baseline proposal is implemented and make findings and recommendations on how to best implement the baseline proposal, taking into consideration the implications.

c. Conduct research and make recommendations on a governance model for the new anti-corruption body that will ensure the integrity of operations, minimise external interference, support internal and external accountability and safeguard independence.

d. Provide a refined baseline proposal with an accompanying operational model and organisational structure.

[3]Corruption wounded SA democracy-Pres Ramaphosa | The Public Servant Online

[4]NACAC: Mid-Term Report, May 2024

[5]ToR for the research (Limina contract with GIZ)

e. Provide a preliminary costing for the new body with an annual budget, taking into account transfers of functions from other institutions.
f. Present the final products to the project team and other stakeholders at the validation workshop and handover session.
g. Provide progress/technical reports on key outputs achieved, with an executive summary.

In the process of the project, further tasks were required by NACAC, namely the participation in the Annual Anti-Corruption Conference in December 2024 and a workshop on the definition of systemic corruption in April 2025.

## 1.3 Research Methodology

A mixed-method approach was used to conduct this research, integrating both qualitative and quantitative approaches. This included desktop analysis, engagements with NACAC members (weekly meetings with Workstream 1, participation in plenary meetings of NACAC), interviews with various stakeholders (SIU, NT) and collaboration with a research team that was simultaneously assigned by NACAC.

A detailed review and analysis of the relevant legislative frameworks relating to corruption response measures in South Africa was conducted. Furthermore, a comparative analysis was conducted on anti-corruption bodies from countries/jurisdictions such as Kenya, Uganda, Namibia, Nigeria, Malaysia and Hong Kong.

The research outcomes were shared through a validation workshop, with the NACAC members and relevant key stakeholders to present, review, and confirm the accuracy, relevance, and completeness of the findings. The primary purpose of this comprehensive research methodology was to ensure that NACAC's baseline proposal for the establishment of the OPI is informed by South Africa's unique context of systemic corruption, experiences and best practices from other countries, relevant legislative boundaries and South Africa's multi-agency architecture in the fight against corruption.

# 2. Systemic Corruption

This chapter addresses two key issues. Firstly, it looks at the definition of systemic corruption from a theoretical and managerial perspective. Secondly, it provides an overview of systemic corruption in South Africa. These two parts of this chapter are important as they will pave the way for the roadmap towards establishing the OPI for the fight against systemic corruption.

## 2.1 Understanding and Defining Systemic Corruption

Systemic corruption refers to corruption that is deeply embedded in the structures and functioning of an organisation, institution, or society. It occurs when corruption is not limited to isolated cases but becomes a regular, normalised, and pervasive feature of a system. This type of corruption often involves networks of individuals or entities that perpetuate unethical practices, undermining the integrity and efficiency of governance and other societal structures. Below, we introduce various definitions of systemic corruption and the NACAC's definition to provide a world/best practice view of what constitutes systemic corruption. Then, we propose a definition of systemic corruption that has been discussed with NACAC members in a workshop in April 2025. It takes key components of all the presented definitions into account.

The following definitions of systemic corruption have been taken into account for this report:

**World Bank**[6]

Systemic corruption occurs when it is pervasive throughout an entire organisation or society and becomes a defining characteristic of its interactions and operations.

**Transparency International**[7]

Systemic corruption is corruption that is entrenched in the political, legal, and economic framework of a society, where it influences laws, institutions, and practices to serve corrupt interests.

**United National Office on Drugs and Crime (UNODC)**[8]

Systemic corruption is the most challenging type to address, as it involves corrupt behaviours institutionalised within the rules of practices of systems, often blurring the line between legality and illegality.

**Anti-Corruption Resource Centre**[9]

Systemic Corruption, also known as endemic corruption, describes a scenario in which corruption is an integral part of a state's economic, social and political system, and where most people have no alternatives to dealing with corrupt officials. Sporadic corruption, in contrast, occurs irregularly and does not compromise the mechanisms of governance in the same crippling way.

---

[6]World Bank: Understanding corruption in governance contexts
[7]Transparency International: Exploring corruption types and their impacts globally. Transparency International
[8]United Nations Office on Drugs and Crime (UNODC): UN anti-corruption resources and definitions. UNODC
[9]https://www.u4.no/terms#systemic-corruption

### NACAC Mid-Term Report[10]

Systemic corruption is defined as a form of corruption that does not always involve individual criminal acts and is not necessarily punishable through criminal law. It enables corrupt actions and is usually unethical, but not always criminal. Systemic corruption often involves hidden networks of public and private actors that distort and capture democratic processes to facilitate the misuse of public authority for personal and political advantage. These networks are governed by unwritten rules and held in place by rewards (including promotion) or punishments (including bullying). Systemic corruption has eroded the value systems of democratic institutions, turning their purpose from serving the public good (ubuntu) to personal gain. It has affected the functioning of public institutions and negatively impacted public welfare and the delivery of public services. The NACAC emphasises the need for a combination of different powers, functions, and capacities to expose and dislodge systemic corruption, as it is resistant to conventional methods of reform.

### Further explanations of systemic corruption highlight the following key characteristics:

- **Commonplace and institutionalised:** Systemic corruption describes environments where corrupt practices have become commonplace, institutionalised, or normalised (also called 'legal corruption').
- **Political decay:** Corruption becomes integral to the system, often involving those in power shaping the system to serve corrupt ends.
- **Everyday experience:** Systemic corruption refers to environments where corruption, such as bribery, is a common experience for the population in their interactions with the state.
- **Collective norm:** Systemic corruption can function as a collective norm, tolerated or even encouraged by those in power. Low levels of trust in others to behave non-corruptly.

### Examples of systemic corruption:

- **Politicised public institutions:** Public institutions providing jobs and benefits to supporters in exchange for votes. Such activities are often linked to corrupt practices like 'buying and selling' public offices.
- **Corruption in developing countries**: In many developing countries, systemic corruption can be seen in the form of widespread bribery, embezzlement, and nepotism. Public officials may use their positions to extract bribes from citizens or divert public funds for personal use. Typically, it is an environment in which it is known that certain services are only rendered against a bribe.
- **Oligarchic influence:** In some countries, a small group of wealthy individuals (oligarchs) can exert significant influence over political decisions and public policies. This can lead to policies that favour the interests of the few over the many, perpetuating inequality and corruption.

To support NACAC's recommendations for establishing the OPI, we propose a twofold approach: defining systemic corruption and providing a managerial tool to identify cases of systemic corruption.

---

[10]National Anti-Corruption Advisory Council. Mid-Term Report May 2024

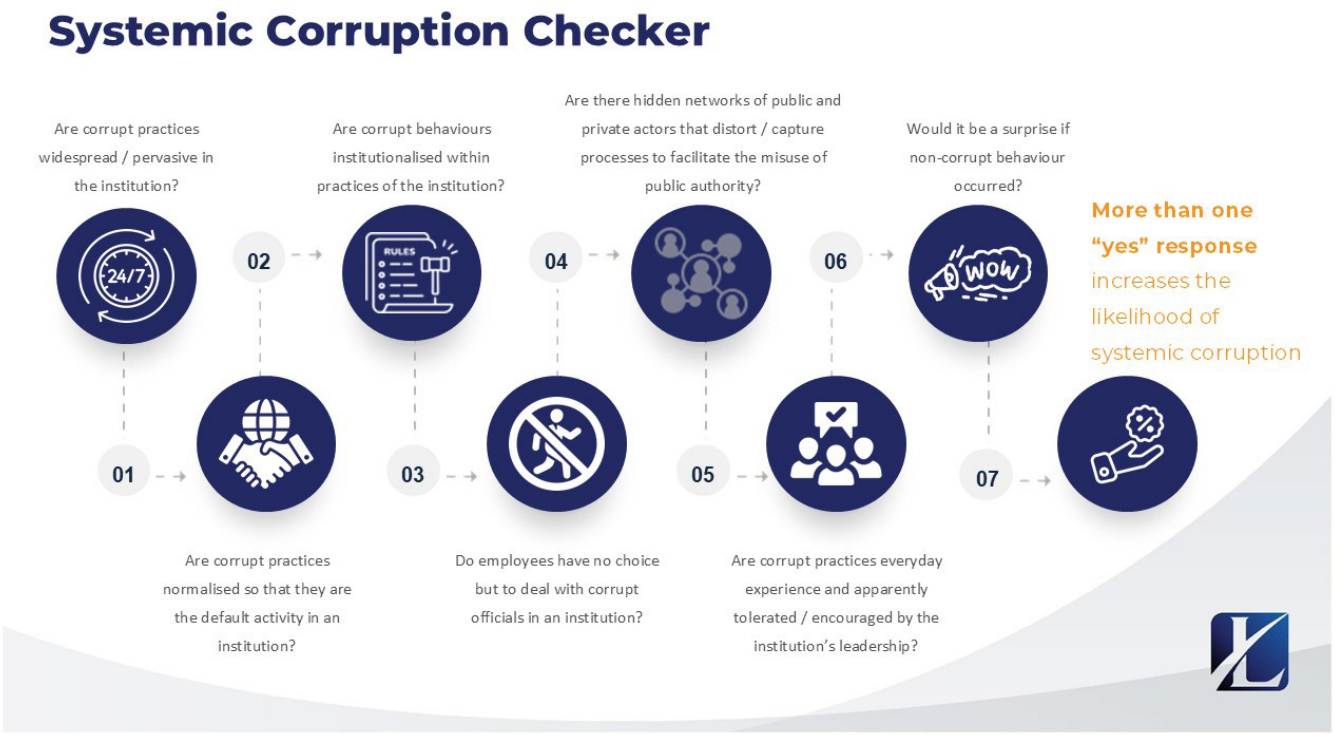
[11]Johnston, M. (2005). Syndromes of Corruption. Cambridge University Press

# Proposal: Definition of Systemic Corruption

'*Systemic corruption refers to the pervasive presence of corrupt practices within an organisation or economy. It implies that corruption is the norm, and encountering an honest officer would be surprising. Systemic corruption often involves private sector players and can include elements of political corruption, where senior government officials initiate or support corrupt activities for personal political and/or financial gain. This political dimension can create hidden networks that guide institutions in their routine corrupt behaviour. Systemic corruption can encompass both major and minor incidents and may not always be illegal.*'

Given the broad definition of systemic corruption, we also propose a managerial tool for the OPI's daily operations. The OPI is intended to coordinate efforts to determine whether a case of systemic corruption exists, hence the necessity to identify such cases. To ensure a focused and consistent approach to investigating systemic corruption, we suggest the following **Systemic Corruption Checker**. This tool is based on a number of questions, which have been derived from the various definitions of systemic corruption presented above. The checklist provides clear indicators to assess complexity, institutional entrenchment, and the involvement of high-level networks, thereby preventing scope creep and misclassification of cases. Unlike traditional approaches, it standardises investigative criteria, strengthens case prioritisation, and enhances the strategic targeting of entrenched corruption. Ultimately, this tool ensures that the OPI's interventions remain high-impact, evidence-driven, and aligned with its core mandate.

Below is the **Systemic Corruption Checker**, as a guiding tool to support consistent identification and response to systemic corruption, subject to continuous refinement as required for continued relevance and accuracy:



## 2.2 Systemic Corruption in South Africa

In order to establish the current state of systemic corruption in South Africa, we employed a number of different sources. From the Zondo Commission of Inquiry into State Capture [12]- the pervasive and systemic nature of corruption involving senior state officials and the private sector was revealed. Other commissions include the Seriti Commission (arms deal)[13] and the Nugent Commission (SARS)[14] - all revealing deep-rooted corruption and decaying state institutions. These commissions, among others, have highlighted that corruption in South Africa has evolved into a systemic threat to democracy, development, and social justice, demanding immediate action. The relatively similar insights that the reports of these commissions brought to light are backed by the Corruption Perception Index (CPI) of Transparency International. In its 2024 report, South Africa scored 41 out of 100, thus ranked 82nd out of 180 countries. The CPI ranges between a score of 0, which is considered 'highly corrupt' and a score of 100, which is considered 'very clean'. With the global average score at 43 and the sub-Saharan mean of 33, South Africa's score of 41 highlights pervasive public-sector integrity challenges and the urgent need for renewed reform efforts[15].

The impact of systemic corruption has far-reaching effects and permeates every aspect of society. It results in misallocation of resources, with billions of rands lost each year to corrupt practices, undermining service delivery and hindering infrastructure development. Moreover, it deepens inequality, disproportionately affecting the most vulnerable communities and perpetuating cycles of poverty and social injustice, manifesting in the issues below:

- **Monetary loss:** For example, the Zondo Commission and National Treasury estimates between R500 billion and R1 trillion lost to state capture and corruption over the past decade[16].
- **Service delivery:** Over the years, public service delivery has severely weakened, especially in crucial services such as health, education, and infrastructure, resulting in unreliable access to essential services for millions of South Africans, more so the poor.
- **Livelihoods and jobs:** Corruption has contributed to high unemployment (31.9% as at Q4 2024), eroded investor confidence, and undermined economic growth, with all-time high levels of youth unemployment[17].
- **Institutional damage:** Corruption has undermined key institutions like State-Owned Entities like Eskom and Transnet, amongst others, resulting in rolling blackouts and reduced economic productivity, negatively impacting livelihoods and economic activities.
- **Public trust:** Corruption has led to declining public confidence in government and democratic institutions[18].

---

[12]Johnston, M. (2005). Syndromes of Corruption. Cambridge University Press
[13]Seriti Commission of Inquiry
[14]Nugent Commission of Inquiry
[15]Corruption Transparency Index 2024 - Corruption Perceptions Index 2024 - Transparency.org
[16]State capture scorecard: R500bn looted, zero assets recovered - Moneyweb - Sthttps://www.moneyweb.co.za/news/south-africa/state-capture-scorecard-r500bn-looted-zero-assets-recovered/?
[17]Statistics South Africa - Quarterly Labour Force Survey _Stats SA - Q4 2024
[18]Afrobarometer Dispatch No. 474: South Africans' trust in institutions and representatives reaches new low - https://www.ijr.org.za

The fight against corruption causes tremendous costs for the country. South Africa invests extensively in fighting corruption, with the Peace and Security Cluster receiving R244 billion in the 2024/25 budget (R765 billion over the 2024/2025 to 2026/2027 term)[19], funding entities such as the NPA, SIU, DPCI, SAPS, and AFU, as well as supporting key anti-corruption efforts through the PPSA, AGSA, SARS, FIC, and various commissions of inquiry. In addition to the Peace and Security Cluster allocation, the country incurs significant costs in fighting corruption through multiple avenues. These expenditures encompass judicial inquiries (over and above what is covered by the judicial system), consultancy fees, and funding for anti-corruption bodies that receive resources from other sources. Understanding these costs is essential for assessing the country's anti-corruption efforts. The same is true in understanding the true impact of corruption in the country. To accurately determine this, a comprehensive analysis is required, encompassing all stakeholders as supported by research, given the lack of sufficient studies on this[20].

The OPI, through its multi-agency approach, mandate and powers, will assist the state in identifying the true cost of fighting corruption by collecting and analysing critical management information. This will enable a clearer understanding of existing gaps, duplication of efforts, and inefficiencies across institutions. Equipped with the right expertise and resources to respond to systemic corruption, the OPI will ultimately streamline efforts and reduce long-term costs by closing overlaps and keeping key capabilities in-house. By investigating systemic corruption, introducing preventative measures, providing public awareness, and engaging in policy advice, the OPI will contribute positively to South Africa's attempt to curb corrupt practices.

At the same time, there are a number of challenges and lessons learned, which must be considered for the OPI to be effective. At this point, we just mention the most important ones.

For the OPI, there is a crucial need to be legally safeguarded to ensure autonomy, independence, security of tenure and function, and a high consideration for compliance with international standards and best practices. The following key aspects are of utmost importance in its establishment to ensure past mistakes are not repeated:

a. **Structure and operational independence:** Both in law and in practice, the OPI must be free of political interference. This will be achieved in the four-phased implementation approach, which ultimately lands the OPI as a Chapter 9 Institution. In this process, care should be taken to ensure that the legislative drafting process fully aligns with constitutional requirements, takes into account existing mandates and functions of other anti-corruption agencies, avoids challenges experienced in the disbandment of the Scorpions and the establishment of the Hawks (DPCI), and avoids any legislative challenges that may render the process unconstitutional. Lessons from these precedents underscore the need for strong legislative clarity, independence, and structural integrity to prevent future constitutional invalidations

[19]National Treasury 2024 Budget review - https://www.treasury.gov.za/documents/national%20budget/2024/review/FullBR.pdf

[20]Colette Ashton: August 2024, Rethinking Anti-Corruption in South Africa: Pathways to Reform

b. **Security of tenure, resources and funding:** Shielding the leadership, resources, funding, and tenure of the OPI from political interference is crucial. It is of utmost importance that the OPI be adequately capacitated and continually assessed to ensure that this remains the case to execute its mandate without fear or favour.

c. **Avoid executive dominance:** A permanent independent multi-stakeholder oversight mechanism must be in place for the OPI to ensure that its oversight does not rest solely with the Executive, such as a President, Minister, cabinet, or department of government officials. Where, in the interim, as the OPI transitions to its ultimate position, i.e., a Chapter 9 Institution, the NACAC or its equivalent, may serve as an interim advisory role with a long-term oversight vested in a more structured body accountable to Parliament, such as[21]:
   - Multi-party members of Parliament
   - Civil society and legal and constitutional experts
   - Chapter 9 Institutions
   - Whistleblower protection advisory groups
   - Anti-corruption specialists and academics
   - Private sector representatives.

d. **Compliance with international standards and best practice:** The legal frameworks and structure of the OPI must reflect international norms and best practice, such as the following (these are discussed in detail later in the report):

- **United Nations Convention against Corruption (UNCAC):** Being the first legally binding international anti-corruption instrument adopted by the UN General Assembly in 2003, it sets out minimum global standards for countries to prevent and combat corruption effectively. Applicable to the OPI in this regard are articles 6, 8, 13, 32 and 36[22].
- **Jakarta Statement on Principles for Anti-Corruption Agencies:** It endorses independence, adequate resourcing, legal clarity, public accountability, and collaboration. It also emphasises that anti-corruption agencies (like OPI) must be free from undue influence and have operational autonomy.
- **Colombo Commentary on the Jakarta Statement:** This expands on how countries can apply the Jakarta Principles in practice and recommends strong legal mandates, security of tenure for leadership, and multi-agency collaboration without mandate conflict.
- **African Union Convention on Preventing and Combating Corruption (AUCPCC):** Urges member states to establish independent national anti-corruption bodies. South Africa is a signatory; thus, the OPI should reflect AU standards in structure and operation.
- **STIRS principles:** The principles of Simplicity, Transparency, Integration, Reliability, and Sustainability are a critical framework for the establishment of the OPI. They assist in building the OPI on clear processes, integrity, and public trust and assist in making the OPI an institution of accountability.

[21]Considerations for structured body accountable to Parliament
[22]Summary of articles 6,8,13, 32 and 36 of UNCAC

## 2.3 Experiences from Other Countries

One part of our assignment was to conduct desk research on experiences made in other countries. For this purpose, we employed a variety of sources, namely:

- Rethinking Anti-Corruption in South Africa: Pathways to Reform (Colette Ashton)[23]
- Learning Journey on Anti-Corruption Institutional Reforms – Kenya (GIZ)
- GIZ-TIP NACAC East Asia Learning Journey – Hong Kong
- Internet searches

We have summarised the insights gained from exchange visits and internet searches as follows:

| Country | Finding |
|---|---|
| Kenya | The Ethics and Anti-Corruption Commission (EACC) is a multi-purpose agency with preventive and investigative powers. It has achieved several high-level convictions and engages extensively with the public and private sectors in prevention programs. The Ethics and Anti-Corruption Commission (EACC) plays a key role in combating corruption through law enforcement, prevention, and public education. The Office of the Auditor-General (OAG) and the Public Procurement Regulatory Authority (PPRA) also contribute to transparency and accountability. Learning from this, the OPI can focus on high-impact investigations, asset tracking and recovery, and promoting transparency in public procurement. Engaging civil society organisations and enhancing public participation can also foster a culture of accountability and integrity. |
| Malaysia | The Malaysian Anti-Corruption Commission (MACC) is a multi-purpose agency with preventive functions, enhanced investigative powers, and the power to prosecute. Has had significant success in dealing with high-profile corruption cases, such as the Malaysia Development Board scandal. |

[23]Recommendations from the Collete Ashton report (summarised)

| Country | Finding |
|---|---|
| Brazil | Brazil's anti-corruption efforts are coordinated by the Office of the Comptroller General, which undertakes public audits, imposes disciplinary measures, and maintains a national register of red-listed companies. The Car Wash investigation is a notable example of successful anti-corruption enforcement in Brazil. |
| Latvia | The Corruption Prevention and Combating Bureau (KNAB) in Latvia is a multi-purpose agency combining preventive, policy, and investigative powers. It is often cited as a model anti-corruption agency, although its success is partly due to Latvia's specific context as a high-income, developed country with a small population. |
| Indonesia | The Corruption Eradication Commission (KPK) in Indonesia was one of the world's most effective anti-corruption agencies until recent years. It had preventive, investigative, and prosecution powers and achieved a 100% conviction rate for years. However, recent political changes have undermined its independence and effectiveness. |
| Hong Kong | The Independent Commission Against Corruption (ICAC) has been successful in controlling corruption due to strong political support, rigorous oversight, and effective community engagement. They use an integrated approach involving investigation, prevention, and education. Drawing from this, OPI can adopt an integrated approach involving investigation, prevention, and education, and establish strong partnerships with the public, business, and education sectors. Additionally, investing in public education and creating safe spaces for reporting corruption can enhance community trust and participation. |
| Uganda | The Inspectorate of Government (IG) operates independently and uses the Transparency, Accountability, and Anti-Corruption (TAAC) framework to engage citizens in oversight. The Whistleblower Protection Act provides mechanisms and incentives for whistleblowers. From this, the OPI can implement mechanisms for whistleblower protection and use frameworks like TACC to involve citizens in oversight and monitoring. Leveraging ICT for the detection, investigation, and reporting of corruption can also be beneficial. |

| Country | Finding |
|---|---|
| Namibia | The Anti-Corruption Commission (ACC) is the primary institution for combating corruption, working closely with law enforcement and financial sector regulatory authorities.<br><br>The Financial Intelligence Centre (FIC) focuses on protecting the financial system against money laundering and other financial crimes. From these lessons, the OPI can focus on educating the public about the dangers of corruption and ensuring compliance with anti-money laundering controls. Addressing institutional and bureaucratic shortcomings and enhancing regional presence can improve accessibility and effectiveness. |
| Nigeria | The Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) are responsible for investigating and prosecuting corruption and financial crimes. They aim to maintain integrity and professionalism while addressing widespread corruption. The OPI can focus on investigating and prosecuting corruption, examining corruption-prone systems, and educating the public. Collaborating with various stakeholders and maintaining integrity and professionalism are also crucial. |

Interestingly, there are several commonalities that show that the fight against corruption presents similar challenges in the countries observed. The most important challenges can be summarised as follows:

- Institutional and bureaucratic shortcomings are widespread
- Public trust and confidence are crucial
- Whistleblower protection is essential for uncovering corruption and misconduct
- Coordination and cooperation among various agencies improve efficiency
- Education and public awareness campaigns are needed to foster a culture of integrity
- Adequate resource allocation is necessary for combating financial crimes
- Political will and leadership drive the enforcement of anti-corruption measures
- Robust legal/regulatory framework to ensure compliance with international standards

The exchange visits and the Colette Ashton Report propose a range of mitigation measures, which again seem to be applicable to most, if not all, countries considered in this report. According to the findings, the most promising measures to address the mentioned challenges are:

- Institutionalised structure addressing Systemic Corruption
- Leadership and staff training are critical to developing institutional integrity
- Whistleblower protection → Amendment of the PDA
- Coordination mechanism needed between OPI/SIU, SAPS/DPCI, NPA/IDAC and other institutions
- Education and public awareness campaigns
- Sustained funding of corruption-fighting institutions
- Political will and leadership
- Robust legal and/or regulatory framework

We have taken all these recommendations into consideration in our proposal for the establishment of the OPI.

# 3. Analysis of Legal Frameworks

Our analysis of the legal frameworks of the country's existing anti-corruption architecture reveals systemic fragmentation, overlapping mandates, and inconsistent legal powers across institutions such as the SIU, NPA, DPCI (Hawks), and the PPSA. Each institution operates under separate enabling legislation, which, in some instances, has resulted in blurred lines of responsibility, institutional turf wars, and inefficiencies in responding to complex, cross-cutting corruption cases, such as systemic corruption. For instance, the Hawks cannot prosecute, relying on the NPA, which in turn faces internal capacity challenges and case backlogs. This results in delays that potentially weaken deterrence. Another concern is the processes of the SIU, where the SIU is required to approach the President for a Proclamation before acting, causing delays in urgent matters and dependence on external legal enforcement through the NPA or civil litigation.

These gaps warrant the need for a single, independent body with a harmonised legal mandate to which the OPI, eventually as a Chapter 9 Institution, is positioned to provide from inception. The OPI can consolidate and integrate investigative, analytical, and oversight functions, while also coordinating systemic responses across institutions. If properly structured, it will not only resolve legal and operational inefficiencies but also safeguard independence and public trust, enhancing South Africa's ability to fight corruption at scale.

As the OPI takes shape in absorbing the powers and functions of the SIU and expanding its powers and functions in incremental phases to ultimately fully implement all the NACAC recommendations, it will be essential to avoid any mandate overlaps and develop clear coordination mechanisms from the outset. This way, the OPI will be enabled to function effectively within South Africa's multi-agency anti-corruption landscape.

Our research has noted mandate overlaps that come with duplication of efforts and a lack of adequate and effective resource utilisation mechanisms, hindering the nation's efforts to fight corruption effectively. Therefore, to prevent this, it is crucial to draft the enabling legislation in a way that takes into account the strategic intent of the OPI. The negative effects of current legislative overlaps were also highlighted in the Glennister judgment and the Zondo Commission of Inquiry. A well-crafted OPI will close these mandate overlaps and ineffective coordination mechanisms and improve the effectiveness and efficiencies of investigations and prosecutorial outcomes, thereby providing a clear, unified strategic direction for the nation's effort in the fight against corruption.

For the purpose of this report, we just list the institutions and legal frameworks in the following table. We also included the Protected Disclosures Act in our analysis, given its importance in the fight against corruption.

| Institution | Legal Frameworks | Mandate | Key Provisions |
|---|---|---|---|
| **Special Investigating Unit (SIU)** | Special Investigating Units and Special Tribunals Act (Act 74 of 1996) | Investigate State Corruption | • Recovery of public funds lost to corruption or irregularities<br>• Recommendations for systemic improvements<br>• Referral of cases to the NPA for prosecution |
| **National Prosecuting Authority (NPA)** | National Prosecuting Authority Act (Act 32 of 1998) | Prosecute Corruption Crimes | • Sole authority to institute criminal proceedings on behalf of the state<br>• Powers to investigate, prepare, and prosecute complex corruption cases |
| **Investigating Directorate for Corruption and Economic Crime (IDAC)** | National Prosecuting Authority Act (Act 32 of 1998) | Investigates High-Profile Corruption and State Capture Cases | • Investigative and prosecutorial focus on organised crime and corruption |
| **Directorate for Priority Crime Investigation (DPCI)** | South African Police Service Act (Act 68 of 1995 as amended in 2008) | Investigate Serious Crimes | • Investigates serious and high-priority crimes, including corruption, organised crime, and economic offences<br>• Operates as an independent unit within SAPS |
| **South African Police Service (SAPS)** | South African Police Service Act (Act 68 of 1995) | General Policing and Investigations | • General law enforcement, including investigating corruption complaints<br>• Works alongside specialised units like the Hawks and IPID |

| Institution | Legal Frameworks | Mandate | Key Provisions |
|---|---|---|---|
| **Independent Police Investigative Directorate (IPID)** | Independent Police Investigative Directorate Act (Act 1 of 2011) | Oversight of SAPS | • Oversight of SAPS and municipal police services<br>• Investigates police corruption, misconduct, and human rights abuses |
| **Auditor General of South Africa (AGSA)** | Public Audit Act (Act 25 of 2004) | Audit Public Finances | • Mandates the AG to audit and report on public sector financial management<br>• Includes special investigations into financial irregularities |
| **Public Protector South Africa (PPSA)** | Section 182 of the Constitution of South Africa<br><br>Public Protector Act (Act 23 of 1994) | Investigate Maladministration | • Investigates improper conduct in public administration<br>• Recommends corrective actions and refers matters for further action where necessary |
| **Public Service Commission (PSC)** | Chapter 10 of the Constitution of SA<br><br>Public Service Commission Act (Act 46 of 1997) | Promote Good Governance | • Promotes ethical behaviour, accountability, and efficiency in public service<br>• Monitors corruption and maladministration |
| **National Treasury (NT)** | Public Finance Management Act (PFMA, Act 1 of 1999)<br><br>Municipal Finance Management Act (MFMA, Act 56 of 2003) | Fiscal Oversight | • Oversees fiscal management and promotes financial discipline<br>• Detects and addresses financial misconduct in government institutions |

| Institution | Legal Frameworks | Mandate | Key Provisions |
|---|---|---|---|
| **Public Service and Local Government Departments** | Municipal Structures Act (Act 117 of 1998)<br><br>Municipal Systems Act (Act 32 of 2000) | Governance and Service Delivery | • Ensure transparent and effective governance at the municipal level<br>• Promote accountability and ethical conduct among public servants |
| **Protected Disclosures Act** | Protected Disclosures Act, 26 of 2000 (PDA) | Whistleblower Protection | • Key legal framework in South Africa aimed at encouraging whistleblowing<br>• Providing protection for employees who disclose information about unlawful or irregular conduct in the workplace. |

The Protected Disclosures Act, 26 of 2000 (PDA) needs to be analysed further, given its cross-cutting function in the fight against corruption. The Act complements the legal frameworks of anti-corruption institutions and other entities by strengthening mechanisms for exposing and addressing corruption. The Act provides that employees who disclose information in good faith about corruption, criminal offences, failure to comply with legal obligations, or abuse of authority are protected from occupational detriment (e.g., dismissal, harassment, or victimisation). Employers are required to implement internal procedures for whistleblowing and ensure the confidentiality of disclosures. Disclosures can be made to employers, legal advisers, specific regulatory bodies, or the public (under specific conditions).

The Protected Disclosures Act could be a very powerful tool in the fight against corruption, and in some cases, it indeed was. However, the act in its current version has a number of weaknesses, and these may deter potential whistleblowers from speaking up. In the act, the definition of misconduct is narrowly construed, limiting the scope of what can be reported. There is no protection for individuals who report misconduct for purposes of personal gain, a criterion that is both vague and subjective. Employees who face victimisation as a result of whistleblowing cannot expect rapid reinstatement or protection; instead, they must seek relief through the courts. Furthermore, there is no specific compensation for victimisation, including lost past and future wages, legal fees, and other costs, as well as moral damages.

The absence of penalties for those who retaliate or threaten retaliation against whistleblowers exacerbates the issue. Additionally, no public institution is ultimately responsible for enforcing the law and overseeing the whistleblower system, leaving it without adequate oversight and enforcement mechanisms.

## General Considerations for the OPI Establishment

In NACAC's Mid-Term Report, the SIU was identified as the preferred partnering institution of choice for the OPI establishment. There are a number of reasons for this approach: The SIU's current mandate – as set out in the SIU Act – does not specifically refer to systemic corruption, but to '*...serious malpractices or maladministration in connection with the administration of State institutions, State assets and public money as well as any conduct which may seriously harm the interests of the public...*'[26]. This mandate is very close to what is recommended by NACAC as the objective for the OPI. Secondly, the SIU has gained knowledge and experience in the fight against corruption, suggesting it to be the best institution to partner with. Thirdly, the approach to link the OPI with the SIU ensures an immediate start to the fight against systemic corruption.

## Current Powers of the SIU

The SIU, established under the SIU Act, is empowered to investigate serious malpractices, maladministration, and corruption in state institutions. It can subpoena witnesses, interrogate under oath, and access financial records. However, the SIU does not have prosecutorial powers, it relies on the NPA for criminal prosecution and the Special Tribunal for civil litigation to recover assets or set aside contracts. Experience has proven that the SIU is not always successful in its referrals to the NPA.

## Current mandate and functions

In addition to the investigations indicated above, the SIU also undertakes civil litigation to recover state funds, supports disciplinary processes, and recommends systemic improvements. Recent strategic advancements have enabled the SIU to broaden its scope into digital forensic investigations and develop a corruption risk register to guide preventive efforts.

## Challenges faced by the SIU (structural and operational)

In spite of its success, the SIU face a number of structural and operational challenges which mainly include:

- Dependence on Presidential Proclamations, delaying urgent responses and possible political interference.
- SIU recommendations are not legally binding.
- The SIU report is only issued to the President.
- Lack of criminal prosecutorial powers, requiring coordination with the NPA.
- Inadequate and unpredictable funding, primarily driven by fee-based recovery models.
- Backlogs due to capacity shortages and increasing investigative complexity.
- Delayed implementation of disciplinary or criminal action due to dependency on other institutions.

[26]SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT: https://www.justice.gov.za/legislation/acts/1996-074.pdf

- Unpredictable and recovery-based funding model.
- Inter-institutional dependency.
- Preventative work is not fully supported by legislation.

## Prevention Frameworks

The SIU has taken steps towards prevention by implementing fraud detection systems, compiling public sector corruption trend reports, and contributing to sector-specific anti-corruption forums. However, its preventative role remains limited due to its primary investigative mandate, which often focuses on post-facto interventions. It is also worth noting that preventative measures are not within the legislative scope of the SIU Act.

## OPI Absorbing the SIU

Recommendation 2 of the NACAC mid-term report - recommending '*that in the transitional phase, the OPI absorbs the mission, powers, and resources of the SIU, maintaining its full portfolio of work, thus enabling the OPI to be operational with immediate effect and adding to its functions, powers, staff, and resources.*' [27]

Given the urgency of the establishment of the OPI in response to the entrenching and eroding nature of the systemic corruption and the expectation for the operations of the OPI to commence within 12 months of the December 2024 National Dialogue on Anti-Corruption[28], this would be achieved by the OPI absorbing the powers and functions of the SIU in its current form. This should also trigger immediate SIU legislation amendments or a completely new OPI legislation. The skeleton of this research paper is based on the understanding that the OPI should initially be started through proclamation within the SIU and simultaneously start the process of amending the current SIU legislation, taking into account the mandate, powers and functions of the OPI. Then, in order to eventually absorb the SIU in its entirety and to enhance and strengthen the existing mandate, powers and functions to accommodate the objective of the OPI, the OPI should be established as a statutory institution. Once this has been achieved, the OPI should then be transitioned into a Chapter 9 Institution. The proposed process of the OPI establishment will be explained in detail later in this chapter.

### Absorbing the SIU into the OPI will:

- Provide an operational foundation with already-skilled investigators, legal experts, and digital forensic capacity.
- Enable continuity by embedding existing tools, systems, and institutional knowledge.
- Accelerate the functionality of the OPI, reducing the lead time required for capacity development.
- Ensure the OPI enters the system with proven investigation and recovery capability, leveraging the SIU's existing case load, infrastructure, and footprint.
- Consolidate duplication and streamline mandates, avoiding parallel investigations and overlapping mandates with other anti-corruption bodies.

[27]NACAC 2024 Mid-Term Report

[28]The National Dialogue on ant-corruption_2024 Report_9-10 December2024

- However, a major consideration shall not be overlooked: In its initial stage, when the OPI operates within the current SIU legislation, investigations can only be commenced by way of Presidential Proclamation. This limitation may be acceptable in return for the immediate start of the OPI operations. But, when establishing an OPI legislation in which the SIU will be fully absorbed, it should be ensured that investigations shall be initiated on the institution's own accord.

## Critical Powers and Functions Required for the OPI

In line with the NACS and in support of the NACAC recommendations, below are the required critical mandates, powers and functions of the OPI. These were further debated and critiqued during the National Dialogue on Anti-Corruption held in December 2024.[29]

**The power to conduct investigations into systemic corruption:** The recommendation is that 'the OPI should have the power to conduct investigations into systemic corruption, either through a Presidential Proclamation or in line with the mandate given to it by drafting a new enabling legislation'.

Granting the OPI the power to investigate systemic corruption through either a Presidential Proclamation or new enabling legislation is essential to ensure it operates with clear legal authority and independence. This will empower the OPI to proactively uncover and address entrenched patterns of corruption, strengthening institutional accountability and reinforcing public trust.

Countries like Singapore[30], Hong Kong[31], Brazil[32], and the UK[33] have shown that granting independent anti-corruption bodies strong investigative powers through legislation or executive authority is essential to effectively tackle systemic corruption. Their success demonstrates that with legal authority, operational independence, and a clear mandate, agencies like the proposed OPI can disrupt entrenched corruption networks and restore public trust. However, the OPI's mandate must be carefully framed in law to ensure it has the authority to investigate systemic corruption while avoiding an open-ended scope that allows it to pursue any matter arbitrarily, therefore ensuring focus, accountability, and legitimacy.

**Investigations:** The recommendation is for the OPI to work closely with the NPA and SAPS and refer evidence of criminal conduct during systemic corruption investigations to the NPA or ID (Investigating Directorate) , which will assign an ID prosecutor-led investigation.

[29]The National Dialogue on ant-corruption_2024 Report_9-10 December2024
[30]Corrupt Practices Investigation Bureau - https://www.cpib.gov.sg/about-corruption/legislation-and-enforcement/introduction
[31]The Independent Commission Against Corruption - https://www.elegislation.gov.hk/hk/cap204
[32]The Federal Public Ministry - https://www.globalcompliancenews.com/anti-corruption/handbook/anti-corruption-in-brazil
[33]The Serious Fraud Office - https://www.thetimes.com/business-money/companies/article/watchdog-to-be-lenient-with-firms-owning-up-to-fraud-7mvghzdmn?

The OPI's effectiveness in tackling systemic corruption hinges on an investigation model, where cases are swiftly referred to the NPA or ID for immediate prosecutorial guidance. This model, proven in countries like Italy[34] and Brazil[35], ensures admissible evidence, faster prosecutions, and stronger convictions in complex corruption cases. A proper coordination mechanism will prevent duplication and enhance the delivery of credible results aligned with FATF standards, especially Recommendations 2, 30, and 31[36].

**Search and Seizure Powers:** It is recommended that OPI investigators should be granted search and seizure powers to investigate potential criminal conduct that is discovered during the course of a systemic corruption investigation and prepare criminal dockets for presentation to the NPA.

Granting search and seizure powers to OPI investigators is essential to uncover critical evidence of criminal conduct during systemic corruption probes and to prepare dockets for referral to the NPA. In countries like Singapore[37] and Hong Kong[38], this model has shown success, where these anti-corruption bodies CPIB (Singapore) and ICAC (Hong Kong), have high conviction rates and strong public trust emanating from these powers. Empowering the OPI in this way aligns with international standards and enhances its ability to disrupt systemic corruption effectively.

**Civil Recovery Processes:** '*The OPI should have a mandate in its civil recovery to claim damages and utilise other civil recovery mechanisms, this should be expanded to include asset recovery from criminal investigations*.'

Through non-criminal means, the OPI should be granted statutory powers to initiate civil recovery actions, including claiming damages and recovering proceeds of corruption. The new OPI legislation and required legislative amendments must provide the OPI with these powers, together with the State Liability Act, the Financial Intelligence Centre Act (FICA), and the Prevention of Organised Crime Act (POCA), enabling OPI to recover assets independently or in partnership with the NPA's Asset Forfeiture Unit.

This approach emulates successful frameworks under the Proceeds of Crime Act 2002[39] in the UK, and where the Ethics and Anti-Corruption Commission (EACC)[40] in Kenya routinely uses civil processes to recover stolen public assets without the need for criminal conviction.

---

[34]Mani Pulite (Clean Hands) - https://rowman.com/ISBN/9781666938487/Among-Equals-The-Causes-of-Effective-Corruption-Prosecution-in-Italy?

[35]"Operação Lava Jato" (Operation Car Wash) - https://www.economist.com/the-economist-explains/2021/03/09/what-did-lava-jato-brazils-anti-corruption-investigation-achieve?

[36]INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION

[37]CPIB - Mission, Vision, Core Values - https://www.cpib.gov.sg/who-we-are/our-corporate-philosophy/mission-vision-core-values/

[38]ICAC - Independent Commission Against Corruption, Hong Kong Special Administrative Region - https://www.icac.org.hk/tc/home/index.html

The OPI's broader mandate and constitutional mandate is aimed at allowing it to exercise these powers more comprehensively compared to the current SIU, addressing corruption embedded in hidden networks and collaborating closely with other entities like the National Prosecuting Authority.

**Special Tribunal Powers:** It is recommended that '*legislative amendments should enable the Special Tribunal to have powers of criminal forfeiture, exercised by the OPI in collaboration with the NPA Asset Forfeiture Unit and subject to the provisions of POCA*'.

Legislative amendments should empower the Special Tribunal to issue criminal forfeiture orders in systemic corruption cases referred by the OPI, in collaboration with the NPA's AFU. A new enabling law must explicitly link the powers of the Special Tribunal to the OPI's mandate, and amendments to the Special Investigating Units and Special Tribunals Act (Act 74 of 1996) are necessary to allow for expanded jurisdiction. This is in line with mechanisms used in Nigeria, where the Economic and Financial Crimes Commission (EFCC)[41] collaborates with special courts to fast-track forfeiture, and Italy, where anti-mafia tribunals handle similar asset-based penalties as part of criminal procedures.[42]

To strengthen the OPI's efforts against systemic corruption, legislative amendments should grant the Special Tribunal authority to issue criminal forfeiture orders in cases referred by the OPI, in collaboration with the NPA's AFU. The new OPI legislation must explicitly link the Special Tribunal's powers to the OPI's mandate, while amendments to the SIU Act are essential for

[39]Proceeds of Crime Act 2002 - UK
[40]https://eacc.go.ke/en/default/eacc-records-significant-progress-in-asset-recovery/
[41]Economic and Financial Crimes Commission - EFCC - EFCC Makes Single Largest Asset Recovery till Date - https://www.efcc.gov.ng/efcc/news-and-information/news-release/10562-efcc-makes-single-largest-asset-recovery-till-date
[42]Italy's progress in strengthening measures to tackle money laundering and terrorist financing - https://www.fatf-gafi.org/en/publications/Mutualevaluations/Fur-italy-2019.html

expanding its jurisdiction. This approach aligns with practices in Nigeria, where the Economic and Financial Crimes Commission (EFCC), in partnership with special courts, expedite forfeiture proceedings. Similarly, in Italy, the anti-mafia tribunals impose similar asset-based penalties as part of criminal procedures.

**Appointment Criteria:** '*The appointment of the Head of the OPI as the Accounting Officer must meet certain statutory criteria of eligibility and qualifications*.'

In terms of the position of the Head of the OPI, and consideration for it ultimately being a Chapter 9 Institution, research[43] recommends appointing the Executive Authority as the Head of the OPI, with a CEO serving as the Accounting Officer, in line with the Constitution and PFMA. This model, consistent with other Chapter 9 Institutions, ensures clear separation between strategic oversight and operational execution, enhancing both accountability and efficiency. This should be embedded in the appointment procedures defined above.

It is important to ensure no individual holds unfettered power, and governance powers should be separated. This needs to be considered when planning the organisational model for the OPI.

To uphold competence, independence, and integrity, the Head of the OPI should meet statutory eligibility criteria akin to those required for the Public Protector. The new enabling legislation should codify these standards, integrating provisions from the Public Protector Act and revising the Public Service Act to establish a transparent, accountable, inclusive and merit-based appointment process.

This approach aligns with best practices seen in South Africa and Ghana, where openness in leadership selection bolsters institutional trust. Additionally, insights from the SIU's reports underscore the necessity of robust governance frameworks to enhance accountability within oversight institutions.

**Public Hearings:** '*The OPI should be granted additional powers to convene public hearings into instances of systemic corruption, to compel the attendance of witnesses at those hearings, and to require evidence production of documents and other physical and digital evidence in conjunction with those hearings*.'

To ensure accountability and public participation, the OPI should be granted the authority, either through new legislation or Presidential Proclamation, to hold public hearings, compel testimony, and mandate the disclosure of evidence. Amendments to the Commissions Act and Criminal Procedure Act should support this power. This is a tested model in South Korea, where the Anti-Corruption and Civil Rights Commission has used public hearings to promote transparency in systemic corruption cases[44].

**Mandate to drive the NACS:** '*The statute must give the OPI the mandate to 'drive the long-term roll-out of the National Anti-Corruption Strategy' and advise the government on policy measures to advance the NACS, to educate and mobilise the public, to gather and analyse*

[43]SIU report: Proposed Concept Notes - Establishment of the Office of Public Integrity_2 December 2024

*data relevant to corruption and anti-corruption, and to monitor and evaluate the impact measures designed to prevent corruption, including the receipt, analysis of material classified as restricted, confidential, or secret*.'

The implementation of the NACS cannot be overemphasised in the fight against corruption in South Africa. Therefore, it is of utmost importance that the OPI be granted a clear legislative mandate to oversee its implementation. This new role requires a new statutory framework and mandate, along with amendments to the Public Service Act to empower the OPI to coordinate effectively with government departments. Through the KPK in Indonesia[45] and via the office of the Ombudsman in Rwanda[46], comparable institutional mandates have been successfully implemented, ensuring sustained policy continuity in anti-corruption reform efforts.

**Expert Staff:** The OPI should '*have statutory authority to create an organisation and to employ staff with expertise in particular areas, which will be essential to its participation with other government entities in the implementation of the NACS*.'

New legislation should give the OPI the power to independently recruit a multidisciplinary team with skills in forensics, data analysis, law, and administration, etc. To accommodate non-standard hiring and pay structures, amendments to the Public Service Act and relevant employment legislation are necessary. This approach aligns with global best practices, as seen by the UK's Serious Fraud Office (SFO)[47] and Kenya's Ethics and Anti-Corruption Commission (EACC)[48].

**Multi-Institution Architecture:** It is recommended that '*South Africa retain its multi-institution architecture in fighting corruption rather than consolidating all the work and powers in a single commission or other institution*.'

The enabling legislation should explicitly define the OPI's mandate to focus on systemic corruption, complementing existing institutions like the NPA and DPCI - and not competing with any other. The Anti-Corruption Task Team model could be enhanced through legislative clarity and formalisation of mandates. Countries like Singapore's Corrupt Practices Investigation Bureau (CPIB)[49] and Botswana's Corrupt Practices and Economic Crime Act[50] use clearly delineated mandates among agencies to prevent duplication and promote operational efficiency. The OPI would benefit immensely in adopting a similar model.

**Conflict Resolution Mechanisms:** It is recommended that there be an '*establishment of conflict resolution mechanisms to deal with problems that arise when more than one institution is investigating a particular situation*.'

---

[44]Anti-Corruption and Civil Rights Commission (South Korea) - https://www.acrc.go.kr/en/
[45]KPK Indonesia - kpk.go.id
[46]Rwanda Office of the Ombudsman - ombudsman.gov.rw
[47]SFO UK - Serious Fraud Office - GOV.UK - https://www.gov.uk/government/organisations/serious-fraud-office
[48]EACC - https://eacc.go.ke/en/default/
[49]Singapore CPIB - https://www.cpib.gov.sg/advisory/
[50]Corrupt Practices and Economic Crime Act, Botswana

The aim is to avoid duplication of efforts, resulting in frustrated process and misuse of resources, and improper use of resources, resulting in possible turf wars. Therefore, it is imperative that formal conflict resolution mechanisms where institutional mandates overlap are guarded and facilitated through new legislation and amendments of existing (e.g., amendments to the NPA Act and the SAPS Act). The OPI can draw lessons from similar mechanisms in Australia's multi-agency coordination forums through the Australian Criminal Intelligence Commission (ACIC)[51] and have enhanced cross-agency cooperation.

**NPA Coordination:** '*Strengthening the efficiency and effectiveness of the NPA's coordination and collaboration role in a multi-agency anti-corruption framework and system*.'

Formal joint protocols mandated through legislation and the OPI's framework should be enabled to ensure structured collaboration with NPA and ID to successfully expedite complex investigations on systemic corruption. This would require amendments to the NPA Act and inter-agency MoUs to institutionalise the NPA's role in coordinating corruption case management. The OPI can draw lessons from the successes of South Africa's State Capture Task Force[52] and Brazil's Lava Jato (Operation Car Wash) coordinated frameworks[53].

Colette Ashton's research titled Rethinking Anti-Corruption in South Africa: Pathways to Reform[54] further supports the OPI in building a credible and effective anti-corruption framework and system in South Africa.

**Other critical considerations for the functions of the OPI:**

- **Public Awareness and Education**

In a 2024 address, Public Protector Advocate Kholeka Gcaleka, emphasising the need for a courageous and collective response to combat corruption, said, '*We need to start reading books of anti-corruption to children. We need to ensure that our educational system is centred around ethics, is centred around human character*'.[55]

This call by the Public Protector underscores the importance of early ethical education as a foundation for long-term societal change. It is critical for the OPI to lead in fostering integrity and anti-corruption values from a young age as part of its systemic prevention mandate.

Furthermore, in the 2022/2023 SAPS Annual Report, the role of community involvement in combating crime, including corruption, is also emphasised. The report advocates for active

[51] Australian Criminal Intelligence Commission (ACIC) - https://www.acic.gov.au/
[52] NPA Task Force on State Capture - https://www.npa.gov.za/index.php/media/task-force-handle-state-capture-cases
[53] Priscila Villela 2024, Operation Car Wash beyond Borders: The Making of a Transnational Policing Field, https:/doi.org/10.1590/S0102-8529.20244602e20220105
[54] Colette Ashton: August 2024, Rethinking Anti-Corruption in South Africa: Pathways to Reform
[55] Public Protector Gcaleka believes SA needs a courageous response to corruption

citizenry and collaboration between the police and communities to enhance transparency and trust.[56]

A sector-based approach would be key for the OPI. Currently, the SIU has a number of targeted awareness campaigns concluded, including an anti-corruption and ethics awareness campaign at a primary school and an engagement with Communal Property Associations in the Northern Cape. Other initiatives by the SIU include the engagement of the public through syndicated community radio programmes in different provinces and languages. Youth engagement via social media platforms is also important. The SIU already has a strategy in place, i.e. Know Your SIU, which the SIU communicates via social media[57].

As some of these initiatives are already being implemented by the SIU, but with the OPI fully mandated and resourced to lead educational awareness through a multi-agency approach, this becomes the only viable path to achieving lasting, systemic change.

- **Whistleblowing**

South African whistleblowers play a crucial role in the uncovering, investigation and prosecution of corruption. This is evidenced in the recent Zondo Commission of Inquiry, amongst others. However, the protection is therefore concerningly lacking where whistleblowers' experiences have not been positive in terms of retaliation and protection. The Zondo Commission of Inquiry included recommendations to introduce legislation or amend existing legislation to strengthen the protection for whistleblowers[58].

[56]South African Police Service Annual-Report-2022-23-final-draft-2023-10-12
[57]SIU Interviews
[58]Judicial Commission of Inquiry into State Capture Report: Part VI Vol. 4: All the Recommendations

The protection of whistleblowers is an integral part in the fight against corruption and upholding our democracy. Positioning the OPI to play an oversight role in ensuring that the Zondo Commission of Inquiry's recommendations on the protection of whistleblowers are implemented will demonstrate a decisive and urgent commitment to protecting those who expose systemic corruption, reinforce the OPI's institutional integrity and elevate it as a trusted defender of public interest. Restoring public confidence, fostering a culture of accountability, and ensuring that critical disclosures are not silenced by fear or intimidation is critical.

In a country where whistleblowers are retaliated against and are faced with '*lethal violence and murder-for-hire*'[59], this function of the OPI towards whistleblowers is not only necessary, but rather urgent, critical, and transformative[60].

- **Oversight responsibilities towards the NCAS**

To ensure continuity, coherence, and accountability in delivering the NACS objectives, the OPI should assume oversight of the implementation of its strategy, as recommended by NACAC. This alignment will consolidate institutional efforts, avoid duplication, and embed systemic monitoring of anti-corruption reforms within a dedicated and independent body. In ensuring this, the OPI must be equipped with appropriate resources, data access, monitoring tools, and the authority to coordinate with all relevant stakeholders and departments. The enabling legislation should provide for this.

[59]National Anti-Corruption Advisory Council. Mid-Term Report May 2024
[60]Whistleblower Retaliation_list

## General Design of the OPI

The OPI will adopt a multi-agency design approach[61]. The legislative requirements (new OPI Act and/or amendment of existing legislation) will enable this design approach to ensure adequate coordination and integration mechanisms with other institutions. In the design of the OPI, it is imperative to distinguish between a single and a multi-agency approach. The table below provides a clear distinction to be considered in drafting the OPI framework:

| Institution | Multi-agency approach | Single-agency approach |
|---|---|---|
| **Description** | OPI functions as a collaborative body with other institutions mandated to investigate and prosecute systemic corruption. Through a coordinated structure, lead anti-corruption efforts. | OPI as a standalone body or sole anti-corruption authority. Full powers, mandate, and function powers to investigate and prosecute systemic corruption. |
| **OPI absorbing the SIU** | OPI takes over all SIU powers, mandate, and functions AND operates as a coordinated ecosystem with other bodies, like PPSA, AGSA, DPCI, FIC, SARS, ID (NPA), etc. | OPI takes over all SIU powers, mandates and functions. |
| **Implications** | • All agencies retain powers, functions, and mandates<br>• OPI lead all systemic corruption efforts/response<br>• Requires vigorous and resilient coordination frameworks | • Legislative amendments for the transfer of all relevant functions<br>• One unified, empowered body or authority<br>• Oversight and accountability simplified |
| **Pros** | • Responsive to complexity<br>• Leverages existing capabilities and capacities<br>• Encourages inter-agency coordination | • Clear accountability<br>• Authority centralised<br>• Streamlined operations |
| **Cons** | • Requires strong coordination<br>• Potential risks:<br>  • Turf wars<br>  • Mandate overlaps | • Resource-intensive<br>• Potential risks:<br>  • Gaps in skills and capacity<br>  • Isolation from broader institutional support |

[61]NACAC – OPI Proposal Overview, 10 December 2024

In absorbing the SIU, the OPI framework should note any current design approaches adopted by the SIU as well as the adequacy and effectiveness thereof. Currently, "*the SIU is part of the National Priority Committee on Organised Crime (NPCOC), formerly known as the Anti-Corruption Task Team. NPCOC is a multi-agency structure that plays a key role in South Africa's national crime-fighting strategy. It operates under the Justice, Crime Prevention and Security (JCPS) Cluster and is coordinated by the Directorate for Priority Crime Investigation. The main purpose of the NPCOC is to facilitate inter-agency coordination among law enforcement (SAPS, DPCI/Hawks), the National Prosecuting Authority (NPA), intelligence services, customs, the SIU and other departments to ensure a unified and effective response.*"[62]

Other important factors to consider in the design are avoiding mandate overlaps and ensuring that a robust and effective coordination mechanism is adopted from the outset. This will require effective continuous monitoring processes that will ensure that this is achieved.

It is also crucial that the independence of the OPI is maintained from the outset and that it avoids interfering with the mandate and functions of other law enforcement agencies. It is also noted that considering that some of the anti-corruption agencies have been in existence for some time, there is an inherent risk of possible turf wars. In a single-agency approach, the OPI will be heavily involved in anti-corruption efforts and taking away other agencies' functions and powers, which may, in turn, create resistance and a lack of harmony between them, where the OPI may be perceived as claiming supremacy over others.

On the other hand, a multi-agency approach would not be without inherent risks or challenges. These anti-corruption agencies must have a clear mandate, functions and responsibility, and the prioritisation and distinction of responses to systemic corruption must be clear. By design, this also presents the emergence of potential turf wars in terms of who does what, the type, urgency, and priority of such systemic corruption reforms. These anti-corruption agencies would potentially compete over jurisdiction or prestige, rather than collaborating effectively. It is therefore crucial to design this approach in a manner that avoids situations where anti-corruption agencies potentially avoid cases that are considered to be either less prominent, appear to not to be of 'high-profile', less politically valuable but rather focusing on cases that assert their dominance and validate their existence and importance (creating a perception of supremacy over others.)

Therefore, taking into account that this paper, in its broad definition of systemic corruption, provides a clear triage process where cases are categorised in terms of the type of systemic corruption, which in turn determines which anti-corruption agency is required to respond. This includes promoting a structural design and architecture that eliminates or aims to eliminate institutional competition, and promotes and enables a cooperative environment that prioritises impact and effectively fights systemic corruption.

[62]SIU Interviews

## Whole-of-Society Approach

In appointing the NACAC members on 29 August 2022, the President stated that the NACAC '*is the embodiment of our united resolve as a nation to rid all components of our society of all forms of crime and corruption and develop a whole-of-society response to and prevention of this scourge corruption*'.[63] This statement was made with the understanding that fighting corruption means mobilising every sector, i.e., government, business, civil society, communities and individuals in a coordinated effort that combines active citizen engagement, strengthened institutions, and multi-stakeholder partnerships to prevent, detect and respond to corruption.

In its 2024 Annual Report, the Corruption Watch advocates a whole-of-society response, via initiatives like Strengthening Action Against Corruption (SAAC) and Rallying Efforts to Accelerate Progress (REAP) that empowers civil society, forges multi-sector collaboration and centres community engagement to drive transparency and accountability. This emphasises that a unified, whole-of-society effort to end corruption is essential as tolerance and impunity will never lift people from poverty, sustain infrastructure, create jobs, or grow our economy.[64]

It is understood that systemic corruption thrives in gaps between institutions and communities, therefore, a whole-of-society approach will assist in the fight against this scourge. The OPI, working in collaboration with all stakeholders, can unlock intelligence, build legitimacy and public trust, and leverage diverse expertise and resources. With this, the OPI can ensure that its responses to systemic corruption are targeted, credible, and capable of dismantling /disrupting it.

## Lessons to Draw from the Successes of the Fusion Centre

The Fusion Centre is one of South Africa's success stories of an effective collaboration in combating corruption through a multidisciplinary initiative. It was established in May 2020 by the Anti-Corruption Task Team (ACTT) and the National Priority Committee on Organised Crime (NPCOC) to fight COVID corruption. It has proven that a collaborative, intelligence-driven, and multi-agency approach is essential for effectively investigating and prosecuting complex financial crimes, including corruption and fraud. It brings together key institutions like the NPA, SIU, FIC, SARS, SAPS, and others to share data, expertise, and resources, resulting in faster case resolution and successful convictions.

The South African Anti-Money Laundering Integrated Task Force (SAMLIT) plays a pivotal role in facilitating real-time financial intelligence sharing between the banking sector and law enforcement agencies. Since March 2023, the Fusion Centre has expanded into a multi-agency hub tackling broader financial crimes through an intelligence-led and collaborative approach across the public and private sectors.

The OPI can adopt this model to ensure seamless collaboration, data sharing, and collective accountability, which are critical for dismantling systemic corruption in both the public and private sectors. This approach ensures a comprehensive, coordinated response to corruption, leveraging diverse expertise and resources to achieve sustainable impact, thereby strengthening its mandate to combat systemic corruption.

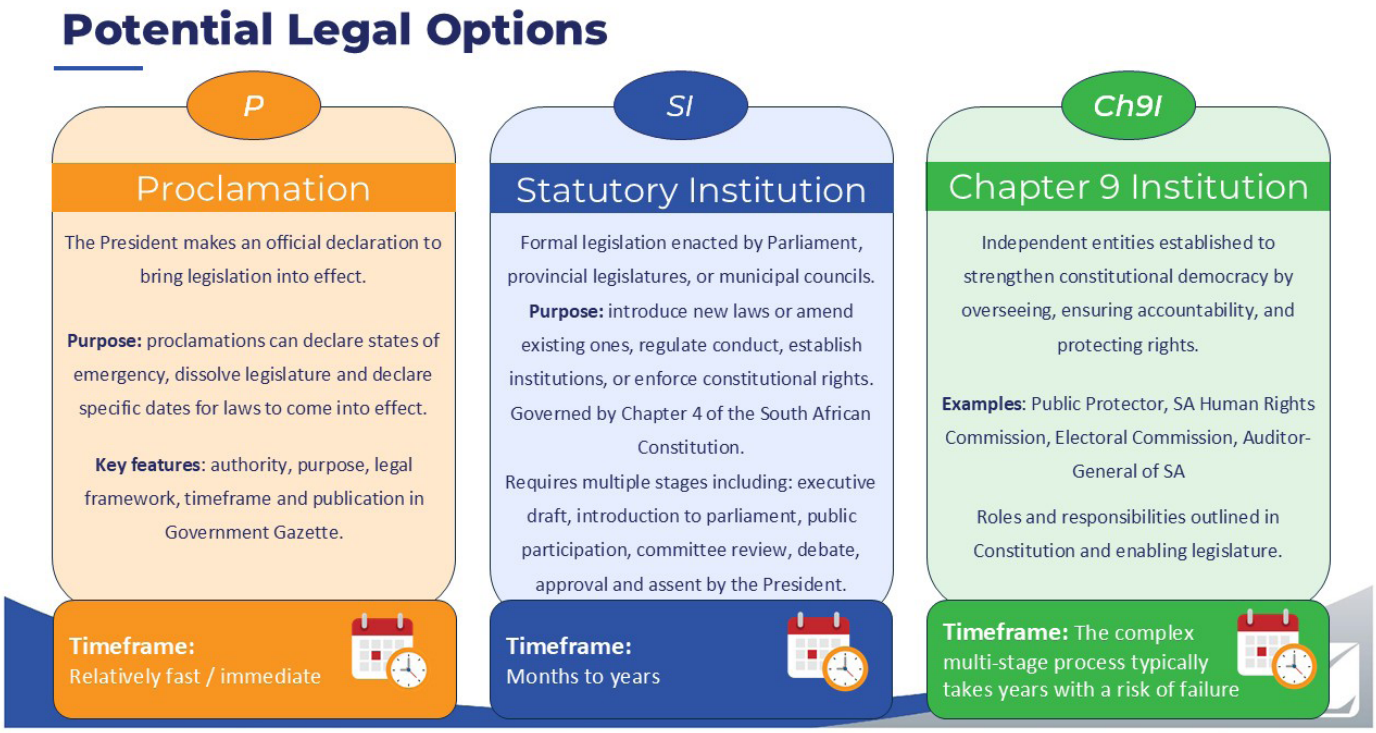
[63]President appoints members of the National Anti-Corruption Advisory Council | The Presidency
[64]Corruption Watch 2024 Annual Report
[65]Lieutenant General Godfrey Lebeya: Achievements and accomplishments of Fusion Centre | South African Government

# 4. Establishing the OPI

In this chapter, we will first explain the legal options to establish the OPI. We take into account that an immediate start of OPI operations is important and that a Chapter 9 Institution is the anticipated final state of the OPI.

In enabling the establishment of the OPI, legislative amendments or new laws based on the NACAC's recommendations are required. Below are the legal options available for the OPI.

## 4.1 Legal Options: Proclamation, Statutory Body & Chapter 9 Institution[66]




### Proclamation

A Proclamation is a formal legal instrument issued by the President of South Africa to bring legislation into effect or declare executive actions[67]. The Proclamation is issued against an existing legislation, and it is issued under the authority of the particular Act (enabling legislation). The Proclamation cannot grant powers, functions, or authority beyond those provided for in the underlying legislation under which it is issued. Without the Act, there is no legal authority for the President to issue a Proclamation.

[66]Constitution of the Republic of South Africa, 1996 - Chapter 5: The President and National Executive | South African Government

[67]Section 84(2)(f) - The Constitution of the Republic of South Africa, 1996

There are limitations in adopting the intended functions of the OPI by way of Proclamation under the SIU Act. In instances where the underlying legislation (SIU Act) does not offer the required powers, functions, and authority required for the full function of the OPI, the Proclamation cannot be used long-term[68]. It can assist in assigning specific investigative functions or mandate temporary capacity where urgent action is needed (but within the scope of the SIU Act).

Therefore, this route to the OPI through the Proclamation cannot be utilised as a substitute for legislative amendment or the development of new legislation to grant the OPI a broader or permanent mandate in terms of the NACAC recommendations. It is rather a process that triggers the amendment of the SIU legislation and the potential drafting of a new OPI legislation.

## A Statutory Body

A statute is formal legislation enacted by Parliament with the purpose of introducing new laws or amending existing ones, regulating conduct, establishing institutions, or enforcing constitutional rights. It is governed by Chapter 4 of the South African Constitution and requires multiple stages, including executive draft, introduction to Parliament, public participation, committee review, debate, approval, and assent by the President.

**For the purpose of the OPI establishment, two options are available:**

1. Amendment of the existing SIU Act incorporating the mandate, powers and functions of the OPI
2. Development of an OPI Act that will include the mandate, powers and functions of the current OPI

The amendment of the existing SIU Act is considered faster as it builds on existing legislation. On the other hand, the development of an entirely new OPI Act enables a completely new framework of mandate, powers and functions of the new institution with a fit-for-purpose institutional and organisational structure. At the same time, the political process may take more time[69]. In several rounds of discussions within NACAC, a phased approach was agreed upon, which moves from Proclamation to SIU Act Amendment, OPI Statute and eventually OPI as a Chapter 9 Institution.

## A Chapter 9 Institution

Chapter 9 Institutions are independent entities established to strengthen constitutional democracy. These institutions, such as the PPSA, SAHRC, Commission for Gender Equality, Independent Electoral Commission, and AGSA, are responsible for overseeing, ensuring accountability, and protecting rights. Their roles and responsibilities are outlined in the Constitution and enabling legislation. Amendments to these institutions may require special procedures to maintain their independence, impartiality, and effectiveness.

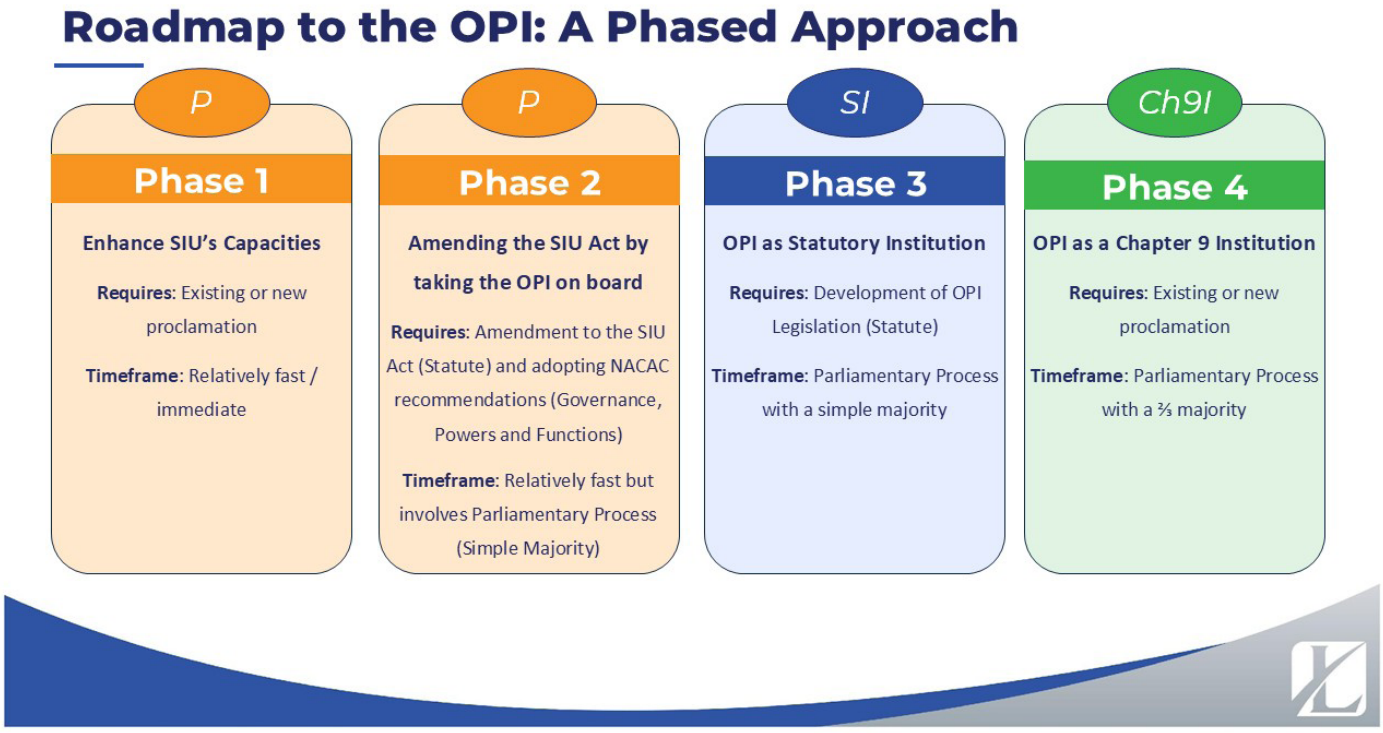
[68]Section 3(1) SIU Act 74 of 1996
[69]SIU interview

Establishing the OPI as a Chapter 9 Institution will position the OPI as a state institution defending constitutional democracy, granting the OPI a significant degree of independence and authority. With corruption presenting as one of the major threats to democracy and decaying public trust in state institutions, as a Chapter 9 Institution, the OPI will be best positioned to defend democratic values and serve as the leading force in the fight against systemic corruption.

## 4.2 OPI Establishment: A Phased Approach

The objective is to establish an OPI that is free of undue political influence, established as a Chapter 9 Institution, and one of the State's preferred Prevention and Investigations Units, in particular with regard to systemic corruption. Considering the urgent need to combat corruption and strengthen institutional integrity, it is recommended that the OPI be established through a phased approach, ensuring rapid initial implementation while transitioning towards its ultimate institutional form. This phased approach will allow the required time for the relevant and necessary process to take shape, whilst the objective of the OPI is being met. In order to ensure the immediacy in operational activities, the SIU is seen as the base institution for the phased approach.

Below is the phased approach from Phase 1 through to Phase 4 for the implementation of the OPI.

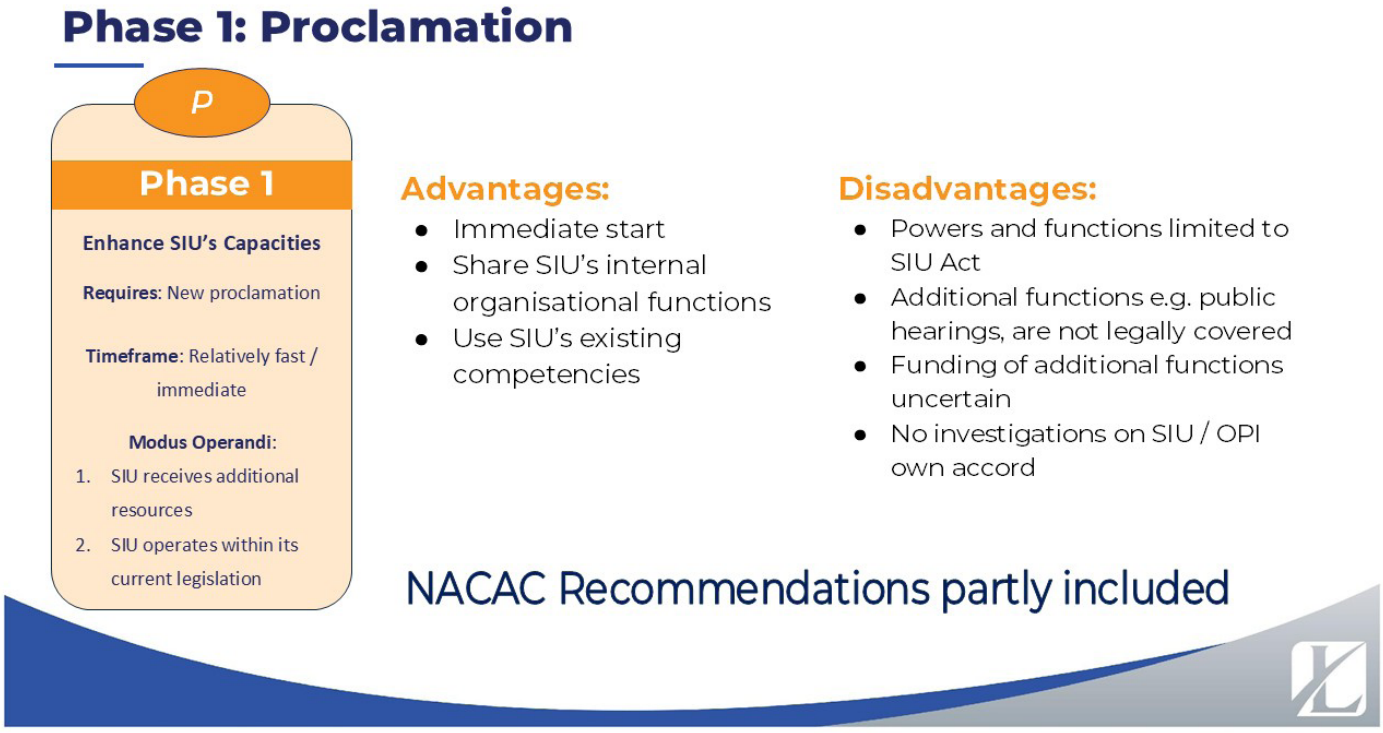


## Phase 1: Proclamation in Terms of the SIU Act

The purpose of establishing the OPI by way of Proclamation is to make provisions for the OPI under executive authority in the interim while legislative reforms are underway, therefore short-circuiting the process to address the urgent need.

This provides for the immediate operationalisation of the institution, given the urgent requirement to combat corruption. Given current national budget constraints and the pressing need to address systemic corruption, leveraging existing structures of the SIU is optimal to provide the OPI with a robust and immediate foundation. Leveraging its established infrastructure, experienced personnel, and operational capabilities, the SIU can facilitate a swift and cost-effective launch of the OPI, ensuring continuity and momentum in anti-corruption efforts.

This phase is not without limitation, as there would be limited autonomy and legal powers dependent on executive discretion. Not enjoying protection from enabling legislation means that the approach is not fit for long-term sustainability. In this initial phase of the OPI, the SIU in its current form requires immediate structural and operational changes in some areas. This will be further discussed in the chapter on organisational change.



## Phase 2: Amendment of the SIU Act

In the execution of the implementation of the NACAC's recommendation in terms of the OPI, it is apparent that legislative intervention is required and urgent. Significant progress could be achieved through strengthening the SIU through the express inclusion of the intended powers of the OPI into the existing SIU. This could be achieved by proposing those immediate powers in the current SIU Amendment Bill. Such provisions may address issues such as giving the SIU to investigate cases of its own initiative, without a Presidential Proclamation, while retaining the Presidential powers to instruct the SIU where they deem it necessary to do so[70].

This phase focuses on transitioning statutory powers and personnel from the SIU to the OPI framework and using the existing SIU legal framework as a base for OPI's functions, while gradually expanding powers and capabilities. The required and relevant staff would be added in incremental phases.

Amendments to the SIU Act are necessary to empower the OPI with statutory authority for prevention functions, including provisions for proactive measures, impact assessments, data analytics, and systemic recommendations. Legislative mandate should be expanded to allow proactive investigations without presidential proclamations. Additionally, granting criminal prosecution authority or streamlining processes with the NPA is essential. Increasing funding and resources, including 100% government funding, is crucial[71].

Phasing the absorption of the SIU into the OPI in this approach will preserve institutional memory and capacity, established infrastructure and operational processes, providing ease for scope expansion into systemic corruption in a structured manner.

### Current SIU amendments with the DOJ

There is an urgent need for the SIU Amendment Bill to be prioritised, in that it may need to skip the queue of Bills already before the houses of Parliament, something requiring political influence and persuasion. The Minister of Justice needs to prioritise the SIU Amendment Bill in the Department's Legislative Programme and table the same in Cabinet for approval, progress the Bill to be certified by the Office of the Chief State Law Advisor prior to introduction in the National Assembly. This urgent action and support from the Minister are crucial in the success of these amendments being passed into law.

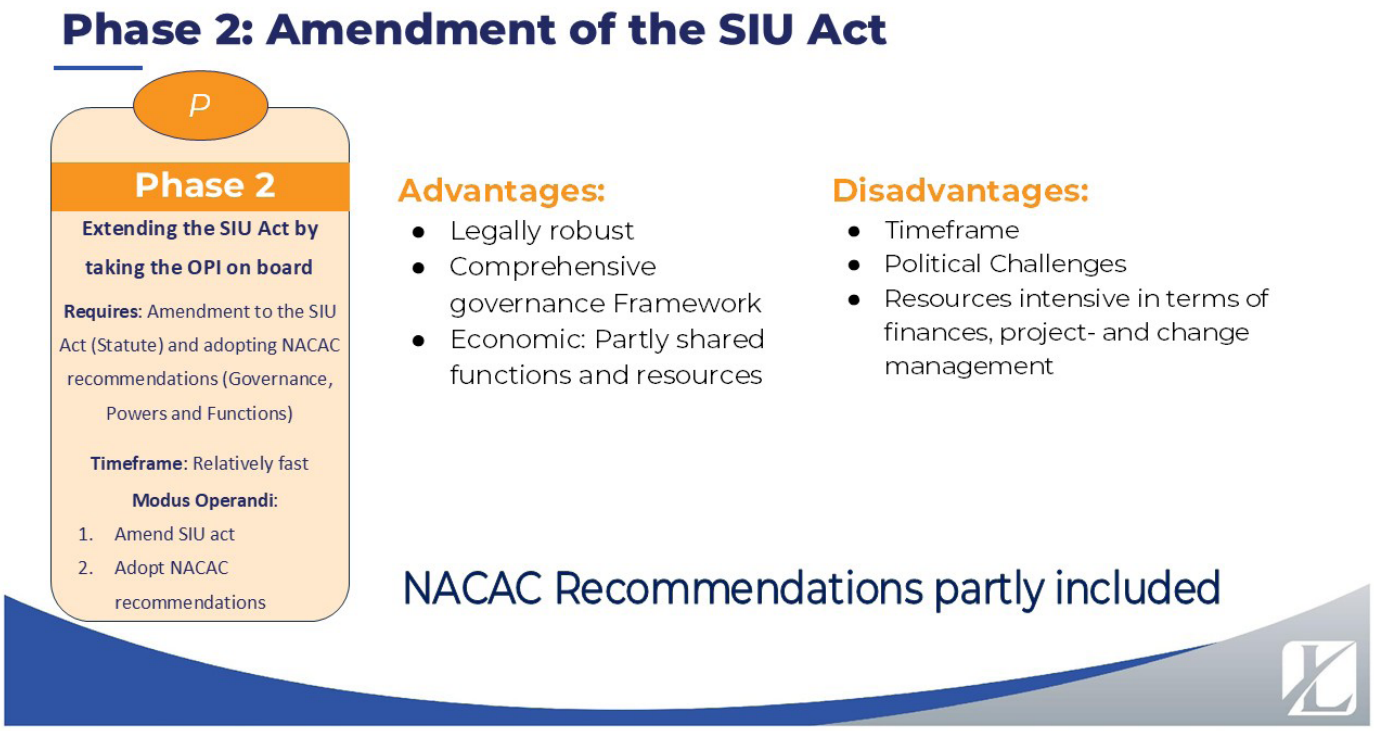
We acknowledge and appreciate the current SIU Act amendments that are underway. The SIU Act proposed amendments from this research in line with the OPI requirements should be considered in the same breath as the current amendments underway to ensure a seamless process. During this transition phase, the OPI should continue operating under Presidential Proclamation whilst these current proposed amendments are underway.

[70]SIU interview

[71]SIU report: Proposed Concept Notes - Establishment of the Office of Public Integrity_2 December 2024

The challenges envisioned in Phase 1 will also be experienced in this phase, where the SIU's mandate remains limited by Section 2 of the SIU Act, i.e., recommendations that are not legally binding, reporting line to the President only and still dependent on case-specific Proclamation, etc. The priority would be to see these amendments through and ensure that enabling OPI legislation is expedited.

The amendments should be in sync and not in contradiction with the enabling legislation in Phase 3 to enable a smoother transition into a full Statutory Body.



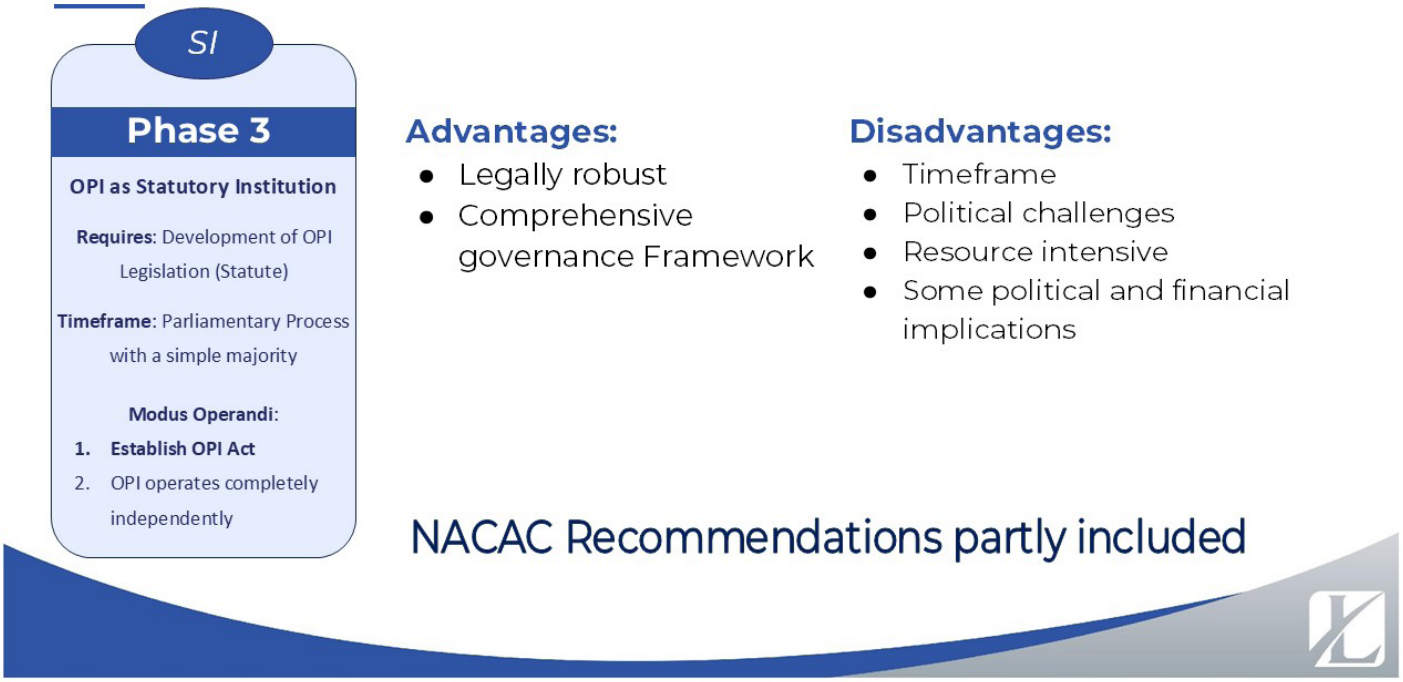

## Phase 3: OPI Statute

The purpose of this phase is to pass dedicated legislation that formally establishes the OPI as a dedicated anti-corruption Statutory Body with clearly defined powers and independence. This enabling legislation will detail institutional clarity, provide a full legal standing, and mandate and powers tailored to systemic corruption, enhancing public trust and legal legitimacy.

The challenge with this process may be lengthy, as the process requires extensive stakeholder engagement and is subject to political contestation. With the leveraging of the SIU's infrastructure, additional resources and upgrading of the infrastructure in incremental stages, the transitioning process would be smoother and less resource intensive.

The statute, as opposed to a constitutional amendment, may be a great starting point, given that constitutional amendments require a higher threshold to be passed in both the National Assembly (NA) and the National Council of Provinces (NCOP). Furthermore, the OPI needs to be a constitutional institution in order to be independent and be an effective corruption-fighting entity. The same outcome could be achieved through an Act of Parliament.

## Phase 3: OPI Statute




## Phase 4: OPI as Chapter 9 Institution

The purpose of transitioning to Phase 4 is to entrench independence and constitutional status, ensuring constitutional protection and independence. This phase will ultimately provide the OPI with security of tenure, full oversight powers, secure funding from parliament, and full independence from executive interference. However, it is admitted that this process is rather complex, politically sensitive, and requires constitutional amendment, i.e., a 2/3 majority in parliament.

## Phase 4: OPI as Chapter 9 Institution

It is important to note that each phase is dependent on the other, and all phases are to be completed to achieve the full implementation of the NACAC recommendations. Phases 1 and 2 will run in parallel. The use of a Proclamation in terms of the SIU Act should immediately trigger the process of amending the SIU Act. The development of an OPI Act should start right after that, providing the SIU with the mandates, powers, and functions of the institution and fully absorbing the current SIU.

## 4.3 Technical Brief on SIU Act Amendment and OPI Legislation

Given our strong recommendation to amend the SIU Act and establish the OPI as a statutory institution, we will provide a brief on the potential content of a respective act here. Having said that, it must also be pointed out that a more in-depth legal analysis and advice would be beyond the scope of our assignment. Yet, we believe it is important to provide an overview of the potential criteria for the new Act aimed at establishing the OPI. It is also important to note that the current powers and functions of the SIU– as set out in the SIU Act– must also be included in the OPI Act, though with amendments. However, in this chapter, we will focus on the specifics of an OPI act that is directed to the OPI key mandate: the fight against systemic corruption.

The primary objective of the SIU Act amendment and the OPI Act is to investigate systemic corruption within state institutions, state assets, and public money, as well as any conduct that may seriously harm the interests of the public. The Acts should encompass various powers and functions, including investigations, powers of search and seizure, preparation of criminal dockets, civil recovery, expanded powers of the Special Tribunal, policy advice, whistleblowing, public hearings, and corrective actions.

The Acts must definitely contain a definition of systemic corruption. In Chapter 2, we proposed the following definition of systemic corruption:

'*Systemic corruption refers to the pervasive presence of corrupt practices within an organisation or economy. It implies that corruption is the norm, and encountering an honest officer would be surprising. Systemic corruption often involves private sector players and can include elements of political corruption, where senior government officials initiate or support corrupt activities for personal political and/or financial gain. This political dimension can create hidden networks that guide institutions in their routine corrupt behaviour. Systemic corruption can encompass both major and minor incidents and may not always be illegal.*'

### Independence and Powers of the OPI

The OPI should have the authority to initiate investigations independently and exercise its powers without prior consultation or approval. This independence is crucial to ensure that the OPI can address systemic corruption without undue political influence. The President or the OPI must set out the terms of reference for investigations or the Special Tribunal. Any amendment to a Presidential Proclamation must be agreed upon by the OPI.

## Governance Structure and Competencies

We propose that the governance structure of the OPI be amended to clearly define the competencies and skills required for its head. The head of the OPI should be appointed by the President or Parliament, and the amendment should stipulate the necessary competencies and skills for this role. This structure will ensure that the OPI is led by individuals with the expertise and integrity needed to combat systemic corruption effectively.

## Powers of the OPI

The OPI should be tasked with investigating all allegations of systemic corruption and collecting evidence related to such cases. Additionally, the OPI should engage in the prevention of systemic corruption, public education, and policy advisory. These functions will enable the OPI to address corruption comprehensively, from investigation to prevention and education.

## Functions of the OPI

The specific powers and functions of the OPI should include investigations, powers of search and seizure, preparation of criminal dockets, civil recovery, expanded powers of the Special Tribunal, whistleblowing, public hearings, and corrective actions. These powers will provide the OPI with the necessary tools to effectively combat systemic corruption and hold individuals and institutions accountable.

In summary, we emphasise the importance of amending the SIU Act and then establishing the OPI with the necessary powers and functions to address systemic corruption effectively. By defining systemic corruption, ensuring the independence of the OPI, and outlining its governance structure and specific powers and functions. Thus, a robust framework will be created to combat corruption and promote integrity within state institutions.

# 4.4 Prevention and Public Awareness

The OPI's operations will have a strong emphasis on preventative measures and public awareness, not just investigations. Therefore, we want to highlight some important objectives and activities at this point in order to explain further the uniqueness of the institution's anticipated role.

We propose a comprehensive approach to reducing systemic corruption through cultural change and public awareness campaigns. Leadership at state institutions, staff at state institutions, the general public, non-governmental actors, educational institutions, and the private sector all play crucial roles in this effort. Awareness and public education campaigns could include, for example:

- online courses
- video short casts
- podcasts
- social media posts
- influencer campaigns
- school and university programs

- mandatory programs for the public sector (leadership and staff)
- training for ethics officers and concerned staff in private companies
- campaigns specifically targeting local/rural communities and the youth

The importance of public awareness cannot be overstated. By educating the public and fostering a culture of integrity, the OPI can create an environment where corruption is less likely to thrive. Online courses and video shortcasts can provide accessible and engaging content to a wide audience, while podcasts and social media posts can reach individuals who may not have access to traditional educational resources. Influencer campaigns can leverage the reach and credibility of popular figures to spread anti-corruption messages, and school and university programs can instil values of integrity in the next generation.

Mandatory programs for the public sector are essential to ensure that leadership and staff at state institutions are well-versed in anti-corruption measures and ethical behaviour. Training for ethics officers and concerned staff in private companies will assist in creating a culture of integrity within the private sector, which is often intertwined with public sector corruption. Campaigns specifically targeting local/rural communities and the youth can address the unique challenges faced by these groups and empower them to take a stand against corruption.

## Whistleblowing as a Preventive Measure

Whistleblowing should be an integral part of the preventive measures against systemic corruption. Key challenges of the current Protected Disclosures Act (PDA) must be addressed to ensure effective whistleblowing mechanisms. Legal advice, safety, protection from victimisation, and financial support must be granted to whistleblowers. While witness protection is beneficial, it is not sufficient, as not every whistleblower is a witness.

Effective whistleblowing mechanisms are crucial for uncovering corruption and holding individuals accountable. Legal advice can help whistleblowers navigate the complexities of reporting corruption, while safety and protection from victimisation can ensure that they are not retaliated against for their actions. Financial support can provide whistleblowers with the resources they need to continue their fight against corruption, and witness protection can offer additional security for those who may be at risk.

It is important to consider the pros and cons of internal versus external whistleblowing mechanisms. Internal whistleblowing mechanisms can provide a more controlled and confidential environment for reporting corruption, but they may also be subject to internal biases and conflicts of interest. External whistleblowing mechanisms, on the other hand, can offer greater independence and transparency, but they may also be more challenging to implement and manage. It is important to carefully consider the advantages and disadvantages of each approach and develop a system that best meets the needs of the organisation and its stakeholders.

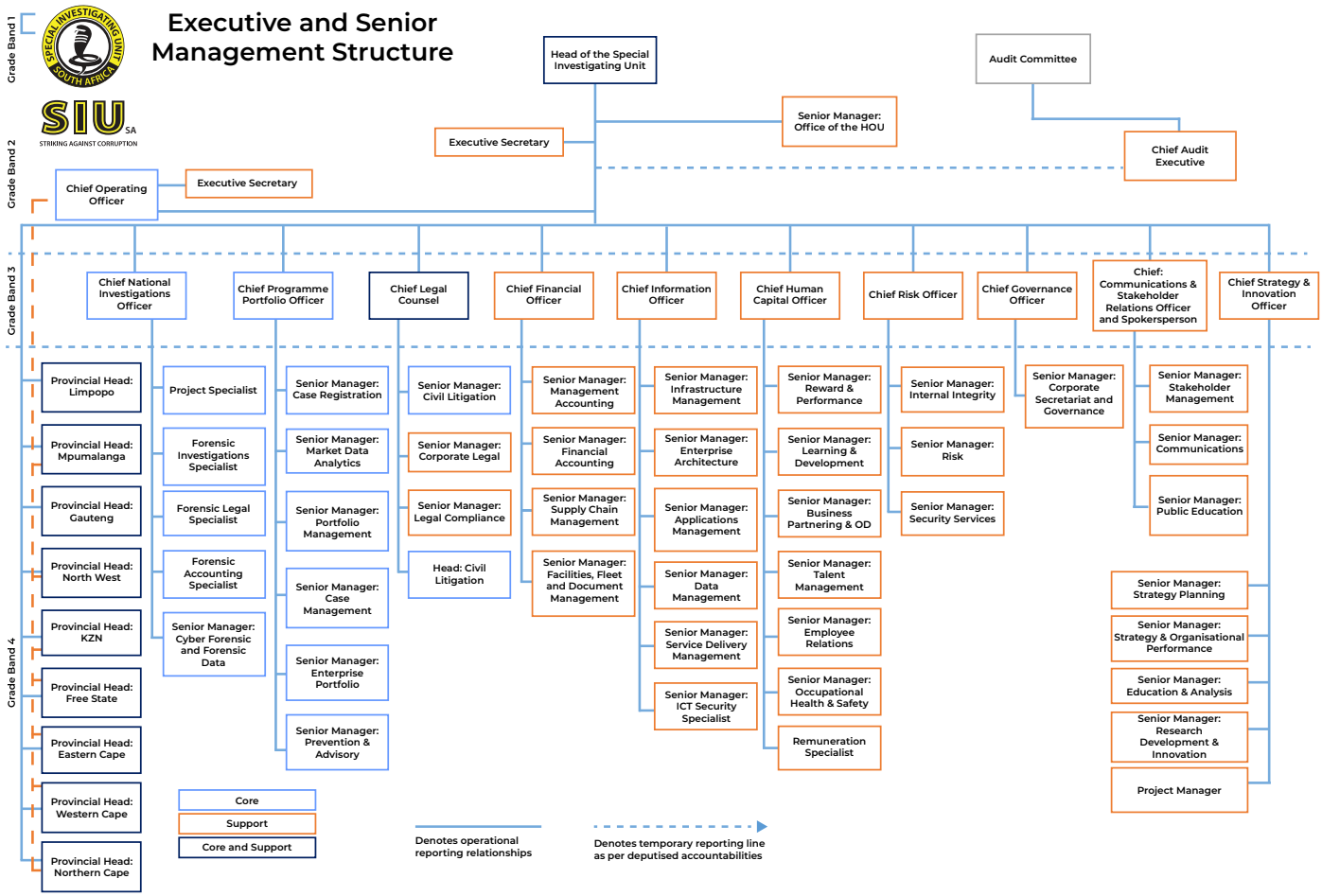
These are only some initial ideas of how to shape the OPI concerning its mandate for prevention and public awareness.

# 5. Organisational Structure

The existing organisational structure and employees of the SIU are the starting point in Phase 1 – Proclamation. Towards Phase 2 – Amendment of the SIU Act and Phase 3 - OPI Statute, the current SIU employees should be transferred to the OPI. A fit-for-purpose organisational structure with additional functions like policy development, criminal docket preparation, and whistleblower protection should then be developed. A conceptual human capital framework for the transition of functions and employees should be developed[72]. A transition project plan covering job design, capacity development, and organisational culture is also necessary. For the purpose of this report, we will highlight the most important organisational changes.

## 5.1 From SIU to OPI

The establishment of the OPI is proposed in phases. Therefore, the planning for the organisational structure follows this approach and is split in two steps which will be explained in this chapter. To do so, the current organisational structure of the SIU is regarded as the starting point. The SIU presents its current organisational structure as follows:




[72]SIU report: Proposed Concept Notes - Establishment of the Office of Public Integrity_2 December 2024

The approach to organisational change follows the phased approach towards SIU Act amendment first, and then OPI Statute establishment. We see two major changes necessary for the organisation to adopt the OPI and its activities targeting systemic corruption:

- **In Phase 1 – Proclamation:** Immediate start of operations through proclamation and within the SIU structure
- **In Phase 3 – OPI Statute:** The OPI being established as a statutory institution absorbing the current SIU.

Both Phases consider the scarcity of resources for government institutions and anticipate that such funds will remain limited. For this reason, the proposal tries to combine effective OPI operations with efficiency concerning necessary resources.

## Phase 1: Proclamation

This phase assumes that, through Presidential Proclamation, the SIU will be mandated to start operating the OPI within its current structure. In order to do so, there are some divisions that are unique for the OPI and others which can be shared with the current SIU. In the current SIU structure, we propose that the following divisions receive additional staff to cover the increasing workload that will result from OPI operations. Our proposal for these divisions with shared functions is as follows:

### a. Additional Staff in Current SIU Divisions (Shared Functions)

| Divisions (Heads) | Potential Function | Proposed Additional Number of Staff for OPI Operations |
|---|---|---|
| **Provincial OPI Representatives** | | 9 |
| **Chief National Investigations Officer** | Forensics | 2 |
| **Chief Programme Portfolio Officer** | | |
| **Chief Legal Counsel** | | |
| **Chief Financial Officer** | Accounting and Fleet, Facilities and Documentation | 2 |
| **Chief Information Officer** | Data Management, ICT Security | 3 |
| **Chief Human Capital Officer** | HR | 2 |
| **Chief Risk Officer** | Risk Management | 1 |

| Divisions (Heads) | Potential Function | Proposed Additional Number of Staff for OPI Operations |
|---|---|---|
| **Chief Governance Officer** | Governance | 1 |
| **Chief Communication and Stakeholder Relations Officer (Spokesperson)** | Communication | 1 |
| **Chief Strategy and Innovation Officer** | Strategy, Innovation | 1 |
| **Total Amount of Additional OPI Staff** | | **22** |

### b. New Divisions (OPI Specific)

Additionally, there are functions which are unique and should be covered by specific OPI divisions. These divisions are important to gain valuable experiences and to build knowledge. We propose the following structure for these divisions:

| OPI Divisions | Potential Function | Proposed Initial Number of Staff |
|---|---|---|
| **Investigations** | Head of Division | 1 |
| | Investigators | 8 |
| | Whistleblowing Specialists | 2 |
| | Lawyers: Preparation of Criminal Dockets | 2 |
| | Lawyers: Special Tribunal (Criminal Forfeiture) | 1 |
| | Search and Seizure Specialists | 1 |
| | Civil Recovery Specialists | 1 |
| **Prevention** | Head of Division | 1 |
| | Public Education | 4 |
| | Policy Advisory | 3 |
| | Corrective Actions | 3 |
| | Public Hearings | 2 |
| **Total Amount of Additional OPI Staff** | | **30** |
| **Total OPI Staff Phase 1 a) and b)** | | **52** |

The composition of shared and OPI-specific functions leaves room for debate. For example, the two Forensic Specialists in (a) could also be allocated to the OPI-specific Investigations Division. Our take on this is that they would be better placed in the SIU Investigation function in order to share forensics knowledge with colleagues. We also acknowledge that lawyers for special tribunals within the OPI may appear to be a duplication, given that such function is already assumed in the SIU. In this case, we believe it would be good to build specific OPI knowledge and experiences, hence the OPI-specific function.

It shall also be noted that the number of staff proposed will not be hired on day one; rather, it is anticipated that the employees will be employed over a period of a year. In the beginning, the main task in many of the functions will be establishing well-working structures (e.g. Whistleblowing).

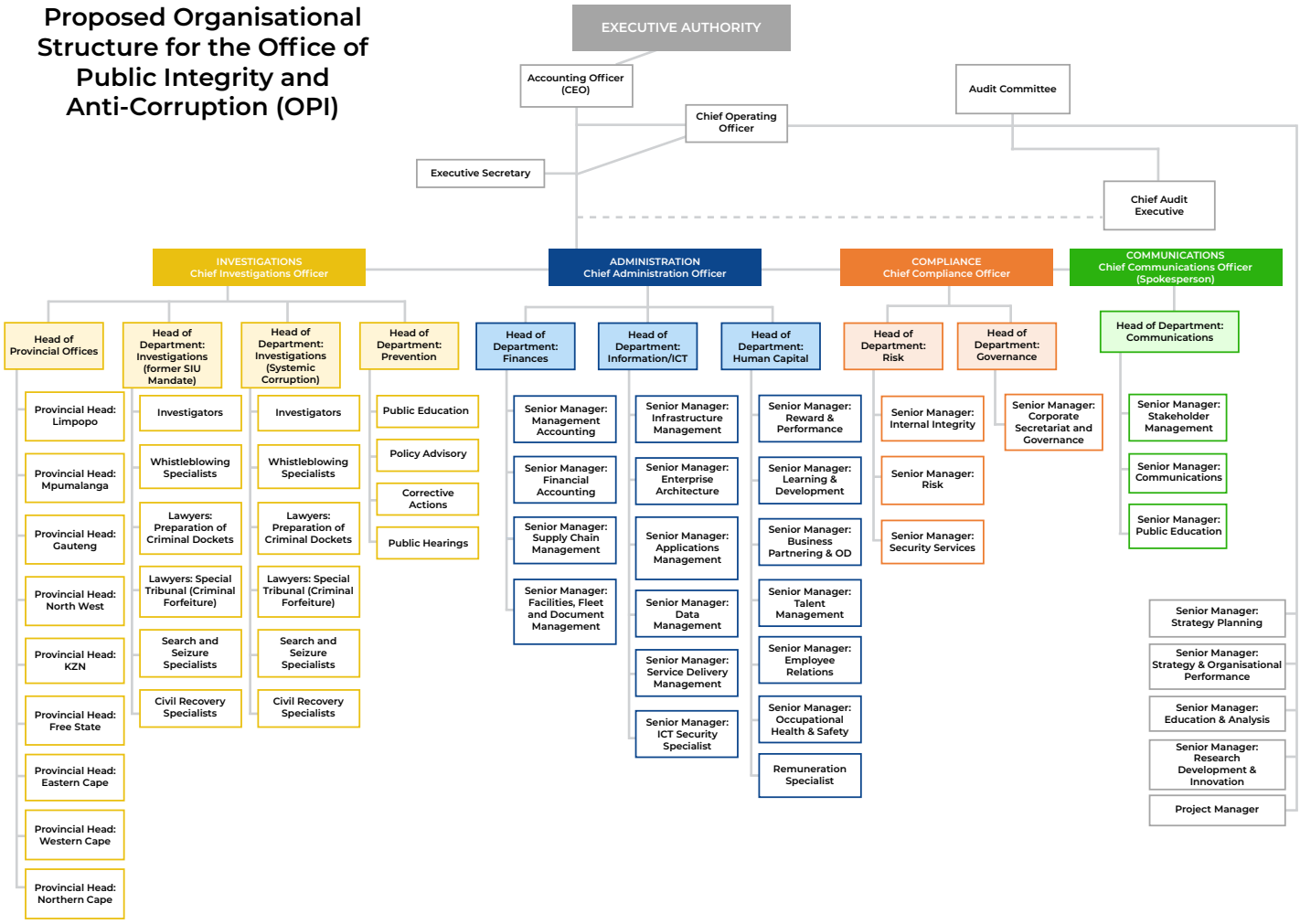
## Phase 3: OPI Statute

Once the OPI operations are started through proclamation and within the current SIU and subsequent SIU Act amendment, the legislative and organisational preparation for a statutory OPI (taking on board the SIU) shall start. We propose that the development of a new and comprehensive legislation covering the SIU and OPI mandates should go hand in hand with a completely new organisational structure for the new institution.

We anticipate that the new OPI in Phase 3 - OPI Statute will require more staff than what is proposed for Phase 1 - Proclamation. The reason is that we assume an increasing demand for activities countering systemic corruption. Obviously, this will also affect budgeting – an issue that will be addressed in the next chapter. We suggest a change in the governance structure with clear division of duties between the Executive Authority and the Accounting Officer (CEO). Secondly, we believe that the organisation should be simplified at top-management level, employing a four-pillar structure (Investigation, Administration, Compliance, Communications).

For the OPI as a statutory institution and absorbing the current SIU (as outlined in the table at the beginning of this chapter), we propose the following structure:

**Proposed Organisational Structure for the Office of Public Integrity and Anti-Corruption (OPI)**




At the end of the financial year 2023/2024, the SIU had 702 employees. In Phase 1 - Proclamation, according to our proposal, this number goes up to approximately 752. With growing expertise and experience, we anticipate that the new organisational structure for the statutory institution OPI will grow further to approximately 1000 employees. The organisational changes anticipated for Phase 3 – OPI Statute will impact the budget further, which will be addressed in the following chapter. The changes in Phases 1 and 3 also require a solid project and change management process, which will also be presented in a separate chapter.

## 5.2 Skill Sets for Top Leadership

With the change of the organisational structure, we also propose to develop skill sets for the top leadership positions, namely Executive Authority and Accounting Officer, within the OPI. We believe this will assist in identifying sufficiently qualified candidates and visibly express the qualification demands for these roles. Both positions are critical in ensuring financial integrity, risk management, and compliance within the unit, adhering to principles outlined in Sections 63 and 64 of the Public Finance Management Act (PFMA) with Parliamentary oversight. We hold that such a skill set will positively contribute to the overall effectiveness and credibility of the OPI.

Our proposal shall be seen as blueprints that need to be discussed and amended further. Yet, we hold it is good to provide the baseline qualification set here.

## Executive Authority

The Executive Authority will oversee financial integrity, risk management, and compliance within the unit. We suggest that the minimum educational qualifications for this role include a bachelor's degree in accounting, finance, forensic auditing, or economics, with a Chartered Accountant (CA(SA)) qualification being highly preferred. Alternatively, credentials such as Certified Internal Auditor (CIA), Certified Fraud Examiner (CFE), or ACCA are advantageous.

The Executive Authority must possess extensive knowledge, skills, and experience, including 8 to 12 years in financial management, forensic auditing, or risk governance, preferably in a regulatory or anti-corruption setting. We propose that they should have deep knowledge of PFMA, Municipal Finance Management Act (MFMA), and Treasury Regulations, expertise in detecting and preventing financial fraud, procurement fraud, and money laundering schemes, and a strong understanding of government financial accountability, budget oversight, and forensic financial investigations. Proven leadership and strategic management experience in government agencies, regulatory bodies, or multinational compliance environments is crucial.

## Accounting Officer (CEO)

The Accounting Officer (CEO) must have leadership, investigative, and strategic capabilities to manage and guide the unit effectively, in line with sections 36, 38, and 40 of the PFMA 4. We suggest that the minimum educational qualifications for this role include a bachelor's degree in law (LLB), forensic accounting, criminology, public administration, or political science, with a master's degree in business administration (MBA), public policy, law, or governance, being highly advantageous. Certifications such as Certified Fraud Examiner (CFE) or Certified Anti-Money Laundering Specialist (CAMS) would be beneficial.

The Accounting Officer should have 10 to 15 years of experience in law enforcement, forensic investigations, anti-corruption, compliance, or financial crime risk management, with experience in handling high-profile corruption investigations and working with international anti-corruption bodies. We propose that they must have a strong understanding of South Africa’s anti-corruption laws, the Prevention and Combating of Corrupt Activities Act (PRECCA), PFMA, and related governance frameworks. Proven leadership and strategic management experience in government agencies, regulatory bodies, or multinational compliance environments is essential.

# 6. Project and Change Management (GTAC)

The establishment of the OPI marks a significant milestone in this ongoing struggle. The OPI is a newly formed institution dedicated to investigating cases of systemic corruption within public institutions. It will eventually integrate the SIU, which has been responsible for probing serious malpractices in public institutions. The following strategy outlines the project and change management process necessary in order to establish the OPI. It takes into account the stepwise approach proposed in this report. We believe that it is crucial to start the project and change management process right from Phase 1. The following strategy employs Project Management Processes and Tools proposed by South Africa's Government Technical Advisory Centre (GTAC).

The overall project of establishing the OPI consists of three major steps:

a. Developing the Strategy for the OPI
b. Developing the Project Management Plan
c. Developing the Change Management Plan.

We will highlight the most important steps of the project here, but please note that a comprehensive plan will require detailed plans for all steps, including the assignment of responsibilities, funds and a time plan.

## a. Developing the Strategy for the OPI

Crafting a robust strategy is the first important step in establishing the OPI. This involves collaboratively developing the vision, mission, and values of the new organisation, followed by setting clear goals, devising a strategy, and formulating an action plan. The following statements are just proposals to start the collaborative process within the OPI and the SIU.

**Examples:**

- **Vision:** The vision of the OPI is a transparent and accountable public sector, free from systemic corruption.
- **Mission:** The mission of the OPI is to investigate and eradicate systemic corruption within public institutions, thereby ensuring integrity and trust in public administration.
- **Values:** The OPI stands firm on the pillars of Integrity, Accountability, Transparency, Excellence, and Collaboration.
- **Goals:** The goals are ambitious yet achievable:
  - To identify and investigate cases of systemic corruption within public institutions.
  - To promote ethical practices and integrity in public administration.
  - To collaborate with other agencies and stakeholders to combat corruption.
  - To undertake preventative measures to avoid systemic corruption.
  - To provide policy advice for a more transparent and accountable, corruption-free public service.

**Strategy: The strategy is multifaceted and will only be explained here in broad steps:**

- **Research and Analysis:** Conducting thorough research to understand the extent and nature of systemic corruption in public institutions.

- **Stakeholder Engagement:** Engaging with key stakeholders, including government agencies, civil society, and the public, to gather insights and build support for the OPI's mission.
- **Capacity Building:** Developing the necessary infrastructure, resources, and expertise to effectively investigate and address systemic corruption.
- **Public Awareness:** Launching awareness campaigns to educate the public about the OPI's role and the importance of combating systemic corruption.
- **Policy Advice:** Advise the government and stakeholders to tackle systemic corruption comprehensively.

**Action Plan: This report explains a number of interventions towards the establishment of the OPI. In a narrow sense, the action plan unfolds in phases as follows:**

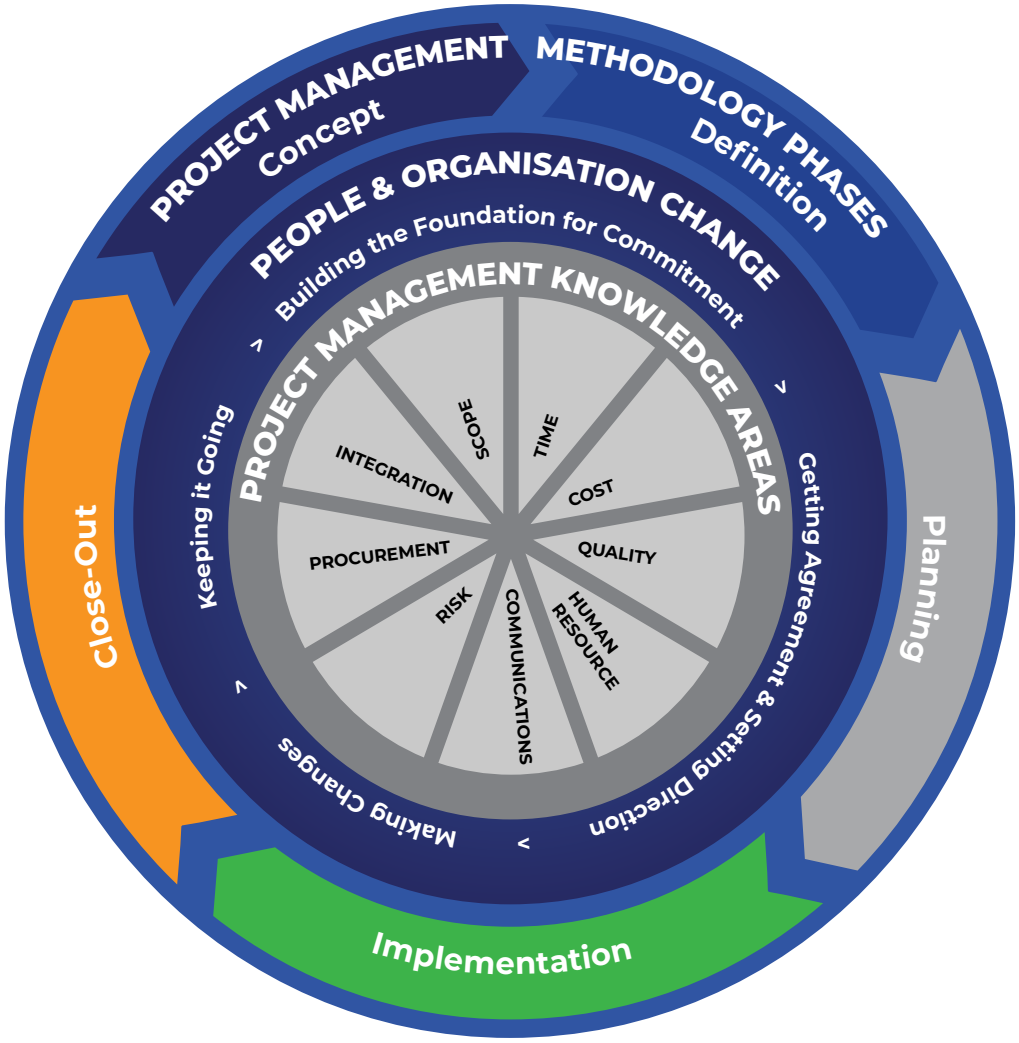
| STEP 1 | STEP 2 | STEP 3 | STEP 4 | STEP 5 |
|---|---|---|---|---|
| Establishing the OPI's organisational structure and recruiting key personnel. | Developing and implementing investigation protocols and procedures. | Developing Departments for Prevention, Public Awareness and Policy Advice. | Initiating investigations and collaborating with other agencies to address systemic corruption. | Monitoring and evaluating the effectiveness of the OPI's initiatives and making necessary |

## The Strategy Pyramid

## b. Developing the Project Management Plan

The project management plan for establishing the OPI is a meticulous process that employs the Project Management Processes and Tools proposed by South Africa's Government Technical Advisory Centre (GTAC). The project management plan consists of five key steps: Concept, Definition, Planning, Implementation, and Close-out.

- **Concept:** The first step begins with defining the purpose and scope of the OPI. Identifying key stakeholders and their roles is crucial, as is outlining the initial vision, mission, and values.
- **Definition:** Next, detailed project objectives and deliverables must be developed. The organisational structure and governance framework will be established, and resource requirements and budget will be identified.
- **Planning:** A detailed project plan will be created, including timelines, milestones, and dependencies. Risk management and contingency plans will be developed, and communication and reporting protocols will be established.
- **Implementation:** The project plan will be executed, encompassing recruitment, training, and infrastructure development. Progress will be monitored, and any issues or challenges will be addressed. Compliance with legal and regulatory requirements is ensured.
- **Close-out:** Finally, a comprehensive review and evaluation of the project will be conducted. Lessons learned and best practices will be documented, and the transition to operational status will be completed, ensuring ongoing support and maintenance.



## c. Developing the Change Management Plan

The change management plan for the OPI is a thoughtful process and consists of four key steps: Building the foundation of commitment, getting agreement and setting direction, making changes, and keeping it going. Change management must be taken very seriously, given that the newly established OPI will take on board the already existing SIU. This can lead to a number of challenges, particularly concerning organisational culture and resistance to change. The key steps of change management are:

- **Building the foundation of commitment:** The vision, mission, and values of the OPI are communicated to all stakeholders. Trust and support are built through transparent and inclusive processes, and concerns and resistance to change are addressed through open dialogue and engagement.
- **Getting agreement and setting direction:** Buy-in from key stakeholders and decision-makers is secured. Clear goals, roles, and responsibilities are established, and a roadmap for the change process, including timelines and milestones, is developed.
- **Making changes:** The necessary changes to integrate the SIU into the OPI are implemented. Training and support are provided to ensure a smooth transition, and progress is monitored, with any issues or challenges addressed.
- **Keeping it going:** The momentum of change is sustained through ongoing communication and engagement. Continuous evaluation and improvement of the OPI's processes and initiatives are carried out, and successes are celebrated, with contributions recognised to maintain morale and commitment.

## POC MODEL

## Key Challenges of the Project

Integrating the staff of the Special Investigating Unit (SIU) into the newly established Office of Public Integrity (OPI) presents several key challenges. These challenges must be addressed thoughtfully to ensure a smooth transition and the successful operation of the OPI. One of the primary challenges is resistance to change. SIU staff may feel uncertain or anxious about the transition to the OPI, fearing changes in their roles, responsibilities, or job security. This resistance can stem from a lack of understanding of the new organisation's vision, mission, and values, or from concerns about how the integration will impact their daily work. To mitigate this resistance, it is crucial to engage SIU staff early in the process. Inclusion and participation in the planning and implementation phases can help build trust and buy-in. By involving SIU staff in developing the OPI's strategy, project management plan, and change management plan, they can feel a sense of ownership and commitment to the new organisation.

Leadership commitment is another critical factor in overcoming integration challenges. Leaders must demonstrate their dedication to the transition by actively participating in the process, communicating transparently, and addressing concerns promptly. Their commitment can help reassure SIU staff and foster a positive attitude towards the change. Ongoing communication is essential throughout the integration process. Regular updates, open forums for discussion, and clear channels for feedback can help keep SIU staff informed and engaged. This communication should be two-way, allowing staff to voice their concerns and suggestions, which can then be addressed by leadership. Training and support are also vital to ensure that SIU staff can adapt to new roles and responsibilities within the OPI. Providing comprehensive training programs and resources can help staff develop the necessary skills and knowledge to succeed in the new organisation. Additionally, offering support services, such as counselling or mentoring, can help staff navigate the transition more smoothly.

Finally, it is important to recognise and celebrate achievements throughout the integration process. Acknowledging the contributions and successes of SIU staff can help maintain morale and motivation, reinforcing their commitment to the OPI's mission. By addressing these challenges through inclusion, leadership commitment, ongoing communication, training, and recognition, the integration of SIU staff into the OPI can be managed effectively, ensuring a successful transition and the fulfilment of the OPI's mandate to investigate and eradicate systemic corruption within public institutions.

# 7. Financial Considerations

Currently, the SIU is partially funded by a Government grant from the National Treasury, allocated through the SIU's Executive Authority, the Department of Justice and Constitutional Development. During the Medium-Term Expenditure Framework (MTEF) budget processes, the SIU would be able to motivate for additional funding for the initial establishment of the OPI, as the SIU is already partly funded through annual budgetary processes that are in place. It is estimated that the SIU would require between R50 million and R120 million per annum over the MTEF period to kickstart the OPI. This would be in areas regarding investigations, prevention, additional communication and awareness capabilities, policy advice and shared functions with the current SIU (e.g. finances, HR, etc.). In the event that National Treasury is not able to allocate additional funding for the establishment of the OPI within the SIU, the SIU stated it could provide funds for approximately 50 additional employees from its own funds and will prioritise the recovery of its debt book in order to do so[73].

Given the aforementioned, this chapter addresses two financial aspects of the OPI establishment, namely:

- The anticipated costs of the OPI establishment
- Potential funding solutions

Importantly, the figures presented here do not take into account inflationary trends. All amounts are based on the buying power of the and at the time of the release of this report.

## 7.1 The Anticipated Costs of the OPI Establishment

For the OPI establishment, budget considerations are based on estimates. Given that Phase 1 – Proclamation of our proposal basically adds core and support staff to the current SIU, we anticipate additional costs based on the increase in the number of employees. For Phase 3 –OPI Statute, we again base our estimates on the figures of the most recent financial report of the SIU. We also assume that the transition into Phase 4 - Chapter 9 Institution will not incur further operational costs.

For the financial year 2023/2024, the SIU states the following[74]:

| | |
|---|---|
| Number of staff at the end of the financial year | 702 |
| Average number of staff during the financial year | 663 |
| Employee-related expenditure in the financial year | 645,307,000 ZAR |
| Expenditure per employee in the financial year | 973,000 ZAR |
| Total Expenditure of the SIU in the financial year | 1,118,480,176 ZAR |
| Average total costs per employee based on the total expenditure of the SIU in the financial year | 1,686,998 ZAR |
| (Total Expenditure of the SIU in the financial year/average number of staff during the financial year) | |

[73]SIU Interview

[74]SIU Annual Report 2023/2024: https://www.siu.org.za/wp-content/uploads/2024/10/SIU-202324-Annual-Report_Tabled.pdf

For our forecasts, we use the average number of staff and the total expenditure of the SIU in the financial year. We acknowledge that employee expenditure and total expenditure of the institution do not increase proportionally, given that there are fixed costs which do not go up when more staff are hired. However, we believe that establishing the OPI will also incur extra costs such as costs for the project and change process, additional equipment, office space, staff training, etc. Therefore, we hold that it is sensible at this point to use the two figures mentioned and to extrapolate them into the future. Consequently, we anticipate the following budgetary influences through the OPI establishment:

## Phase 1: Proclamation

As explained in the chapter on the organisational structure, in this phase, 52 employees are assumed to join the SIU. Employing the average total costs per employee (f) of 1,686,998 ZAR, this totals to 87,723,935 ZAR. Given that the new employees will be hired throughout the year, it is reasonable to assume that 50% of the mentioned amount will be necessary in the first year and 100% for every year, until the OPI, as a Statutory Institution, is established.

| | |
|---|---|
| Additional costs in the first year (50%) | 43,861,967 ZAR |
| Any following year | 87,723,935 ZAR |

## Phase 3: OPI as Statute

Based on our organisational assumptions, we anticipated that the OPI, as a statutory institution, would have approximately 1000 employees. Taking into account that the SIU had 702 employees at the end of the financial year, we foresee an increase of 298 employees in order to establish a fully functional OPI which absorbs the current SIU. 298 additional employees, averaging total costs per employee of 1,686,998 ZAR, will lead to 502,725,404 ZAR additional costs.

With this in mind, the total expenditure of the SIU will amount to 1,621,205,580 ZAR annually. It is important to note that for this estimate, we use the number of staff at the end of the financial year of the SIU (2023/2024) and not the average number of employees, hence the addition of 298 employees. The reason is that the employees to be hired for OPI purposes add to the 702 staff at the end of the financial year, not the average number.

| | |
|---|---|
| Additional costs when OPI is a statute: | 502,725,404 ZAR |
| Anticipated annual expenditure for OPI: | 1,621,205,580 ZAR |

We hold that a 50% budget by the government would be the bare minimum for an institution that is supposed to have full government attention and support. In fact, if one considers the devastating social, economic, financial and political consequences of rampant (systemic) corruption, any amount spent on the fight against corruption will pay off societally.

## 7.2 Potential Funding Solutions

Any proposal for funding the OPI must somehow range between what can be seen as ideal and what is realistic in the light of the current financial situation of the government and the overall economy in South Africa.

In an ideal scenario, the current SIU, as well as the future OPI, would be fully funded by government grants. This would ensure the independence of the institution in its operations, as far as the inflow of financial resources is concerned. In fact, an under-resourced anti-corruption institution will not be in the position to fulfil its mandate. In addition, it may be politically steered through funds that are either withheld or provided.

Based on the experience with the current SIU and its funding, it is reasonable to assume that full government funding is not going to happen in the foreseeable future. In fact, the SIU currently receives only 43% of its overall budget through government grants, while 57% must be sourced elsewhere[75].

While the ideal – full funding by government – is rather unrealistic, even maintaining the 43% funding ratio will be challenging when the OPI is fully established as a statutory institution. According to our interview with the National Treasury, the capacity to provide further funds is seen to be low, given the constraints that the government is currently facing[76].

Against this background, we still believe that at least 50% budget coverage by the government should be granted throughout the OPI establishment. This would mean the following:

### Phase 1 – Proclamation

Total expenditure of the SIU in the financial year (2023/2024) 1,118,480,176 ZAR + additional costs in the first year (50 %): 43,861,967 ZAR = 1,162,342,134 ZAR total costs, of which 50% is to be funded by the government = 581,171,071.59 ZAR

Any additional year in this phase would lead to the following:

Total expenditure of the SIU in the financial year (2023/2024) 1,118,480,176 ZAR + additional costs in any further year (100%): 87,723,935 ZAR = 1,206,204,111 ZAR total costs, of which 5 % is to be funded by the government = 603,102,055.50 ZAR

### Phase 3 – OPI Statute

For the OPI as a statutory institution and having absorbed the current SIU, 1,000 employees are assumed. This leads to the following budget estimates:

Anticipated annual expenditure for OPI: 1,621,205,580 ZAR, of which 50% is to be funded by the government = 810,602,790 ZAR

[75]SIU Annual Report 2023/2024: https://www.siu.org.za/wp-content/uploads/2024/10/SIU-202324-Annual-Report_Tabled.pdf

[76]National Treasury Interview

Even if government funding is provided to this extent, the current SIU will have to find resources in the amount of 581,171,071.59 ZAR in the initial phase and must consider this amount to increase up to 810,602,790 ZAR annually, once the OPI as a statutory institution is established and fully operational. This will put the institution under pressure, and the question of how to cover these amounts must be answered.

We would propose a funding model, a combination of the following options (in line with the SIU Proposal[77]):

- A major share of the funding gap should be covered, in that the OPI is allowed to keep a portion of 25% of recovered funds from its operations.
- A considerable share of the funding gap should be covered by OPI services rendered. Examples would be advisory/consultation services.
- A minor share could be covered by direct funding from private sector partners and development partners, however, such funding must be limited to training purposes in order to avoid conflicts of interest and undue influences by foreign institutions on OPI operations.

It is important to note that the current SIU legislation does not allow for the institution to keep a share of recovered funds. Therefore, to make this proposal viable, the OPI legislation must clearly allow for the OPI to keep such benefits from its operations.

[77]SIU report: Proposed Funding Model - Establishment of the Office of Public Integrity_2 December 2024

# 8. Performance Measurement

The OPI's credibility, long-term effectiveness, and sustainability depend on strong oversight and evaluation measures integrated from the beginning. These mechanisms will ensure transparency, accountability, and public trust while enabling continuous performance improvement and alignment with legislative requirements and global anti-corruption standards as systemic corruption evolves. Within the scope of this report, we can only provide a first idea of potential criteria for performance measurement. However, we believe this aspect is important for the long-term success of the OPI, hence the following notions.

## Oversight and Accountability Mechanisms

To ensure its success in fulfilling its mandate, adequate oversight and accountability mechanisms should be in place and properly implemented. 'Coordination of planning and execution of relevant activities between officials from the Presidency, the Department of Justice and Constitutional Development (DoJ), the Special Investigating Unit (SIU) and NACAC is crucial as a point of departure'[78]. To achieve this, a multi-stakeholder oversight body is required to ensure accountability and review the performance of the OPI. Lessons can be drawn from Hong Kong's ICAC Operations Review Committee[79] by adopting a similar approach and in line with the legislative requirements of the OPI.

## Impact Assessment

It is critical that tools to evaluate the broader impact of OPI actions on systemic change, deterrence, and institutional integrity across the state are embedded at the onset.

## Performance Audits

The OPI should have regular review audits to assess its efficiency and effectiveness by bodies such as the AGSA and other external evaluators deemed fit. These audit reports should be shared with the oversight bodies, and any improvements should be identified and implemented accordingly (with binding recommendations). These should be enabled by legislation.

## Performance Metrics

Key performance indicators (KPIs) count the number of investigations, prosecutions, and asset recoveries, and measure the impact of the response to systemic corruption by continually assessing and measuring the state of level systemic corruption in the country, as well as public perceptions and satisfaction. A closer look at the indicators (local and international) that measure the state and perception of corruption in South Africa should be considered (such as Transparency International's CPI).

## Whistleblower and Public Feedback

To provide the OPI with the required credibility and eminence, transparency is key. Considering whistleblower and public feedback helps rebuild lost public trust and confidence. In addition, it will strengthen current mechanisms for the protection of whistleblowers, given the dire state

[78]SIU interviews

[79]ICAC, HKSAR - Operations Review Committee

in which whistleblowers find themselves. This can be achieved through institutionalising feedback mechanisms that provide whistleblowers with real-time (need-to-know basis) case tracking, public awareness, and progress reports to the public on how the government is responding to systemic corruption. This should align with global trends in citizen-centred accountability, restoring public trust and investor confidence.

Currently, the SIU conducts the National Stakeholder Perception Survey[80] every two years to measure its effectiveness and impact. With the latest survey concluded on 31 March 2025, the outcome showed an average appreciation of the SIU services work at 75%, noting provinces with gaps requiring more work[81]. The OPI should leverage this survey to measure its effectiveness for systemic corruption.

# 9. Conclusion

In conclusion, the establishment of the Office of Public Integrity (OPI) represents a significant step forward in South Africa's fight against systemic corruption. The OPI is designed to provide a comprehensive and coordinated approach to combating corruption, leveraging the strengths of existing institutions while introducing new mechanisms to enhance effectiveness and accountability. It maintains South Africa’s multi-agency architecture. The phased approach to the OPI’s establishment ensures that the OPI can begin operations swiftly, addressing urgent needs while laying the groundwork for a robust and independent institution.

The integration of the Special Investigating Unit (SIU) into the OPI is a strategic move that allows for the immediate commencement of operations, utilising the existing infrastructure and expertise of the SIU. This integration will be managed carefully to ensure a smooth transition, with a focus on maintaining the integrity and effectiveness of both entities. At the same time, the immediate start of amending the SIU Act, followed by the development of an OPI legislation to become a statutory institution and eventually transition into a Chapter 9 Institution, calls for an ambitious, yet realistic approach of establishing the OPI.

[80]National Stakeholder Perception Survey 31.03.2025_SIU

[81]SIU Interviews

The OPI's mandate will encompass a wide range of powers and functions, including investigations, public education, policy advisory, and corrective actions, all aimed at addressing systemic corruption comprehensively. The OPI's success will depend on several critical factors, including strong leadership, adequate funding, and effective coordination with other anti-corruption agencies. The proposed governance structure, with clear roles and responsibilities, will ensure that the OPI operates with the necessary independence and authority. The report also highlights important aspects to be considered for the legal establishment of the OPI statute.

The emphasis on prevention through public awareness and education is crucial, as it fosters a culture of integrity and empowers citizens to participate actively in the fight against systemic corruption. This also includes a solid whistleblowing mechanism. All this resonates well with the whole-of-society approach.

Financial considerations are carefully considered, and the OPI will require a sustainable funding model to support its operations. The proposed mix of government funding, retained portions of recovered funds, and service fees for consulting will provide a balanced approach to financial sustainability. This approach takes into account the constrained resources of the government and proposes a funding mix that ensures uninterrupted OPI operations. Performance measurement and oversight mechanisms will be integral to the OPI's operations, ensuring transparency, accountability, and continuous improvement.

The report also explains the strategic, project and change management processes necessary to align the current SIU organisation with the anticipated OPI structure. Here, aspects such as resistance to change and the role of leadership are taken into consideration. The entire process demands ongoing commitment by leadership and transparent communication across the organisation.

In summary, the OPI is positioned to play a pivotal role in South Africa's anti-corruption landscape. By addressing systemic corruption through a multi-faceted approach, the OPI will contribute to restoring public trust, enhancing institutional integrity, and promoting a culture of accountability. The successful implementation of the OPI will require commitment and collaboration from all stakeholders, but the potential benefits for the country’s democracy and economic and societal development are immense.

# 10. Bibliography


1. Department of Planning, Monitoring and Evaluation, National Anti-Corruption Strategy 2020–2030 (26 February 2021) https://www.gov.za/documents/other/national-anti-corruption-strategy-2020-2030-26-feb-2021 , accessed 30 April 2025.
2. National Anti-Corruption Advisory Council. Mid-Term Report May 2024
3. Gabara, N., 'Corruption Wounded SA Democracy – Pres Ramaphosa', The Public Servant Online (9 November 2023) https://www.dpsa.gov.za/thepublicservant/2023/11/09/corruption-wounded-sa-democracy-pres-ramaphosa , accessed 30 April 2025.
4. National Anti-Corruption Advisory Council. Mid-Term Report May 2024
5. ToR for the Research (Contract with GIZ)
6. World Bank, Enhancing Government Effectiveness and Transparency: The Fight Against Corruption, World Bank, 2020 https://www.worldbank.org/en/topic/governance/publication/enhancing-government-effectiveness-and-transparency-the-fight-against-corruption [accessed 30 April 2025].
7. Transparency International, Exploring Corruption Types and Their Impacts Globally, [n.d.], Transparency International https://www.transparency.org/en , accessed 30 April 2025.
8. United Nations Office on Drugs and Crime, UNODC Homepage (n.d.) https://www.unodc.org/ , accessed 30 April 2025.
9. U4 Anti-Corruption Resource Centre, Glossary: Systemic Corruption (n.d.) https://www.u4.no/glossary/systemic-corruption , accessed 30 April 2025.
10. National Anti-Corruption Advisory Council. Mid-Term Report May 2024
11. Johnston, M. Syndromes of Corruption. Cambridge: Cambridge University Press, 2005.
12. Republic of South Africa, Judicial Commission of Inquiry into Allegations of State Capture: Final Report, Republic of South Africa, 2022 https://www.statecapture.org.za/site/information/reports , accessed 30 April 2025.
13. Republic of South Africa, Commission of Inquiry into Allegations of Fraud, Corruption, Impropriety or Irregularity in the Strategic Defence Procurement Package: Final Report, Republic of South Africa, 2016 https://www.justice.gov.za/comm-sdpp/docs/20160624-gg40088_gon742-ArmsCommReport.pdf , accessed 30 April 2025.
14. Republic of South Africa, Commission of Inquiry into Tax Administration and Governance by the South African Revenue Service: Final Report, Republic of South Africa, 2018 https://static.pmg.org.za/190213SARS_Commission_Final_Report.pdf , accessed 30 April 2025.
15. Transparency International. Corruption Perceptions Index 2024. Berlin: Transparency International, 2025. https://www.transparency.org/en/cpi/2024 ,accessed 30 April 2025.
16. Ryan, C., 'State Capture Scorecard: R500bn Looted, Zero Assets Recovered', Moneyweb (5 July 2022) https://www.moneyweb.co.za/news/south-africa/state-capture-scorecard-r500bn-looted-zero-assets-recovered/ (accessed 30 April 2025).
17. Statistics South Africa. Quarterly Labour Force Survey, Quarter 4: 2024. Pretoria: Statistics South Africa, 2025. Available at: https://www.statssa.gov.za/publications/P0211/P02114thQuarter2024.pdf , accessed 30 April 2025.
18. Afrobarometer, Dispatch No. 474: South Africans' Trust in Institutions and Representatives Reaches New Low (Institute for Justice and Reconciliation, n.d.) https://www.ijr.org.za , accessed 30 April 2025.
19. National Treasury, 2024 Budget Review (Republic of South Africa, 2024) https://www.treasury.gov.za/documents/national%20budget/2024/review/FullBR.pdf ,accessed 30 April 2025
20. Ashton, C., Rethinking Anti-Corruption in South Africa: Pathways to Reform, Institute for Security Studies, 2024 https://issafrica.org/research/southern-africa-report/rethinking-anti-corruption-in-south-africa-pathways-to-reform, accessed 30 April 2025.
21. Considerations for Structured Body Accountable to Parliament

22. Summary of Articles 6,8,13, 32 and 36 of UNCAC
23. Ashton, C., Rethinking Anti-Corruption in South Africa: Pathways to Reform, Institute for Security Studies, 2024 https://issafrica.org/research/southern-africa-report/rethinking-anti-corruption-in-south-africa-pathways-to-reform, accessed 30 April 2025.
24. Constitutional Court of South Africa, Glenister v President of the Republic of South Africa and Others (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC), Republic of South Africa, 17 March 2011 https://www.saflii.org/za/cases/ZACC/2011/6.html , accessed 30 April 2025.
25. Republic of South Africa, Judicial Commission of Inquiry into Allegations of State Capture: Final Report, Republic of South Africa, 2022 https://www.statecapture.org.za/site/information/reports , accessed 30 April 2025.
26. Republic of South Africa, Special Investigating Units and Special Tribunals Act 74 of 1996 – Section 3(1), Republic of South Africa, 1996 https://www.justice.gov.za/legislation/acts/1996-074.pdf ,accessed 30 April 2025.
27. Lessons Learned from International Case Studies
28. National Anti-Corruption Advisory Council. Mid-Term Report May 2024
29. National Anti-Corruption Advisory Council, National Dialogue on Anti-Corruption Report 2024: 9–10 December 2024 (Republic of South Africa, 2024) https://anticorruption.gov.za/assets/Documents/National%20Dialogue%202024/National%20Dialogue%20on%20Anti-Corruption%20Report%202024-Digital%20Version.pdf, accessed 30 April 2025.
30. National Anti-Corruption Advisory Council, National Dialogue on Anti-Corruption Report 2024: 9–10 December 2024 (Republic of South Africa, 2024) https://anticorruption.gov.za/assets/Documents/National%20Dialogue%202024/National%20Dialogue%20on%20Anti-Corruption%20Report%202024-Digital%20Version.pdf, accessed 30 April 2025.
31. Corrupt Practices Investigation Bureau, Legislation and Enforcement: Introduction (Singapore Government, n.d.) https://www.cpib.gov.sg/about-corruption/legislation-and-enforcement/introduction/, accessed 30 April 2025.
32. Hong Kong Special Administrative Region Government, Independent Commission Against Corruption Ordinance (Cap. 204) (n.d.) https://www.elegislation.gov.hk/hk/cap204, accessed 30 April 2025.
33. Global Compliance News, Anti-Corruption in Brazil (n.d.) https://www.globalcompliancenews.com/anti-corruption/handbook/anti-corruption-in-brazil/ , accessed 30 April 2025.
34. The Times, 'SFO to Offer Deals to Firms That Come Clean on Fraud', The Times, 19 April 2025 https://www.thetimes.com/business-money/companies/article/watchdog-to-be-lenient-with-firms-owning-up-to-fraud-7mvghzdmn , accessed 30 April 2025.
35. Lucia Manzi, Among Equals: The Causes of Effective Corruption Prosecution in Italy Lexington Books, 2023 https://rowman.com/ISBN/9781666938487/Among-Equals-The-Causes-of-Effective-Corruption-Prosecution-in-Italy , accessed 30 April 2025.
36. The Economist, 'What did Lava Jato, Brazil's anti-corruption investigation, achieve?', The Economist, 9 March 2021 https://www.economist.com/the-economist-explains/2021/03/09/what-did-lava-jato-brazils-anti-corruption-investigation-achieve , accessed 30 April 2025.
37. Financial Action Task Force, The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation FATF, 2012 https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf , accessed 30 April 2025.
38. Corrupt Practices Investigation Bureau, Mission, Vision, Core Values Corrupt Practices Investigation Bureau, n.d. https://www.cpib.gov.sg/who-we-are/our-corporate-philosophy/mission-vision-core-values/ , accessed 30 April 2025.

39. United Kingdom, Proceeds of Crime Act 2002, United Kingdom, 2002 https://www.legislation.gov.uk/ukpga/2002/29/contents , accessed 30 April 2025.
40. Republic of Kenya, EACC Records Significant Progress in Asset Recovery, Ethics and Anti-Corruption Commission, 2024 https://eacc.go.ke/en/default/eacc-records-significant-progress-in-asset-recovery/ ,accessed 30 April 2025.
41. Economic and Financial Crimes Commission, 'EFCC Makes Single Largest Asset Recovery till Date', 2 December 2024 https://www.efcc.gov.ng/efcc/news-and-information/news-release/10562-efcc-makes-single-largest-asset-recovery-till-date , accessed 30 April 2025.
42. Financial Action Task Force, Italy's Progress in Strengthening Measures to Tackle Money Laundering and Terrorist Financing FATF, 2019 https://www.fatf-gafi.org/en/publications/Mutualevaluations/Fur-italy-2019.html , accessed 30 April 2025.
43. SIU Report: Proposed Concept Notes - Establishment of the Office of Public Integrity_2 December 2024
44. Anti-Corruption and Civil Rights Commission, Homepage Anti-Corruption and Civil Rights Commission, n.d. https://www.acrc.go.kr/en
45. Komisi Pemberantasan Korupsi, Homepage Komisi Pemberantasan Korupsi, n.d. https://www.kpk.go.id/en , accessed 30 April 2025.
46. Office of the Ombudsman of Rwanda, Homepage Office of the Ombudsman of Rwanda, n.d. https://www.ombudsman.gov.rw/en/home , accessed 30 April 2025.
47. Serious Fraud Office, Homepage Serious Fraud Office, n.d. https://www.gov.uk/government/organisations/serious-fraud-office , accessed 30 April 2025.
48. Ethics and Anti-Corruption Commission, Homepage Ethics and Anti-Corruption Commission, n.d. https://www.eacc.go.ke/ , accessed 30 April 2025.
49. Corrupt Practices Investigation Bureau, Homepage Corrupt Practices Investigation Bureau, n.d. https://www.cpib.gov.sg/ , accessed 30 April 2025.
50. Corrupt Practices and Economic Crime Act, Botswana
51. Australian Criminal Intelligence Commission, Homepage Australian Criminal Intelligence Commission, n.d. https://www.acic.gov.au/ ,accessed 30 April 2025.
52. National Prosecuting Authority, 'Task Force to Handle State Capture Cases', 25 March 2022 https://www.npa.gov.za/media/task-force-handle-state-capture-cases , accessed 30 April 2025.
53. Villela, P., 'Operation Car Wash Beyond Borders: The Making of a Transnational Policing Field', Contexto Internacional, 46(2), 2024 https://doi.org/10.1590/S0102-8529.20244602e2022010, accessed 30 April 2025.
54. Ashton, C., Rethinking Anti-Corruption in South Africa: Pathways to Reform, Institute for Security Studies, 2024 https://issafrica.org/research/southern-africa-report/rethinking-anti-corruption-in-south-africa-pathways-to-reform, accessed 30 April 2025.
55. Daily Maverick, 'Public Protector says SA needs a courageous response to corruption', 21 February 2024 https://www.dailymaverick.co.za/article/2024-02-21-public-protector-says-sa-needs-a-courageous-response-to-corruption/ , accessed 30 April 2025].
56. South African Police Service, Annual Report 2022/2023 South African Police Service, 2023 https://www.saps.gov.za/about/stratframework/annual_report/2022_2023/Annual-Report-2022-23-final-draft-2023-10-12.pdf , accessed 30 April 2025.
57. SIU Interviews
58. Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State, Report: Part VI, Volume 4 – All Recommendations, corrected version (Republic of South Africa, 2022) https://www.stateofthenation.gov.za/zondo-commission-reports/Part%206%20Vol%204%20-%20Judicial%20Commission%20of%20Inquiry%20into%20State%20Capture%20Report.pdf , accessed 30 April 2025.

59. National Anti-Corruption Advisory Council. Mid-Term Report May 2024
60. Whistleblower Retaliation List
61. National Anti-Corruption Advisory Council, OPI Proposal Overview, 10 December 2024
62. SIU Interviews
63. The Presidency, 'President appoints members of the National Anti-Corruption Advisory Council', 29 August 2022 https://www.thepresidency.gov.za/president-appoints-members-national-anti-corruption-advisory-council , accessed 30 April 2025.
64. Corruption Watch, Annual Report 2024: Accountable Together Corruption Watch, 2025 https://www.corruptionwatch.org.za/wp-content/uploads/2025/03/19631_Corruption-Watch_Annual-Report-2024_D5.pdf , accessed 30 April 2025.
65. South African Government, 'Lieutenant General Godfrey Lebeya: Achievements and Accomplishments of Fusion Centre', 6 December 2023 https://www.gov.za/news/speeches/lieutenant-general-godfrey-lebeya-achievements-and-accomplishments-fusion-centre-06 , accessed 30 April 2025.
66. Republic of South Africa, Constitution of the Republic of South Africa, 1996 – Chapter 5: The President and National Executive, Republic of South Africa, 1996 https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-chapter-5-president-and-national , accessed 30 April 2025.
67. Republic of South Africa, Constitution of the Republic of South Africa, 1996 – Chapter 5: The President and National Executive, s 84(2)(f), Republic of South Africa, 1996 https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-chapter-5-president-and-national , accessed 30 April 2025.
68. Republic of South Africa, Special Investigating Units and Special Tribunals Act 74 of 1996 – Section 3(1), Republic of South Africa, 1996 Special Investigating Units and Special Tribunals Act 74 of 1996 | South African Government , accessed 30 April 2025.
69. SIU Interview
70. SIU Interview
71. SIU report: Proposed Concept Notes - Establishment of the Office of Public Integrity_2 December 2024
72. SIU report: Proposed Concept Notes - Establishment of the Office of Public Integrity_2 December 2024
73. SIU Interview
74. Republic of South Africa, Special Investigating Unit Annual Report 2023/2024, Republic of South Africa, 2024 https://www.siu.org.za/wp-content/uploads/2024/10/SIU-202324-Annual-Report_Tabled.pdf , accessed 30 April 2025.
75. Republic of South Africa, Special Investigating Unit Annual Report 2023/2024, Republic of South Africa, 2024 https://www.siu.org.za/wp-content/uploads/2024/10/SIU-202324-Annual-Report_Tabled.pdf , accessed 30 April 2025.
76. National Treasury Interview
77. SIU Report: Proposed Funding Model - Establishment of the Office of Public Integrity_2 December 2024
78. SIU Interviews
79. Hong Kong Special Administrative Region, ICAC Operations Review Committee, Independent Commission Against Corruption, 2025 https://www.icac.org.hk/en/about/power/check/advisory/orc/index.html , accessed 30 April 2025.
80. National Stakeholder Perception Survey 31.03.2025_SIU
81. SIU Interviews

Limina

Reimagine Learning

**Phone:**
+27 21 201 7251

**Email:**
admin@limina.co.za

**Website:**
www.limina.co.za

# Strengthening Law Enforcement Agencies in Combating Corruption: Mandates and Resourcing

## 1. Introduction

The NACAC research finds a number of challenges and limitations to the operation of Law Enforcement Agencies (LEA) combatting corruption. This is apparent in their mandates and resourcing. Alarmingly, combatting corruption does not appear as a clear priority in their mandates, budgets nor the posts allocated. Overall, a picture emerges of constrained legislative mandates, structural challenges and a weak financial and human resource capacity. The recommendations below are aimed at what can be achieved in the short term and place particular emphasis on, amongst others, long overdue law reform with reference to the NPA and SAPS.

## 2. National Prosecuting Authority (NPA)

The entire accountability architecture of the state hinges on an effective, efficient, independent and accountable National Prosecuting Authority (NPA). The NPA performs poorly in relation to the scope and volume of prosecutions of crime in general and corruption in particular. Success in high-level corruption matters remain elusive. Lacking institutional and financial independence, effective functioning of the (NPA) is a core challenge and must be addressed to improve law enforcement capability. It is, constitutionally speaking, intolerable that the NPA functions as a programme in the Dept of Justice's budget.

To combat corruption effectively it will require the overhaul the legislative framework of the NPA with reference to at least:

- its financial and institutional independence,
- the appointment and removal of the senior echelon,
- conditions of service of staff to attract and retain critical skills, and
- setting standards for accountability and transparency.

In support of the preceding:

- Special consideration will need to be given to mechanisms such as independent or special prosecutors (or even an additional anti-corruption prosecution entity) in cases of corruption involving members of the high or former high executive.
- Significant delegation or expansion of the prosecuting role to other players will be required, as well as significantly better allocation and support of judicial officers in courts hearing these matters, and efficient management of their time. There is an urgent need to bolster the independence, accountability and effectiveness of the NPA, to protect whistle-blowers from physical violence and not just in the employment relationship and not only when they are to give evidence in court.

### 3. The South African Police Services (SAPS)

The South African Police Services (SAPS) and its Directorate Priority Crimes Investigation (DPCI) and Crime Intelligence are not fit for the purpose of combating corruption. These are more suited to the investigation of serious and violent crime and organised crime, in both mandate and resources. The SAPS legislation is poorly drafted and requires completing redrafting into one new consolidated Act, including providing for Crime Intelligence. The latter is constitutionally required but remains unfulfilled.

### 4. Courts

The courts are a key component in our constitutional democracy. Yet their resourcing is fractured and insufficient, and there appears to be inadequate attention paid to their optimal operation.

### 5. Conclusion

Across the criminal justice and law enforcement sector the following are required:

- Clear and aligned legal frameworks that are harmonised across sectors and levels of government to avoid gaps, contradictions, or unresolvable overlaps.
- Institutional coordination and role clarity enabled by defined mandates and established, clear mechanisms for inter-agency coordination and cooperation
- Political commitment and leadership sending a unified and sustained message that corruption will not be tolerated and enabling law enforcement and oversight bodies to be independent.

**Recommendations**

### 5.1. To be actioned in the short term

The legislation for SAPS requires thorough overhaul. In particular, the following should be provided for in legislation:

a) A **dedicated, budget ring-fenced anti-corruption component of the DPCI** whose mandate covers all corruption. The legislation should provide for discretion to delegate less serious matters to other levels, but the starting point should be that all corruption may be investigated by this component. A process should be provided for which permits the DPCI to decide who should investigate what, or whether a shared investigation should be pursued.
b) The vetting of Crime Intelligence personnel should be the responsibility of an external agency.
c) The **budget of the SAPS contains anomalies** (billions allocated to single posts) which require urgent clarification.

The **SAPS should be obliged consistently to report**, in relation to dockets investigated, dockets referred, cases to court, cases convicted, for all crime types including corruption matters.

The **legislation for the NPA requires amendment**, toward greater financial and operational independence, which favours the prosecution of corruption, coupled with greater transparency,

accountability and safeguards. In particular, the following should be provided for in the short term in legislation:

a) The NDPP, DNDPPs and DPPs should be **appointed through a public consultative process**, rather than Presidential fiat. This is urgent as some of these positions become vacant next year. Dynamic leadership is urgently required. In this regard, such leadership and will only be attracted if the NPA has greater independence.
b) **The NPA should have its own budget vote**. At the very least, section 38 of the Act should be amended so that Ministerial and Departmental approval is not required to secure outside skills, up to an agreed budgetary amount. With its own Budget Vote, allocations to units of the NPA such as SOCA and SCCU should transparently be listed.
c) The **salary structure** within the NPA should be reviewed and adjusted, to be more in line with equivalent positions in the Special Investigation Unit (SIU). At the same time, consideration should be given to raising the requirements for appointment as a prosecutor to the NPA. It should be possible for the NPA itself to address vacancies not filled within one year, by short-term procurement processes involving contracts.
d) A system needs to be established to brief counsel in private practice to prosecute certain matters
e) The **mandate of the Investigation Directorate (ID) should be clarified**. It should be granted a large ring-fenced discretionary budget for the procurement of ad-hoc specialist skills.
f) **Term limits** should apply to DPPs, and the age limit of 65 should be removed.
g) The NPA should be required to **respond with a decision to referrals** for prosecution for corruption from other agencies within specified time limits, and it should be required to maintain a register of all referrals for prosecution.
h) An external agency **should be mandated to receive and investigate complaints of unethical or corrupt conduct by prosecutors**. This currently falls to the NPA itself.
i) The **NPA Prosecution policy and policy directives** should be transparently developed and required by legislation to be tabled in Parliament. Compliance should be monitored. It is submitted the NPA should withdraw its Deferred Prosecution Policy (aka Corporate Alternative Dispute Resolution) and invite Parliament to consider the issue.
j) The Office of Witness Protection (OWP) should provide for the **protection of whistle-blowers** and related persons even if they are not to testify in court. Whistle-blower protection must effective and perceived to be effective.

The legislation or regulations of the **Financial Intelligence Centre (FIC) should require mandatory routine reporting** on its data.

### 5.2. To be actioned in the medium term

The issue of **curator fees and dissipation of value during freezing of assets** requires closer interrogation. AFU recoveries could be tripled if dissipation is avoided. At the same time, safeguards to prevent the abuse of freezing processes should be considered. An external agency should also be mandated to maintain a register of curators appointed in freezing matters.

The cause of the discrepancy between **potential and actual recoveries** in the SIU should also be investigated toward increasing recoveries.

The SIU legislation should permit the **SIU to conduct prosecutions or forfeitures** on behalf of the NPA, where this is so authorised by the NPA, and under the supervision of the NPA. The latter would require amendment to the Prevention of Organised Crime (POCA) Act. If the SIU is to take on such roles, additional skilled posts may need to be allocated to it. The SIU should, in its investigations, be mindful of potential prosecutions and where possible, build dockets to the criminal standard of proof as it carries out its work.

The Courts not have sufficient judicial officers. All judges, as well as magistrates allocated to Commercial Crime Courts, should each be allocated a **dedicated, high-quality legal researcher** to bolster their capacity. Saturday and additional court sittings and the associated overtime budgets should be made available. Consideration should be given for CARA to finance these overtime interventions.

The Chief Justice should be prevailed upon to issue a **Practice Direction** that 1) Acting Judges not be allocated high profile corruption matters 2) corruption matters take priority, and may not be postponed for more than one month (or another benchmarked period) hence.

### 5.3. To be actioned in the long term

In the long term, an entirely **new model of prosecution** should be discussed and consulted upon, which permits either the appointment of special counsel in sensitive matters, or that, as a matter of course, provides for the briefing of prior-approved counsel in private practice by the prosecuting authority (the Commonwealth model).

The budget and posts allocated to the ID, SCCU in the NPS, and the Asset Forfeiture Unit (AFU) do not indicate a serious intention to tackle corruption, and should be increased. Far greater allocations from CARA to support forfeiture and anti-corruption prosecutions should be considered.

**Court infrastructure challenges** contributing to court delays should urgently be addressed. A thorough critical review of the operation of the courts towards maximising efficiency should be carried out. Clarity and accountability are needed on roles and responsibilities between the Office of the Chief Justice, Public Works, and the Department of Justice and Constitutional Development.

.

## NATIONAL ANTI-CORRUPTION ADVISORY COUNCIL (NACAC)

**SUBJECT: ADVISORY NOTE TO THE PRESIDENT REGARDING THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE ZONDO COMMISION**

Date: 19 October 2022

### 1. AIM

This document serves as the first advisory note by the National Anti-Corruption Advisory Council (NACAC) to His Excellency: President Cyril Matamela Ramaphosa. It outlines the background to the NACAC and then makes specific proposals that could be considered by the President when tabling his implementation plan in Parliament in relation to the recommendations of the 'The Judicial Commission of Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State' (hereinafter referred to as the Zondo Commission).

### 2. CONTEXT

2.1 The NACAC was announced by the President on 29 August 2022. NACAC Councillors will serve for a term of three years commencing from 01 September 2022.

2.2 According to the draft NACAC Terms of Reference, "the **primary purpose** of the NACAC is to be an advisory body which will monitor the implementation of the National Anti-Corruption Strategy (NACS). The Strategy contains the following **six strategic pillars**:

(a) Promote and encourage active citizenry, whistleblowing, integrity and transparency in all spheres of society.
(b) Advance the professionalisation of employees to optimise their contribution to create corruption-free workplaces.
(c) Enhance governance, oversight and consequence management in organisations.
(d) Improve the integrity and credibility of the public procurement system.
(e) Strengthen the resourcing, coordination, transnational cooperation, performance, accountability and independence of dedicated anti-corruption agencies.



STOP REPORT KNOW
CORRUPTION
FIGHTING CORRUPTION IS EVERYONE'S BUSINESS

(f) Protect vulnerable sectors that are most prone to corruption and unethical practices with effective risk management.

2.3 In the Presidential appointment letters, NACAC councillors are expected to execute the following **functions**:

(a) Advise on the effective implementation of the Strategy by government, civil society and the private sector;
(b) Advise key role-players on the overarching thrust of the Strategy, namely the six pillars upon which it is premised;
(c) Advise on strengthening of South Africa's anti-corruption architecture;
(d) Host the national anti-corruption summit(s), bringing together government, civil society, business, and academia, to set the country's anti-corruption agenda and evaluate progress in the implementation of the Strategy.
(e) Consequently, the NACAC will also advise on the implementation of the recommendations of 'The Judicial Commission of Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State' (The Zondo Commission) from a strategic and systemic perspective.

2.4 To date, NACAC has held 4 plenary meetings (2 September, 26 September, 8 October and 16 October 2022). In those meetings, Councillors familiarised themselves with the NACAC mandate. They discussed both administrative issues and substantive issues of executing the above mandates. NACAC has identified its main priority areas of work and established tentative workstreams, that have been meeting to provide in-depth analysis of work to be done. The planning process will be finalised by end of October 2022.

2.5 Given the urgency of advising on the implementation of the recommendations of the Zondo Commission report, NACAC has prioritised this first advisory note to the President to address that question.

## 3. APPROACH

3.1 As already indicated in 2.3(a), one of the urgent tasks for NACAC is advising the President and government on the implementation of the recommendations of the Zondo Commission report. This is due to the court directive that the President is expected to present his implementation plan within four months since the receipt of the report. The final instalment of the Zondo Commission report was received by the Presidency on 22 June 2022, which implied that the President would be expected to table his response by 22 October 2022. As such, the NACAC deemed it critical to engage with this process in **two phases**.

### 3.1.1 Phase 1: Before the tabling of the reports and the President's plan in Parliament

(a) The Government Technical Task Team led by the Director-General in the Presidency, Ms Phindile Baleni, consulted NACAC by presenting two progress reports on 26 September 2022 and 08 October 2022, respectively. It was clearly stated that the information presented was based on the technical level inputs. Consultations of political structures were not yet conducted.

(b) NACAC members appreciated the opportunity, asked questions and made comments, which were deemed as a form of advice that would inform further drafting of the implementation plan by government. Some of the ideas that emerged during that discussion are developed further in this advisory note meant for the President.

### 3.1.2 Phase 2: Implementation of the recommendations of the Zondo Commission by various actors

(a) The second phase will involve further analysis of the strategic and systemic recommendations of the Zondo Commission based on the implementation plan put forward by the President. NACAC will undertake stakeholder consultations and research to inform such advisory notes.

(b) Furthermore, NACAC is developing a system of monitoring and evaluating implementation of the NACS. This system will integrate NACAC's prioritised actions in relation to the recommendations of the Zondo Commission. On the basis of that system, NACAC will receive reports from all stakeholders in society regarding implementation of the NACS and the recommendations of the Zondo Commission. Those reports will be reviewed and advisory notes produced accordingly.

The next section discusses key points that could be considered by the President when developing and tabling his response to the recommendations of the Zondo Commission in Parliament.

## 4. DISCUSSION

### 4.1 Integrated strategic and system-wide action against corruption

The Terms of Reference of the Zondo Commission limited its scope to specific bodies and sectors such as the State-Owned Companies (SOEs), among others. Hence it could not conduct investigations in all spheres of government, various sectors of the economy and other parties. The strategic nature of the findings and recommendations of the Zondo Commission lie in the fact that the phenomenon of state capture, fraud and corruption has been well-diagnosed and published for all to know. Therefore, South Africa should not miss the opportunity to identify other areas of vulnerabilities such as municipalities and act swiftly and decisively to prevent future occurrence of state capture.

The NACS was adopted by Cabinet in 2020 while the investigations by Zondo Commission were still in progress. The six strategic pillars of the NACS cover various domains of work that should be taken forward in a whole-of-government and society fashion. Additionally, the NACS acknowledged the recommendations of the previous judicial commissions of inquiry and court rulings that must be taken into consideration in the fight against corruption. As such, the Zondo Commission is viewed as presenting significant body of evidence that points to the fact that corruption is endemic in our country and extraordinary measures must be put in place to combat and prevent the spread and recurrence of this scourge.

Among other things, NACAC will examine whether necessary additions and amendments to our constitution and our anti-corruption statutes are necessary, and devise mechanisms and policies for promoting transparency. NACAC will ensure that in its recommendations, the issues identified in the Glenister[1] judgements regarding the independence are complied with in proffering advise on the anti-corruption architecture. It is also devising an approach to monitoring and evaluating the impact of our fight against corruption using the NACS as the foundation.

**Proposed actions:**

(a) *The NACAC will advise stakeholders on the thrust of the NACS. This Strategy, developed by a joint government and civil society reference group, is a comprehensive, multi-faceted approach to fighting corruption and is, itself, an important milestone in our efforts to combat corruption. At the heart of the Strategy is an 'all of society' approach, a conviction that a necessary condition for successfully combatting corruption is the participation of 'all of society' in this fight. To this end NACAC has been tasked with hosting a national anti-corruption summit by March 2023.*

(b) *The NACS is the centrepiece guide regarding South Africa's fight against corruption in a systemic and strategic manner across all spheres of government and sectors of society. The findings and recommendations of the Zondo Commission report are viewed from the integrated perspective of the vision, values, objectives and strategic pillars of the NACS to have implications beyond the mentioned individuals and institutions. As a form of grand corruption, state capture must be prevented and combated across the board using the NACS strategic pillars e.g. rebuilding the capacity of law-enforcement agencies to act without fear, favour or prejudice.*

(c) *The monitoring system should incorporate timeframes and a decision register against each of the recommendations of the Zondo Commission.*

### 4.2 Whistle-blower protection

The first strategic pillar of the NACS urges us to: "Promote and encourage active citizenry, **whistleblowing**, integrity and transparency in all spheres of society." Currently there is an intensive discourse in civil society, labour, academia and the legal community regarding the plight of whistle-blowers and what South Africa needs to do to improve the situation. Some of these stakeholders have put forward an advocacy document called the "Whistle Blower Act", whose purpose is to highlight major legislative and policy reforms that could be implemented to incentivise and protect whistle-blowers and their families.

**Proposed actions:**

(a) *The President could acknowledge the role of whistle-blowers, civil society activists and journalists in helping the country accept that there is a problem of state capture. President should expressed strong language in terms of supporting the whistle-blowers.*

[1] a) Glenister v President of the Republic of South Africa and Others (CCT 41/08) [2008] ZACC 19; 2009 (1) SA 287 (CC); 2009 (2) BCLR 136 (CC) (22 October 2008);
b) Glenister v President of the Republic of South Africa and Others (Glenister I) (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC) ; 2011 (7) BCLR 651 (CC) (17 March 2011); and
c) Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others (CCT 07/14, CCT 09/14) [2014] ZACC 32; 2015 (1) BCLR 1 (CC); 2015 (2) SA 1 (CC) (27 November 2014).

(b) *The President could speak strongly against corrupt officials in state-owned enterprises, public bodies and private sector who have proffered charges against those whistle-blowers who testified at the Zondo Commission and charged them with bringing their organisations into disrepute through their testimony. Policy and regulatory measures should be put in place to enforce this action.*

(c) *The President could elect to establish a temporary discretionary fund to support bona fide whistle-blowers in dire need on compassionate grounds. This fund could be held in The Presidency and deployed to assist those whose lives and livelihoods are under threat. This would be until such time as the legislative framework and institutional arrangements for the fight against corruption are established.*

(d) *The abovementioned fund may also be held by a person whom the President appoints temporarily as the Protector of Whistle-blowers and acts in their interests until such time as the appropriate infrastructure is established. That person can be a retired judge, whose office is situated in the office of the Chief Justice and deals with the most egregious violations of whistle-blower rights.*

(e) *The reconfigured Whistle-Blower Act must squarely address the following: a) criminalisation of retaliatory action; b) extend the number of bodies that a bona fide whistle-blower can make a disclosure to; c) create stiffer penalties for violations by companies of the new whistle-blower laws; d) ensure that the new law applies further than the narrow confines of the employer-employee relations stipulated in the labour law and current Protected Disclosures Act thus making the new law an important cog in our human rights law. This will give full effect to the rights to freedom of expression, right to life, right to make a living, right to privacy – all of which whistle-blowers are often bereft. The new law must also establish a fund from which whistle-blowers can draw upon successful prosecution and following an order of court. (The Namibian law establishes such a fund). A framework for the provision of full legal immunity for whistle-blowers needs to be a key feature of the new act.*

(f) *In concurrence with the recommendations of Zondo Commission, "ensure that any person disclosing information to reveal corruption, fraud or undue influence in public procurement activity be accorded the protections stipulated in article 32(2) of the United Nations Convention Against Corruption". Furthermore, align new legislation with Article 33 of the United Nations Convention Corruption, which states: "Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention".*

(g) *The President could call for the proposal of a mechanism to ensure incentivised disclosures. The creation of an Independent Whistle-Blower Ombud's body with the capacity to cater for the following is recommended: a) psycho-social support; b) medical support; c) legal services; d) investigative capacity; e) case assessment capacity; f) a unit for ensuring the physical safety of whistle-blowers.*

### 4.3 Principles to guide appointments

The Zondo Commission found that strategic appointments and dismissals were corruptly used as an enabler for capturing targeted state institutions.

**Proposed action:**



STOP REPORT KNOW
CORRUPTION
FIGHTING CORRUPTION IS EVERYONE'S BUSINESS

*The amended recommendation of the Zondo Commission regarding "appointments to the boards and executives of SOEs" should be translated into principles and procedures that would apply across the board beyond the SOEs.*

### 4.4 Transparent public procurement

The Zondo Commission found that public procurement was the main site of state capture and corruption. It recommends extensive institutional and legislative reforms. NACAC is still applying its mind on this area and will formulate substantial advice based on further research and consultations. It is also acknowledged that National Treasury is in the process of consulting on the new Public Procurement Bill that has been on the pipeline for more than six years. This Bill is also under consideration at the NEDLAC. As a quick win, the following proposals are made.

**Proposed actions:**

*(a) The adoption and use of digital technology for transparency in public sector procurement.*
*(b) Inclusion of measures in the Public Procurement Bill to reduce corruption.*
*(c) Adoption of standards and practices by non-government actors to reduce inducements to corruption.*
*(d) The adoption of open principles and transparency standards in procurement in the country.*

### 4.5 Balancing the response to cover both private and public sectors

While state capture focuses on state bodies, in most cases of corruption both was state and non-state actors are implicated. There is a discourse in society that alleges that the fight against corruption is disproportionately targeting the public sector officials and institutions which needs to be dispelled through action.

**Proposed actions:**

*a) The President could highlight the pervasiveness of the corrupt practices both in the public and private sectors. Specific actions against private sector companies mentioned in the Zondo Commission report could be highlighted.*
*b) Zondo raises critical question for the government to address and also by the legal and audit professions.*
*c) Furthermore, the President could make a call for professionalisation of management consultants and consultancies in the similar manner that legal and audit professions and companies are regulated.*

### 4.6 Resourcing of law-enforcement agencies

The Zondo Commission does make some pointers towards malfeasance in the sector of law-enforcement agencies, but does not make any recommendations except the institutional reforms. However, it is common knowledge that these bodies have been adversely affected by state capture. NACAC has prioritised the area of conducting research and consultations on the anti-corruption architecture and will advise the President in due course.

**Proposed action:**

*The President could make a firm commitment to progressively provide resources to the law enforcement agencies and SARS and also put measures in place to prevent future recurrence of state capture. Additional funds that have been committed to these bodies to address the findings of the Zondo Commission could be announced such as those resources provided to the Investigative Directorate of the National Prosecuting Authority.*

*NACAC is looking at various models to review the anti-corruption architecture based on existing benchmarking, including emerging Australian model. A range of stakeholders will be consulted on this matter.*

### 4.7 Cultural change towards adherence to constitutional values and ethical leadership

Culture change will require strong leadership, training and education processes, communication and awareness, over a substantial period of time. Communication is one of the most important preventive measures for malpractices like corruption and fraud. South Africa has good examples of successful communication campaigns that were targeted at society-wide behaviour change such as the HIV campaign led by the South African National Aids Council (SANAC) and civil society organisations over the years. NACAC is conceptualising a communication campaign of that scale and magnitude.

**Proposed actions:**

*(a) The President and government to continue to address issues of poverty, unemployment and inequality as part of our struggle against corruption. Communicating the relationship between the fight against corruption and the triple challenges plus economic growth and trust-building would resonate with people's lived experiences.*

*(b) The President could formulate messages around the importance of ethical leadership in society and behaviour change at an individual level on specific anti-corruption related sub-topics like anti-bribery. A clarion call should be made for all stakeholders in society to play their part in championing behaviour change.*

*(c) There is a need to prioritise positive values of Ubuntu by focusing on soft skills as well as mainstreaming such values in the curriculum at all levels of education. This will be a proactive way of attending to social ills and perhaps exposing children at an early age to oppose all forms of destructive behaviour and corrupting tendencies.*

## 5. RECOMMENDATION

3.1 This advisory note is submitted for consideration by the President in his speech/response to the recommendations of the Zondo Commission report.



STOP REPORT KNOW
CORRUPTION
FIGHTING CORRUPTION IS EVERYONE'S BUSINESS

For immediate attention: His Excellency President Cyril Ramaphosa

February 2023

---

**Advisory: Public Support for Whistle-blowers**

The National Anti-Corruption Advisory Council (NACAC) is concerned about the current socio-political environment that has led to the ongoing harassment, retaliation and victimization of whistle-blowers who seek to expose and confront corruption in South Africa. Threats to the lives, livelihoods and dignity of whistle-blowers undermine the President's efforts to deal decisively with corruption, and create a context of fear and retaliation associated with the act of exposing misconduct, corruption and wrongdoing. Despite public commitments[1] made by the President to create an environment that is conducive for whistle-blowing, there are numerous examples of whistle-blowers facing retaliation as a result of their disclosures. One such case that deserves the President's attention is that of Ms Martha Ngoye, the suspended Head of Legal at the Passenger Rail Agency of South Africa (PRASA).

Ms Ngoye is a whistle-blower, who provided testimony at the Judicial Commission of Inquiry into Allegations of State Capture on widespread corruption and misconduct at the rail agency. While the NACAC respects the independence, mandate and rights of PRASA and its board of directors, we are troubled by the ongoing use of taxpayer money to fund retaliatory litigation against bona fide whistle-blowers and corruption fighters, especially in the context of a dysfunctional rail agency where corruption has negatively impacted poor and working class communities, who are reliant on the services of PRASA.

Unfortunately, Ms Ngoye is one of many whistle-blowers who are currently under threat as a result of their disclosures. The recent debacle surrounding the SA Tourism Board and its proposed deal with an English football club, revealed the extent with which the Board and CEO of the organisation were willing to go to "find" and "isolate" the whistle-blowers – calling the act of disclosing the deal "un-South African".

---

[1] The President's response to the recommendations of Judicial Commission of Inquiry into Allegations of State Capture – "Whistle-blowing is an essential weapon in the fight against corruption. The actions of whistle-blowers have played a vital role in exposing many of the activities that were part of state capture. Whistle-blowers need to be encouraged to report instances of fraud and corruption, and need to be protected from victimization, prejudice or harm. Among other things, whistle-blowers need protection from retaliatory action – in the form of disciplinary action or criminal charges – by public or private bodies at which corruption has been alleged."

Further commitments were made to improve the legislative and policy environment in the 2023 State of the Nation Address.

We reiterate that the ongoing retaliation by state agencies against whistle-blowers directly undermines the efforts of the President, NACAC and other interested stakeholders to create an environment that protects, supports and encourages whistle-blowing.

Given the current environment, we advise the following:

1. That the President issue further public communication in support of whistle-blowers who are exposing corruption. This could be in the form of a media statement, or from the President's weekly "From the Desk of The President" newsletter;
2. During a meeting with the Cabinet, the President should table his support for whistle-blowers and note that retaliatory behaviour towards whistle-blowers will not be condoned. In this regard, a statement by the Cabinet should be released to the public, outlining that consequences will be meted out against public servants and public office bearers who are attacking and victimising whistle-blowers;
3. Through the relevant NACAC work stream, the President should convene a small gathering of whistle-blowers who exposed corruption at various state entities, to publicly recognize these individuals for their effort, integrity and perseverance, and to understand the plight that they faced; and
4. That the President consider acknowledging whistle-blowers who exposed corruption with national orders of merit, for their duty to our country and service to our nation.

Publically recognising whistle-blowers for their bravery and efforts to expose corruption, will contribute to an environment where the act of whistle-blowing is encouraged and respected. It will also send a signal to those in various state and private entities that the ongoing harassment and persecution of whistle-blowers will not be tolerated or condoned.

Finally, the NACAC has established work streams that are currently working on proposals to improve the legislative, policy and social environment for whistle-blowers. This is a priority for the NACAC and the President can expect to receive subsequent advisories in this regard.

# ADVISORY NOTE

# TO THE PRESIDENT REGARDING THE IMPLEMENTATION AND ROLL-OUT OF THE NATIONAL ANTI-CORRUPTION STRATEGY

NACAC
National
Anti-Corruption
Advisory Council

2030 NDP

# 1. AIM

This document serves as the an advisory note by the National Anti-Corruption Advisory Council (NACAC) to His Excellency: President Cyril Matamela Ramaphosa. It outlines the background to the NACAC and then makes specific proposals for the President's consideration in guiding the implementation and roll-out of the National Anti-Corruption Strategy (NACS).

# 2. SUMMARY OF RECOMMENDATIONS

**2.1.** Cabinet and all political principals in national, provincial and local government champion the process of embedding the NACS as the principal framework for the development and implementation of all anti-corruption and integrity-building programmes and projects throughout government, and develop the capability of for this to be carried into the development of the Mid-Term Strategic Framework of the 7th Administration.

**2.2.** Executive authorities of all government departments and entities, including state-owned and municipal entities, lead the alignment of their respective organisations' anti-corruption and integrity-building activities with the NACS and detail these in their organisations' annual performance plans as early as in the 2024/25 financial year, as well as in the Mid-Term Strategic Framework of the 7th Administration.

**2.3.** Executive authorities ensure that NACS related reporting on identified outputs are embedded in the annual performance plans and reporting of all government entities, and such performance plans and reports be availed to the NACAC to support fulfilment of its mandate.

**2.4.** Cabinet assign responsibility for cluster-level cooperation, coordination and performance management of NACS programs to an appropriately suited department and allocate sufficient capacity and resources for to perform this-function. NACAC advises this should be the Department of Planning, Monitoring, and Evaluation in the Presidency.

**2.5.** The Presidency facilitate engagement between the NACAC and FOSAD to guide the development of a thoroughgoing NACS Implementation Plan and corresponding Monitoring and Evaluation Framework, and facilitate access to the appropriate stakeholders in their respective departments and entities to support this process.

# 3. CONTEXT

The NACS was adopted by Cabinet in November 2020 following a drafting and consultation process that involved a cross section of the public, in keeping with the whole-of-society approach to combatting corruption. The NACS provides a roadmap to an envisioned South Africa in which all sectors of society are transparent and accountable, leaders act with integrity, high ethical standards and zero tolerance for deviation are the norm, the rule of law prevail, and where the level of corruption is substantially reduced.

A key implementation proposal of the NACS is the appointment of the National Anti-Corruption Advisory Council (NACAC). In October 2021 Cabinet approved draft Terms of Reference for the NACAC, which guided a public nomination and selection process for potential members of the NACAC. On 29 August 2022, President Ramaphosa appointed the nine-member NACAC for a period of three years.

Since its appointment the Council members have met in plenary monthly, and have organised themselves into workstreams to guide specific areas of mandated work. The NACAC is supported by a four-person Secretariat and is further assisted through the Transparency and Integrity Programme (TIP) with technical assistance and funding for specific strategic level operational activities.

In January 2023 the NACAC held a strategic planning retreat, and also conducted it first major stakeholder engagement with members of the previous NACS Reference Group and key law-enforcement agencies in efforts to identify potential strategic partners, concretise priorities, and to commence with awareness-raising to ensure the implementation of the Strategy.

Based on planning and engagement to date a number of matters need to be conveyed to the President. This NACAC Advisory Note has been prepared under the following headings:

1 Implementation approach for the NACS;

2 Monitoring and Evaluation approach for the NACS.

# 4. NACAC IMPLEMENTATION APPROACH FOR THE NACS

The NACS (2020 – 2030) has an anticipated 10-year implementation period. The implementation of the NACS and the work of the NACAC will require collaboration across sectors and from all members of society. In order to do this the following can be reported regarding prioritisation and organisation of the work of the NACAC:

### 4.1. Prioritisation of focus areas and work

Pending the appointment of the NACAC, preliminary ad hoc implementation of the six pillars of the strategy commenced in 2021, under the stewardship of the NACS Steering Committee.

Since its appointment in 2022 the NACAC, guided by the NACS and a preliminary prioritisation exercise carried out by a multi-sectoral Reference Group in 2021, commenced with formal prioritisation of work and implementation of select activities.

To better achieve multi-sectoral coordination and other NACS objectives, the NACAC has identified six priority areas on which to focus for initial implementation of outputs and activities aligned to the NACS. These are:

1. *Institutional Architecture*
2. *Procurement Reform*
3. *Whistle-blower Protection*
4. *Legislative Reform and Transparency*
5. *Monitoring, Evaluation, Reporting, and Learning*
6. *Communications & Stakeholder Engagement*

### 4.2. Organisation of work (workstreams and expert reference groups)

Each prioritised area is addressed by a NACAC Workstream comprised of 2-3 Councillors, supported by members of the NACAC Secretariat, representatives of the Transparency and Integrity Project and select experts.

During its tenure the NACAC will lead the process of processing and tracking the NACS and its implementation framework, through the social compact, with key implementation partners and target entities to ensure buy-in and impactful implementation.

The concept of an expert "reference group", and use of focused "workstreams" were employed with great success during the development of the NACS, and the NACAC builds on this methodology and relationships in its work with expanded stakeholder groupings. To further support some of the primary NACAC Workstreams, multi-sectoral expert reference groups have been constituted. The focus of these reference groups will initially include communication and stakeholder engagement with a view towards raising awareness of the NACS and affecting behaviour change in society; guiding the developments in the design of an anti-corruption agency; monitoring the implementation of the NACS across all sectors; and issuing advisories on governance, the procurement system, and whistle-blower protection and support. To this end expert reference groups informing social participation; systems and infrastructure; institutional capacity; and governance approaches have already been formed.

Some of the various activities required to implement the NACS already resort under line-functional mandates or work being undertaken by government departments, private sector entities and civil society organisations. Roll-out will also take place through sectoral or industry forums established in line with the "Vulnerable Sector" approach as outlined in Pillar 6 of the NACS, and which has been articulated through initiatives such as the Joint Initiative on Crime and Corruption.

### 4.3. Embedding the NACS in government

Even while the NACS is a whole-of-society response to corruption which requires the involvement of all social partners in their communities of influence, government must lead in creating an enabling environment for anti-corruption and integrity building initiatives. This is ideally achieved by government a) demonstrating the importance of framing all anti-corruption and integrity-building programming through the NACS framework, and b) coordinating and facilitating the implementation of the various programs and projects being undertaken by all social partners to facilitate mutual cooperation and shared benefits in the implementation of the NACS.

The effective implementation of the NACS therefore requires that it is embedded in government. In order to do this, **the NACAC advises that:**

**4.3.1.** Cabinet and all political principals in national, provincial and local government champion the process of embedding the NACS as the principal framework for the development and implementation of all anti-corruption and integrity-building programmes and projects throughout government. This must include:

**4.3.1.1.** structuring the all-of-society implementation of the NACS through government Clusters who will take ownership of the aggregation of relevant projects implemented by various social partners under the NACS into Cluster Programs, as well as coordinate agreement on responsibilities, actions to be implemented, participation in implementation as well as reporting;

**4.3.1.2.** developing the necessary capability to guide the development and implementation of a NACS-aligned anti-corruption and integrity-building programmatic agenda for the Mid-Term Strategic Framework of the 7th Administration;

**4.3.2.** the executive authorities of all government departments and entities, including state-owned and municipal entities, lead the alignment of their respective organisations' anti-corruption and integrity-building activities with the NACS. This must include:

**4.3.2.1.** Developing programs by which the NACS is socialised among public servants and employees in their respective organisations so that it is well-understood and supported;

**4.3.2.2.** Developing the internal/operational and external/programmatic anti-corruption and integrity-building initiatives of their respective organisations in line with the NACS;

**4.3.2.3.** Requiring that the performance planning and management processes of their respective organisations are aligned with and communicated through the NACS framework, including at the level of budgeting for priority programmes and projects, the specific outputs to be achieved, and the performance monitoring and evaluation of their implementation.

**4.3.2.4.** Detailing their entities' respective anti-corruption and integrity-building initiatives in their annual performance plans starting as early as the 2024/25 financial year, in alignment with the NACS;

**4.3.3.** Cabinet assign ownership of the NACS to a government department responsible for cluster-level cooperation, coordination and performance management in the implementation of the NACS, with a special emphasis on ensuring delivery of the outputs prioritised in it. This Department should be appropriately resourced to be able to perform this function. To this end, **the NACAC further advises that:**

**4.3.3.1.** the Department of Planning, Monitoring and Evaluation in the Presidency is institutionally best placed to fulfil this mandate;

# 5. MONITORING AND EVALUATION APPROACH

## 5.1. Overview of the M&E Approach

Even while the NACAC is still undertaking work to develop its proposals for the institutional architecture and arrangements required for the successful implementation of the NACS, including the utility and design of a new agency that will lead the independent coordination of anti-corruption and integrity-building initiatives, the NACS is already in the third year of its 10-year strategic horizon, and requires ongoing performance monitoring and evaluation at the level of institutionalisation, operationalisation, and outcomes. It is anticipated that this approach will build the requisite learning loops that will support the institutionalisation of the NACS, the ownership of which may ultimately fall to a new agency, and inform the effective and sustainable coordination and implementation of the programs and projects contained in the NACS.

NACAC has begun a process to learn about and immediately strengthen existing government processes utilised to report, monitor, and track anti-corruption and integrity-building initiatives, as well as to develop an effective and impact-oriented NACS monitoring and reporting framework that will align the interventions and results produced by the various social partners under the NACS in a credible, unified, and verifiable narrative of change.

This effort will ultimately result in the development of two interrelated outputs, namely: a) a **unified implementation plan** for the NACS, consolidating the various projects, programs, and outputs that various social partners will contribute towards realising the outcomes of the NACS, and b) a **monitoring and evaluation (M&E) framework** detailing the standards against which progress on their respective outcomes and social impact shall be measured and communicated to all of society by government as the chief custodian of this all-of-society response.

To develop a coherent and unified implementation plan for the NACS and its corresponding M&E framework, NACAC with the support of the TIP Program, is recruiting an expert research team that will undertake a deep research process with relevant stakeholders involved in the implementation of the anti-corruption and integrity-building initiatives prioritised in the NACS as well as by the Judicial Commission of Inquiry into Allegations of State Capture in the recommendations flowing from its reports. In order to support the success of this process, particularly in respect of NACAC's engagements with the public sector at all levels, the NACAC advises that in the immediate term:

**5.1.1.** The Presidency facilitates NACAC engagement with the Forum of South Africa's Directors-General (FOSAD) to:

**5.1.1.1.** introduce the work of the NACAC;

**5.1.1.2.** receive reports on the work furthering implementation of the NACS already underway in the public sector under the guidance of FOSAD clusters and their respective directors general;

**5.1.1.3.** coordinate anti-corruption and integrity-building programs in line with the NACS; and

**5.1.1.4.** facilitate the research and engagement processes supporting development of a unified NACS implementation plan and corresponding M&E framework to which the government-wide performance-planning and management processes shall be aligned.

In order to support effective and sustainable monitoring, evaluation, reporting and learning in the implementation of the NACS over the mid-to-long term, and the NACAC's role in driving this work in line with its mandate, the NACAC advises that:

**5.1.2.** government departments, agencies, and state-owned entities, under the auspices of their respective clusters should periodically report progress made in the implementation of the NACS, including the factors enabling and inhibiting progress in order for review processes to respond to these accordingly. Thus, NACS related reporting on identified outputs should be embedded in the annual performance plans and reporting of all government entities, and such performance plans and reports be availed to the NACAC to support fulfilment of its mandate;

**5.1.3.** social partners and other entities interface and coordinate actions to report on the implementation and monitoring of NACS at regular intervals.

**5.1.3.1.** This emphasises the need for formalisation of partnerships with the social compact partners through NEDLAC.

# 6. CONCLUSION

We thank the President for his consideration of this advisory and are at his disposal to further elaborate its contents, as the case may be.

**ADVISORY**

# Strengthening the Political Party Funding Act to Manage Corruption Risks and Improve Transparency in South Africa

NACAC
National
Anti-Corruption
Advisory Council

2030 NDP

# 1. EXECUTIVE SUMMARY

The National Anti-Corruption Advisory Council (NACAC) has undertaken a review of the Political Party Funding Act ("PPFA") and proposes amendments aimed at strengthening transparency and reducing vulnerabilities for corruption and undue influence in the context of party funding. Corruption risks are inherently intertwined with political party funding, presenting a significant challenge to the integrity of democratic processes. When financial contributions from individuals, corporations, or interest groups flow into political parties, the potential for undue influence and favouritism in policy decisions and government contracts may arise. Donors may expect favourable treatment in return for their contributions, creating an environment where policy choices prioritize private interests over the public good.

This dynamic not only erodes the principles of transparency and accountability but also undermines the level playing field essential for a fair and equitable democratic system. Unregulated or opaque party funding can facilitate hidden agreements, quid pro quo arrangements, and the emergence of shadow networks seeking to manipulate the political agenda for personal gain. As such, robust regulations, comprehensive disclosure mechanisms, and rigorous enforcement are pivotal to mitigating corruption risks associated with political party funding and safeguarding the fundamental principles of democratic governance. Based on these considerations, the NACAC makes the following recommendations in order to strengthen the political party funding environment in South Africa:

**1.1.** The PPFA should not include the Corrupt Donation Crime, recommended by the State Capture Commission, as a separate offense. Instead, it should reference section 13 of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 ("PRECCA"), which already criminalizes corrupt donations.

**1.2.** Any amendments to the current thresholds for disclosure and caps on donations should be postponed until sufficient evidence is available to make informed decisions regarding more appropriate thresholds and caps.

**1.3.** Natural persons who donate amounts above the section 9(1)(a) threshold should be required to disclose their donation directly to the Independent Electoral Commission ("IEC").

**1.4.** Natural persons and juristic entities should be prohibited from circumventing the section 8(2) cap by making multiple donations through related juristic entities.

**1.5.** Strengthen section 10 of the PPFA by requiring that all private monetary donations to political parties be deposited directly into the bank account specifically created for donations in section 12(1)(a).

**1.6.** Subject donations made to internal party races to the same disclosure thresholds, and prescribed maximum caps, as those which the PPFA applies to party political funding.

**1.7.** Mandate disclosure of sources of investment income for political parties' investment vehicles, subject to the prohibited sources of income imposed on political parties themselves in section 8(1).

**1.8.** Regulate donations received by independent candidates and establish guidelines for how independent candidates receive money from public funds established in sections 2 and 3.

**1.9.** Lastly, the NACAC recommends that the Political Party Funding Unit ("PPFU") within the Independent Electoral Commission ("IEC") be adequately resourced and staffed to effectively conduct oversight, monitoring of donations, and investigate complaints.

The regulation of political party funding is crucial for transparency and accountability in democratic systems. It prevents corruption and state capture and promotes integrity in politics. South Africa's PPFA has positive elements, but to combat corruption effectively, gaps must be addressed, and the law must be strengthened. By strengthening the PPFA, South Africa can enhance its multi-party democracy, improve transparency, and inspire public trust in modern politics.

# 2. INTRODUCTION

Money and politics have long been intertwined, forming a complex relationship that can have profound consequences for the democratic process. The influence of money in politics extends to political party funding, where the financial support from wealthy individuals and corporations can shape the outcomes of elections and policy decisions. Unchecked financial contributions to political campaigns and parties can enable powerful interest groups and individuals to unduly influence and shape the political landscape in their favour, leading to a distortion of policies that prioritise private interests over the needs of the broader population. To safeguard democratic processes and limit the undue influence of moneyed interests – South Africa passed a crucial piece of legislation in 2019, the Political Party Funding Act ("PPFA"), which regulates party funding and places obligations on both political parties and donors to disclose their donations. Whilst there is scope for improvement and strengthening to ensure greater effectiveness of this legislation, the PPFA is a positive step forward in building a political establishment that is transparent and accountable to the public.

It goes without saying that money is crucial for funding politics and for facilitating the proper functioning of democratic processes. Political parties face significant expenses and must contend with the escalating costs associated with modern politics. Moreover, the act of donating to political parties by individuals, interest groups, and corporations should not automatically be viewed as inherently malicious, however, it does warrant scrutiny and regulation to prevent undue influence. In a landmark and controversial judgement by the United States Supreme Court[1], donations to political parties are viewed as a necessary First Amendment Right to express political beliefs within a democratic system. The dissenting opinions in the Citizens United case, however, raised compelling concerns about the potential for corruption and undue influence resulting from the Court's decision, and argued that the majority's ruling would enable corporations to wield disproportionate power in elections, and thereby undermine the democratic process. The dissenting justices voiced concerns that an influx of corporate money into elections could lead to quid pro quo arrangements, where politicians might feel beholden to corporate donors who fund their campaigns. This, they contended, could erode public trust in the political system and give rise to a perception that policy decisions were being influenced by special interests, rather than the will of the people. They argued that the government had a legitimate interest in protecting the integrity of the electoral process, even if it required some restrictions on corporate spending.

1 Citizens United v. Federal Election Commission (FEC) is a landmark case within the United States Supreme Court's jurisprudence, addressing the intersection of campaign finance regulations and the First Amendment rights of corporations and unions to engage in political spending. At its core, the central question in Citizens United v. FEC was whether specific provisions of the Bipartisan Campaign Reform Act (BCRA) of 2002, particularly those restricting corporate and union financing of electioneering communications, infringed upon the First Amendment rights of these entities. In a landmark decision in 2010, the Supreme Court ruled 5-4 in favor of Citizens United, striking down key provisions of the BCRA. The Court's majority opinion held that limiting corporate and union spending on political communication was a violation of the First Amendment's protection of free speech.

The Citizens United decision had significant implications for campaign finance and American politics. It led to the creation of "super PACs" (Political Action Committees) and other entities that could raise and spend unlimited amounts of money to support or oppose political candidates and issues. This decision also removed many restrictions on corporate and union political spending, allowing them to spend funds independently on advertising and other forms of political communication.

Critics of the decision argue that it has led to an influx of money from wealthy individuals, corporations, and unions into the political process, potentially distorting the democratic process and giving undue influence to those with the resources to spend heavily on campaigns. Proponents, on the other hand, emphasize the importance of protecting free speech rights, arguing that restrictions on political spending infringe on the ability of individuals and groups to express their views and engage in the political process.

Unfortunately, the majority ruling on the Citizens United matter ushered in a new era where the floodgates of corporate and union political spending were swung wide open, fundamentally altering the landscape of campaign finance and raising profound questions about the balance between free speech rights and the potential for corruption in the American electoral system.

Simalarly, in both the developed and developing worlds, the influence of private interests on matters of policy and procurement has become an urgent and complex issue. In South Africa's case, this is not an emerging predicament but rather a longstanding one. In a recent publication titled *The Unaccountables*[2], the authors shed light on a multitude of local and international companies that generously bank-rolled the National Party during apartheid. In exchange for financial contributions, the National Party granted access to power and guided policy outcomes and state contracts in a favorable direction to those who donated to them.

This pattern unfortunately, continued into democratic South Africa. Owing to the lack of legislation and oversight during the initial twenty-five years of South Africa's democratic era, the practice of donating to political parties with an expectation of receiving a state tender, or wielding influence in the policy and regulatory landscape, became commonplace. This was particularly evident in the reports that emanated from the Judicial Commission of Inquiry into Allegations of State Capture ("the State Capture Commission") which exposed evidence that political parties in South Africa, on some occasions, become beholden to their donors, rather than accountable to the electorate.

Within this context, then Deputy Chief Justice Raymond Zondo recommended that the Political Party Funding Act be amended to criminalize the making of donations to political parties with an expectation to grant procurement tenders or contracts as a reward for donations made. To this end, this advisory serves as guidance on whether:

i. The Political Party Funding Act No 6 of 2019 should be amended to "criminalize the making of donations to political parties in the expectation of or with a view to grant procurement tenders or contracts as a reward for recognition of such grants being made", ("Corrupt Donation Crime") as suggested by then Deputy Chief Justice, Raymond Zondo in the State Capture Commission Report; and

ii. The PPFA could be otherwise amended to better cohere with Pillar One of the National Anti-Corruption Strategy ("NACS")

2 Michael Marchant, Mamello Mosiana, Ra'Essa Pather, and Hennie Van Vuuren. 2022. The Unaccountables. Jacana Media.

The regulation of political party funding is crucial for transparency and accountability in democratic systems. It prevents corruption and state capture and promotes integrity in politics. South Africa's PPFA has positive elements, but to combat corruption effectively, gaps must be addressed, and the law must be strengthened. By strengthening the PPFA, South Africa can enhance its multi-party democracy, improve transparency, and inspire public trust in modern politics.

# 3. STATE CAPTURE COMMISSION RECOMMENDATION

The recommendation relating to the Corrupt Donation Crime arises within the context of testimony and evidence relating to companies who donated to political parties, with an expectation of receiving state contracts. Justice Zondo lamented, that within this specific context, South Africa is facing an "existential threat to our democracy" in relation to the quid pro quo arrangements between moneyed interests and political parties.

The NACAC engaged in extensive discussions, sought external expertise and consulted with stakeholder regarding the recommendation to amend the PPFA to provide for the Corrupt Donations Crime. To this end, we respectfully contend that the proposed criminalization of donations to political parties made with ulterior motives, specifically to influence tender awards, may be redundant. In essence, it duplicates existing laws already in place, such as the Prevention and Combatting of Corrupt Activities Act ("PRECCA").

Section 13 of PRECCA prohibits the direct or indirect provision or acceptance of any "gratification" intended to induce the awarding of tenders to specific individuals. Our understanding is that this provision adequately encompasses donations to political parties.

Nonetheless, it could be beneficial to incorporate the relevant PRECCA provisions within the PPFA and require that the Independent Electoral Commission ("IEC") report criminally suspicious activity to the relevant public body for investigation – and to require further that the relevant public body keep the IEC informed of the progress and the outcome of the investigation. This wording is borrowed from section 3(1)(b)(1A) of the Public Audit Amendments Act No 5 of 2015.

# 4. IMPROVING TRANSPARENCY IN POLITICAL PARTY FUNDING

The remainder of this advisory proposes amendments that are aimed at promoting transparency and accountability in South Africa, in line with Pillar One of the NACS. In this regard, Pillar One of the NACS notes that activities must be undertaken to increase transparency in political party funding. Under this umbrella, the NACAC recommends the following:

### 4.1. Pausing amendments to the current thresholds and caps

It is imperative to pause any amendments to the PPFA regarding the current thresholds for disclosure and funding caps, until comprehensive research has been conducted to enable informed, objective, and evidence-based decisions. Recent developments in the political landscape by political parties indicate a desire to raise the disclosure threshold above R100,000 and potentially increase or remove the funding cap altogether.

We advise that, despite the challenges of political party fundraising in the present climate, what is truly needed is more transparency and accountability, not less. Diluting the transparency requirements of the PPFA would signify a regression, rather than progress, in fortifying our constitutional order and multi-party democracy.

It is essential to allow the PPFA sufficient time to establish a robust and nuanced track record, so that any future amendments can be grounded in solid evidence. With this in mind, we strongly urge the President and Cabinet to allow for an extended period of assessment regarding the effectiveness of this legislation before considering any changes to the existing thresholds and caps.

### 4.2. Natural persons must disclose donations above the threshold

Section 9(1)(a) of the PPFA stipulates that political parties must disclose all donations exceeding R100,000 to the IEC, while section 9(2) inexplicably requires only juristic persons, not natural persons, to disclose directly to the IEC when they donate above the threshold. In principle, this would allow political parties to withhold information from the IEC regarding private donations from natural persons.

To address this concern, we recommend that natural persons also be mandated to disclose donations exceeding the R100,000 threshold directly to the IEC. This would ensure greater transparency and enable more effective oversight of political party funding.

### 4.3. Donations from interrelated entities

Section 8(2) of the PPFA requires that a political party "may not accept a donation from a person or entity in excess of the prescribed amount within a financial year." This, in principle, allows natural persons, and juristic persons, to donate amounts in excess of section 8(2)'s maximum prescribed amounts by donating through separate, but related, juristic entities.

To guard against this, we advise that section 8(2) of the PPFA be amended so that:

**a.** A natural person who has already donated in their own name to a political party, cannot donate again through a juristic entity that they control to the same political party, if this means that the cumulative donation exceeds the section 8(2) threshold; and

**b.** Two or more juristic entities, with the same controlling shareholding, cannot donate in excess of the section 8(2) threshold.

### 4.4. Donations received on behalf of a political party

Section 10 of the PPFA imposes restrictions on the delivery and receipt of donations in relation to political parties as follows:

**a)** Subsection (1) states donations should only be delivered for party political purposes.

**b)** Subsection (2) limits the receipt of donations to members of political parties, on behalf of the party; and,

**c)** Subsection (3) prohibits any person from circumventing these provisions.

As such, Section 10 of the PPFA works to mitigate the risk that individual members of political parties' pocket donations intended for the party, with corrupting results. However, we advise that Section 10 be strengthened to require that all private monetary donations be deposited directly into the bank account which section 12(1)(a) of the PPFA creates specifically for the receipt of private donations. This ensures that funds intended as monetary donations to political parties are used as such.

For non-monetary donations, section 10 should retain the requirement that they only be received by party members on behalf of the party and strictly for party purposes, and that these donations should be monetised and recorded accordingly.

### 4.5. The PPFA and political party investment vehicles

While the PPFA requires investment vehicles affiliated to political parties to disclose donations above the prescribed thresholds in terms of section 9(2) and prevents them from donating in excess of section 8(2)'s caps, it does not provide for transparency regarding the sources of an investment vehicle's income. This leaves voters in the dark regarding influences that may inform a party's policy, and /or its actions in government, via the commercial interests of their investment vehicles. As such, we advise that the PPFA require that a political party's investment vehicle disclose the sources of its income, investments, and dividends to the IEC, who in turn must disclose to the public, if the investment vehicle decides to donate to the political party. We suggest further that investment vehicles set up for the purposes of funding political parties be subject to the same prohibited sources of income that political parties themselves face in section 8(1) of the PPFA.

### 4.6. The PPFA and internal party races

The PPFA is not clear about whether internal leadership contests fall within its scope. However, these contests can attract significant money flows to individual members and political parties, who may later find themselves in influential government positions. As such, we recommend that donations made to internal party races be subject to the same disclosure thresholds, and prescribed maximum caps, as those which the PPFA applies to party political funding.

### 4.7. The PPFA and independent candidates

Currently, one of the most obvious gaps in the PPFA pertains to independent candidates, whose involvement in general elections is now outlined in the Electoral Amendment Act 1 of 2023. It is imperative that the PPFA undergoes the necessary amendments to effectively govern donations made to independent candidates. These amendments should ensure fairness and non-discrimination in their application.

**4.8. Strengthening the IEC**

The effectiveness of any party funding legislation hinges on the extent to which political parties comply with it. Therefore, robust monitoring and evaluation mechanisms, along with the enforcement of punitive measures, are crucial to ensure compliance with party funding regulations. This enforcement is particularly significant in combating corruption and promoting the success of such legislation. The PPFA established the Political Party Funding Unit ("PPFU") within the IEC to oversee compliance with the PPFA. Yet, the PPFU is a small group with limited resources, which may hinder its capacity to effectively monitor and enforce compliance with the PPFA.

To address these challenges, we advise that the PPFU be adequately resourced and staffed in order to conduct their work efficiently and effectively. This oversight body plays a vital role in monitoring and investigating non-compliance cases identified through their monitoring programmes and complaints filed with the IEC.

# 5. SUMMARY OF RECOMMENDATIONS

The NACAC advises that the following be taken into consideration in relation to the PPFA:

**5.1.** The PPFA should not include the Corrupt Donation Crime, recommended by the State Capture Commission, as a separate offense. Instead, it should reference section 13 of PRECCA, which already criminalizes corrupt donations.

**5.2.** Any amendments to the current thresholds for disclosure and caps on donations should be postponed until sufficient evidence is available to make informed decisions regarding more appropriate thresholds and caps.

**5.3.** Natural persons who donate amounts above the section 9(1)(a) threshold should be required to disclose their donation directly to the Independent Electoral Commission (IEC).

**5.4.** Prohibit natural persons and juristic entities from circumventing the section 8(2) cap by making multiple donations through related juristic entities.

**5.5.** Strengthen section 10 of the PPFA by requiring that all private monetary donations to political parties be deposited directly into the bank account specifically created for donations in section 12(1)(a).

**5.6.** Subject donations made to internal party races to the same disclosure thresholds, and prescribed maximum caps, as those which the PPFA applies to party political funding.

**5.7.** Mandate disclosure of sources of investment income for political parties' investment vehicles, subject to the prohibited sources of income imposed on political parties themselves in section 8(1).

**5.8.** Regulate donations received by independent candidates and establish guidelines for how independent candidates receive money from public funds established in sections 2 and 3.

**5.9.** Lastly, the NACAC recommends that the PPFU within the IEC be adequately resourced and staffed to effectively conduct oversight, monitoring of donations, and investigate complaints.

# 6. CONCLUSION

The regulation of political party funding plays a vital role in promoting transparency and accountability within democratic systems. It serves as a critical safeguard to reduce vulnerabilities to corruption and state capture and promotes integrity in the political landscape. The implementation of the PPFA in South Africa has been a positive step forward, as it introduces necessary measures such as disclosure requirements and donation limitations. However, in order to effectively curb corruption and enhance accountability, it is imperative to address the existing gaps and strengthen the legislation. Continuous evaluation of the PPFA's impact and evidence-based amendments are essential to ensure its efficacy. By fortifying the regulation, South Africa can reinforce its multi-party democracy, foster a culture of transparency, and instil public confidence in the fairness and integrity of its political processes.

# 7. ACKNOWLEDGEMENTS

The following organisations are acknowledged for their contributions to this advisory:

- AmaBhungane Centre for Investigative Journalism
- Civil Society Working Group on Party Funding
- Corruption Watch
- Council for the Advancement of the South African Constitution
- Department of Public Service and Administration
- Financial Intelligence Centre
- Helen Suzman Foundation
- Human Sciences Research Council
- Inclusive Society Institute
- My Vote Counts
- University of Sussex

Presidency: Republic of South Africa

NACAC
National
Anti-Corruption
Advisory Council

# ADVISORY ON THE APPOINTMENT OF A RETIRED JUDGE AS WHISTLEBLOWER PROTECTOR OF SOUTH AFRICA

Dear Mr President

The National Anti-Corruption Advisory Council (NACAC) has undertaken a far-reaching review of the legislative frameworks aimed at addressing the hardships experienced by whistleblowers by prescribing protections. We note that such protections – even if robust on paper – fail thus far to provide sufficient protection for whistleblowers in practice. Therefore, while the Protected Disclosures Act undergoes a period of review, there is a profound need to address the dangers, needs, and denial of rights experienced by whistleblowers, urgently through the implementation of an interim institutional mechanism. It is for this reason that we propose the establishment of an office of the whistleblower protector under the auspices of a retired judge. Chief Justice Raymond Zondo has acknowledged that the protection of whistleblowers is paramount in the fight against state capture, corruption, and larceny. Chief Justice Zondo has remarked:

> 'If we do not look after these whistleblowers during state capture, they won't be around next time. Others will look at how whistleblowers were treated and will not come forward. A lot of people are reporting corruption. We must assure that they are properly protected.'

The legislative framework attempts to address hardships experienced by whistleblowers by prescribing protections. However, such protections – even if robust on paper – fail to protect whistleblowers in practice. While the Protected Disclosures Act undergoes a period of review, there is a profound need to address the needs of whistleblowers urgently through the implementation of institutional mechanisms.

Applying the required resources and expertise towards such measures will help to ensure that there is a 'safe haven' to which whistleblowers can turn for support. This will serve as a crucial risk-mitigation factor which can potentially lead to more members of the public developing confidence to blow the whistle on wrongdoing.

**Existing lacunae in the whistleblower protection and support environment**

In South Africa at present, there are several gaps in the protections afforded to whistleblowers. These include a lack of:

- Legal advice and representation;
- Personal security provisions for the whistleblower and their families;
- Financial support to meet the losses that often flow from retaliatory action;
- Information and awareness about whistleblowing;
- Psycho-social support to meet the emotional and mental health detriments experienced by whistleblowers;
- Employment support to assist whistleblowers to obtain gainful employment after suffering occupational detriment; and
- Cultural awareness about whistleblowing to combat stigma.

While it may not be possible for an institutional mechanism to address all of these deficits, it is important to recognise that the difficulties that whistleblowers face are often interlinked. There is therefore a need for a mechanism to assist whistleblowers that is comprehensive in its service offering, while still closely attuned to their experiences and needs.

**Proposed Intervention**

*Essential features*

To address these needs, it is proposed that a whistleblower protection institution be developed with a number of essential characteristics. The institution must, at the outset, have a clearly **defined mandate**, that is, the protection of whistleblowers. It is understood that there is a need for clarity who would be considered 'whistleblowers' and therefore eligible to seek assistance of the institution.

It should be **specialist** in nature and have a **singular focus** towards the aim of protecting whistleblowers. It should be **independent** and insulated from political interference. It should be imbued with **legal authority** to take certain steps to enforce whistleblower protection.

The institution should ideally be headed by a retired judge. The appointment of such a retired judge should be undertaken through a **legitimate and transparent process**. The appointed judge should have

**security of tenure** in their position to guard against political interference against the threat of dismissal. Ideally, the retired judge should occupy this position on a **full-time basis** and not take on concurrent responsibilities.

Essential to the success of the institution is the provision of **adequate resources** to meet its mandate. These include budget and operational resources to ensure its ability to function day-to-day. It must also be staffed with appropriate personnel possessing the required skills and expertise in relation to law, and more specifically, whistleblower protection. In order to ensure independence, the institution should be given autonomy over its own budget and resource management. This is subject to the institution remaining fully **accountable** for its expenditure. In carrying out its mandate, the institution should maintain **confidentiality** at all times in relation to the individual whistleblowers it is assisting. However, the need for confidentiality must be balanced with **transparency** in relation to its general operations.

*Functions of the institution*

It is proposed that the institution be responsible for several interrelated functions. These include:

- Certification of whistleblower status: Bearing in mind the need to define 'whistleblower', people who have made disclosures (or are contemplating making disclosures) would be able to approach the institution with the relevant facts relating to their disclosure as well as retaliation suffered or likely to be suffered. The retired judge would then apply the relevant definitional criteria and make a determination whether the person is a 'whistleblower' or not. Certified whistleblowers would then have access to the services of the institution.

- The institution would then conduct a risk assessment, noting the whistleblower's particular circumstances. This would take into account risks relating to personal safety, occupational detriment and more.

- The mandate (and empowering legislation) of the institution would imbue it to take several actions on the basis of the risk assessment. This could include:

    - *Referral* to other institutions who are able to assist the whistleblower. For example, a need for legal representation could be referred to the Legal Practice Council. Referrals could also be made to non-governmental organisations, such as referring a whistleblower suffering mental health detriments to organisations offering psycho-social support.

        - The referral function should be combined with an *oversight* function. This would give the institution the power to enquire of the organisations who receive referrals regarding what they have done to mitigate risks or alleviate harm to the whistleblower. This is analogous to the manner in which courts exercise supervisory jurisdiction.

    - The entitlement to apply for *urgent interdicts* on behalf of whistleblowers to halt retaliatory action against whistleblowers.

    - The power to *instruct* institutions to take certain actions to protect or support whistlelowers. For example, the South African Police Service could be instructed to issue a protection order in favour of a whistleblower.

    - The resources and capacity to provide *financial assistance* to whistleblowers who are in financial distress as a result of making disclosures.

    - The capacity to conduct its own *research*, generate *reports* based on its work and make policy *recommendations* about whistleblower protection.

- It may be that a single institution is not able, by itself, to meet these requirements. It is proposed that the institutional model employed in relation to competition (i.e. the Competition Commission and Competition Tribunal) be examined as a possible structure. A Whistleblower Commission could have administrative powers to make decisions, while at Whistleblower Tribunal could have judicial-type powers.

**Way forward**

The need to address the needs of whistleblowers is urgent. Therefore, it is proposed that the formation of an institution to protect whistleblowers be achieved through a two-phase process:

1. Interim phase: The President establishes the institution and appoints a retired judge to lead it. Members of the Special Investigations Unit are seconded to assist in the establishment of the organisation. The first responsibility of the retired judge is to determine the structure to enable them to fulfil the mandate of the institution. The interim institution should be established by no later than 30 September 2023. This is one year from the date that Judge Zondo's recommendations were made in relation to whistleblowing.

2. Permanent phase: Based on the learnings of the interim phase, a permanent institution as described above is established.

**Conclusion**

Whistleblowers play a vital role in both the public and private sectors by shedding light on wrongdoing and paving the way for official investigation and consequent accountability measures to follow. It is thus of paramount importance that the laws and institutions of this country accept the responsibility to protect them. Society in general benefits from these disclosures, despite the fact that society often visits recrimination on whistleblowers with devastating consequences for their lives and livelihoods. Protecting whistleblowers by appointing a retired judge to look after their welfare will go a long way towards ameliorating their plight. We have the honour to make this request of the Honourable President of the Republic of South Africa.

**Acknowledgements**

The following organisations are acknowledged for their contributions to this advisory:

- University of Cape Town
- Whistleblower House
- Active Citizens Movement
- Special Investigating Unit
- Department of Justice
- GIZ
- SAIHRAG

# ADVISORY

**Strengthening anti-corruption elements of the Public Procurement Bill**

January 2024

---

## 1. Introduction

1.1 Public procurement is the pillar of service delivery in the country, of making real the aspirations of our constitution, of driving social and economic development. According to the Office of the Chief Procurement Officer in National Treasury, government spends around one trillion rands per annum on goods, services and works.[1] Public procurement consumes a large portion of the budget of the country.

1.2 As a nation, we have made extraordinary progress in the fight against state capture and corruption but there is much work that lies ahead, to rebuild our institutions and the capacity of the state, to ensure accountability, to restore trust and confidence, and to rekindle our hope in a better future for all.

1.3 Institutional checks and balances and improvements in existing rules within the executive will not by themselves prevent a recurrence of state capture. Much more needs to be done to prevent a future occurrence of state capture. Nevertheless, state capture revealed vulnerabilities and

[1] See National Treasury's State Of Procurement Spent in National and Provincial Departments

deficiencies in existing procurement systems and processes, the tightening of which could help prevent recurrence.

1.4 The public procurement system was the primary site for the redirection of state resources, particularly in state-owned entities, which have by far the largest procurement, capital, and operational budgets.

1.5 Enhancing the integrity of the public procurement system is therefore a central component of the state's response to the State Capture Commission. Enhancing the integrity of the public procurement system is also a pillar of our National Anti-Corruption Strategy. The strategy anticipates a public procurement system that is insulated from corruption and better structured to drive development, expand the productive base of the economy and support innovation and investment.

## 2. State Capture Commission Recommendations

The State Capture Commission made several recommendations regarding the strengthening of procurement systems in the country:

### 2.1 Recommendation 1: The National Charter against Corruption

That the Government, in consultation with the business sector prepare and publish a National Charter against corruption in public procurement, such Charter to include a Code of Conduct setting out the ethical standards which apply in the procurement of goods and services for the public;

### 2.2 Recommendation 2: The establishment of an independent Agency against corruption in public procurement

That the Government introduce legislation for the establishment of an independent Public Procurement Anti-Corruption Agency (PPACA).

### 2.3 Recommendation 3: Protection for Whistle Blowers

That the Government introduce legislation or amend existing legislation to afford whistleblowers protection, to identify the correct channels for reporting corruption and to incentivise the making of disclosures;

**2.4 Recommendation 4: Deferred Prosecution Agreements**

That the government introduce legislation for the introduction of deferred prosecution agreements by which the prosecution of an accused corporation can be deferred on certain terms and conditions;

**2.5 Recommendation 5: The Creation of a Procurement Officer's Profession**

That consideration is given to enacting legislation that will establish a professional body to which all officials who work in the area of public procurement should belong.

**2.6 Recommendation 6: The Enhancement of Transparency**

That set standards of transparency consistent with the OECD Principles for integrity in public procurement be formulated by National Treasury for compulsory inclusion in every procurement system adopted by a public procurement entity.

The full details of these recommendations are captured in Annex 1.

In terms of this advisory on the Public Procurement Bill, all these recommendations, other than the first one relating to the National Charter, are relevant.

## 3. Strengthening Anti-corruption in the Public Procurement Bill

This advisory is focused on the Public Procurement Bill that is currently before Parliament. As of the date of this Advisory (January 2024), the Bill has been revised and passed by the National Assembly but has yet to be considered by the National Council of Provinces.

**3.1 It is the view of the National Anti-Corruption Advisory Council that the Bill, in its current form, has not properly addressed the recommendations of the Zondo Commission, and may, despite its best intentions, open the doors for corruption.**

3.2 It is also our view that the processing of the Bill has been problematic, particularly in relation to the significant changes to the Bill made in relation to preferential procurement during the parliamentary process, on which there has been very limited consultation.

3.3 The parliamentary participation process has been limited and problematic.[2] On 18 August 2023, the National Assembly's Standing Committee on Finance opened the Bill for public comments. Despite short notice, a total of 112 stakeholders made submissions amounting to 2200 Excel rows of comments by close of comments on 11 September 2023.

3.4 Two months later, when the Treasury responded to these submissions in front of the standing committee, it appears from records to have given cursory attention to only 36% of them; 64% had not been processed at all. Treasury's subsequent recommendations - often with opaque origins outside of the participatory process itself - retained serious flaws in the Bill, rolled back integrity provisions, and included an entirely new preferential procurement chapter.

3.5 This treatment of submissions arguably mocks the efforts of participating stakeholders and did not give members of Parliament in the National Assembly adequate information. The last-minute imposition of sweeping changes to the Bill, where impact on rights requires further consultations between social partners in Nedlac and with the public in Parliament, contradicts the participatory spirit of the Constitution, the Nedlac Act, and broader law.

3.6 The Standing Committee on Finance's own superficial engagement in participatory procedures and executive oversight erodes its status as the people's assembly and violates the separation of powers.

[2] South African Veterinary Association v Speaker of the National, Assembly and Others [2018] ZACC 49; the word "veterinarian", section 22C(1)(a) of the Medicines and Related Substances Act 101 of 1965 (Act) was declared to have been amended in a manner inconsistent with the Constitution

3.7 When compared with participatory processes conducted for Bills with a similarly far-reaching public impact (such as the Basic Education Laws Amendment Bill and the Traditional and Khoisan Leadership Act)[3], it is apparent that Parliament has put much less effort in this Bill into involving as many affected parties as possible.

3.8 Stakeholders who have participated were not given meaningful opportunity to address issues in the changed Bill. A process of minimal consultation and only marginal rewriting in the National Council of Provinces will not sufficiently remedy these defects.

3.9 This lack of consultation may well have contributed to instances of diluting or leaving unclear the guardrails against corruption in procurement in the Bill as tabled. For example, the Bill introduced into the National Assembly gave the proposed Public Procurement Office and provincial treasuries the power to review procurement policies of procuring institutions. The Bill now passed by the National Assembly removes these provisions.

3.10 Further, when the Bill was introduced into the National Assembly, leaders of political parties were automatically excluded from participating in procurement as bidders and suppliers. Persons related to officials were also automatically excluded from submitting bids to the procuring institutions within which they are employed. The Bill that the National Assembly passed instead proposes to regulate these potential conflicts through ordinary conflict of interest provisions.

3.11 Finally, regarding debarment which is a key instrument against procurement corruption, several questions of interpretation pointed out by the public and practitioners in section 15 remain unaddressed such as whether the list of grounds of debarment is a closed list. These questions

[3] The Constitutional Court of South Africa ruled on May 30, 2023 that the Traditional and Khoi-San Leadership Act 3 of 2019 was unconstitutional and invalid. The court held that the National Assembly, the National Council of Provinces, and the provincial legislatures failed to fulfil their constitutional obligations to facilitate reasonable public involvement in the passing of the Act

are largely considered 'grey areas' under the status quo regime and it would be useful if the Bill clarified them.

## 4. Aligning the Bill with the Anti-Corruption Objective

In the opinion of the NACAC, two structural features of the Bill require significant revision in order to align with the anti-corruption objective that is the heart of the NACS: institutional arrangements in public procurement and the framework for preferential procurement proposed by the Bill.

### 4.1 Institutional Arrangements in Public Procurement

The Public Procurement Bill has failed to address the recommendation from the Zondo Commission that there should be an independent Public Procurement Anti-Corruption Agency (PPACA), an anticorruption recommendation that itself ultimately should be measured against the Constitution.[4]

4.2 In terms of the recommendation for an independent PPACA, the Commission explicitly noted that the location of such an entity *within* any government department would not be advisable. The Commission stated in this regard (in part 1 of its report): "The vulnerability of any government department to undue political interference remains and will always remain and the answer to state capture does not lie in replicating the very same features that allowed state capture to succeed in the first place." The Commission's report continues to record that even National Treasury became subject to the project of state capture, albeit for a brief period.

4.3 Despite this, the Bill has put forward the creation of a Public Procurement Office as a unit within the National Treasury. This is not the optimal placement of a structure that should have the necessary institutional independence to provide effective oversight.

[4] Glenister v President of the Republic of South Africa and Others (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC) ; 2011 (7) BCLR 651 (CC) (17 March 2011)

4.4 Furthermore, the single-sentence statement in the Bill that “the Head and officials of the Public Procurement Office must perform their functions in terms of this Act impartially and without fear, favour or prejudice”, is meaningless in the absence of any further institutional arrangements and protections (e.g. on grounds for dismissal of the Head) in support of institutional independence in the Bill.

4.5 Building on the recommendations of the Zondo Commission, the appropriate approach from an anti-corruption perspective would be to create an independent procurement oversight body. This is an approach which is in place in many countries, especially those that have recently adopted new regulatory regimes.

4.6 NACAC thus advances the recommendation to create an independent procurement oversight body, such as a Public Procurement Regulatory Authority (PPRA). There are thus many regulatory examples available on which one can draw, such as the Kenyan Public Procurement Regulatory Authority. It is imperative to mention that South Africa can learn much from the Kenya Public Procurement Policy and Institutional Framework which is well researched and benchmarked among global leaders in public procurement – including Germany, Switzerland, Luxembourg, America – USA, Canada, and Chile as well as, closer to home, Zambia, Namibia, Rwanda, Tanzania, Burundi and Uganda.

4.7 The PPRA’s oversight structure should enjoy real protection from any political interference and as part of its oversight mandate should have appropriate powers to investigate and act against alleged abuse of the procurement process.

4.8 This is also in line with Pillar 5 of the National Anti-corruption Strategy (NACS) which refers to strong anti-corruption agencies and the independence of dedicated anti-corruption agencies.

4.9 It is recommended that, in line section 217 of the Constitution of South Africa, an independent Public Procurement Regulatory Authority (PPRA) should be established.

4.10 It is imperative to split procurement regulatory responsibility from procurement operations to enhance the capacity of the state to regulate procurement, improve procurement oversight, enhance enforcement for breaches of procurement prescripts, and enhance the transparency of the system.

The proposed institutional arrangement is this:

- the chief buyer (operational) functions of the current Office of the Chief Procurement Officer (OCPO) are split from its public procurement regulatory powers;
- the chief buyer functions stay under the Chief Procurement Officer within the NT;
- the public procurement regulatory powers of the OCPO (including appropriate enhancements as proposed by the Bill and including the proposed Public Procurement Tribunal (PPT) but without an additional exclusive anti-corruption investigative function and powers) are placed within a new Public Procurement Regulatory Authority which is given Competition Commission-like independence from National Treasury and the Minister of Finance;
- in order to link regulation and enforcement, a duty of and mechanisms for cooperation and coordination is placed upon the PPRA and on a potential new general anti-corruption agency (NACA) as envisaged under the NACS and as also recommended by the Zondo Commission;
- the PPRA is given civil investigative powers over non-compliance with public procurement legislation;
- the Tribunal as currently contained in the Bill should be granted independence by statute and be housed within the PPRA, in accordance with the principle of anticorruption efficacy.

4.11 As empowered and constrained by the Bill, the Public Procurement Regulatory Authority shall set out the regulatory framework for public procurement, issue directives and regulations, deal with procurement tender complaints and disputes, investigate procurement complaints and

corruption, and refer issues to the relevant law enforcement agencies where appropriate. It will monitor standards and criteria for tenders and compliance with procurement legislation.

4.12 It will also propose improvements in the regulatory system to ensure an effective, equitable and competitive procurement system that functions optimally in the interests of the state and the South African public. As such, its remit covers more than purely anti-corruption in public procurement, although it will be a key element of the anti-corruption arsenal.

4.13 The version of the Bill that was tabled in the Standing Committee gave the proposed Public Procurement Office and provincial treasuries the power to review procurement policies of procuring institutions and to propose changes. The version of the Bill that has been passed by the National Assembly has removed these provisions, and this weakened the already circumscribed powers of the proposed Public Procurement Office. This power should be restored.

**5.2 Preferential procurement**

The provisions on preferential procurement in the current Bill are extremely concerning in several aspects.

5.3 Firstly, as noted above, these sections have been introduced late in the process which means that neither the public, nor affected organs of state have been able to comment on the provisions.

5.4 Secondly, S217 of the Constitution envisages that national legislation will prescribe a framework which enables organs of state to depart from the prescribed system requirements relating to the contracting for goods and services to implement a preferential procurement policy.

5.5 The Bill as it stands currently has introduced a welter of possible exclusions from tendering, resulting in the potential of any organ of state to limit the individuals and institutions that are eligible to tender for any particular

tender. The Bill does not provide implementation principles with clear checks and balances.

5.6 Thirdly, the preferential procurement provisions fail to provide set standards of transparency consistent with the OECD Principles for integrity in public procurement,

5.7 Fourthly, Chapter 4 has significant uncertainty regarding its content. The relative weight of preferences, set-asides, prequalification criteria, subcontracting or local content, as against other evaluation criteria such as price and functionality, is left to the Minister to decide by means of regulations.

5.8 No guidance is given to the Minister in this regard. Sections 17, 18, 19 and 20 refer to other "prescribed criteria which may include complementary goals". No legislative guidance is provided as to the nature of these 'complementary goals.

5.9 The removal of price as one presumptively required criterion in evaluating the value for money of tenders offered to organs of state increases the potential for rampant corruption and higher costs which undermine growth and employment. As the President, citing the Zondo Commission, has noted, "one of the inherent problems with the current procurement regime is that it does not make clear whether the primary intention of the Constitution is for goods to be procured at least cost or for the procurement system to prioritise transformation. The Commission recommended that procurement officials be advised that "maximum value for money" must be primary."

5.10 As noted above, the version of the Bill that was tabled before the Standing Committee excluded leaders of political parties from participating in public procurement as bidders and suppliers. Immediate family members of officials were also excluded from submitting bids to the procuring institutions within which the official is employed.

5.11 The version of the Bill that the National Assembly passed has removed these provisions, aiming to regulate these issues through ordinary conflict

of interest provisions. These provisions have proved to be largely ineffective in curbing corruption in the past and, contrary to the recommendation of the Zondo Commission relating to enhancement of transparency, present a risk to the integrity of the public procurement system.

5.12 The complexity of the proposed approach in Chapter 4, its relationship to changes made in the Bill, and the lack of clear definition of concepts making up the framework proposed, means that these sections may well open the door to further corruption.

5.13 It is widely recognised that the more complex the procurement process is, the greater the risk of corruption and the lower the possibility of tracking corrupt processes. The preferential procurement sections of the Bill as they currently stand introduce precisely the type of complexity and vagueness that should be avoided from an anti-corruption perspective.

5.14 It is therefore **recommended that a period of consultation** on these sections of the Bill be mandated to enable the development of an approach that supports transformation objectives but that does not increase the opportunities for corruption.

5.15 Finally, the retained power of the PPO in the Bill to issue binding instructions and notices, and the sheer volume of substantive matters to be dealt with in regulations will simply continue the current highly fragmented nature of public procurement regulation in South Africa, contrary to the explicit object of the Bill and certainly to the detriment of creating a clear, relatively simple procurement regulatory system that will be able to withstand corruption better than the current one. The Zondo Commission also noted how the complexity of the current regulatory system contributed to state capture.

## 6. The Creation of a Procurement Officer's Profession

6.1 The Zondo Commission recommended that consideration be given to enacting legislation that will establish a professional body to which all officials who work in the area of public procurement should belong. The

opportunity to increase professionalisation in procurement has been missed in the current Public Procurement Bill and that should be addressed.

6.2 The thinking behind the Zondo Commission recommendation is twofold. Firstly, that the professional body will establish the qualifications, training and experience for membership together with standards of integrity and a commitment to resist mismanagement, waste and corruption.

6.3 Secondly, that disciplinary action can be taken against professionals in the field of procurement by simply removing membership. This would not only professionalise those engaged in public procurement but also remove those who breach standards of integrity from participating in public procurement processes. In these ways, professionalisation advances the anticorruption objective.

6.4 In NACAC's view, the Bill should grasp this opportunity to enable greater professionalisation in procurement. It is intended to issue a further more detailed Advisory on this procurement and anticorruption issue.

## 7. Whistleblowing and Supplemental Information Disclosure to the State in the Public Procurement Sector

7.1 The actions of whistleblowers and the information they have provided to the public and law enforcement agencies were crucial in fighting state capture. The NACAC strongly supports the ongoing effort led by the DOJCD to strengthen and extend the whistleblower protection framework in the Protected Disclosures Act[5] and has drafted an Advisory on that issue.

7.2 In addition to the general regulation of whistleblowing in the PDA, Parliament has inserted provisions in several statutes in specific fields that provide supplemental facilitation of (and in some cases providing rewards/incentives for) disclosure of information to regulatory authorities.

[5] Invitation for Public Comments: Discussion Document on Proposed Reforms for the Whistleblower Protection Regime in South Africa (29 June 2023).

7.3 These supplemental information disclosure regimes assist the anticorruption objective. These sector-specific statutes include the Companies Act, the Financial Intelligence Centre Act, the National Environmental Management Act, the Marine Living Resources Act, the National Forest Act, and the Pension Funds Act.

7.4 From an anticorruption perspective, the procurement sector must be added to this list of supplemental information disclosure regimes. As the Zondo Commission specifically and explicitly recognized, information disclosure in the form of cash for information can be a powerful enforcement tool in the public procurement space. Its use in procurement in nations across the globe echoes the South African experience of the crucial role played by whistleblowers against state capture.

7.5 In procurement, unprotected but incentivized information disclosure is a leading anticorruption enforcement tool in numerous comparative jurisdictions. It is a tool that should be added by Parliament into the South African public procurement sector.

7.6 Unfortunately, there is no mention of whistleblowing in the Bill. Nor are there any specific provisions in the Bill to facilitate information disclosure about procurement corruption or contract fraud to the appropriate regulatory or law enforcement authorities. The Bill is deficient by omission in these respects.

7.7 In line with supplemental information disclosure regimes in other sectors, this Advisory proposes that a basic empowering provision facilitating incentivized procurement information disclosure to state authorities be added to the Public Procurement Bill. Like the provisions in other existing statutes, this provision would be supplemental to and not inconsistent with the PDA regime.

7.8 Such a provision should enunciate broad principles around several issues including:

(a) proportionate rewards/incentives for informants disclosing information materially assisting with recovery of funds from public procurement fraud or corruption;

(b) differentiation among eligible persons (including civil servants);

(c) disqualification of persons offering information with false motives from incentives; and

(d) the appropriate regulatory or law enforcement body to be receiving these procurement information disclosures.

## 8. Transparency: Procurement Methods and Open Data Standards

The Zondo Commission recommended "that set standards of transparency consistent with the OECD Principles for integrity in public procurement be formulated by National Treasury for compulsory inclusion in every procurement system adopted by a public procurement entity."

8.1 Transparency in primary legislation necessitates the formulation and placement in the Bill rather than in subordinate legislation the policy principles for procurement, and to establish checks and balances framed around section 217 of the Constitution. Having clear procurement principles at the level of statute enables effective and strategic action by procuring institutions as well as facilitating across-government coordination, and eliminates reliance on regulations and instructions to interpret and apply the constitutional principles. This is necessary to inform the range and variety of procurement methods that could be prescribed by the Minister.

8.2 An Act with purposive interpretation and clearer objectives embedded could guide and shape procurement methods to be developed and implemented in the years to come. The absence of a guiding framework in the Bill for procurement principles around which a range of procurement methods which can be developed will both hamper service delivery and open the door to large-scale wrongdoing, influence and manipulation.

8.3 While the Bill does address the issue of open data standards, it has weakened some of the transparency provisions in the tabled version of the Bill and has failed to take the opportunity to truly embed critical anti-corruption provisions.

8.4 Open data is defined in the Bill to mean machine-readable data that is made available with the technical and legal characteristics necessary for it to be freely used, reused and redistributed without restrictions, based on a standard determined by an instruction.

8.5 The Bill mandates that the Public Procurement Office must develop and implement measures to ensure transparency in procurement and must ensure the development of a single platform that at least provides access for officials, bidders, suppliers and members of the public to all procurement related services. It also requires that the Minister must prescribe requirements to disclose information regarding procurement.

8.6 These provisions are to be welcomed, as are the provisions regarding beneficial ownership transparency provisions. However, these provisions should be more clearly aligned to recent amendments to the Companies Act.

8.7 The definition of ‘confidential information’ in the Bill also is extremely wide and could be used by corrupt actors to hide important information such as names of directors and owners of companies. Confidential information should be limited to what is non-disclosable under PAIA and the Constitution.

8.8 Finally, public procurement information and data falls into one of three broad categories, namely transaction transparency, public procurement policy transparency and data base transparency. The minimum requirements for disclosure of procurement information in the Bill appear to only deal with transaction transparency. There is no explicit requirement in the Bill for public procurement policy transparency nor for data or database transparency. There is no similar requirement for the procurement policies and similar elements of the “procurement system” of a procuring entity to be disclosed nor the machine-readable data (open data) be disclosed.

8.9 The Bill should thus require the disclosure for public procurement policies at procuring institution level, as well as disclosure of open data in the form of databases at procuring institution level as well as at the level of the central ICT system required in terms of the Bill Section 30.

## 9. Summary of NACAC Recommendations re the Public Procurement Bill

Amend the Public Procurement Bill to:

i. Refer to Establishment of an independent Public Procurement Regulatory Authority
ii. Simplify and clarify the clauses on preferential procurement and exclusions.
iii. Refer to Establishment of a Procurement Professional Body and accreditation system
iv. Align the beneficial ownership provisions with recent amendments to the Companies Act
**v.** Limit 'confidential information' to what is non-disclosable under PAIA and the Constitution**.**

Conform to public participation legislation process for major changes in the Public Procurement Bill

Refer to disclosure of corruption and procurement fraud, encourage procurement information disclosures as a countenance to procurement corruption

Introduction of e-procurement that integrates vetting of tendering entities

## 10. Conclusion

NACAC supports the establishment of Public Procurement legislation, however, the Public Procurement Bill should allow the amendments to be effected when NACAC recommendations are finalised on an independent procurement oversight body and professionalisation oversight body. Public Procurement Office and Tribunal shall be recommended to form part of an independent procurement oversight body for effective procurement oversight and separation of responsibilities.

## 11. Acknowledgements

The following individuals and organisations are acknowledged for their contributions to this advisory:

Prof J Klaaren

Prof G Quinot

Dr M Khanyile

Dr R Watermeyer

Dr T Nombembe

Ms P Reyburn

PARI

Corruption Watch

AGSA

“END”

## Annex 1: State Capture Recommendations on Public Procurement

**Recommendation 1: The National Charter against Corruption**

51. 1 . That the Government, in consultation with the business sector prepare and publish a National Charter against corruption in public procurement, such Charter to include a Code of Conduct setting out the ethical standards which apply in the procurement of goods and services for the public;

The National Charter should be signed by or on behalf of:

- the President and the Cabinet
- the Provincial Premiers and members of the Provincial Cabinets;
- the local authorities;
- all State-Owned enterprises;
- the political parties represented in Parliament;
- constitutional entities;
- the institutional representatives of the business sector;
- listed public companies;
- Trade Unions
- Anti-corruption bodies in civil society;
- every procurement officer in the public service shall, on assuming duty, be required to sign a commitment to observe and uphold the terms of the National Charter;

51.4. every natural or juristic person tendering or contracting to supply goods or services by way of public procurement must sign a like commitment to uphold and to adhere to the terms of the Charter and its Code of Conduct;

51.5. the content of the National Charter and the Code of Conduct should be widely publicised ;

51.6. the National Charter and Code of Conduct should be given legal status and effect by an Act of Parliament.

**Recommendation 2: The establishment of an independent Agency against corruption in public procurement**

52. That the Government introduce legislation for the establishment of an independent Public Procurement Anti-Corruption Agency (PPACA).

53. That such legislation constitutes the Agency:

53.1. as an independent body subject only to the Constitution and the law;

53.2. which has jurisdiction throughout the Republic;

53.3. which is impartial and must perform its functions without fear, favour or prejudice;

which is financed from:

- money that is appropriated by Parliament for the Agency;
- fees payable to the Agency by all tenderers for public procurement contracts;
- money received from any other source.

54. That such legislation must provide that the Agency consists of:

- The Council consisting of 5 members:
  - of whom the chairperson shall be a senior legal practitioner with expertise in procurement matters; and
  - 4 members chosen for their special skills in accounting, finance and economics with expertise in public procurement matters one of whom shall be a member of the academic staff of a University who is a specialist in matters of public procurement;
  - the said members of the Council are to be selected by a panel consisting of the Chief Justice, the Auditor-General and the Minister of Finance following a public process."
- an Inspectorate;
- a Litigation Unit;
- a Tribunal;
- a Court.
- That the function of the Council is to:
  - initiate measures to protect procurement systems from corruption
  - issue guidelines for the betterment of procurement practice;
  - prohibit any practice which facilitates corruption, fraud or undue influence in public procurement;
  - formulate measures for the making of reports to the Agency by whistle blowers and for their protection and incentivisation;
  - implement measures to increase the integrity and transparency of public procurement practices;

- negotiate agreements with any regulatory or oversight authority to co-ordinate and harmonise the exercise of jurisdiction over public procurement;
- participate in the proceedings of any regulatory or oversight authority and advise or receive advice from such authorities;
- issue regular reports for public and media attention, detailing the nature and extent of corruption, fraud and undue influence identified by the AACIPP.

- That the function of the Inspectorate is to:
  - monitor and inspect public procurement activity to detect and expose corruption;
  - establish, maintain and update a comprehensive and secure data base recording and listing:
  - every public procuring entity, together with its procurement procedures and the names and qualifications of the procurement officials employed;
  - information obtained from Whistle Blowers and complaints registered by tenderers;
  - the reports and information provided by oversight authorities;
  - reports of disciplinary proceedings relating to procurement officials conducted by any governmental, SOE or constitutional entity;
  - any other information in respect of the aforegoing;
  - institute electronic procedures to facilitate the monitoring and inspection of public procurement activity;
  - undertake in situ inspections, where necessary without notice, of public procurement activity by the procuring entities;
  - review the procurement systems utilised by the procuring entities to ensure the adequacy of in-built protections against corruption;
  - issue Mandatory Compliance Notices requiring the prompt implementation of remedial measures by a procuring entity to address deficiencies or irregularities detected in any procurement system or in respect of any tender or the award of any contract calling upon the affected entity to take immediate steps to rectify same;
  - refer all instances of non-compliance with such Notices to the Litigation Unit for further action;

- promptly investigate any information received concerning fraud or corruption in the grant of tenders or contracts and take active steps to protect informants against intimidation or revenge;
- investigate any circumstances suggesting the giving of a bribe or other gratification for the award of a tender or contract including the making of donations to political parties in connection with the award of tenders;
- investigate all complaints concerning corruption made by tenderers or other informants and refer matters arising from such investigations to the Tribunal.

That the function of the Litigation Unit is to:

- apply to the Tribunal for the giving of authority to the Inspectorate to exercise powers of search and seizure against any juristic or natural person including any political party in connection with any investigation into corruption, fraud or undue influence connected to public procurement;
- receive and negotiate Deferred Prosecution Agreements and refer such Agreements to the Tribunal for approval;
- seek remedial action from the Tribunal where Notices of Compliance issued by the Inspectorate have not been rectified;
- institute proceedings before the Court for the recoupment of monies stolen from, or damages suffered by the State as a consequence of corruption, fraud or undue influence in the procurement process;

- apply to the Tribunal for an order debarring any person from participating in any tender process or the grant of any procurement contract either permanently or for a stipulated time and either conditionally or unconditionally;
- apply to the Tribunal for an order striking any procurement official from the roll of professional procurement officers either permanently or for a stated period and whether conditionally or unconditionally.

That the function of the Tribunal is to:

- grant or refuse warrants of search and seizure of documents to the Inspectorate at the request of the Litigation Unit;
- review and approve either with or without conditions any DPA or to reject same;

- make any order requiring any procuring entity or other recipient of a Compliance Notice to comply forthwith or subject to such qualifications as the Tribunal may impose;
- issue, where appropriate, an order interdicting any procurement entity from conducting any procurement activity until it has properly complied with any order issued by the Tribunal;
- issue an order debarring any natural or legal person found guilty of corruption, fraud or exercising undue influence from again participating in any tender or receiving the grant of any procurement contract either for a period of time or permanently.

That the function of the Court is to:

- determine civil actions instituted by the Litigation Unit for recompense to the State in respect of losses suffered through corrupt acts;
- act as a Court of Appeal in respect of decisions of the Tribunal.

**Recommendation 3: Protection for Whistle Blowers**

That the Government introduce legislation or amend existing legislation:

- to ensure that any person disclosing information to reveal corruption, fraud or undue influence in public procurement activity be accorded the protections stipulated in article 32(2) of the United Nations Convention Against Corruption;
- identifying the Inspectorate of the Agency as the correct channel for the making of such disclosure;
- authorising the Litigation Unit of the Agency to incentivise such disclosures by entering into agreements to reward the giving of such information by way of a percentage of the proceeds recovered on the strength of such information;
- authorising the offer of immunity from criminal or civil proceedings if there has been an honest disclosure of the information which might otherwise render the informant liable to prosecution or litigation.

**Recommendation 4: Deferred Prosecution Agreements**

That the government introduce legislation for the introduction of deferred prosecution agreements by which the prosecution of an accused corporation can be deferred on certain terms and conditions:

- that a company has self-reported facts from which criminal liability could be inferred and has co-operated fully in making such report;
- that the company has agreed to engage in specific conduct intended to ensure that such conduct is not repeated;
- that the company has paid a fine;
- or been subject to other remedial action;
- that the terms and conditions of the agreement has been sanctioned by the Tribunal of the Agency.

**Recommendation 5: The Creation of a Procurement Officer's Profession**

It is recommended that consideration is given to enacting legislation that will establish a professional body to which all officials who work in the area of public procurement should belong.

Such professional body will fix the qualifications and the necessary training and experience necessary for membership of the profession.

Such training and qualification to include high standards of integrity and a commitment to resist mismanagement, waste and corruption.

That the procurement system in every procuring entity be managed by a duly qualified public procurement official being a member in good standing of the profession.

That the Tribunal of the Agency act as the disciplinary committee of the profession with power to strike a member from the Roll or to impose such other disciplinary sanction as the case may require.

**Recommendation 6: The Enhancement of Transparency**

The Commission recommends that set standards of transparency consistent with the OECD Principles for integrity in public procurement be formulated by National Treasury for compulsory inclusion in every procurement system adopted by a public procurement entity.

## NATIONAL ANTI-CORRUPTION ADVISORY COUNCIL (NACAC)

**SUBJECT: ADVISORY NOTE TO THE PRESIDENT REGARDING THE ELECTORAL MATTERS AMENDMENT BILL**

Date: 11 April 2024

1. In August 2023, the National Anti-Corruption Advisory Council (NACAC) submitted an advisory to the President of the Republic of South Africa, recommending that certain provisions of the Political Party Funding Act (PPFA) be strengthened[1] in order to prevent systemic political corruption.

2. The NACAC recognises that sufficient financial support for political parties is essential for maintaining and enhancing the vitality of South Africa's democracy. We hold the view that adequate public funding is essential.

3. We also hold the view that political parties should be able to raise funds from private sources. However, the unregulated influence of money in South African politics, presents imminent dangers to our constitutional democracy and our ability to end cycles of capture and undue influence by private actors in policy making process, regulatory bodies and procurement systems.

[1] (1) The PPFA should not include the Corrupt Donation Crime, recommended by the State Capture Commission, as a separate offence. Instead, it should reference section 13 of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 ("PRECCA"), which already criminalises corrupt donations.

(2) Any amendments to the current thresholds for disclosure and caps on donations should be postponed until sufficient evidence is available to make informed decisions regarding more appropriate thresholds and caps.

(3) Natural persons who donate amounts above the section 9(1)(a) threshold should be required to disclose their donation directly to the Independent Electoral Commission.

(4) Natural persons and juristic entities should be prohibited from circumventing the section 8(2) cap by making multiple donations through related juristic entities

(5) Strengthen section 10 of the PPFA by requiring that all private monetary donations to political parties be deposited directly into the bank account specifically created for donations in section 12(1)(a).

(6) Subject donations made to internal party races to the same disclosure thresholds, and prescribed maximum caps, as those which the PPFA applies to party political funding.

(7) Mandate disclosure of sources of investment income for political parties' investment vehicles, subject to the prohibited sources of income imposed on political parties themselves in section 8(1)

(8) Regulate donations received by independent candidates and establish guidelines for how independent candidates receive money from public funds established in sections 2 and 3.

(9) The Political Party Funding Unit within the Independent Electoral Commission be adequately resourced and staffed to effectively conduct oversight, monitoring of donations, and investigate complaints

4. We welcome some of the proposed amendments in the Electoral Matters Amendment Bill (EMAB), such as the inclusion of a provision which criminalises the receipt of a political donation on a quid pro quo basis, as well as regulating the receipt of donations for independent candidates.

5. We also note amendments relating to regulations 7 and 9 of the PPFA, which provides the President, acting on a resolution of the National Assembly, the power to determine the upper donation limits to political parties and independent candidates, as well as the threshold for disclosure to the Independent Electoral Commission (IEC).

6. In the event that the President enacts these provisions of the EMAB without concurrently issuing a proclamation, based on a resolution of the National Assembly, that specifies both the disclosure thresholds and the maximum limits on donations, there will be no legal obligation for political parties and independent candidates to reveal their funding sources, nor shall there be any imposed upper limit on the amount of donations that they may receive.

7. Given that Parliament is currently on recess and will dissolve in a matter of weeks, it appears improbable that the National Assembly will adopt a resolution (based on evidence, and in-line with the criteria outlined in EMAB[2]) for the President to act on. Additionally, the President is constrained from unilaterally setting these upper limits and disclosure thresholds without a formal resolution from Parliament. Thus, it is likely that for an indeterminable period, there will be no upper limit and disclosure thresholds on political funding, including during the upcoming 2024 general election.

8. The NACAC is concerned that this lacuna in law, during a critical election period, may increase corruption-risks in relation to both quid pro quo and *clientelistic*[3] corruption, as well as bring into question the integrity of the election.

---

[2]Section 7(2) of the Electoral Matters Amendment Bill: (a) The actual fiscal contribution to public funding for political purposes; (b) inflation; and (c) the actual costs of running a party and running elections, as submitted by parties.''

[3] Office-holders decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the office-holder. McLoy v State of New South Wales (2014), High Court of Australia, Para 37.

9. In this regard, we believe that these provisions of the EMAB can be challenged on the following grounds:

   9.1. Information on the private funding of political parties and independent candidates is essential for the effective exercise of the right to make political choices and participate in elections.[4]

   9.2. Information on private funding of political parties and independent candidates must be recorded, preserved, and made reasonably accessible.[5]

   9.3. The detection of corruption in political processes requires transparency.

   9.4. The prevention of undue influence of private actors and corruption in political processes, requires upper limits.

10. In light of the above, the NACAC recommends the following:

    10.1. The President is advised to assent the EMAB into law, but specify an alternative commencement date for the sections of the Bill concerning disclosure thresholds and donation limits. To avoid a lacuna, protect the integrity of our electoral process, and mitigate risks of corruption, we recommend that the sections of the Bill addressing disclosure thresholds and donation limits become effective on 1 July 2024. This approach ensures a seamless transition and reinforces the legal framework governing political financing in the interim period.

[4] My Vote Counts v The Minister of Justice and Correctional Services & the Democratic Alliance [2018] Constitutional Court, p1 paragraph 1.1.

[5] My Vote Counts v The Minister of Justice and Correctional Services & the Democratic Alliance [2018] Constitutional Court, p1 paragraph 1.2.

# REPORT ON THE PROGRESS OF THE NATIONAL ANTI-CORRUPTION STRATEGY (NACS) AS AT 31 MARCH 2025

Two of the National Anti-Corruption Advisory Council's (NACAC) key mandate area were to advise on the effective implementation of the NACS by government, civil society and the private sector; and to advise key role-players on the overarching thrust of the Strategy, namely the six pillars upon which it is premised.

In doing so, NACAC also monitored the progress of implementation of the interventions in the NACS and noted slow but significant progress. A key challenge was and continues to be the slow prosecution and conviction of criminal referrals within the court system. As the NACS timeframe ends in 2030, there will need to be more focus on the institutionalisation of NACS in the remaining timeframe (2024-2029).

Of significance to the success of the NACS, several pieces of anti-corruption legislation related to preventing and combating corruption were assented by the President during NACAC's period. These include the:

- Judicial Matters Amendment Act (Act 15 of 2023) (makes technical and practical amendments to various laws administered by the Department of Justice and Constitutional Development);
- Electoral Matters Amendment Act (Act 14 of 2024) (incorporating changes to the Political Party Funding Act);
- National Prosecuting Authority Amendment Act (Act 10 of 2024). This Act creates and empowers a permanent Investigating Directorate against Corruption (IDAC);
- General Intelligence Laws Amendment Bill, disestablishing the State Security Agency and returning to the doctrine of national security, to address the abuse of intelligence services for state capture; and
- Changes to strengthen the Prevention and Combatting of Corrupt Activities Act (PRECCA) - which include a new offense of failure to prevent corruption.

## Progress and proposed interventions aligned with NACS strategic pillars

NACAC has been collecting data on activities aligned to the implementation of the NACS pillars using performance measures and indicators. In tracking the key indicators and targets in the NACS Framework, the following key milestones per strategic pillar can be reported. Medium-

term interventions to advance NACS progress are also proposed and the responsible department indicated.

## STRATEGIC PILLAR ONE: CITIZEN PARTICIPATION

Focus: Promote and encourage active citizenry, whistleblowing, integrity and transparency in all of society:

- A multi-year and interdisciplinary research study 'Tracking Social Norms and Behaviour Change in South Africa: Measuring Attitudes to Corruption' was undertaken by the HSRC. The information contributes to providing baseline information to the monitoring and evaluation of the NACS Framework.
- The drafting of the whistleblower protection Bill is in progress by the Department of Justice and Constitutional Development (DoJCD).
- To strengthen transparency and accountability of political parties in the context of the June 2024 national and provincial elections, NACAC engaged with the Independent Electoral Commission's unit responsible for administering the Political Party Funding Act and developed and submitted an advisory to the President on political party funding.

The finalisation of the amendments to the Protected Disclosures Act (PDA) to strengthen whistleblower protection and support has been slow and needs to be fast-tracked by the DoJCD. Proposed amendments include expanding the scope of the PDA, criminalizing retaliation, and establishing independent bodies to manage disclosures and provide support. There is a need for more public awareness and education campaigns to destigmatize whistleblowing and foster a culture of integrity by both government institutions and non-state actors.

Proposed Interventions for Medium-Term (2024 - 2029) and Departmental Annual Performance Plans (APPs)

Public awareness and education to prevent and combat corruption

- Promotion of values reorientation education in the schooling system to inculcate ethics and integrity; and increase awareness on how to prevent and combat corruption (DoE).
- Awareness and training of government officials on whistleblower protection and support to encourage people to willingly report corruption because they understand the benefits of doing (PSC/DPSA and NSG).

- Host public dialogues and International Anti-Corruption Day commemorations to create awareness amongst all sectors of society to prevent and combat corruption within their spheres of influence (PSC).
- Enhance communication of anti-corruption messages to provide periodic reports on corruption arrests and prosecutions to the public (GCIS).
- Issue departmental Directives on protection and support whistleblowing to guide departments and encourage officials to report suspected corrupt activities and unethical behaviour to the employer (DPSA).
- Review the Promotion of Access to Information Act (PAIA) and strengthen oversight to improve compliance with PAIA (PSC/DPSA/OTPs).

Enforcement and consequence management

- Monitor and report on the implementation of the 60 actions of the State Capture Commission to promote transparency and accountability (Presidency/ DPME/DoJ).

## STRATEGIC PILLAR TWO: PROFESSIONAL CONDUCT

Focus: Advance the professionalisation of employees in all sectors to optimise their contribution to create corruption-free workplaces:

- The Public Service Amendment Bill (2023) was passed in Parliament. The Bill amends the Public Service Act, 1994, to provide for among others, the devolution of administrative powers from executive authorities to heads of department.
- DPSA issued a directive on revised criteria for appointments to the senior management service (SMS).
- Draft Public Administration Management Regulations for the Central register was published for public comment in the Government Gazette of 24 January 2025. The Central Register will enable DPSA to track disciplinary cases across government spheres and public enterprise, to disqualify officials who have dismissed to reemployed in the public sector.

Proposed Interventions:

Public awareness and education to prevent and combat corruption

- Introduce a programme to create awareness for public servants to embrace a values-based work ethos and adherence to Batho Pele principles in Public Service (DPSA and departments).

Prevention of administrative corruption in the public sector

- Implementation and monitoring of “A National Framework Towards the Professionalization of the Public Sector” (DPSA/DPME).
- Drafting and issuing of directives on the Institutionalisation of the Ethics Officer function within departments (DPSA).
- Scaling up of financial declarations and lifestyle audits of all public servants (PSC/ DPSA).

Enforcement and consequence management

- Strengthen and enforce discipline management in the Public Sector (PSC/DPSA).

## STRATEGIC PILLAR THREE: ETHICAL GOVERNANCE

Focus: Enhance governance, oversight, and consequence management in organizations:

- DPSA conducted ethics and integrity management orientation and training of departmental ethics committees in national, provincial, and local government.
- President Cyril Ramaphosa signed the Companies Amendment Bill and the Second Amendment Bill (collectively, "Bills") into law on 26 July 2024. The Bills will facilitate the compliance of Corporate Boards and businesses to ethical governance standards.

Proposed Interventions:

Public awareness and education to prevent and combat corruption

- Training of executive leadership in ethics and integrity management (NSG).
- Public dialogues on the role of stakeholders in the promotion of integrity, ethics, and accountability in challenging environments like labour and traditional leadership (PSC).

Prevention of administrative corruption in the public sector

- Monitor organisational compliance with measures to ensure good governance and support the promotion of ethics and ethical behaviour in all government institutions (DPME/DPSA).
- Develop and monitor the recommended actions by the Auditor-General in three spheres of government to address identified material irregularities to enhance accountability and compliance with the Public Audit Amendment Act (2018)1 (AG/NT/ DPME/DCOG).

Enforcement and consequence management

- Timeously and effective parallel investigation (non-criminal) of reported incidents and case resolution in the public sector of alleged corruption, maladministration, and wrongdoing, in compliance with the relevant organizational/labour relations policies and procedures and the applicable law (PSC and DPSA).
- Implement the Central Register, which aims to prevent officials dismissed from one sphere of government from finding employment in another sphere, unless rehabilitated (PSA/DPSA).

## STRATEGIC PILLAR FOUR: CREDIBLE, TRANSPARENT PROCUREMENT SYSTEM

Focus: Improve the integrity and credibility of the public procurement system:

- To promote greater transparency, the Beneficial Ownership Register was created at Companies and Intellectual Property Commission (CIPC);
- The Public Procurement Bill was passed by Parliament in June 2024.
- Processes to implement public procurement reforms are underway and these include:, introduction of a centralized database for dismissals across public sector and review of the whistleblower policy.
- The National Treasury commissioned a research report on designing a Governance Risk Assessment System (GRAS) for public procurement data systems.

Proposed interventions:

The primary recommendation for the medium to long term is the implementation and extension of standardised reporting requirements for public procurement, to all of government and state-owned enterprises. In addition, mechanisms for monitoring and enforcing compliance with public procurement regulations should be strengthened. A straightforward, country-level e-procurement system should be implemented, with a gradual transition away from paper-based tendering, with the ultimate goal of its eventual elimination.

Public awareness and education to prevent and combat corruption

- The Public Procurement Office to ensure professional development and training of officials involved in procurement (NT/NSG).

Prevention of administrative corruption in the public sector

- Implementation of the Public Procurement Act and regulations that will the following areas to prevent and combat procurement fraud (NT).

- Public Procurement Bill (Parts 2 and 3) tasks the Public Procurement Office to establish an integrated digital system for procurement and institute measures to "access procurement processes; (b) scrutinize procurement, and (c) monitor high value or complex procurement that entail significant risks of mismanagement and corruption. Enhanced public procurement data and management systems to ensure improved integration, digitalisation, and transparency of procurement information and databases on the principles of open governance and open contracting.
- Promotion of integrity and transparency in the procurement process – which includes codes of conduct of officials, bidders, and suppliers, measures to prevent abuse of the procurement system, and debarment of bidders and suppliers found to have engaged in corrupt practice
- Measures to promote access to the procurement process, and disclosure of procurement information.
- Establishment of a Public Procurement Tribunal to provide avenues for bid reconsideration, review, and dispute resolution.
- Measures for investigating procurement–related matters, a delegation of powers and duties, criminalization of misconduct, regulations, amendments, and implementation procedures. It provides a comprehensive framework for effectively enforcing and administering the provision of the Act.
- Mechanisms and structures to coordinate the implementation of the procurement regulations.
- Strengthening monitoring and reporting, and enforcing compliance with public procurement regulations.

Enforcement and consequence management

- The creation of the Central Register, which aims at debarment of bidders and suppliers found to have engaged in corrupt practices (NT)

## STRATEGIC PILLAR FIVE: STRONG ANTI-CORRUPTION AGENCIES

Focus: Strengthen the resourcing, coordination, transnational cooperation, performance, accountability, and independence of dedicated anti-corruption agencies

- The prosecutorial capability of the National Prosecuting Authority was strengthened through the establishment of the IDAC;

- By February 2024, the Asset Forfeiture Unit and SIU had reported recoveries of R8,6bn. A further R17,65 billion is currently subject to preservation or restraint orders pending the outcome of court processes.
- NACAC completed research on strengthening of law enforcement and anti-corruption agencies and its proposal for the establishment of the Office of Public Integrity (OPI).

Proposed interventions

Public awareness and education to prevent and combat corruption

- Continuous professional development of officials in the anti-corruption law-enforcement agencies and judiciary (DoJCD/NSG).
- Strengthening official capacity and organisational capabilities in law enforcement agencies' areas of investigation, prosecution, and Asset Recovery functions; and specific scare skill areas of forensic investigation and financial crime investigation (DoJCD).

Prevention of administrative corruption in the public sector

- Establish the Office of Public Integrity as a Chapter 9 institution to combat and prevent systemic corruption (Parliament).
- Strengthen coordination mechanisms of Law Enforcement Agencies (Justice Crime Prevention and Security Cluster).

Enforcement and consequence management

- Accelerate enforcement to increase the number of prosecutions, convictions, and recoveries related to corruption in the public and private sectors (DoJ/NPA/SIU/SAPS, and SARS).

## STRATEGIC PILLAR SIX: PROTECTION OF VULNERABLE SECTORS

Focus: Protect vulnerable sectors that are most prone to corruption and unethical practices with effective risk management

- The SIU and the Border Management Authority launched the Border Management and Immigration Anti-Corruption Forum (BMIACF) in March 2025. This forum brings

together various stakeholders to address systemic corruption and combat corruption and illicit activities related to border management and immigration.

Proposed interventions:
Public awareness and education to prevent and combat corruption

- Training of Board of Directors and executive leadership in vulnerable sectors (in particular State-Owned Entities, and Municipal Councils) in good governance, ethics and integrity management (Presidency/NSG/ SALGA).

Prevention of administrative corruption in the public sector

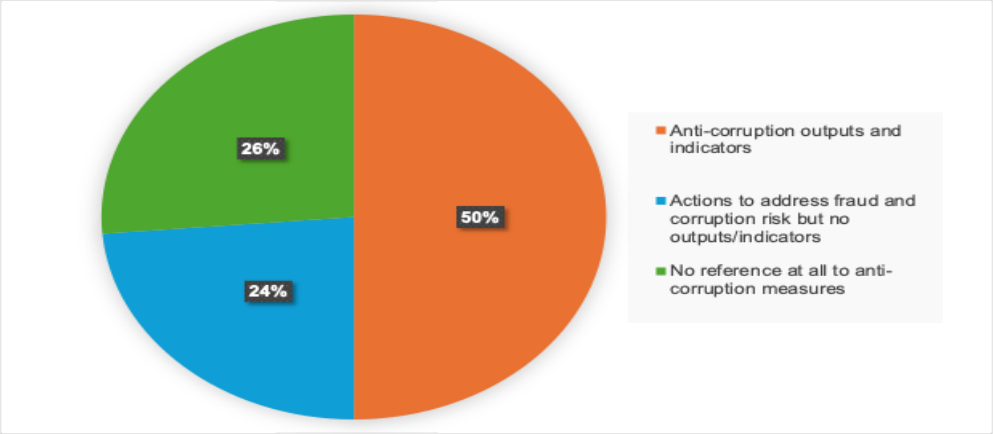
- Conduct research to identify sectors vulnerable to corruption and the nature of corruption, in the public and private sectors, and civil society e.g., State Owned Entities (PSC).
- Develop and implement risk management and integrity management plans of vulnerable sectors (Presidency/DCOG/ NT).
- Ongoing monitoring, periodic evaluation, and review of the implementation of the anti-corruption interventions in vulnerable sectors (PSC/Presidency/NT/DPME and DCOG).

Enforcement and consequence management

- Detection, discipline management, and consequence management of corrupt of officials (PSC/DPSA).
- Ensure enforcement to increase the number of prosecutions, convictions, and amount of recoveries related to corruption in the vulnerable sectors in both public and private sectors (DOJ/NPA/SIU/SAPS/SARS).

## ANALYSIS OF DEPARTMENTAL APPS

This section examines the alignment of national department annual performance plans (2024/25) with NACS outputs and indicators. The figure below shows the extent of the nationalisation of the NACS outputs and indicators across national departments' 2024/25 annual performance plans.




The analysis of the 38 APPS of National Departments showed that 19 APPs contained outputs and indicators on anti-corruption in line with NACS, 19 contained related fraud and anti-corruption measures in the risk mitigation but no clearly defined outputs and indicators related to NACS, and 10 Apps had no mention of anti-corruption measures. The analysis shows that the NACS has not been fully institutionalised with government departments.

Departments/entities in the Justice Crime Prevention and Security Cluster (JCPS) and Governance, State Capacity and Institutional Development Cluster (GSCID) were more likely to have outputs and indicators on anti-corruption than departments in the other clusters. Departments in other clusters tend to have anti-corruption measures under Programme 1: Administration, as part of institutional governance and/or employment relations.

The review has shown that in the 2025/26 APP, DPME must ensure NACS targets are included in the Departments/entities in Justice Crime Prevention and Security Cluster (JCPS); and Governance, State Capacity and Institutional Development Cluster (GSCID); and NACS interventions to be mainstreamed in Programme 1 of all national and provincial departments Annual Performance Plans.

## DRAFT MONITORING AND REPORTING FRAMEWORK: ANTI-CORRUPTION STRATEGY 2020 - 2030

The Draft Monitoring and Reporting Framework of the implementation of the Strategy is intended to track progress against key output and outcome targets. A summary of the key outcome indicators to guide the tracking of the effectiveness and impact of the revised implementation plan is described below.

- Percentage change in attitudes/ values and norms related to ethics, integrity, and transparency to encourage whistle-blowing disaggregated into different sectors and gender (Source of data – surveys by research institutes – e.g., HSRC);
- Percentage increase in compliance by employees to ethical and professional standards in line with the Constitutional values in Chapter 9 and Professionalisation Framework for the Public Service (Source of data – DPSA Annual Report);
- Percentage increase in clean audits in government institutions (Source of data – AG annual audit reports);
- Percentage increase in transparency in public procurement to improve integrity and credibility (Source of data – Procurement Transparency Index);
- Percentage increase in investigation, prosecution of corruption-related cases, and total amount of asset recovery (Source of data- DOJCD Annual Reports);
- Percentage reduction in corruption-related incidents in identified vulnerable sectors (Source of data – AG annual reports and SIU reports).

# THE NATIONAL DIALOGUE ON ANTI-CORRUPTION

# 2024 REPORT

**Date** | 9 – 10 December 2024
**Location** | Birchwood Conference Centre, Boksburg, Gauteng

**Presented by:**
The Presidency, NACAC & The PSC

NACS
National Anti-Corruption Strategy

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

PSC
Custodian of Good Governance

german cooperation
DEUTSCHE ZUSAMMENARBEIT

Implemented by:
giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

State Secretariat for Economic Affairs SECO

UNODC
United Nations Office on Drugs and Crime

# EXECUTIVE SUMMARY

The Presidency, together with the National Anti-Corruption Advisory Council (NACAC) and the Public Service Commission, held its second National Stakeholder Dialogue on Anti-Corruption on 9-10 December 2024. This event aimed to unite key stakeholders and members of society in the ongoing fight against corruption. The vibrant engagement was a follow-up from the previous year, intended to mobilise broader society to actively pursue the developmental goals outlined in the Constitution and the National Development Plan as articulated in the National Anti-corruption Strategy (NACS). This initiative represents a collective societal effort, wherein government, business, and civil society collaborate to create a society that upholds the rule of law and empowers citizens to hold those in power accountable.

The NACAC is a multi-sectoral advisory body appointed by the President in August 2022 to oversee the implementation of the NACS and to advise on the future of the country's anti-corruption institutional architecture. It is anticipated that the successful implementation of the NACS will result in significantly reduced levels of corruption and improved investor and public confidence in South Africa. The National Dialogue is a process that allows the whole of society (in its broadest definition) to:

- Maintain the momentum started with the hosting of the event in November 2023;
- Contribute towards the fight against corruption with innovative ideas and new commitments;
- Hold the government, civil society and business sectors to account for their individual and collective actions against corruption;
- Share successes achieved to date in fighting corruption in South Africa and
- Create awareness of the NACAC recommendations to the president to establish the Office of Public Integrity (OPI).

Consequently, the National Dialogue represented not just an event but a significant milestone in the endeavour to realign society towards the promotion and celebration of ethical behaviour. Throughout this process, individuals and sectors must be empowered to express their concerns regarding corruption and provide constructive contributions to the vision of the NACS. Therefore, the National Dialogue unified the ideas and perspectives that surfaced during the process to present them to a broader audience, including those in charge of governance in South Africa.

The sessions explored the theme "Implementing a multisector approach to strengthen our capacity to combat corruption by reflecting on the six strategic pillars of the NACS." South Africa is the third-largest economy in Africa. However, it is also regarded as the most unequal country in the world. This context is crucial for understanding the effects of corruption and anti-corruption efforts in South Africa. Hosted at the Birchwood Conference Centre in Boksburg, Gauteng, the national dialogue offered a platform to critically evaluate South Africa's anti-corruption landscape and devise actionable strategies aligned with the National Anti-Corruption Strategy (NACS, 2020–2030). Over two days of vigorous discussions, key themes emerged in alignment with the six strategic pillars of the **National Anti-Corruption Strategy (NACS, 2020–2030).**

## SETTING THE TONE: OPENING PLENARY

The event commenced with a powerful call for collaboration and action from Nkosikazi N. Mhlauli, Deputy Chairperson of the National Anti-Corruption Advisory Council (NACAC). Her remarks underscored the urgent need for a generational mission to eradicate corruption, positioning youth as crucial change agents. Ms P. Baleni, Secretary of the Cabinet, expanded on this by emphasising the significance of integrity, transparency, and accountability as foundational pillars for fostering public trust. These themes resonated in the keynote address by Hon. Inkosi Mzamo Buthelezi, MP, who characterised corruption as a societal cancer, advocating for an all-of-society approach to confront it directly.

## KEY OUTCOMES AND RESOLUTIONS

**1. Establishing the Office of Public Integrity (OPI):** Participants strongly endorsed the expedited establishment of the OPI as a Chapter 9 institution with constitutional protections. Alongside the SIU, the OPI will address systemic corruption, conduct civil investigations, issue binding recommendations, and lead preventative measures through public education and institutional capacity-building. Leveraging the existing resources of the Special Investigating Unit (SIU), the OPI aims to operate within a year, with legislation drafted to ensure its independence and effectiveness.

**2. Strengthening Whistleblower Protections:** The dialogue highlighted the critical role of whistleblowers in exposing corruption and called for urgent legislative reforms to strengthen protections. Proposed measures include expanding the scope of the Protected Disclosures Act, criminalising retaliation, and establishing independent bodies to manage disclosures and provide support. Public education campaigns were recommended to destigmatise whistleblowing and foster a culture of integrity.

**3. Transforming Public Procurement Systems:** Public procurement was identified as a key vulnerability in governance. The National Treasury's commitment to implementing an e-procurement system was commended, with stakeholders emphasising transparency, community oversight, and blacklisting corrupt suppliers. These measures aim to address irregular contracts, bid rigging, and inadequate contract management, fostering accountability and efficiency.

**4. Enhancing the Capacity and Independence of Anti-Corruption Agencies:** Agencies such as the Hawks, the National Prosecuting Authority (NPA), and the Special Investigating Unit (SIU) encounter significant resource and capacity challenges. Recommendations include increasing funding, enhancing forensic capabilities, and establishing a dedicated unit within the NPA to prosecute complex corruption cases. Inter-agency collaboration, guided by a streamlined case management system, is essential for effective law enforcement.

**5. Professionalisation of the Public Sector:** To establish a capable and ethical developmental state, participants emphasised the necessity of mandatory ethics training, competency-based recruitment, and reforms in performance management. The ongoing initiatives of the National School of Government have received praise; however, challenges such as resistance to change and resource limitations persist. Prioritised were targeted programmes to foster a culture of continuous learning and accountability.

**6. Inclusive Anti-Corruption Strategies:** Integrating gender and youth perspectives is vital for tackling systemic inequalities and fostering ethical governance. Strategies encompass crafting gender-sensitive anti-corruption policies, involving youth through innovative means such as social media, and empowering marginalised communities to engage in governance.

**7. Safeguarding Vulnerable Sectors and Communities:** The impact of corruption on at-risk sectors—including healthcare, education, and local government—highlights the necessity for targeted oversight and reform. Increased public engagement, enhanced mechanisms for service delivery, and greater accountability are acknowledged as essential priorities.

## CALL TO ACTION

The event concluded with a shared commitment to advancing the pillars of the NACS through decisive action, including but not limited to:

- **Implementation:** Accelerate the operationalisation of the OPI and enhance existing agencies to tackle systemic and individual corruption.
- **Education and Engagement:** Launch comprehensive public education campaigns to foster a culture of integrity and active citizenry.
- **Legislative Reform:** Prioritize legal frameworks that protect whistleblowers, enhance procurement systems, and support independent anti-corruption bodies.
- **Collaboration:** Foster multi-sectoral partnerships to build an inclusive, transparent, and accountable governance system.

The event concluded on a hopeful note, with **Prof. F. Cachalia,** Chairperson of NACAC, describing the dialogue as a potential "Codesa moment" in the fight against corruption. The dialogue laid the groundwork for a cohesive, action-oriented anti-corruption agenda by uniting stakeholders across sectors, underscoring the urgency of safeguarding South Africa's democratic and developmental future.

NACS
National
Anti-Corruption
Strategy

# NATIONAL ANTI-CORRUPTION ADVISORY COUNCIL

***Presents the***

# MID-TERM REPORT

***To the President, The Cabinet & The Country***

**MAY 2024**

BUILDING CULTURES

INTEGRITY

COLLECTIVE ACTION

AGAINST CORRUPTION

PREVENTION

CONSTITUTIONAL VALUES

PARTICIPATIVE DEMOCRACY

UBUNTU

**ACKNOWLEDGEMENTS**

**The NACAC wishes to acknowledge the Transparency, Integrity and Accountability Programme of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH and the Regional Office Southern Africa of the United Nations Office on Drugs and Crime (UNODC) in supporting its research, consultations and public engagements.**

NACS
National
Anti-Corruption
Strategy

*Presents the*

# MID-TERM REPORT

***To the President, The Cabinet & The Country***

**MAY 2024**

# CONTENTS


## INTRODUCTION

6 **PART 1**

**The Office of Public Integrity and Anti-Corruption (OPI)**

1.1 Establishment of the Office of Public Integrity and Anti-Corruption (OPI)
1.2 Powers and functions and work of the Special Investigating Unit (SIU)
1.3 Proposed powers and functions of the Office of Public Integrity and Anti-Corruption
1.4 Independence of the OPI
1.5 Powers to convene public hearings
1.6 Mandate to drive the National Anti-Corruption Strategy (NACS) 2020-2030
1.7 Structure and resources of the OPI to support its mandate and functions
1.8 The OPI's role in matters of procurement
1.9 South Africa's anti-corruption institutional architecture

16 **PART 2**

**The work of the National Anti-Corruption Advisory Council (NACAC) (September 2022 to March 2024)**

2.1 Introduction
2.2 The mandate of NACAC
2.3 Composition of the Council
2.4 Accountability of NACAC to the President and engagement with government departments and the Forum of South African Directors-General (FOSAD)
2.5 Organising structure and functions of NACAC
2.6 Relevance of the NACAC mandate
2.7 Description of the work of NACAC
2.7.1 Institutional Architecture
2.7.2 Procurement Reforms
2.7.3 Monitoring, Evaluation, Research and Learning
2.7.4 Legislation & Transparency
2.7.5 Whistleblower Protection and Support
2.7.6 Communication and Engagement

25 **PART 3**

**The next phase of implementation of NACAC**

3.1 Key issues to be addressed through further research and engagements
3.2 Concluding remarks

# INTRODUCTION

**This mid-term report describes the work and key milestones achieved by the National Anti-Corruption Advisory Council (NACAC) in executing its mandate, from its inception in September 2022 to March 2024.**

***The Council has been established to deepen the country's efforts to rid society and the administration of corruption, improve investor confidence, and secure higher levels of public trust. The Council will advise the government on critical preventive measures, institutional capabilities, and resources required to proactively curb a recurrence of state capture and to prevent fraud and corruption in South Africa.*** - President Cyril Ramaphosa, 29 August 2022

**Part One** of this report presents the Council's recommendations for the establishment of the Office of Public Integrity and Anti-Corruption, known as OPI, as a permanent, independent, overarching anti-corruption body, described in the National Anti-Corruption Strategy (NACS) 2020 -2030. **Part Two** describes the NACAC's work processes over its first 18 months, with particular emphasis on the key activities achieved in the implementation of the NACS. **Part Three** identifies critical areas of further research and engagements with relevant stakeholders to accelerate the next phase of the implementation of the Council's mandate.

## Why this Mid-Term Report?

One of the principal tasks in terms of the mandate of the National Anti-Corruption Advisory Council (NACAC) is the formulation of a proposal to the President and Cabinet regarding the creation of a new, independent, overarching institution, to play a leading role in the nation's work against corruption, in collaboration with existing law enforcement agencies.

The rationale for the establishment of a new independent anti-corruption body to fight corruption is in direct response to South Africa's National Anti-Corruption Strategy (NACS), adopted by Cabinet on 18 November 2020. The NACS commits government to the establishment of "an independent statutory/constitutionally entrenched state body that will report to Parliament". [NACS sec. 6.4] NACS's strategic objective describes the key component of work for the Advisory Council as the "research, conceptual development and drafting of a proposal to Cabinet for the establishment of the overarching body" [NACS, sec. 6.4].

Further, the NACS envisions that:

***This overarching body will drive strategy roll-out and coordinate all the anti-corruption activities in the country. It is premised on an integrated operational model with cross-sectoral collaboration, in line with the country's whole-of-government and societal approach to combating corruption. [NACS, Appendix H]***

This strategic intent of the NACAC was reiterated by President Ramaphosa in his 2021 State of the Nation Address, where he explained that he is relying on the Council to "oversee the initial implementation of the strategy and the establishment of an independent statutory anti-corruption body that reports to Parliament".

Based on evidence from extensive research, engagements with critical stakeholders, and lessons learned from international study visits, the Council has proposed the establishment of a permanent, independent, overarching anti-corruption body; its powers, functions, and design strategically located in South Africa's institutional anti-corruption architecture, as promised in the National Anti-Corruption Strategy. The Council recognises that in the transitional phase, the details will be worked out and legislation drafted and debated, but those details and debates must follow our recommendations set out in this document on the design and authority of the permanent anti-corruption body.

The Council regards the establishment of a permanent anti-corruption body as urgent. The NACS, adopted in 2020, anticipated that "[i]t will take some time, possibly up to two years, before a permanent body will be in place, with the required legislation passed, and appointments and budgets finalised." Even if our recommendations in this document are accepted, we are lagging woefully behind on the imperative to have people and resources permanently in place. We have done all we can to get our recommendations to the President speedily, and to keep this report concise and actionable.

Still, the Council has not been rushed or hasty; we have been deliberate and consulted widely with critical stakeholders. The NACS instructs that our recommendations should be informed by "all relevant international, Constitutional and legislated obligations, and current capacities of existing structures... findings of various judicial commissions of inquiry... [and a] review of mandates and functioning of all existing institutions with anti-corruption mandates... " Moreover, the NACS urges us to engage with the public, with all stakeholders, and "with relevant inter-ministerial committees, clusters, and social partners". [NACS, executive summary, table 1].

We have done all this and more. We have reviewed South Africa's international obligations and we have discussed various options with the heads of the various criminal justice institutions handling corruption cases at different stages. We have met with the leadership of the Public Service Commission, with the Forum of South African Directors-General (FOSAD) across government, and many more heads of relevant departments. We have been guided by the international standards for anti-corruption bodies known as the Jakarta Principles, and we have studied the Constitutional Court's judgments in the Glenister cases.

Suffice it to say here, by way of introduction, that we have benefitted greatly from the input of the leadership and professional staff of the many existing institutions that share responsibility for anti-corruption activities, and from the wisdom of scholars, civil society advocates, and those with comparative international experience. We have learned much from visits undertaken to Nairobi and Hong Kong, allowing us to interact with institutions – new and old – that have tackled related challenges across our continent and elsewhere in the world.

We are especially grateful for the experience, advice, and recommendations shared with us at our National Dialogue in November 2023. Alongside the President, the Chief Justice, members of Cabinet, the National Director of Public Prosecutions, and the heads of the Hawks, the Investigating Directorate, and the Special Investigating Unit, we were able to hear from more than a hundred citizens, including business leaders, civil society advocates, community representatives, and experts in numerous fields.

We have much to learn from experience around the world, but it is also clear to us that we in South Africa face challenges to our democracy from systemic corruption that are distinct from challenges elsewhere and are particular to our society, our history, and our continuing struggles. Big multinational companies, financial institutions, and consultancies have been accused of corruption in many countries over many decades, but the role that some have played in the saga of state capture in South Africa, described so painstakingly in the Zondo Commission's reports, deserves particular attention so that it is never repeated. Corruption in public procurement and state-owned enterprises is sadly commonplace across the world, yet how it rose to such heights in South Africa just a decade ago must be understood in our unique national context and addressed accordingly. Whistleblowers face retaliation in every country, but the extent of lethal violence and murder-for-hire in South Africa today makes the protection of whistleblowers in our country especially urgent, and especially difficult.

We will need to learn from best practices elsewhere, but we just as surely need new institutions with innovative leaders if we are to remove the scourge of systemic corruption here. The establishment of the new anti-corruption body is the essential starting point, and it is already overdue.

The Council recognises that the key enabling condition for the success of the OPI will be that the new Cabinet continues its efforts in building a capable state with ethical leadership and a committed professional public service based on good governance, transparency, integrity management, and accountability to society.

# PART 1 – THE OFFICE OF PUBLIC INTEGRITY & ANTI-CORRUPTION (OPI)

## 1.1 Establishment of the Office of Public Integrity and Anti-Corruption (OPI)

**Recommendation 1**

*We recommend that the Cabinet advance legislation to establish an Office of Public Integrity and Anti-Corruption (OPI) as a new permanent, independent institution in terms of Chapter 9 of the Constitution.*

**Recommendation 2**

*We further recommend that in the transitional phase, the OPI absorbs the mission, powers, and resources of the Special Investigating Unit (SIU), maintaining its full portfolio of work, thus enabling the OPI to be operational with immediate effect and adding to its functions, powers, staff, and resources.*

In this way, the OPI will be able to move forward swiftly and South Africa will avoid the costs and inefficiencies of adding an entirely new state institution to the existing array. More importantly, the OPI will begin expeditiously with an experienced, confident team, as well as build on the public trust and lessons learned in the law enforcement space.

The rest of this part of our report considers various components of the new OPI and the relationship of each to the existing law enforcement structures. These include its investigative powers and authority, and the role of the special tribunal currently within the SIU.

## 1.2 Powers and functions, and work of the Special Investigating Unit (SIU)

In this section, the current powers and functions, and work of the Special Investigating Unit will be described; as well as the limitations of the SIU in relation to its investigative powers and authority.

The Special Investigating Unit (SIU) was established as an independent statutory body in terms of the Proclamation of the President of the Republic of South Africa No. R. 118, 2001; and under section 2(1) (a) of the Special Investigating Units and Special Tribunals Act, 1996 [1] (Act No. 74 of 1996), to exercise or perform the powers, duties, and functions to investigate as contemplated in the said Act, any:

(a) serious maladministration in connection with the affairs of any State institution;
(b) improper or unlawful conduct by employees of any State institution;
(c) unlawful appropriation or expenditure of public money or property;
(d) unlawful, irregular, or unapproved acquisitive act, transaction, measure, or practice having a bearing upon State property;
(e) intentional or negligent loss of public money or damage to public property;
(f) corruption in connection with the affairs of any State institution; or
(g) unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public or any category thereof.

Currently, the SIU may only commence investigations authorised by specific Presidential Proclamations. Once an investigation is authorised, the SIU's investigators have powers of search and seizure, and powers to require the attendance of witnesses and production of bank statements and mobile phone records, to interrogate persons under oath, and to

[1] "PROCLAMATION No. R. 118. 2001, Special Investigating Units and Special Tribunals Act (74/1996): Establishment of a Special Investigating Unit", published in No. 22531: GOVERNMENT GAZETTE, 31 JULY 2001.

litigate in civil proceedings on behalf of the State, either in the High Court or before a Special Tribunal. The power of the SIU to litigate in civil matters is provided by the Special Investigating Units and Special Tribunals Act 74 of 1996, which enables special tribunals to be established "to adjudicate upon civil matters emanating from investigations by Special Investigating Units, and to provide for matters incidental thereto".

The SIU, through civil litigation, has the power to recover financial assets lost through the misconduct it finds, and to correct any wrongdoing it uncovers in its investigations.

However, the SIU has no powers to prosecute criminal matters, as these are constitutionally reserved for the National Prosecuting Authority (NPA). The SIU investigators also do not conduct criminal investigations or prepare criminal dockets. At present, when SIU investigators come across criminal conduct, they refer the matter to the NPA, which in turn refers the matter to the Directorate for Priority Crime Investigations (Hawks), or elsewhere in the South African Police Services (SAPS), for further investigation.

A Presidential Proclamation issued in 2019 established a Special Tribunal with a mandate to recover public funds obtained from the state through corruption, fraud, or other illicit financial acts. Today, the Special Tribunal has jurisdiction only over matters arising from investigations conducted by the SIU, and its members are appointed by the President without security of tenure and are not necessarily judges. For these reasons, among others, the Constitutional Court ruled in March 2023 that the Special Tribunal is not a court [Ledla Structural Development (Pty) Ltd and Others v. SIU (CCT 319/21) ZACC 8]. The Special Tribunal operates according to rules it promulgates itself and, as described by the Department of Justice, in contrast to ordinary civil proceedings, it "adopts a more flexible and expeditious approach to legal actions … more inquisitorial in nature".

In the subsequent sections, we will examine how the proposed OPI with its powers and functions will address the current limitations of the SIU. The Council, therefore, is not recommending that the statute transform the SIU into the OPI, or for the SIU to specify its divisions or the programmes it must implement. In presenting our recommendations for the establishment of the OPI, we discuss the reasons for the choices we make.

## 1.3 Proposed powers and functions of the Office of Public Integrity and Anti-Corruption (OPI)

**Recommendation 3**

*The Council recommends that the Office of Public Integrity and Anti-Corruption (OPI) should have the power to conduct investigations into systemic corruption, either through a Presidential Proclamation or in line with the mandate given to it by drafting a new enabling legislation.*

The power and functions of the newly established OPI will address the limitation in the current regime that restricts the SIU investigations authorised by specific Presidential Proclamations. In the Council's view, this restriction contradicts the Jakarta Principles and the principles of independence enunciated by the Constitutional Court in Glenister II. At the same time, we recognise it is important that the OPI does not have an open mandate to pursue any matter it chooses on its own.

The OPI will locate itself in a strategic niche in the existing law enforcement architecture to investigate systemic corruption. Systemic corruption does not always involve individual criminal acts and is not necessarily punishable through criminal law. It enables corrupt actions; it is usually unethical, but not always criminal. It often involves hidden networks of public and private actors that distort and capture democratic processes to facilitate the misuse of public authority for their own personal and political advantage. These networks are governed by unwritten rules, and held in place by rewards (including promotion) or punishments (including bullying). Systemic corruption has eroded the value systems of democratic institutions, turning their purpose from ubuntu to personal gain.

The OPI will need to use a combination of different powers, functions, and capacities to expose and dislodge systemic corruption where it has implanted itself, since it is resistant to conventional methods of reform. For it is here, in the realm of systemic corruption, that the institutional mechanisms of our young democracy have failed and been harmed most dramatically. Corruption has affected the functioning of public institutions and impacted negatively on public welfare and the delivery of public services.

**Recommendation 4**

*The Council proposes a prosecutor-led investigation system in collaboration with the OPI investigative team to fight systemic corruption.*

The OPI will work in close collaboration with the SAPS and the NPA during the course of any systemic investigation. When the OPI investigation encounters evidence of criminal conduct during a systemic investigation, it will refer this case to the NPA or Investigating Directorate (ID), which will assign an ID prosecutor to lead further investigations.

**Recommendation 5**

*The NACAC recommends that the investigators employed by the OPI be granted 'search and seizure powers' to properly and fully investigate any potential criminal conduct that is discovered during the course of a systemic investigation. About any criminal conduct arising from systemic investigations, the OPI needs to be given powers to prepare criminal dockets for presentation to the NPA.*

The Council acknowledges the mandate of the SAPS and respects that the SAPS will retain its power to arrest and detain any person suspected of criminal conduct in the course of an OPI systemic investigation. The powers of arrest and detention will remain with the police, who must be authorised to execute any warrant of arrest arising from a decision to prosecute made by an NPA prosecutor in respect of an OPI investigation. Such OPI powers and functions should improve the timeliness and effectiveness of criminal charges arising from OPI investigations, avoiding the need to refer matters investigated by the OPI back to the police for further investigation.

The Council also acknowledges the independence of the NPA to retain its exclusive role in criminal prosecutions enshrined in the Constitution, thus preserving its function as an important check and balance about any extraordinary powers of the OPI.

**Recommendation 6**

*The Council recommends that the OPI should have a mandate in its civil recovery processes to claim damages or utilise other civil recovery mechanisms; this should be expanded to include asset recovery arising from criminal investigations.*

**Recommendation 7**

*The NACAC further recommends that there must be a legislative amendment to enable the Special Tribunal to have powers of criminal forfeiture, such powers only to be exercised by the OPI in collaboration with the NPA Asset Forfeiture Unit (AFU) and subject to the provisions of the Prevention of Organised Crime Act (POCA).*

Currently, the Tribunal does not have such legislative powers, although the rules of the Tribunal were amended to make provisions for the preservation and forfeiture of assets. The Prevention of Organised Crime Act (POCA) governs the preservation and forfeiture of assets in respect of proceeds of crime, and the National Director of Public Prosecutions is authorised to bring such applications in terms of chapters 5 and 6 of POCA. The NPA has argued that only the NPA Asset Forfeiture Unit (AFU) should have the power to bring applications of this nature. The legislative amendments will grant powers of criminal forfeiture, to be exercised by the OPI in collaboration with the NPA AFU and subject to the provisions of POCA.

## 1.4 Independence of the OPI

The Constitutional Court has established rigorous tests for the independence of an anti-corruption institution. In 2011, the Court in its Glenister II decision described "the main criteria for effective anti-corruption agencies to be independence, specialisation, adequate training, and resources". These criteria have become known as the STIRS criteria (specialised, trained, independent, and resourced, with security of tenure) and are incorporated in the NACS [section 6.3.2]. Specifically, the Constitutional Court tested the independence of an anti-corruption institution by first examining its insulation from political influence through appointments and budget allocations, and second, the security of tenure of its staff and head.[2]

**Recommendation 8**

*The Council recommends that the appointment of the Head of the OPI as the Accounting Officer must meet certain statutory criteria of eligibility and qualifications.*

The qualifying criteria for the appointment should include a post-graduate degree in law, economics, public administration, or a similar field relevant to the position; several years of experience in senior management in a relevant organisation in any sector; and a strong record and reputation of integrity. As the OPI is to be established in terms of Chapter 9 of the Constitution, we recommend that the appointment process of its director as well as any deputy directors be the same as for the Public Protector. In terms of budget and financial accountability, we recommend that the director of the OPI be its accounting officer and that the OPI manages its budget as established by Parliament, remains accountable to Parliament for its financial activity, and is subject to annual and special audits by the Auditor General.

## 1.5 Powers to convene public hearings

**Recommendation 9**

*The NACAC recommends that the OPI be granted additional powers to convene public hearings into instances of systemic corruption, to compel the attendance of witnesses at those hearings, and to require the production of documents and other physical and digital evidence in conjunction with those hearings.*

When it exercises this power, the OPI should be required to submit a final report of those hearings to the President, making whatever recommendations it feels are supported by the evidence received and in the public interest. The Zondo Commission recommended the establishment of a permanent commission to investigate and expose acts of state capture and corruption, hold public hearings, and make findings and recommendations to the President. The Council supports this recommendation and proposes that the OPI be given the necessary authority to fulfil this role.

[2] Batohi and Stone. 2023. https://www.bsg.ox.ac.uk/research/publications/chandler-papers-worlds-anti-corruption-efforts-need-reset

## 1.6 Mandate to Drive the National Anti-Corruption Strategy (NACS) 2020-2030

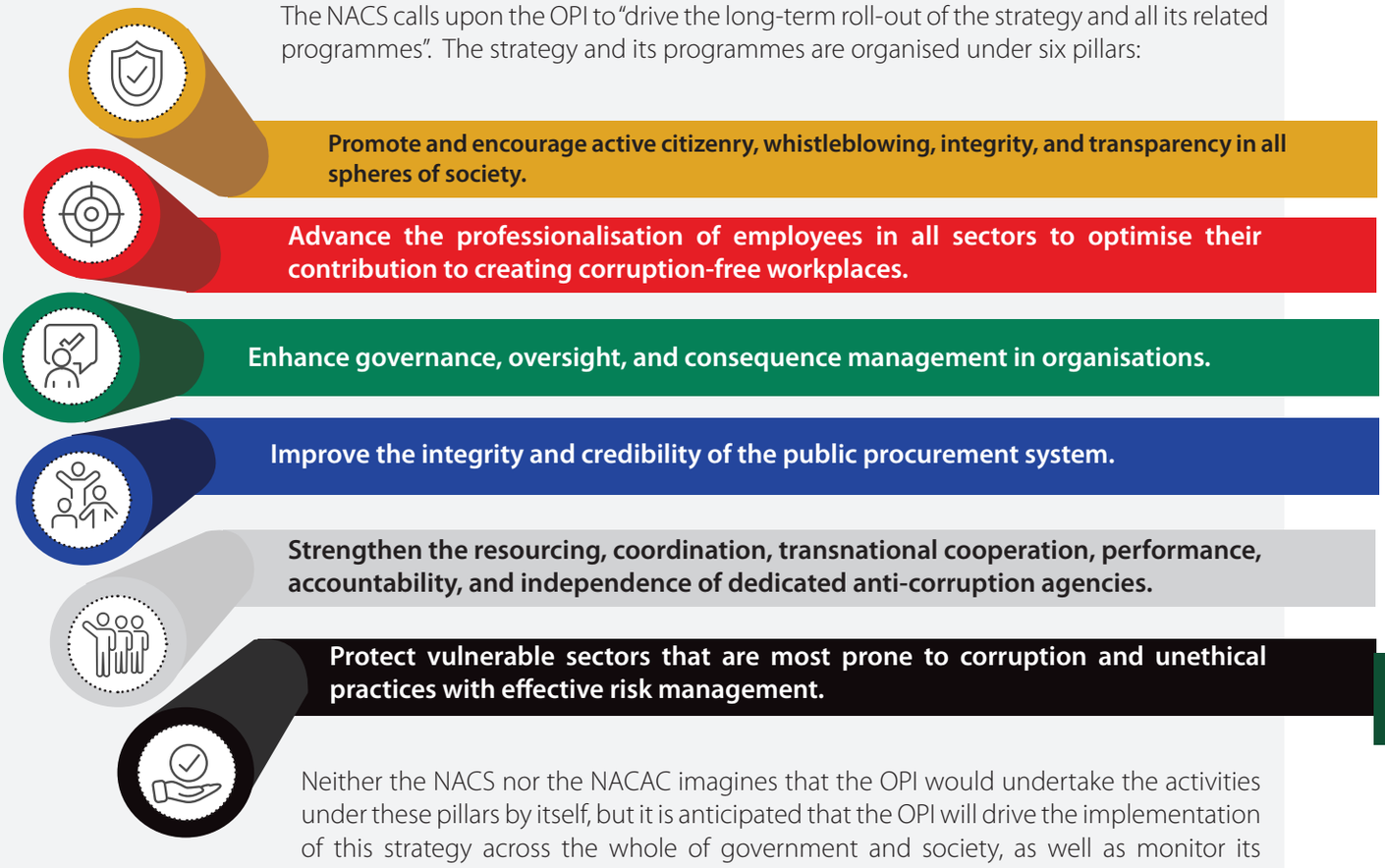
**Recommendation 10**

*The Council recommends that the statute must give the OPI the mandate to "drive the long-term roll-out of the National Anti-Corruption Strategy"; and advise the government on policy measures to advance the NACS, to educate and mobilise the public, to gather and analyse data relevant to corruption and anti-corruption, and to monitor and evaluate the impact of measures designed to prevent corruption, including the receipt and analysis of materials classified as restricted, confidential, or secret.*

In adopting the National Anti-Corruption Strategy, the Cabinet has committed the government to bolster its preventive and educational efforts against corruption. As the Strategy itself explains:

> *The NACS is premised on the principle that there should be more emphasis on the prevention of corruption through good governance, transparency, integrity management, and accountability in society, and early detection of potentially corrupt practices to supplement the reactive measures executed by law enforcement agencies and other anti-corruption bodies in society. [NACS, executive summary].*

The NACS calls upon the OPI to "drive the long-term roll-out of the strategy and all its related programmes". The strategy and its programmes are organised under six pillars:




Neither the NACS nor the NACAC imagines that the OPI would undertake the activities under these pillars by itself, but it is anticipated that the OPI will drive the implementation of this strategy across the whole of government and society, as well as monitor its implementation and effectiveness.

## 1.6 Structure and resources of the OPI to support its mandate and functions

The Council is mindful that the leadership of the OPI will need to create the internal organisation it believes will be most effective and efficient in the realisation of its mandate and its multifaceted functions.

**Recommendation 11**

*The Council recommends that the OPI have statutory authority to create an organisation and to employ staff with expertise in particular areas, which will be essential to its participation with other government entities in the implementation of the NACS.*

Specifically, the OPI should have the mandate to employ persons with expertise in any areas it deems necessary for the effective implementation of the NACS or its successor strategies, including, but not limited to; the design and execution of mass media educational campaigns, the drafting and issuance of sector-specific guidance, structures and operations of internal audit and compliance functions, the protection and encouragement of whistleblowers, and the management and mitigation of corruption risks. These expert resources should be deployed in such a way to be able to support individual ministries, departments, agencies, provinces, and municipalities in the effective implementation of preventative and educational activities under one or more of the six pillars of the NACS.

We are mindful that the role of these experts within the OPI is twofold: to alert other organs of government to the risks and dangers accompanying anti-corruption strategies, and to encourage institutional leaders to champion the effective implementation of the pillars of the NACS. For example, anti-corruption educational campaigns have been found in some instances to increase public cynicism and defeatism rather than to mobilise the public to dislodge corrupt practices, and any encouragement of whistleblowing must take account of the risks that whistleblowers assume, as well as the need to deal with false whistles.

These risks simply underscore the need for expertise within the OPI to be available across government and society as the pillars of the National Anti-Corruption Strategy are driven forward.

In summary, the OPI should work in partnership with leaders of public institutions to support them in implementing corruption prevention measures in their institutions and rolling out anti-corruption educational programmes with their constituents and stakeholders. Like the Office of the Comptroller-General in Brazil, the OPI should collaborate with institutions mandated to prevent corruption in the public sector (e.g., the Public Service Commission and the Technical Assistance Unit of the Department of Public Service and Administration) and with individual departments, to analyse corruption problems in individual entities, recommend solutions, and support their implementation. This is the hard, ongoing work of building cultures of integrity in the public sector that will remain resilient in the face of changing forms of systemic corruption.

## 1.7 The OPI's role in matters of procurement

The Zondo Commission recommended the creation of a standalone institution to deal with matters of public procurement, and, at the time of writing this document, new legislation is under consideration that would reform many matters regarding procurement. We raise questions of our own regarding the regulation of public procurement in Part Two of this report, but our recommendations regarding the role of the OPI in matters of procurement are set out here.

We do not believe that the OPI requires a formal mandate on procurement beyond what has already been discussed. The SIU already investigates matters of corruption and maladministration in procurement and brings cases to the Special Tribunal when there are funds to be recovered. In addition, we have recommended above that the OPI employ experts in this area to work alongside the heads of individual departments as they reform their practices and reduce corruption risks in their procurement processes. These two capacities – one investigative and one preventative – should be enough for the OPI to play its part in the fight against corruption in public procurement.

## 1.8 South Africa's anti-corruption institutional architecture

**Recommendation 12**

*We recommend that South Africa retain its multi-institution architecture in its fight against corruption rather than consolidating all the work and powers in a single commission or other institutions.*

The NACS identified more than 30 separate government departments, parliamentary bodies, and coordinating mechanisms responsible in part for preventing and fighting corruption. [NACS sec 4.3]. Many of these were compromised in the course of state capture, but not all of them. Indeed, the redundancy in the architecture proved its salvation, as institutions like the Public Protector, the Constitutional Court, and the Office of the Auditor General were able to avoid capture and play significant roles in its undoing.

The principle of the division of responsibilities among the institutions authorised to conduct criminal investigations will apply in a multi-institution anti-corruption architecture. The Council suggests that the OPI focus on systemic corruption, that the NPA's Investigating Directorate (ID) focus on high-level corruption, and that the DCPI focus on organised crime and lower-level, opportunistic corruption. Still, those categories are not mutually exclusive, and overlaps are inevitable.

**Recommendation 13**

*The Council recommends the establishment of conflict resolution mechanisms to deal with problems that arise when more than one institution is investigating a particular situation.*

Section 24 (4) of the NPA Act provides that Directors of Public Prosecutions may give written directions or furnish guidelines to the Provincial Commissioner of the police service within his or her area of jurisdiction, or any other person within his or her area of jurisdiction who conducts investigations about offences. This clause could be expanded to deal with the issue of 'conflict resolution mechanisms', should the investigating agencies, where more than one institution is investigating a particular situation, not manage to agree.

We do not recommend that any one of these institutions be given authority to stop investigations in any of the others, as this would only make future efforts at capture easier and thus more attractive.

**Recommendation 14**

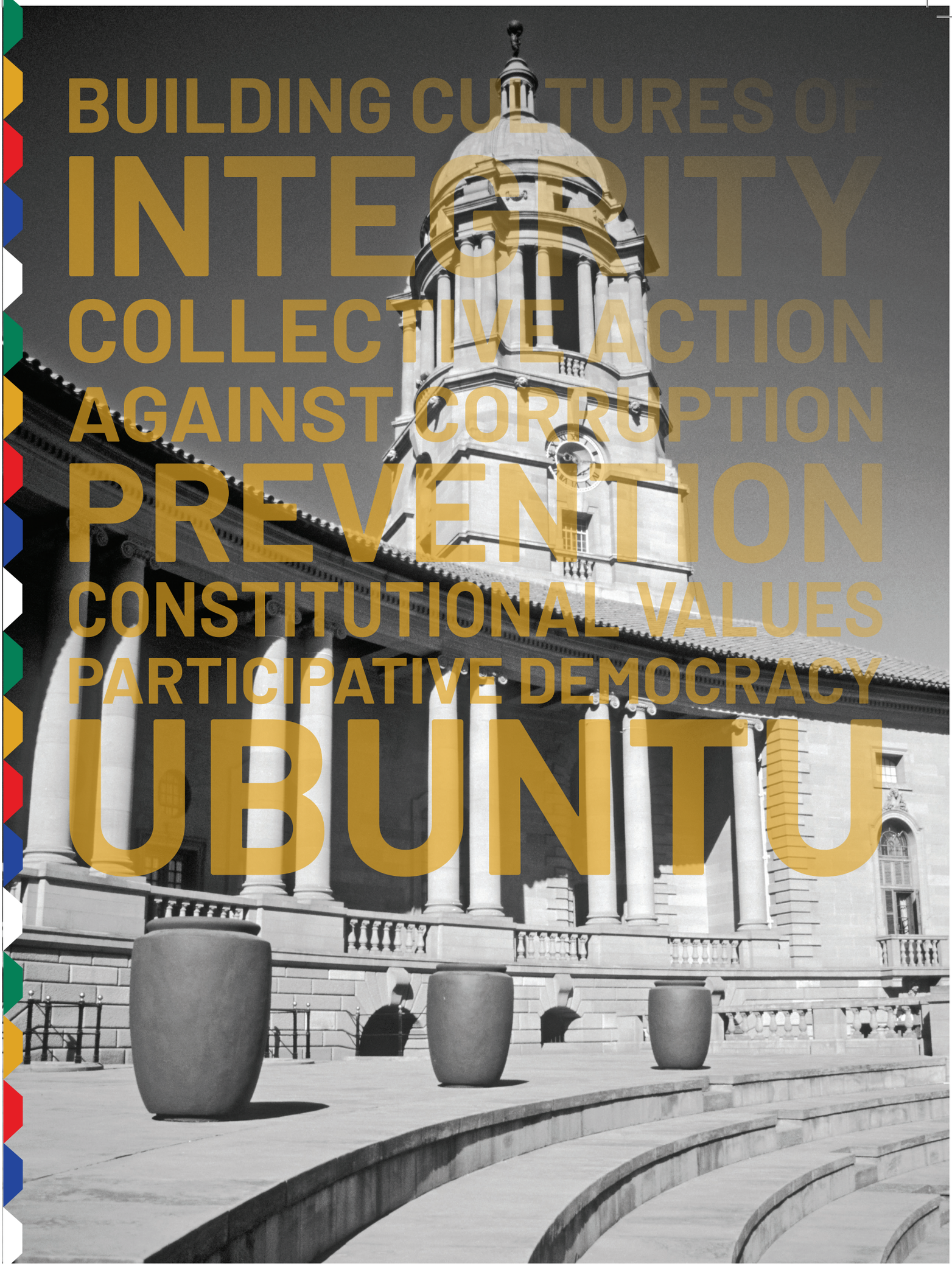
*The Council recommends strengthening the efficiency and effectiveness of the National Prosecution Authority's coordination and collaboration role in a multi-agency anti-corruption framework and system.*

The Council is of the view that the coordination mechanisms of prosecution within the NPA need to be resourced and strengthened to optimise the location of respective provincial and national heads (Directors of Public Prosecutions and National Director of Public Prosecutions) and avert potential challenges of coordination and collaboration.

The Council is also of the view that the NPA/ID should chair the corruption/organised crime case management coordination mechanism, since the NPA is the final decision-maker in whether or not to prosecute. However, the Hawks and the OPI, as members of the multi-agency system that meet regularly with other relevant bodies (Financial Intelligence Centre, SARS, etc.), should be invited to participate where appropriate.

In summary, we recommend that the OPI take on the role that the NACS envisions for its permanent, independent, overarching body, with the appropriate powers and functions, gaining a wider mandate and stronger independence. The OPI must have a wide, flexible mandate, with broad authority in respect of investigation, prevention, and education. Perhaps, most importantly, it has the potential to become a trusted, expert partner to officials leading government departments across the whole of South African society.

We have not answered every question that might be asked, but we urge the nation to move forward with the proposed course of action as set out in this document as quickly as possible, while there is still time and hope for our young democracy to escape the scourge of corruption and capture.


BUILDING CULTURES OF
INTEGRITY
COLLECTIVE ACTION
AGAINST CORRUPTION
PREVENTION
CONSTITUTIONAL VALUES
PARTICIPATIVE DEMOCRACY
UBUNTU

# PART 2 – THE WORK OF THE NATIONAL ANTI-CORRUPTION ADVISORY COUNCIL (September 2022 to March 2024)

## 2.1 Introduction

Part Two describes the NACAC's work processes and key activities in the first phase of implementation in the 18 months from September 2022 to March 2024.

## 2.2 The mandate of NACAC

As outlined in the President's letter of appointment to Council members, the mandate of the NACAC is to:

- Advise on the effective implementation of the National Anti-Corruption Strategy (NACS) by government, civil society and the private sector;
- Advise key role players on the overarching purpose of the NACS, namely the six pillars upon which it is premised;
- Advise on the strengthening of South Africa's anti-corruption architecture;
- Host national anti-corruption summit(s), bringing together government, civil society, business, and academia, to set the country's anti-corruption agenda and evaluate progress in the implementation of the NACS.

**THE NATIONAL ANTI-CORRUPTION STRATEGY IS PREMISED ON THREE KEY PRINCIPLES:**

1. The prevention of corruption through good governance, transparency, integrity management, and accountability in society.
2. Supporting law enforcement agencies and other anti-corruption bodies to combat corruption through early detection of potentially corrupt practices.
3. Raising public awareness about corruption and promoting constitutional values and ethical leadership throughout South African society.

The NACAC is also expected to advise on the implementation of the recommendations of 'The Judicial Commission of Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State' (the Zondo Commission) from a strategic and systemic perspective.

## 2.3 Composition of the Council

The NACAC was appointed by the President following a public call for nominations. Council members represent civil society, traditional authorities, academia, the legal profession, and labour. These members are:

1. Professor Firoz Cachalia (Chair)
2. Inkosikazi Nomandla Dorothy Mhlauli (Deputy Chair)
3. Ms Kavisha Pillay
4. Mr David Harris Lewis
5. Mr Nkosana Dolopi
6. Ms Barbara Schreiner
7. Adv. Nokuzula Gloria Khumalo
8. Mx Sekoetlane Phamodi
9. Ms Thandeka Gqubule-Mbeki

## 2.4 Accountability of NACAC to the President and engagement with government departments and the Forum of South African Directors-General (FOSAD)

The NACAC reports and accounts to the President through the Office of the Minister in the Presidency. At times it may be necessary for the NACAC Chairperson to have a one-on-one with the President to brief him on urgent matters. Advisory and related matters arising from the work of the NACAC that require implementation by government departments may be handled through the Minister in the Presidency.

The NACAC may advise, or report on its work to the Forum of South African Directors-General (FOSAD) through the Director-General in the Presidency and Secretary of the Cabinet in her capacity as the Chairperson of FOSAD. The NACAC thus engages with all government departments through the Office of the Director-General of the Presidency.

## 2.5 Organising structure and functions of NACAC

The NACAC convenes monthly plenary meetings and ad hoc plenary meetings as and when needed. Decisions of the Council are taken at the plenary meetings. Advisories to the President are approved by the full Council before submission to the President. To date, the NACAC has submitted seven advisories to the President.

To facilitate its work, the NACAC established six workstreams to address identified priority areas. Each workstream is led by a NACAC councillor and has other councillors as members, supported by members of the NACAC secretariat. Each workstream committee provides progress on its key activities and recommendations to the NACAC at plenary meetings for noting, decision-making, or action, as may be the case. Several of the workstreams established reference groups made up of subject experts to inform their work.

- **Institutional Architecture:**
  Mr. David Lewis (convenor), Prof Cachali and Ms. Schreiner (members)
- **Public Procurement:**
  Adv. Gloria Khumalo (convenor), Ms Schreiner (member)
- **Monitoring, Evaluation, Research, and Learning:**
  Mx Sekoetlane Phamodi (convenor), Ms. Schreiner and Mr. Dolopi (members)
- **Legislation Reform & Transparency:**
  Ms. Kavisha Pillay (convenor)
- **Communication and Engagement:**
  Ms. Nkosikazi Mhlauli (convenor) Mr. Dolopi, and Mr. Lewis (members)
- **Whistleblower Protection:**
  Ms Thandeka Gqubule-Mbeki (convenor)

The NACAC's work is supported by a Secretariat composed of officials from the Presidency, the Department of Planning, Monitoring and Evaluation, and the State-owned Entity established by the Office of the Director-General in the Presidency.

## 2.6 Relevance of the NACAC mandate

The contextual relevance of the NACAC mandate and its custodianship in implementing South Africa's Anti-Corruption Strategy must first be measured in terms of its responsiveness to corruption in South Africa in the last decade, as highlighted by the State Capture Commission. Secondly, the relevance of the NACAC mandate must be measured in terms of its alignment with international and national legal frameworks. The United Nations Convention against Corruption (UNCAC) was developed as a comprehensive response to this global problem. UNCAC requires state parties to ensure the existence of a body or bodies that prevent corruption (article 6), and that specialise in combating corruption through law enforcement (article 36). It provides that States parties shall grant such a body or bodies the necessary independence to enable them to carry out their functions effectively and free from any undue influence, as well as the necessary material resources, specialised staff, and training that such staff may require to carry out their functions. South Africa is also a signatory to the following international conventions: the Organization for Economic Co-operation and Development (OECD) Anti-Bribery Convention, the SADC Protocol Against Corruption, and the AU Convention on Preventing and Combating Corruption.

The NACAC's mandate is to address corruption that negatively impacts socio-economic development and service delivery in the country and undermines the governance of private and public institutions and the rule of law. The NACAC's strategic intent is to respond to the South African Constitution's obligations to protect the values embedded in a democratic South African state and the whole of society – values of openness, responsiveness, and accountability. The Constitution describes state institutions and their obligation to prevent and combat crime, as well as the state's responsibility to protect the poor and vulnerable sections of society and to put them first in state budgeting and provision of social services.

## 2.7 Description of the work of the NACAC

The work and key activities of the National Anti-Corruption Advisory Council over the past 18 months are described in this section.

The NACAC Plenary met monthly to plan and report on activities of the different workstreams, to take key decisions, and to propose actions for the implementation of the NACS. The Plenary has adopted key advisories to submit to the President, which will be discussed in the respective workstream reports.

### 2.7.1 Institutional Architecture

The Institutional Architecture workstream focused its work on understanding the current anti-corruption institutional architecture and on developing a recommendation for the creation of an anti-corruption agency to deal primarily with systemic corruption. This recommendation was discussed in the previous chapter.

The workstream convened a reference group of experts from civil society who provided research and advice to support its work. Various engagements and interviews were held with law enforcement and government stakeholders, in particular the heads of institutions like the Special Investigating Unit, the National Prosecuting Authority, the Directorate for Priority Crime Investigation, and the collective Anti-Corruption Task Team (ACTT). To understand the institutional architecture, the workstream conducted a collaborative system mapping workshop with heads and staff of law enforcement agencies and civil society representatives on 15 September 2023 to collect data on problems faced by anti-corruption agencies. This was held as part of the ongoing research that will inform the recommendations to the President on reforms to the country's anti-corruption architecture. The workstream conducted a series of in-depth expert interviews with key stakeholders from law enforcement agencies. It also did extensive desktop research, gathering sufficient evidence to inform its analysis of the ecosystem of law enforcement agencies and to make recommendations on strengthening the criminal justice system. Based on this research, and the engagements with national and international players in law enforcement agencies, the workstream conceptualised the creation of a new, independent, overarching institution to play a leading role in dealing with systemic corruption.

### 2.7.2 Procurement Reforms

Public procurement is a key pillar of service delivery, and of realising the aspirations of our Constitution for equitable and just social and economic development. The government spends around R1 trillion per annum on the procurement of goods, services, and works.

While we have made progress in the fight against state capture and corruption, much work remains to rebuild the capacity of the state to reduce the risk of corruption in procurement.

State capture revealed significant deficiencies in the existing procurement systems and processes. The public procurement system was the primary site for the redirection of state resources, particularly in state-owned entities, which have the largest procurement, capital, and operational budgets.

Enhancing the integrity of the public procurement system must therefore be a central component of the state's response to state capture. It is also a pillar of the National Anti-Corruption Strategy, which anticipates a public procurement system that is insulated from corruption and is better structured to drive development, expand the productive base of the economy, and support innovation and investment. A sound procurement system can significantly reduce the risks of corruption in public procurement. The recommendations by the NACAC are made with this in mind.

The recommendations are also made mindful of the need to ensure that the fight against corruption does not lead to perverse outcomes. The Public Finance Management Act (PFMA) and the Municipal Finance Management Act (MFMA) were designed to enable managers to manage while holding them accountable. The intention is for accounting officers to be problem-solvers, and not to be prosecuted for making decisions in good faith. This was a need recognised by the Zondo Commission.

The Public Procurement Reform workstream established a reference group of experts from academia and civil society to support its work. The workstream held a workshop at the Protea Hotel, Hatfield on 21 September 2023, which was co-hosted by the United Nations Office on Drugs and Crime. The dialogue and input from different sectors of society contributed to a rich evidence base that informed the analysis of and recommendations on procurement reforms. Various engagements took place with key government stakeholders regarding public procurement, and also with the Kenyan Public Procurement Regulatory Authority, Kenya Institute of Supply Management (KISM), and Kenya Institute of Supplies Examination Board (KISEB), on a study tour to Kenya.

The NACAC approved an advisory to the President on the Public Procurement Bill on proposed procurement reforms, which addressed several weaknesses in the Bill from an anti-corruption perspective.

It recommended that the Bill should:

- provide for the establishment of an independent Public Procurement Regulatory Authority (PPRA) to ensure independence and effectiveness in the regulation of public procurement and refer issues of corruption and procurement fraud to the relevant law enforcement bodies;
- reduce the exclusions and complexity of the regulatory system, since excessive exclusions and complexity are breeding grounds for corruption;
- provide for the establishment of a procurement professional body and accreditation system;
- set out clear principles and an approach to guide open data and transparency requirements;
- require the PPRA to refer issues of corruption and procurement fraud to the relevant law enforcement bodies;
- protect whistleblowing about public procurement within the framework established in the Protected Disclosures Act;
- embed open contracting reforms throughout the full procurement cycle to strengthen anti-corruption measures; and
- make provision for a national anti-corruption charter to be signed by all bidders on state contracts, as envisaged by the Zondo Commission.

### 2.7.3 Monitoring, Evaluation, Research, and Learning

The NACAC Monitoring, Evaluation, Research, and Learning (MERL) workstream hosted a workshop in October 2023 on the design of a NACS Implementation Plan and Monitoring Framework. The key objective was to build consensus on the NACS Implementation Plan, which is critical for the institutionalisation of NACS interventions in government programmes. Participants included the NACAC MERL workstream and its reference group, other NACAC workstreams and the NACAC secretariat, and representatives from the Department of Planning, Monitoring and Evaluation (DPME), the Human Sciences Research Council (HSRC), the WITS Centre for Learning on Evaluation and Results (CLEAR-AA) and the GIZ Transparency, Integrity and Accountability Programme (TIP).

To support the development of a coherent conceptual framework by which South Africa can be able to monitor and assess whether the NACS is making a meaningful contribution to mitigating corruption risk and strengthening integrity in the public sector and society at large, the workstream has conducted a literature review to benchmark approaches to measure the efficacy of anti-corruption strategies. The purpose of this literature review is to guide the development of a monitoring system with robust indicators that support the use of an evidence-based approach to measure the implementation of the NACS. The draft indicators will guide the alignment of specific programmes and projects that will be implemented individually and collectively by social partners in the all-government and all-society approach prompted by the NACS. The literature review will be developed into a discussion document for further engagement with sectoral partners.

The workstream has prepared an advisory on the mainstreaming of the NACS through government, which has been referred to the President. The advisory urges the President to raise the NACS as the guiding framework for all anti-corruption programmes and initiatives conducted by government in the development of the mid-term strategic framework of the seventh administration. It goes further to urge the integration of the NACS into the annual performance planning cycle of government, starting in the 2024/25 financial year.

### 2.7.4 Legislation & Transparency

This workstream focused their work on strengthening transparency in political party funding. Money and politics have long been intertwined, often resulting in a complex relationship that can deeply affect democratic processes and, in unregulated environments, give rise to corruption and state capture. Financial support from wealthy individuals and corporations can shape elections and policy decisions, potentially leading to outcomes that favour private interests over the needs of the broader population. In response to recommendations emanating from both the State Capture Commission and the National Anti-Corruption Strategy (NACS), that regulations and transparency relating to political party funding should be strengthened and improved, the NACAC legislative reform and transparency workstream submitted two advisories to the President on this matter.

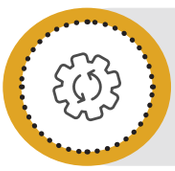
In its first advisory, NACAC made the following recommendations:

**Corrupt donations:** The Political Party Funding Act (PPFA) should not introduce the Corrupt Donation Crime as a separate offense, as recommended by the State Capture Commission. Instead, it should reference Section 13 of the Prevention and Combating of Corrupt Activities Act (PRECCA), which already criminalises corrupt donations.

**Disclosure and caps:** Any amendments to the current thresholds for disclosure and caps on donations should be postponed until sufficient evidence is available to make informed decisions regarding more appropriate thresholds and caps.

**Natural person disclosures:** Natural persons who donate amounts exceeding the Section 9(1)(a) threshold should be required to disclose their donations directly to the Independent Electoral Commission (IEC).

**Circumvention of caps:** Natural persons and juristic entities should be prohibited from circumventing the Section 8(2) cap by making multiple donations through related juristic entities.



**Bank account for donations:** Section 10 of the PPFA should be strengthened by requiring all private monetary donations to political parties to be deposited directly into the bank account specifically created for donations in Section 12(1)(a).

**Internal party races:** Donations made to internal party races should be subjected to the same disclosure thresholds and prescribed maximum caps as those applied to political party funding by the PPFA.

**Investment vehicles:** Mandate the disclosure of sources of investment income for political party investment vehicles and subject them to the same prohibited sources of income imposed on political parties in Section 8(1).

**Independent candidates:** Donations received by independent candidates should be regulated and guidelines set for how they receive money from public funds, as established in Sections 2 and 3.

**Political Party Funding Unit:** The Political Party Funding Unit (PPFU) within the IEC should be adequately resourced and staffed to effectively conduct oversight, monitor donations, and investigate complaints.

Following the adoption of the Electoral Matters Amendment Bill (EMAB) by the National Assembly and National Council of Provinces, the NACAC submitted a second advisory.

This advisory cautioned the President that, if he enacts certain provisions of the Electoral Matters Amendment Bill (EMAB) without concurrently issuing a proclamation based on a resolution from the National Assembly specifying both disclosure thresholds and maximum donation limits, political parties and independent candidates will not be legally obligated to reveal their funding sources, nor will there be any imposed upper limits on the donations they can receive.

NACAC was concerned that this legal gap, especially during a critical election period, could increase the risks of both quid pro quo and clientelist corruption, thereby undermining the integrity of the election.

To address these concerns, NACAC advised the President to assent the EMAB into law, but specify an alternative commencement date for the sections concerning disclosure thresholds and donation limits. To avoid a lacuna in law, protect the integrity of the electoral process, and mitigate corruption risks, we recommended that these provisions come into effect on 1 July 2024. This approach will ensure a seamless transition during the election and reinforce the PPFA during the interim period.

**Improving data collection and use to fight corruption in South Africa**

Another key milestone achieved by the workstream was the hosting of the InData workshop, held on 18 -19 September 2023, organised in conjunction with the Special Investigating Unit, Department of Cooperative Governance, and the Transparency, Integrity, and Accountability Programme of the GIZ, which brought together key stakeholders to explore the role of data analytics and science in combating corruption in South Africa. Organised by NACAC in partnership with various stakeholders, the event introduced participants to corruption intelligence and data mapping, offered practical skills in data collection and analysis, and discussed the challenges and opportunities of using data-driven approaches in anti-corruption efforts.

**The workshop's primary objectives included:**

- **Data mapping:**
  To provide participants with tools for data collection and analysis, helping to map organisations collecting corruption data and to demonstrate how data tools can identify corruption risks and vulnerabilities.
- **Opportunities and challenges:**
  To discuss the opportunities available from existing data, including entity profiling, identifying high-risk organisations, data-driven risk assessments, and predicting waves of corruption. The challenges, such as legal, privacy, and ethical concerns, data specificity, and the need for data standards, were also explored in the workshop.
- **Data-driven strategies:**
  To examine specific strategies for addressing corruption in vulnerable sectors such as healthcare, local government, and infrastructure.

**The key issues that emerged from the consultative sessions were:**

- **Legal and ethical considerations:**
  The need to balance transparency and compliance with laws like POPIA (the Protection of Personal Information Act), as well as ensuring sensitive data is handled appropriately.
- **Data specificity:**
  The need for specific and granular data must be managed around the risks of accessibility of data for different audiences.
- **Central repository:**
  Participants called for a central data repository, although concerns regarding privacy, accuracy, and accessibility protocols were raised.
- **Trust and collaboration:**
  Participants emphasised the need for trust-building within and across sectors, and establishing a culture of responsible and ethical data sharing.

**Consensus and way forward:**

The workshop emphasised the importance of data-centric interventions, collaboration, and innovation in anti-corruption efforts:

- **Data governance:**
  Developing a framework to guide ethical and lawful data sharing.
- **Cross-sector collaboration:**
  The need for partnerships to integrate and analyse data efficiently.
- **Capacity building:**
  The importance of employing data analysts/scientists in the public sector to create the capacity to use data techniques and tools.

In 2024, NACAC plans to organise a follow-up workshop to further discuss data governance, standards, and collaboration, alongside practical training sessions.

### 2.7.5 Whistleblower Protection and Support

This workstream conducted extensive research on international best practice frameworks, including research visits to the Netherlands and Kenya on whistleblower policy. In addition, the workstream conducted collaborative research with South African experts from civil society, including engagement with key stakeholders – the Department of Justice and Constitutional Development in particular – in finding solutions to improve the legal and policy framework governing the support and protection of whistleblowers.

In line with Pillar One of the NACS, which aims to protect and support whistleblowers and resource whistleblower mechanisms, this workstream developed two Presidential Advisories on whistleblowing. The first advisory was on the appointment of a retired judge as an interim arrangement for the protection of whistleblowers while the legislative reforms and institutional architecture were developed and processed.

The first advisory makes the following recommendations related to the protection and support of whistleblowers:

That the President issues further public communication in support of whistleblowers who are exposing corruption. This could be in the form of a media statement, or from the President's weekly 'From the Desk of The President' newsletter;

That the President should table his support for whistleblowers at a Cabinet meeting and note that retaliatory behaviour towards whistleblowers will not be condoned. A statement by Cabinet should be released to the public in this regard, outlining the potential consequences for public servants and public office bearers who attack and victimise whistleblowers.

That, through the relevant NACAC workstream, the President should convene a small gathering of whistleblowers who exposed corruption at various state entities, to publicly recognise these individuals for their efforts, integrity, and perseverance, and to better understand the plight they faced.

That the President considers acknowledging whistleblowers who exposed corruption with national orders of merit for their duty to our country and service to our nation.

The second advisory was on the reform of the Protected Disclosures Act and the need for next-generation whistleblower legislation in South Africa.

## 2.7.6 Communication and Engagement

NACAC has approved the NACS Communication and Engagement Strategy. This workstream led the collaboration with broader society by hosting the National Anti-Corruption Dialogue 2023, which was held on 8 and 9 November 2023 at the Birchwood Conference Centre in Ekurhuleni with support from the Transparency, Integrity and Accountability Programme of GIZ and the United Nations Office on Drugs and Crime. The event was attended by the President, Chief Justice Zondo, numerous cabinet ministers, representatives from the National Economic Development and Labour Council (Nedlac), foreign dignitaries, and the media. The dialogue brought together 300 invitees from government, business, and civil society. The first day, facilitated by the chairperson of the Public Service Commission, involved addresses from the President, the Chief Justice, the Chairperson of NACAC, Prof Christopher Stone, as well as inputs from Nedlac labour and civil society representatives. The second day provided an opportunity for in-depth engagement and consultation on the focus areas of the NACAC workstreams. In addition, the workstream organised two roadshows in North West and Limpopo provinces that took place during the review period. These were hosted by the respective Premiers' offices and led by the NACAC communication workstream. The workstream developed a logo and a website.

# PART 3 — THE NEXT PHASE OF IMPLEMENTATION OF NACAC

In the next phase of implementation, NACAC will prioritise the further development of the OPI and the implementation of the different pillars of NACS across the whole of government and South African society.

## 3.1 Key issues to be addressed through further research and engagements

Part Three deals with issues that the NACAC will address through further research and engagements.

**Planning for the transitional arrangement for the establishment of the Office of Public Integrity (OPI)**

As a transitional arrangement, the NACAC will plan to establish a new institution with clearly delineated functions and powers to deal with systemic corruption, by using and expanding on the existing infrastructure, resources, personnel, and powers of the Special Investigating Unit. This will allow the new body to take up its strategic mandate without the delays and expenses that an entirely new institution would necessitate. Further research will be conducted in drafting the enabling legislation and/or amendments to current legislation for the establishment of the OPI, in particular defining its mandate, powers, and functions in close engagements with key stakeholders.

**Strengthening the capability and independence of law enforcement agencies**

The NACAC, through further research and engagement with key stakeholders, will work towards strengthening the existing capability and independence of law enforcement agencies, streamlining functions to manage duplication, and facilitating collaboration and coordination.

For example, the NACAC recognises that, despite advances in the NPA Amendment Act, the overall governance of the NPA compromises its independence and, by extension, that of the Independent Directorate to prosecute corruption cases effectively. The NACAC plans to engage in further research and consultations to strengthen the independence and resourcing of the NPA in terms of the criteria for independence set out in STIRS and the Jakarta Principles. The Council will conduct further research on strengthening law enforcement agencies and the criminal justice system.

**Strengthening legislative reform and transparency**

In the NACAC's next phase, the Council will produce advisories relating to enacting legislation on lobbying, as well as the appointment processes of senior government officials. Additionally, we will commence with research and deliver advice on how to effectively combat financial crimes in South Africa.

**Strengthening the public procurement system**

Following the advisory to the President on strengthening the Public Procurement Bill, the NACAC intends to make further recommendations about the framework of the Public Procurement Regulatory Authority as it pertains to the control and reduction of corruption risk and the relationship with the proposed OPI; the establishment of a professional institute and accreditation system for procurement practitioners; and open data and e-procurement.

**Strengthening professionalisation and discipline management in the public sector**

The NACAC recognises that poor enforcement of lifestyle audits and discipline management in the public sector enables corruption. The NACAC intends to engage with the Public Service Commission and the DPSA to strengthen lifestyle audits and discipline management in the public service. Discerning the correct institutional framework for this task is beyond the mandate of the NACAC. Accordingly, the NACAC will engage with PSC to consider research to reform and strengthen discipline management in the public sector, and to examine how lifestyle audits can be conducted in the local government sphere and state-owned entities. We believe that the imperative to strengthen discipline management in the public sector is a critical component of the government's stated commitment to the professionalisation of the public sector. The Council will conduct further research into strengthening professionalisation and integrity management systems within the government. This will include recommendations relating to the process governing the appointment of senior public officials.

**Strengthening whistle-blower protection and support**

The NACAC will have to consider whether whistleblower and witness protection functions should be located in the OPI. The NACAC will conduct further research in several areas: on the exact design of the proposed new permanent institution, considering international best practices; how to deal with all whistleblowers, not just those assisting the OPI; how to define whistleblowers, i.e., determine the threshold for support and protection; exactly what capabilities the permanent institution will require; resourcing the new institution; further research topics that include education/communication campaigns based on international models; and on the system of compensation, rewards, and awards; and how whistleblower policy should deal with different types of whistleblowers, e.g., the innocent 'good faith' whistleblower versus the person implicated in criminal conduct.

**Institutionalising the implementation, monitoring, and reporting on the key pillars of the National Anti-Corruption Strategy in the Medium Term 2024-2029 Plan of Government.**

The Council will engage with key governance structures and committees to encourage government institutions to institutionalise the implementation, monitoring, and reporting of the key pillars of the NACS in the Medium Term 2024-2029 Plan. The strategic plans (2024-29) and annual plans and programmes of government institutions should focus on strengthening state capability through the prevention of corruption. Strategic interventions should aim to promote good governance, transparency, integrity management, accountability, and early detection of potentially corrupt practices in government; and should include discipline and consequence management. National departments should drive the implementation and monitoring of key strategic interventions in NACS in partnership with key stakeholders in the 'whole of government and whole of society'. The monitoring framework of the NACS should include key performance measurements for each intervention to guide the gathering and analysing of data relevant to corruption and anti-corruption, and to monitor and evaluate the impact of measures designed to prevent corruption. The critical issues of gender and human rights should inform performance measurements of outputs and outcomes, data sourcing, data analysis, and reporting.

## 3.2 Concluding remarks

In the past 18 months, in its first phase of implementation, the National Anti-Corruption Advisory Council (NACAC) responded to the State Capture Commission recommendations on the prevention and combating of corruption. The NACAC executed its operational activities in collaboration with key stakeholders in civil society, business, and government, and achieved its outputs as planned. Furthermore, through a broad consultative process with key national and international stakeholders and social partners, the NACAC was able to develop a proposal for submission to the President on the establishment of a permanent anti-corruption body in collaboration with existing law enforcement agencies to strengthen the detection, investigation, and prosecution of systemic corruption. The NACAC produced evidenced-based advisories to the President to strengthen procurement, mitigate risks of party-political funding, and implement whistleblower protection and support policies.

In the next phase of implementation, the NACAC's work will focus on establishing the anti-corruption body and facilitating the implementation of the NACS. The Council will intentionally enhance its communication and advocacy of the NACS as an all-of-society effort, with government, business, and civil society working together to contribute to significantly reduced levels of corruption, and improved investor and public confidence in South Africa.

## NOTES:

## NOTES:

## NOTES:

## NOTES:

*Presents the*

# MID-TERM REPORT

## *To the President, The Cabinet & The Country*

## MAY 2024


**CONTACT US**

+27(0)12 300 5200 | +27(0)12 323 8246

nacac@presidency.gov.za

www.anticorruption.gov.za

NACAC
National
Anti-Corruption
Advisory Council

# The Future of Gender and Trust in Governance in 2040

## Futures Literacy Laboratory Report

NACS National Anti-Corruption Strategy

german cooperation

giz

State Secretariat for Economic Affairs SECO

WITS UNIVERSITY

TAYA RISHA

FUTURE AFRICA

# Background

This project was initiated following discussions between GIZ, Wits University, and the Future Africa Futures Literacy Incubator. GIZ requested the design and implementation of a Futures Literacy Laboratory (FLL) to explore the intersection of gender and corruption in preparation for the national anti-corruption dialogue on December 9, 2024. Two co-design meetings were held on November 12 and 22, 2024, to define the project objectives and design the lab.

The FLL took place over the course of a full day on December 3, 2024 at the Future Africa campus in Pretoria. The insights generated during the FLL are documented in this short report and will be used to inform the national dialogue and ongoing activities of the National Anti-Corruption Advisory Council. By participating in the FLL, members of the National Anti-Corruption Advisory Council were equipped to use the future as a lens to reframe their present challenges and opportunities, enhancing their ability to navigate and influence an unpredictable and complex landscape.

# Laboratory Design

The co-design process entailed a small team of the FLL facilitators jointly making decisions about the lab topic, participants, format, agenda, and activities. This step ensured that the FLL was relevant to the local context and that the topic was engaging and interesting for participants.

**What is a Futures Literacy Laboratory?**

The Futures Literacy Laboratory (FLL) is a learning by doing collective intelligence process that involves getting participants to describe and imagine different kinds of futures in the context of a particular topic. The topic of this particular lab - “The Future of Gender and Trust in Governance in 2040” was chosen to engage participants in exploring the intersection of gender and corruption in South Africa. The year 2040 is significant as it marks 20 years since the launch of the National Anti-Corruption Strategy. Through the lab, participants engaged with different ways of using the future, imagining probable, preferred as well as strange and unexpected futures. The goal of these activities is to get participants to think about thinking about the future – and to disrupt the tacit assumptions that they usually use for this task. This process enhances participants' personal and organizational futures literacy, enabling them to: 1) gain a deeper understanding of the future's role in their perceptions and actions, 2) innovate and adapt to change, and 3) leverage the future to rethink the present, fostering creativity and new perspectives.

**Key Aspects of the Co-Design Process**

- Two virtual co-design meetings were held on November 12 and 22 to plan for and design the FLL.
- The FLL was designed to take place over the course of one full day at Future Africa Campus within the University of Pretoria.
- The design was divided into two stages: the morning session featured the four phases of a standard futures laboratory, while the afternoon was dedicated to a 3

Horizon exercise. This approach was chosen to facilitate both open exploration and the identification of areas for action or next steps.

- Key questions that emerged during the co-design process included:
    - How do we establish trust in family, social, and govt. settings pertaining to gender?
    - How is this trust used or abused in these settings?
    - Why do we need to apply a gender lens to an anti-corruption institution?
        - What are the harms of not applying a gender lens
        - What are the benefits of applying a gender lens
    - How can we imagine implementing this in the Office of Public Integrity (OPI)
- The lab topic was extensively discussed during the co-design. A topic provides a focus for group discussions and helps to draw participants attention to a particular area of interest. The topic should also avoid language that is leading, overly normative, or might constrain participants' imagination with predefined ideas and beliefs. For example, "The Future of Corruption" may lead to heated discussions that serve to entrench existing ideas whereas "The Future of Trust" allows for a more open exploration of social norms and values related to trust and corruption. In the end, the topic "**The Future of Gender and Trust in Governance in 2040**" was chosen as described above.

## Laboratory Results

**Characteristics of the participants**

Participants were selected from the National Anti Corruption Advisory Commission, Government agencies (individuals that have worked on ethics, gender, and anti-corruption), civil society (with focus on corruption), and academia.

At the start of the day there were 26 participants, with one or two more joining in the afternoon. The participants were divided into four groups, each comprising 6 to 7 people.

| Personal Information | Participants (N = 16) * | |
|---|---|---|
| | M ± SD | n (%) |
| Age | 47 ± 12 | |
| Min age | 30 | |
| Max age | 64 | |
| Gender | | |
| Female | | 13 (81%) |
| Male | | 3 (19%) |
| Profession | | |

*Table 1 - Participants Demographic Characteristics (* data based on responses to the post-lab evaluation form which not all participants completed)*

**Polak game**

At the very start of the FLL, before commencing the phased activities, an icebreaker activity was conducted to introduce participants to what lay ahead and to set the tone for the laboratory by encouraging participation. The Polak game, inspired by Dutch sociologist Frederik Lodewijk Polak, is typically used at the beginning of a futures laboratory to introduce the concept that there are various ways to anticipate the future (Hayward & Candy, 2017). Participants are asked to position themselves within a two-dimensional Cartesian space along two axes: the vertical axis represents optimism or pessimism about the future, and the horizontal axis represents the degree of agency to impact the future. This simple exercise demonstrates that even within the room, there are multiple futures. It initiates the process of uncovering the often hidden assumptions we hold about the future, making the implicit explicit.

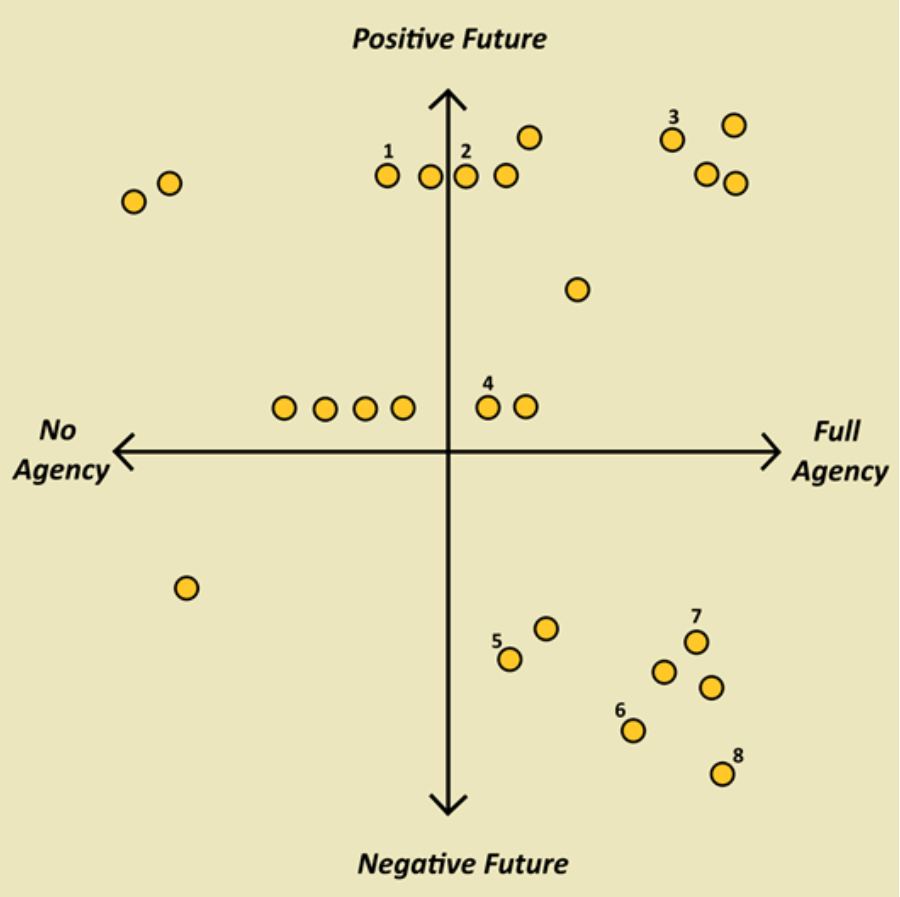



*Figure 1 - Polak Game Resuts*

Quotations from the Polak game:

1 - "It takes too much energy to be positive"
2 - "Recently, the special investigation unit came to our town and made positive changes"
3 - "It was my birthday yesterday... we shape the future we are problem solvers"
4 - "I'm generally optimistic but need to manage my expectations"
5 - "Technological progress in a positive but we have a crisis of leadership"
6 - "We have some agency.. but I think there will be no world left by 2040"

7 - "There is no grey area... either we are doing the right thing or not"
8 - "We all need to act now to make a change"

**Phase 1: Probable & Preferred Futures**

In phase 1, participants were asked to describe their probable and preferred futures for gender and trust in governance in 2040. By thinking through and sharing how they think about the future, the participants began to identify the often tacit anticipatory assumptions that shape their imagination of the later-than-now. The plenary facilitators played a role in revealing these patterns of thought to participants. Results from this phase have been digitized and can be accessed via the Miro platform:

*https://miro.com/app/board/uXjVLo1DzPs=/?share_link_id=641833729485*

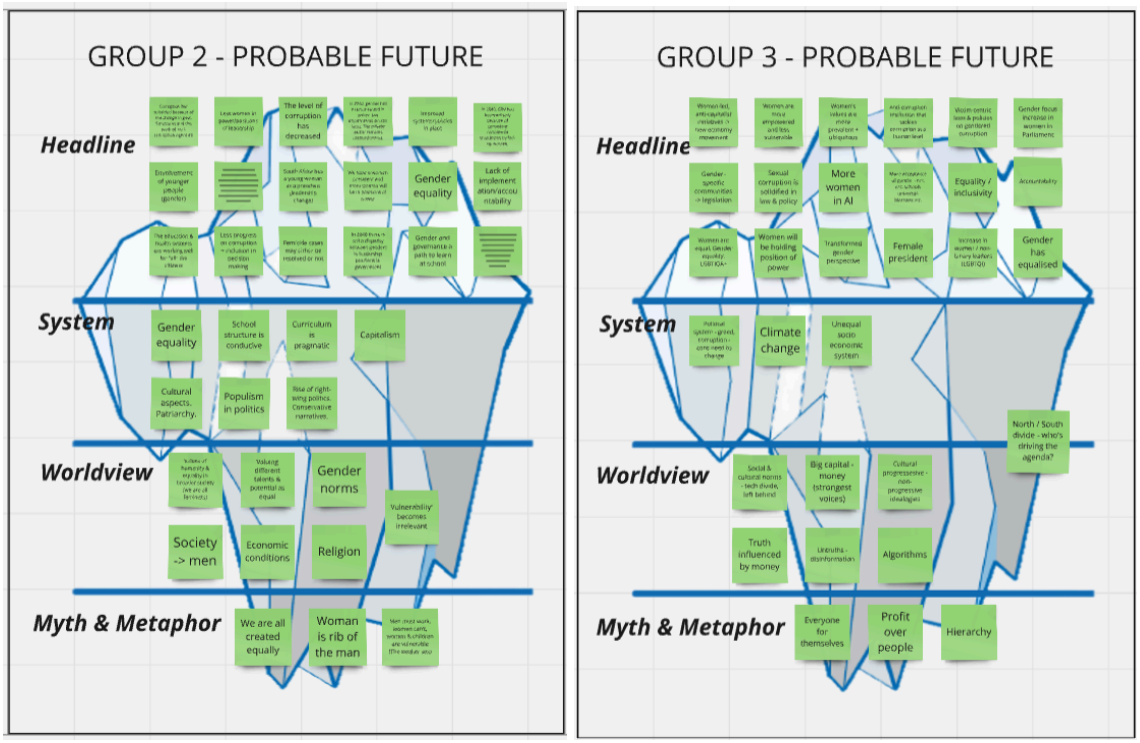



*Figure 3 - Causal Layered Analysis results digitized in Miro platform*

Participants were asked to use causal layered analysis (CLA) as a technique to & deepen the future they envisioned. CLA, developed by Sohail Inayatullah, is a method used to critically examine what drives our images of the future and open up space for alternatives. It consists of four levels: **headlines**, which are the surface understanding of an issue, usually backed by data, maps current response and views about the issue; **systems,** which are social, economic, political structures, community, and even familial policies, official or unofficial, underlying the issue; **worldviews**, which refer to deeper cultural assumptions and values that enable structures and behaviours; and **myth or metaphor** which represent the social narratives and imagery, acting at the level of collective consciousness.

*Figure 4 - Group work during phase 1*

**Phase 2: Reframed Futures**

In phase 2, participants embarked on a journey of experimentation and re-conceptualization. This phase is the heart of the futures lab, where the challenge lies in imagining futures that are neither probable nor necessarily desirable. It's a tough task because it pushes participants to fully engage their imaginations, breaking free from the dominant narratives that society often subconsciously accepts. By uncovering and questioning these assumptions, phase 2 invites participants into a world of novelty and complexity. Each group was asked to envision two scenarios of a reimagined future and bring these worlds to life through sculptures. The group reframe scenarios are outlined below:

Group 1:

| **No hierarchies in 2050** |
| --- |
| While hierarchies, whether in organizational structures, governance, or social systems, have been deeply ingrained in human societies throughout history, advances in technology, particularly in ICT-sharing platforms contribute to more decentralized and collaborative decision-making processes. Digital platforms and tools facilitate greater participation and reduce the reliance on traditional hierarchical models. Social movements advocating for equality, diversity, and social justice lead with their influence on the dismantling or restructuring of hierarchical systems. |
| **The Age of Impermanence** |
| The concept of permanence has become obsolete. Everything, from physical objects to relationships to institutions and policies, is designed to be temporary and dispensable, fully in relation to their relevance and efficacy at any point in time. Like a tide coming in and out, washing over marks on a shore, nothing is developed to exist for long. |

*Figure 4 - Group 1 presenting their reframe scenario sculpture*

Group 2:

| **Gender Fluid Society** |
| --- |
| In a gender-fluid society, individuals have the autonomy to define their own gender identity, embracing the principle of gender self-determination. There is an understanding that gender is not fixed but can change over time, fostering a dynamic and authentic expression of self. |
| **Government 3.0** |
| In 2040, government services are all automated, having fully incorporated cutting-edge technologies. It is the norm to have Personalized public services (including healthcare and education); Predictive governance (e.g. for urban planning and disaster response); AI-driven decision support informs policy decisions; and Blockchain-powered security ensures the security and transparency of government transactions and records, including land registries and voting systems. |

*Figure 5 - Group 2 presenting their reframe scenario sculpture*

Group 3:

| **“Progress” and “Development” Redefined** |
| --- |
| In 2040 progress is no longer defined by measures of economic output or industrial development. Instead, progress and wealth are understood in terms of the celebration of diverse cultures and traditions, artistic expression, cultural exchange, and the protection of heritage sites. |
| **Murmuration: A Heterarchical, Learning Intensive Society** |
| The nature of leadership and social behaviour has transformed profoundly - resembling that of a starling murmuration. Beginnings and ends, leading and following, inside and outside are all constantly changing yet there is a beautifully shifting order to things. |

*Figure 6 - Group 3 presenting their reframe scenario sculpture*

Group 4:

| **The Mycelium Network Future** |
| --- |
| A socio-biological evolution led to humans becoming interconnected with the rest of nature, just as fungi are connected underground via incomprehensibly complex networks of mycelium. The Earth is a fully networked living entity, and people experience emotional and even physical responses to planetary health, including pain - from climate change, deforestation, loss of biodiversity, and other environmental challenges. |
| **All Leaders AI Watchdog (ALAW)** |
| Everyone in a registered leadership role (public sector, private sector, non-governmental organisations, including faith-based) is assigned an anti-corruption device which conducts 24-hour surveillance of all activities and senses any inappropriate conduct (potential corruption), tries, prosecutes and judges the individual based on an objective application of the law. It is an effective judge, jury and executioner. |

*Figure 7 - Group 4 reframe scenario sculpture*

**Phase 3: New Questions**

In phase 3, participants took a step back to reflect on how the reframe in Phase 2 changed (or did not change) the way they thought about gender and trust in governance. Some of the "new questions" that came up highlighted the ways participants were re-examining their anticipatory assumptions and using this new perspective to re-evaluate the present:

" Is a centralised society the answer or should we look at localised mechanisms at community level? "

" How to build a future based on values rather than practicalities? How to be creative? "

" Do we need leaders? Can we coexist as just society that does not recognise gender / power? "

“ What new systems can we construct? Cohesion and collaboration is vital ”

“ What needs to happen that people open their minds + change the way we live / govern / lead? -> How do we get there? ”

“ How to build interconnectedness b/t people -> people and people -> nature? ”

**Phase 4: Next Steps & Three Horizons**

In phase 4, the participants were guided through a three horizons exercise to focus on ways in which the insights and capabilities gained through the laboratory can be used in their work and everyday environments. Three horizons is a futures method that entails taking a vision of the future (e.g. a more fair and equitable South Africa) and connecting it to existing systems and structures in the present. This highlights the tensions between the dominant way of doing things in the present and the change imagined in the future. The method is useful for identifying potential transitions that link the imagined future to the present. The method envisions three horizons, each of which describe very different conditions that become more or less prevalent over time.

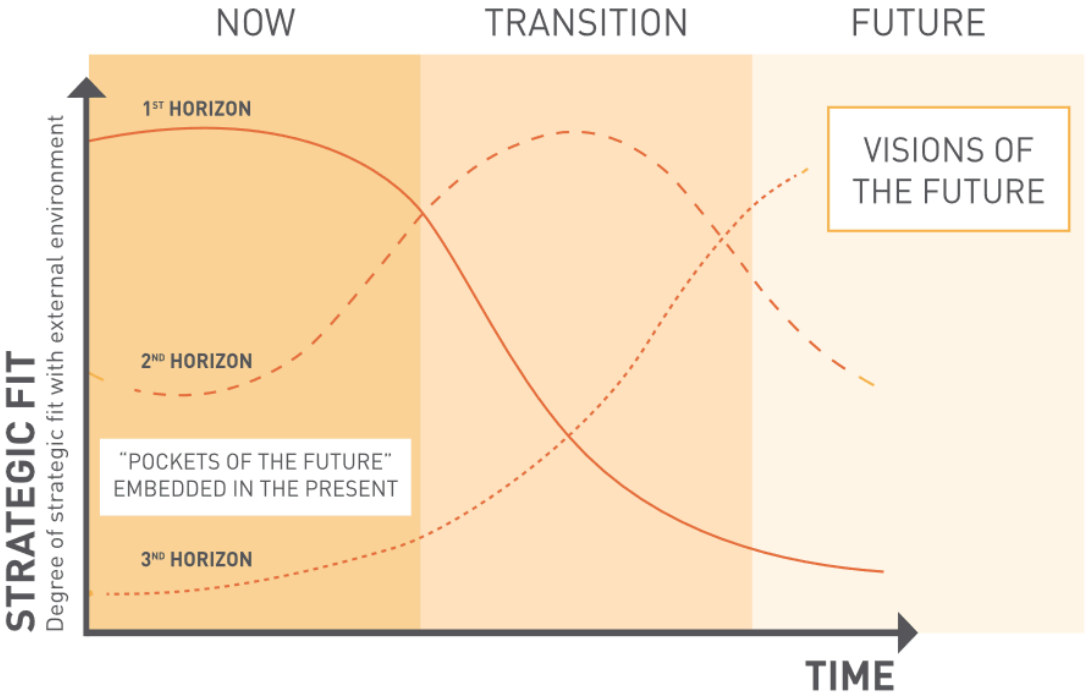



*Figure 8 - Three horizons exercise*

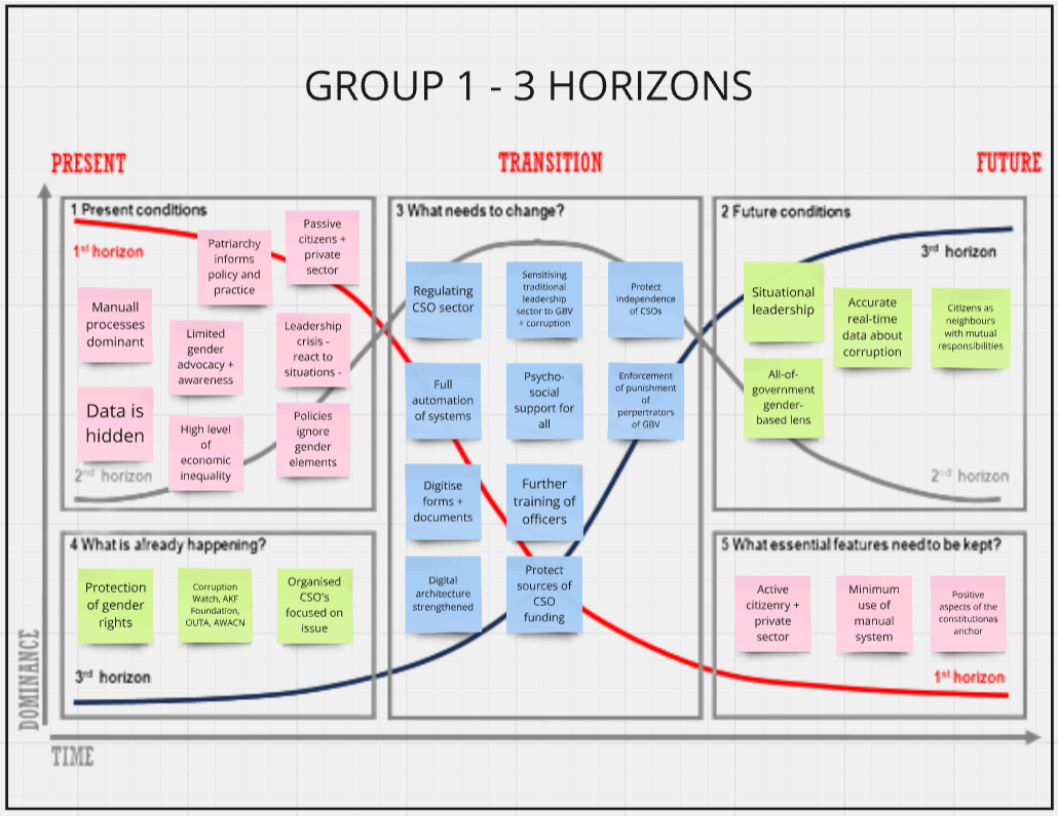



*Figure 9 - Three horizons exercise from the lab digitized on the Miro platform: https://miro.com/app/board/uXjVLo1DzPs=/?share_link_id=641833729485*

Horizon 1: The prevailing systems and ways of doing things in the present

Horizon 3: Describing “new” ideas and systems that are not mainstream in the present but may become so in the future

Horizon 2: An intermediate space where transition between competing paths (1 and 3) plays out.

The recommendations derived from the 'levers of change' developed by each group in Horizon 2 are outlined below:

| Group | Recommendation |
|---|---|
| 1 | Regulating CSO sector |
| 1 | Sensitising traditional leadership sector to GBV + corruption |
| 1 | Protect independence of CSOs |
| 1 | Protect sources of CSO funding |
| 1 | Full automation of systems |
| 1 | Psycho-social support for all |
| 1 | Enforcement of punishment of perpetrators of GBV |
| 1 | Digital architecture strengthened |
| 1 | Digitise forms + documents |
| 1 | Further training of officers |
| 2 | Open communication & collaboration between agencies, also to reduce |

| Group | Recommendation |
|---|---|
| | competition (Civil society can play a role) |
| 2 | Open communication about anti-corruption initiatives & strategy, improve public awareness, also of roles of different agencies |
| 2 | Exchange programmes with other countries' anti-corruption |
| 2 | Data collection & analysis (you can't measure what you don't know) (streamlined / centralised) |
| 2 | Skills transfer across agencies & across sectors |
| 2 | Contextualisation of new international obligations on gender & corruption |
| 2 | A human-centred approach to anti-corruption that takes into account the realities & vulnerabilities of the context (civil society) |
| 2 | Review existing policies for effectiveness & inclusivity & improve implementation (civil society can play a role) |
| 2 | Capacitation on gender dimensions of corruption / mainstreaming in prevention, investigation, data collection / analysis, HR, monitoring (civil society) |
| 2 | Proactive approach to prevention, robust & must be mandated to a specific agency |
| 3 | Victim blaming |
| 3 | Criminalise retaliatory actions against whistleblowers |
| 3 | SAPS / Law enforcement |
| 3 | Enforced consequences 4 perps |
| 3 | More progressive gender education |
| 3 | Education curriculum - include ethics, gender mainstreaming |
| 3 | From a gender initiative approach to gender mainstreaming |
| 3 | Peer counselling of men - non-violence |
| 3 | OPI's - all sectors |
| 3 | Reframing of social norms |
| 3 | Everything! |
| 4 | Diagnosing problems |
| 4 | Problem driven iterative adaptation |
| 4 | Gender lens |
| 4 | Resources + capacity for state institutions |
| 4 | Servant leadership |
| 4 | Communicate + celebrate wins + successes |
| 4 | Nationwide anti-corruption campaign on values + behaviours |
| 4 | *~~Financial~~ incentives for doing the right thing |

*Table 2: Levers of change identified by participants*

* The participant originally wrote financial incentives before deciding to change their recommendation to focus on non-financial incentives.

**Participant Feedback**

At the conclusion of the FLL, participants were encouraged to complete an evaluation form to assess their key takeaways from the lab and to determine if it 1) altered their perspectives

on the future and 2) changed the way they thought about gender and trust in governance. The results of this evaluation are presented below:

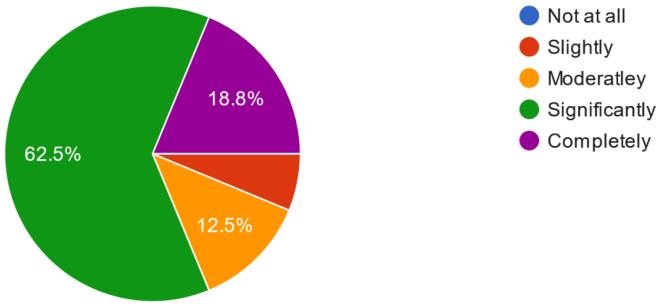



*Figure 10 - Did participating in the futures lab change the way you think about the future? (16 responses)*

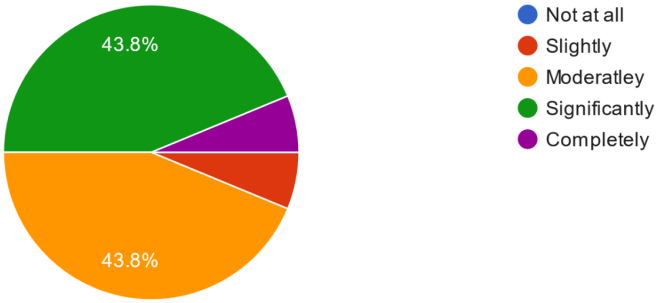



*Figure 11 - Did your perception of the topic: "Gender and Trust in Governance" change as a result of the futures lab? (16 responses)*

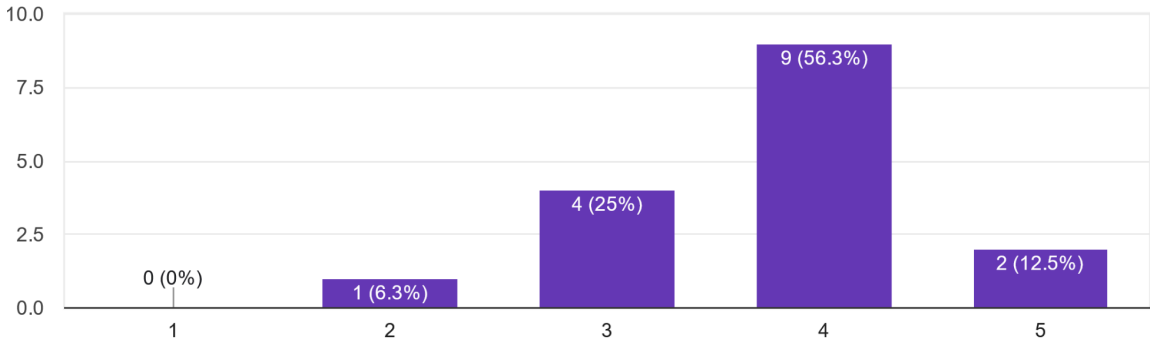



*Figure 12 - How would you rate your level of optimism / pessimism about the future? (16 responses)*

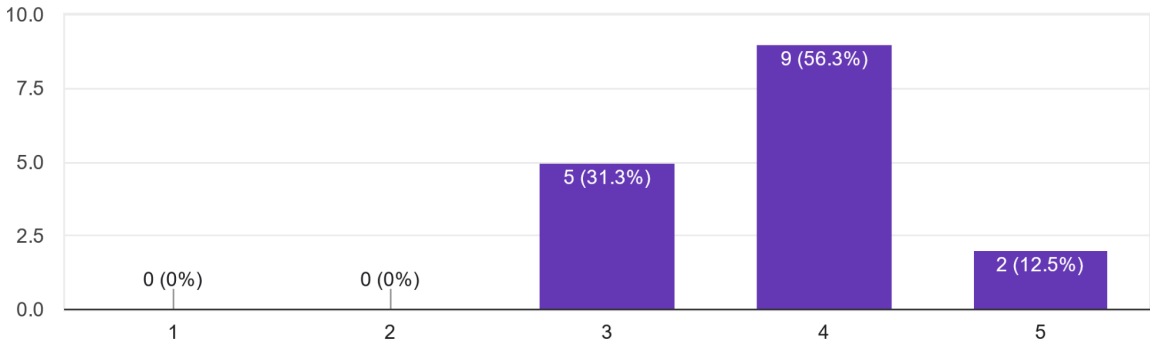



*Figure 13 - How much agency do you have to influence the future? (16 responses)*

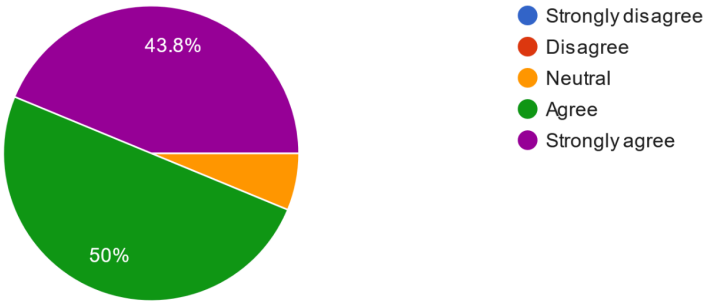



*Figure 14 - Indicate the extent to which you agree or disagree with the following statement based on your experience with the futures literacy lab: "The lab helped me realize and reflect on my assumptions about the future" (16 responses)*

## Insights

The futures literacy laboratory process began with participants describing their probable and desirable futures, specifically imagining the future of gender and trust in governance in 2040. By thinking through and sharing their visions, participants identified the often tacit anticipatory assumptions shaping their imagination of the future. In the second phase, participants challenged these assumptions and re-conceptualized the topic by imagining unusual futures that were neither probable nor desirable, using reframe scenarios. This phase opened participants to novelty and complexity in their worldview. The future served as a tool to unravel and explore thought processes on issues of gender and corruption, generating new insights and perspectives from the group. Key insights from the laboratory are documented here.

**Why versus how:** The group commented that discussions on anti-corruption often emphasize mechanisms such as policy, legislation, and enforcement, focusing on how to prevent corruption. However, these discussions tend to overlook a deeper examination of the values, power dynamics, and systemic realities that enable corruption to exist.

**Diagnosis, action, and adaptability:** There is a need to better understand the nexus of gender and corruption, which includes collecting data and researching the linkages and dynamics between them. At the same time, there is an opportunity to bring this issue to the attention of lawmakers, an opportunity that cannot be missed. It is crucial to avoid poorly

thought-out policies that could lead to ineffective implementation. However, it is also impossible to anticipate everything, as there is always uncertainty and unpredictability in the future. Recognizing the necessity for institutions that learn and adapt, one group used the metaphor of a wave washing away writing in the sand to illustrate the need for fluid and adaptable policies. As things constantly change, this highlights the importance of constant reflexivity, learning, and adaptability in any institution dealing with the complex issue of corruption and gender.

**Technology and shared values:** During the lab, technology was a recurring theme. Participants expressed a great deal of uncertainty about how technology would shape the future, using it as a vehicle to convey their hopes and fears. There was a sense of powerlessness regarding a world dominated by emerging technologies, leading to both positive and negative consequences. This sense of powerlessness, and the act of projecting hopes and fears onto something omnipresent and abstract like technology, may be linked to a resignation of our ability to control the future. Discussions also explored whether technology could address corruption, with AI frequently mentioned as a potential solution. However, concerns were raised about who controls AI and the implications of its governance. These conversations underscored the importance of critically adopting technology, recognizing the challenges of aligning shared values, and avoiding the assumption that technology alone can solve all problems.

**Gaps in the discussion:** The ideas and discussions that emerged during the lab had some interesting and notable gaps. There was an absence of discussion on power dynamics, which are crucial to understanding the broader context of corruption. Additionally, the lack of discussion on private sector involvement meant that important economic factors were potentially overlooked, highlighting the need for a more comprehensive exploration of these dynamics.

**Group dynamics:** Over 80% of the attendees identified as female, with the majority being in the 30-40 age range. Ensuring a balance of voices in future discussions could be crucial for effective strategy and policy development in future engagements.

## Recommendations

Initial recommendations that emerged from the discussions in the futures lab are described here.

1. **Emphasize diagnosis**: Continue to collect data and conduct research on the linkages between gender and corruption in order to properly diagnose the issue. This diagnosis should take place regularly to inform anti-corruption strategies and allow for continuous learning and adaptation.
2. **Adaptable policies and institutions**: To enhance the effectiveness of anti-corruption efforts, it is recommended to design institutions and policies that are adaptable to dynamic and unpredictable contexts. It is important to act quickly when

opportunities arise and to be able to learn from past mistakes and successes, including those of previous institutions.

3. **Differentiation and specificity**: It is essential to define the levels of intervention, specifying which policymakers should be involved. Additionally, it is important to identify who is affected by gender and corruption, considering the differentiated views and impacts on various groups.

*"The future is a social construct; if we made this present we can make a different future" - Councillor Thandeka*

## References:


1. Futures Literacy Laboratory Playbook. 2023. 978-92-3-100587-9. UNESCO.
2. Hayward, P. and Candy, S. 2017. The Polak Game, Or: Where Do You Stand? *Journal of Futures Studies, 22(2)*, pp. 5-14. DOI:10.6531/JFS.2017.22(2).A5.
3. Inayatullah, S. 1998. Causal Layered Analysis: Poststructuralism as method. *Futures* Vol. 30, No. 8 : 815–829.
4. Miller, R. (2018). Transforming the Future: Anticipation in the 21st Century (edited by Riel Miller). UNESCO. https://unesdoc.unesco.org/ark:/48223/pf0000264644

# Annex

**Lab Agenda**

| One Day FLL Agenda - Tuesday 3 Dec, 2024 | | | |
|---|---|---|---|
| **Time** | | **Session** | **Description** |
| 08:00 - 08:30 | | Registration | |
| 08:30 – 08:35 | | Getting started | Welcome participants and gives an overview of the agenda planned |
| 08:35 - 08:55 | | Ice breaker and introductions | The Polak game will be used to get participants to begin examining their imagination of the future and to introduce themselves to each other |
| ***PHASE 1: REVEAL*** | | | |
| 08:55 – 09:55 | | **Probable Futures**<br>a) Headlines / bullet points, 2 or 3 per person (present tense, day in the life) [10 mins]<br><br>**Preferred Futures**<br>a) Headlines / bullet points, 2 or 3 per person (present tense, day in the life) [10 mins]<br><br>b) Layered Analysis [20 mins]<br><br>c) Report back plenary [20 mins] | **Time Travel Exercise**: wake up in 2040… Break-out group discussions will be followed by a plenary discussion.<br>*Probable Futures & Preferred Futures:*<br>*1) Participants will be describing **probable futures**, depicting, painting a picture, of a world you would bet on – what you most expect;*<br>*2) Participants close their eyes and imagine a **desirable future** in 2040.*<br>- *Participants should think of a snapshot, not a movie. This is not about the road to 2054, it's about describing the world as it is already. You are there! Describe things in the **present tense** (e.g., it's Feb 2054 and I'm in X doing Y);*<br>- *Give 3 min of silent time to create ideas.*<br>- *1 min per participant to share their individual thoughts;*<br>- *As a guide to the peer-facilitators, no consensus is needed from this exercise so allow extremes;* |

| | | | |
|---|---|---|---|
| | | | - *Use the Layered Analysis heuristic to explore and document participants' snapshots of the future.*<br>Appointed rapporteur for each group shares summary in plenary, with option for other group members to also weigh in. |
| ***PHASE 2: REFRAME*** | | | |
| 09:25 - 10:55 | | **Phase 2: Reframe**<br><br>a) Presentation of reframing scenario and creativity exercise [5 mins]<br><br>b) Creativity Exercise [35 mins]<br><br>c) Plenary [25 mins] | Presentation of reframing scenario and creativity exercise<br><br>Invitation to visit an unfamiliar future, one that is constructed without reference to its probability or desirability.<br><br>Appointed rapporteur shares summary in plenary, with option for other group members to also weigh in. |
| 10:55 – 11:20 | ***BREAK*** | | |
| ***PHASE 3 & 4: NEW QUESTIONS & NEXT STEPS*** | | | |
| 11:20 - 12:30 | | **Phase 3: Back to the Present**<br><br>a) Groupwork (in pairs) 2 – 3 bullet points per team [30 mins]<br><br>**Phase 4: So what?** Identifying new ideas, projects, and ways of working<br><br>b) Plenary [30 mins] | Returning to 2024, and asking: What was previously important, but seems less so? Vice versa?<br><br>Participants revisit the images of the future from Phases 1 and 2 in order to assess the implications for perception in the present.<br><br>How can the capabilities learned in the laboratory be used in the everyday environment of participants?<br><br>** Identify characteristics / values of the future that are important to the group* |

| | | | |
|---|---|---|---|
| 12:30 – 13:30 | ***LUNCH BREAK*** | | |
| *Working Coffee Breaks Incorporated into Afternoon Sessions* | | | |
| 13:30 - 16:00 | | **3 Horizons** | Using 3 horizons with participants to understand agency and areas for intervention in their work / study / everyday environment.<br><br>** Identify key practice / policy / governance leverage points / issues (H2)* |
| 16:00 - 17:00 | | **Plenary discussion and conclusion** | Discuss how to practically bring these ideas into the National Dialogue / **Recommendations** |

# LEGAL FRAMEWORK ON SEXTORTION/SEXUAL CORRUPTION IN SOUTH AFRICA

SEXTORTION

# LEGAL FRAMEWORK ON SEXTORTION/SEXUAL CORRUPTION IN SOUTH AFRICA


**PUBLISHED BY THE**

Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
Bonn and Eschborn, Germany

Transparency, Integrity, Accountability Programme (TIP) in South Africa
GIZ South Africa, Lesotho and eSwatini



P.O. Box 28102, Sunnyside, 0002, Pretoria, South Africa

Phone +27 12 423 5900

giz-suedafrika@giz.de

www.giz.de/southafrica



**AS AT**
May, 2024

**DESIGN**
Hayley Cameron
Johannesburg

**TEXT**
Professor Sope Williams
Stellenbosch University South Africa

On behalf of the
German Federal Ministry for Economic Cooperation and Development (BMZ)

## CONTENTS PAGE


Executive Summary 3

I. Introduction 5

Ii. Definitions 7

a. Sextortion 7
b. Sexual Corruption and Sexual Bribery 7
c. Transactional Sex 7
d. Abuse of Functions or Position 7
e. Sexual Harassment 8
f. New Definition of Sexual Corruption 8

Iii. Conceptual Issues and Difficulties 9

Iv. The Existing Legal Framework on Sexual Corruption in South Africa 11

V. The Legal Framework on Sexual Corruption in Foreign Jurisdictions 16

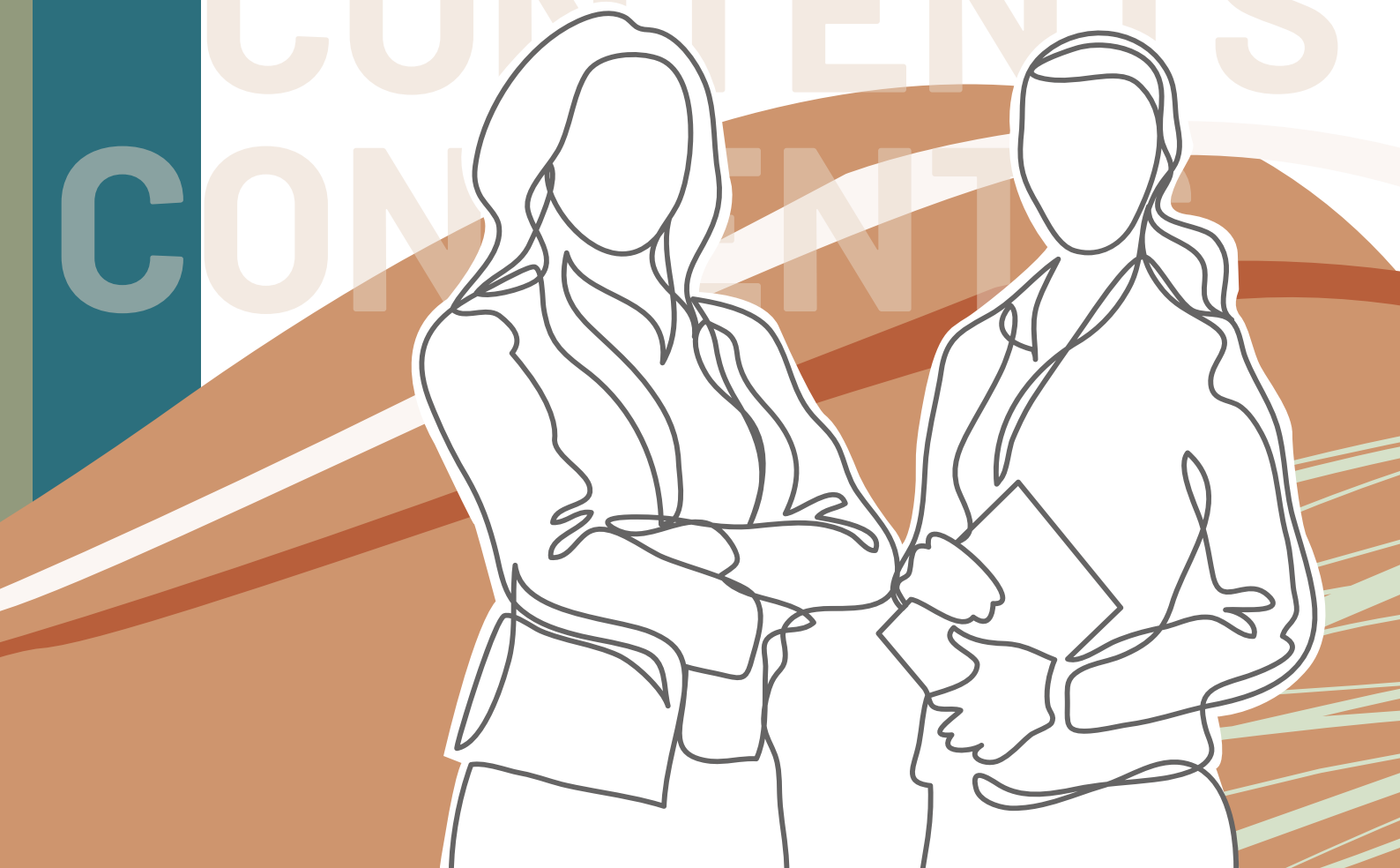
Vi. Case Law on Sextortion and Sexual Corruption in South Africa And Beyond 21

Vii. Proposed Legislative and Institutional Changes To Criminalise Sexual Corruption In South Africa 24

Viii. Proposed Advocacy Plan for Addressing Sexual Corruption In South Africa 27

Ix. Conclusion 29

X. References 29

## EXECUTIVE SUMMARY


Sextortion is a contraction of the words "sexual extortion." It is a form of corruption occurring when sexual acts are demanded or required from women, men and gender non-conforming people in order to obtain a public (or private) service or benefit and is also referred to as "sexual corruption" or "sexual bribery". Sexual corruption requires that the perpetrator is in a position of authority; there is a quid pro quo element; the benefit in the quid pro quo element is sexual in nature; and the perpetrator must rely on the coercive power of his/her authority rather than on physical force to obtain the sexual benefit (International Association of Women Judges, 2012).

Sexual corruption has been partly criminalised in South Africa through a patchwork of laws and policies against corruption, sexual violence and sexual harassment. However, the variable approach to this offence means that there are severe shortcomings with the way it is currently addressed. This report examines the legislative framework on sexual corruption in South Africa to determine if it is adequately criminalised, understand the gaps in the existing legal framework, and make recommendations to address these gaps, in light of international experiences. The report examines South African and foreign case law on sexual corruption and also considers foreign legislation on the issue.

The report concludes that it is necessary to change the current terminology from "sextortion" to "sexual corruption" given that the term "sextortion" is also used to refer to blackmail using intimate images. The report also determines that it is important to criminalise sexual corruption through a dedicated corruption offence. In doing so, it will be necessary to address the challenges seen in other jurisdictions such as the criminalisation of sexual corruption victims and issues around requiring consent and understanding coercion. Given that sexual corruption is a corruption offence as well as a sexual offence, it is also necessary to address the infrastructure around reporting and prosecuting sexual corruption and necessary interventions in the criminal justice system to provide safe and victim-centred channels for whistleblowing and reporting.


EXECUTIVE

## THE REPORT MAKES THE FOLLOWING RECOMMENDATIONS:

**1. The creation of a dedicated offence of "sexual corruption":** a new offence of sexual corruption should be created as an amendment to the Prevention and Combatting of Corruption Act, 2004 (PRECCA). The offence must prohibit any request for physical or non-physical sexual acts in exchange for avoiding a detriment or conferring a benefit in a way that amounts to an abuse of authority, trust or position. Under the PRECCA, there is a presumption of corruption once there has been the giving or receiving of a gratification. For this new proposed offence of sexual corruption, the presumption of corruption should be linked to the request or receipt of a sexual act and the abuse of authority. The new offence should prohibit sexual corruption in both the public and private sectors in line with the existing corruption offences under the PRECCA. The new offence should further specify that there is no defence even if the person in authority did not solicit the bribe and the current duty to report offences under the PRECCA will apply to sexual corruption offences. The law should specify the remedies available on conviction for the offence.

**2. The provision of victim-centred reporting mechanisms:** As sexual corruption is also a sexual offence, it is necessary for public agencies and police stations to provide safe, confidential reporting mechanisms for sexual corruption, and ensure that victims are dealt with in a victim-centred and gender-sensitive way. Reporting mechanisms should be able to provide access to appropriate resources, including physical and psychological health services, and financial and legal support.

**3. Training on prosecuting sexual corruption:** It will be necessary to provide investigators, prosecutors and judges with the technical knowledge on investigating, prosecuting and hearing this offence. Prosecutions and convictions will increase the deterrent effect of the law and reduce the impunity with which the crime is committed (Elden, 2020).

**4. Sustained advocacy:** The criminalisation of sexual corruption alone will not be sufficient to address this problem and ongoing advocacy is required to sensitise the public to their rights and available remedies in relation to this offence. This will involve the creation of materials distributed to areas where sexual corruption is rampant, including schools, universities, the judiciary, and municipalities. Advocacy also involves collaboration between the courts, the prosecutors, law enforcement, correctional institutions, and community groups (including child, women and LGBT groups) to ensure there is no friction between these groups in addressing sexual corruption. Advocacy can create awareness to clarify the processes for reporting, investigating and prosecuting sexual corruption cases and understand the barriers that may keep victims from obtaining effective redress.

**5. Continued efforts to address sexual and gender violence:** South Africa has a problem with sexual and gender-based violence that falls outside the scope of this report. However, in addressing sexual corruption, it is important to recognise that it falls into the sexual violence continuum and work needs to continue to change harmful gender stereotypes, address toxic masculinity tropes and foster a culture of respect for women, children and gender non-conforming people.

# INTRODUCTION

**Sextortion is a contraction of the words "sexual extortion." It is a form of corruption where sexual acts are the currency of the bribe requested.**

Sextortion is also referred to as "sexual corruption" or "sexual bribery" and these terms will be used interchangeably in this report. It is one of the most silent forms of corruption and occurs when sexual acts are demanded or required from women, men and gender non-conforming people in order to obtain a public (or private) service or benefit. Sexual corruption requires that the perpetrator is in a position of authority; there is a quid pro quo element; the benefit in the quid pro quo element is sexual in nature; and the perpetrator must rely on the coercive power of his/her authority rather than on physical force to obtain the sexual benefit (International Association of Women Judges, 2012).

Until a decade ago sexual corruption had received very limited attention from lawmakers, academics and policy makers, meaning that it was often misunderstood, miscategorised and often mislabelled as sexual harassment or sexual misconduct. Despite the lack of legislative attention, there is evidence that sexual corruption is prevalent in countries with high levels of corruption (Aja-Eke et al, 2023; Sundström and Wängnerud, 2021) and manifests in the delivery of public services in sectors such as public procurement, crisis responses, migration/asylum, education, health and sanitation services (UNODC, 2020; Hagglund & Khan, 2023; Transparency International, 2020. Sexual corruption may be systemic, occurring frequently in a particular sector, such as for instance in education or opportunistic, (Eldén et al, 2020) where officials take advantage of a one-off interaction to demand a sexual bribe.

Sexual corruption disproportionately affects women and girls, preventing them from accessing public services (such as criminal justice, health and education services) and public privileges (such as jobs, public contracts and immigration services). In all cases, sexual corruption is oppressive, based on an asymmetry of power, access to resources and relies on coercion that impairs the legal validity of consent to the sexual act (Transparency International, 2020). Because it disproportionately affects women, it is a gendered form of corruption, (Boehm and Sierra, 2015) rooted in patriarchy, sexism, and oppressive systems that demean women. As a gendered form of corruption (Transparency International, 2020; Motala, 2021), it is the only corruption offence where the currency of the bribe may differ according to the gender of the victim and "derogates, demeans, or humiliates an individual based on that individual's sex" (Berdahl, 2007).

Sextortion is both a corruption offence, and a form of sexual and gender-based violence, and lies on the continuum of sexual violence (Guy, 2006). Gender-based violence constitutes any form of violence "that is directed against a woman because she is a woman or that affects women disproportionately" (United Nations 1992). Sexual violence against women "is not the sum of random, individual acts of misconduct but part of a continuum of attitudes, beliefs and actions that support violence against them. This continuum of sexual violence defines women's experiences of everyday life and functions to maintain the overarching gender order of female inequality and domination" (Vuckovic et al, 2017).

As a result of the intersection between sexual abuse and corruption, it is a mistake to view sexual corruption solely from the prism of corruption, as this ignores its gendered nature and the harmful ways in which it impacts especially women and girls (Nilsson, et al. 2019) and also ignores the ways in which it might be fuelled by rape culture, and the ubiquitous pornography that depicts and reinforces the objectification and subordination of women (Srinivasan, 2021). Addressing sexual corruption must therefore occur through a gendered lens if we are to ensure that the often-gendered barriers to sexual corruption can be ameliorated. Sexual corruption is at once a sexual offence, a corrupt abuse of authority, a form of gender-based violence and a human rights violation. Although it is prevalent in both developing and developed countries, and occurs within different sectors, there are several barriers to its being properly criminalised and addressed.

These barriers include inconsistent and confusing nomenclature around sextortion, with it being variously referred to as sextortion, transactional sex, sexual bribery and sexual corruption, and its confusion with extortion or blackmail involving sexual or private images (Wolak et al. 2018). This report will not focus on extortion related to sexual images but will rather consider sexual corruption/ sexual bribery, defined by Transparency International as "when those entrusted with power use it to sexually exploit those dependent on that power" (Transparency International 2020).

Another barrier to addressing sexual corruption is the fact that most anti-corruption legislation do not define sexual corruption as a corruption offence and the corrupt exchange in bribery offences often refers to the receipt of a gratification, financial, undue or other advantage or anything of value and sexual favours are not always explicitly included in the definition of a gratification, advantage or thing of value, leaving sexual acts outside the ostensible ambit of anti-corruption laws.

Further, because it is often a gendered crime, the misogynistic attitudes to sexual abuse and sexual harassment of women especially in developing countries, may normalise sexual corruption and it is in some quarters considered less serious than other forms of corruption (Eldén et al, 2020; Goetz 2007). Where these attitudes are coupled with the power dynamics at play in sexual corruption cases and the shame, stigma and secrecy surrounding sex, many women victims are unwilling to report it. The lack of reporting (Gitlin 2016) affects our understanding of the scale of the problem, making it difficult to properly address it from a remedial point of view.

Other barriers include the evidence that is needed to prove such cases. Sexual corruption occurs through psychological and not physical coercion and in some cases, it may be difficult to prove that a sexual act was coerced, in the absence of physical evidence (Hendry, 2020).

Although, there was a limited focus on sexual corruption in the past, recent awareness of the extent of sexual violence against women has created the impetus for further research on sexual corruption. The time is thus ripe for a comprehensive approach to addressing it in the public sector and in the delivery of public services more generally. Sexual corruption straddles the intersection of sexual and gender-based violence and corruption and thus requires cooperation from activists and policy makers in these fields to properly address it. The historical lack of cooperation has meant that sexual corruption has been sidelined by both the gender and the anti-corruption agendas.

This research report examines the legislative framework on sexual corruption in South Africa to determine if it is adequately criminalised, understand the gaps in the existing legal framework, and make recommendations to address these gaps, in light of international experiences. The report adopts a doctrinal and qualitative methodology, engaging in an analysis of available South African legislation and case law, and foreign legislation and case law on sexual corruption. The report also engages in interviews and consultations with relevant stakeholders to determine their experiences and understand the challenges inherent in the current approaches that affect successful prosecution of the offence.

The report concludes that it may be necessary to change the terminology from "sextortion" to "sexual corruption" and that it is important to criminalise sexual corruption through a dedicated corruption offence. In criminalising sexual corruption, it will be necessary to address some of the challenges seen in other jurisdictions such as the criminalisation of sexual corruption victims and issues around requiring consent and understanding coercion. It is suggested that the offence of sexual corruption includes a presumption of corruption as is the case for the other corruption offences under section 24 of PRECCA, so that when there is a demand for sexual acts accompanied by a power imbalance, an abuse of authority and the conferment of benefits or the imposition of deprivations, then sexual corruption should be presumed, with the burden on the perpetrator to prove there was no corruption. It is also necessary that there are interventions in the criminal justice system to provide safe and victim-centred channels for whistleblowing and reporting.

This report commences by considering the definitions of sexual corruption, sextortion and related offences, to distinguish sexual corruption from other offences, and determine the appropriate nomenclature required for this offence. Next the report examines the existing legal framework on the criminalisation of sexual corruption in South Africa to determine the extent to which sexual corruption is currently criminalised. The report then examines the laws against sexual corruption in foreign jurisdictions, to understand how other countries have addressed this issue and learn from international approaches. The next part of the report reviews court cases in SA and elsewhere to understand judicial approaches to this offence. The report concludes with recommendations for criminalising sexual corruption in SA, setting out the elements of the offense and creates an advocacy plan on sexual corruption given its importance to addressing sexual violence and gender equality in SA (Fuentes Téllez, n.d).

# II. DEFINITIONS

## A. SEXTORTION

The International Association of Women Judges is widely credited as being responsible for shedding light on sextortion and providing an initial definition, which defined sextortion as the "abuse of power to obtain a sexual benefit or advantage. Sextortion is a form of corruption in which sex, rather than money, is the currency of the bribe. It is not limited to certain countries or sectors but can be found wherever those entrusted with power lack integrity and try to sexually exploit those who are vulnerable and dependent on their power." (IAWJ 2012). This definition requires an abuse of authority, a quid pro quo and psychological pressure or coercion. The quid pro quo requirement in the definition of sextortion is crucial as it eliminates from its ambit other forms of sexual misconduct such as sexual abuse and sexual harassment.

Transparency International (2020) developed its own definition of sextortion, defining it as "when those entrusted with power use it to sexually exploit those dependent on that power."

Elden et al (2020) further define sextortion as "a form of corruption and gender-based violence. It occurs when a person with entrusted authority abuses this authority to obtain a sexual favor in exchange for a service or benefit which is within their power to grant or withhold."

## B. SEXUAL CORRUPTION AND SEXUAL BRIBERY

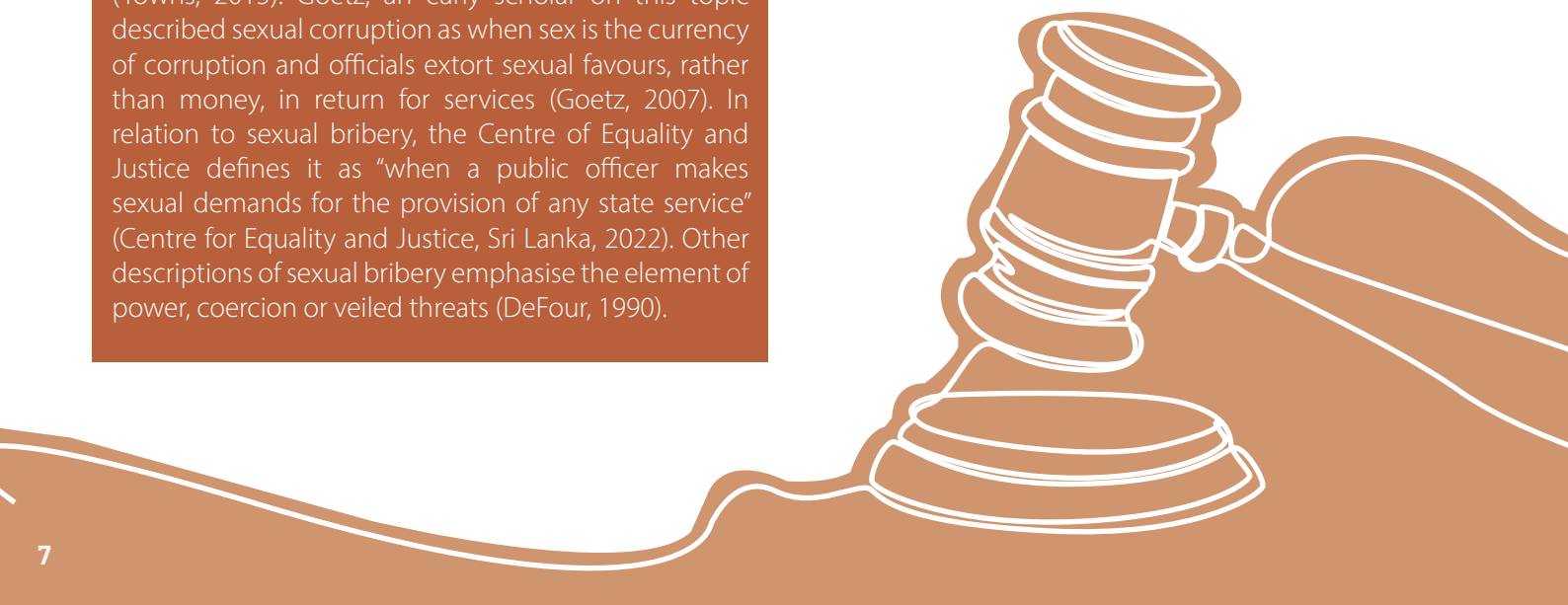
The definitions of sexual corruption and sexual bribery are often identical. Towns defined sexual corruption as "transactional relationships that involve the trade of sex for services, benefits or goods tied to public office" (Towns, 2015). Goetz, an early scholar on this topic described sexual corruption as when sex is the currency of corruption and officials extort sexual favours, rather than money, in return for services (Goetz, 2007). In relation to sexual bribery, the Centre of Equality and Justice defines it as "when a public officer makes sexual demands for the provision of any state service" (Centre for Equality and Justice, Sri Lanka, 2022). Other descriptions of sexual bribery emphasise the element of power, coercion or veiled threats (DeFour, 1990).

## C. TRANSACTIONAL SEX

In some jurisdictions, sexual corruption traverses the boundaries of transactional sex, defined as "the exchange of a sex act for money or anything of value, such as, but not limited to, basic necessities including shelter or food." (Bramon and Leslie, 2012). However, transactional sex is differentiated from sexual corruption, because even though there is the element of a sexual exchange and a usual power imbalance, the exchange occurs within the context of a relationship (no matter how temporary or ambiguous its nature) (Duby et al, 2021). Also, transactional sex is not accompanied by an abuse of entrusted power (Elden et al 2020).

## D. ABUSE OF FUNCTIONS OR POSITION

The United Nations Convention against Corruption does not explicitly criminalise sexual corruption, but rather contains an offence of abuse of functions, in Article 19, which provides that it is a criminal offence when there is "the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity." This offence will cover sexual corruption offences as it covers the performance or non-performance of an official act, and the obtaining of an undue advantage in the form of the sexual act. It also covers the illegitimate bargain with services or privileges within the realm of the perpetrator's function or position in exchange for sexual favours (Elden, et al, 2020). It may be noted that some countries have criminalised sexual corruption through this approach.



## E. SEXUAL HARASSMENT

It is important to delineate between sexual harassment and sexual corruption. Sexual harassment encompasses many forms of unwanted and inappropriate conduct that do not necessarily involve perpetrators entrusted with authority, or the abuse of that authority, or a quid pro quo exchange of sexual acts – all of which are key elements of sexual corruption (Global Judicial Integrity Network, 2020). Sexual harassment is defined as "unwelcome sexual advances, requests for sexual favours, verbal or physical conduct of sexual nature, including instances where such favours or conduct are implicitly or explicitly made a condition of employment, continued employment or promotion" (Smit and Du Plessis, 2011). Sexual harassment occurs where the victim has resisted the behaviour as unacceptable, and the perpetrator is aware that his actions are offensive or unwanted (Nana, 2008). This however means also that where sexual corruption by a person in a position of authority is rejected, a charge of sexual harassment can be sustained (Hlongwane, 2017). It may be noted that many countries prohibit sexual corruption through sexual harassment and employment anti-discrimination laws, often limiting the prohibition to the employment context and treating it as a civil matter.

## F. NEW DEFINITION OF SEXUAL CORRUPTION

As a result of the limitations and confusion inherent in especially the current definition of sextortion, a new definition is proposed, which adopts the term "sexual corruption" but similar to the definition issued by Transparency International, is perpetrator-based, focusing on the responsibility of the person with the power (Elden et al, 2020). This definition utilises the term "sexual corruption", to distinguish this offence from cyber-extortion or blackmail relating to sexual or private images, which is also referred to as "sextortion" in some countries (including the UK, the USA and Australia) and has been criminalised in several jurisdictions and in South Africa. Alternative nomenclature is necessary if we are to avoid confusing sexual corruption with sexual blackmail. A new definition is also necessary as it introduces the concept of the abuse of perceived power and the nature of the sexual exploitation to include digital and emotional forms.

The proposed definition states that sexual corruption is "an abuse of actual or perceived power that sexually exploits those who seek benefits or seek to avoid deprivations tied to that power. The sexual exploitation may be physical, emotional or digital."

*The proposed definition states that sexual corruption is*

***"AN ABUSE OF ACTUAL OR PERCEIVED POWER THAT SEXUALLY EXPLOITS THOSE WHO SEEK BENEFITS OR SEEK TO AVOID DEPRIVATIONS TIED TO THAT POWER. THE SEXUAL EXPLOITATION MAY BE PHYSICAL, EMOTIONAL OR DIGITAL."***

# III. CONCEPTUAL ISSUES AND DIFFICULTIES

**Addressing sexual corruption presents several conceptual issues. Some of the conceptual difficulties arise due to the inherent nature of the offence and serve as barriers, limiting approaches to effectively address it.**

## A. Lack of clarity:

In the past, legislators did not consider the nexus between corruption and sexual exploitation when drafting current anti-corruption legislation, and as a result, this issue was not addressed adequately in many jurisdictions. As stated, there is also confusion in the use of the term "sextortion", which hampers efforts to address this offence. A 2015 review of legislative frameworks on sexual corruption found that no country used the term "sextortion" to refer to sexual corruption (Thomson Reuters Foundation et al, 2015).

## B. Quid pro quo:

As seen from the definition of sextortion issued by the IAWJ, the exchange or the reciprocation inherent in sexual corruption differentiates it from sexual harassment and other forms of sexual abuse. This reciprocity presents several challenges: first sexual favours are not always considered in existing anti-corruption legislation as a bribery benefit, ostensibly removing sexual corruption from the ambit of these statutes. Secondly the reciprocity is often conceived of as given to obtain an advantage and not avoiding a detriment, whilst in many cases of sexual corruption, the victims are also seeking to avoid a disadvantage and the law should reflect this. Third, under many anti-corruption laws, including in South Africa, the reciprocity renders the victim of sexual corruption complicit and guilty in the commission of the offence. Although compliance with the sexual request may be a risk-mitigation strategy, the element of complicity makes reporting less likely for victims (Elden et al, 2020) and in a non-victim centred approach, may affect the likelihood that victims are believed and buttresses the perpetrator's defence that the sexual act was consensual. Addressing the implications of this complicity will be crucial for criminalising a sexual corruption offence, as most corruption offences currently criminalise both parties to a corrupt transaction. In the case of sexual corruption, "corruption exists even if a sexual act is genuinely consensual, because it represents an abuse of power and an undue benefit, and that is enough to enforce the law" (Transparency International 2020). Any claim to consent may also be denied or at least mitigated once there is an abuse of authority and a power imbalance.

## C. Power dynamics and fear:

The power imbalance inherent in cases of sexual corruption often creates a fear of retaliation that makes victims reticent to report it (Elden et al. 2020). This imbalance also fuels a sense of futility at reporting sexual corruption, where the perpetrator has a high status, power or wealth. If sexual corruption is not categorised as a unique offence, this power asymmetry and the attendant psychological coercion will be ignored, resulting in the criminalisation of both the recipient and the victim-provider of the sexual act (Elden et al. 2020) and requiring physical evidence to prove the commission of the offence. The power dynamics and fear may also increase the impunity with which perpetrators operate, creating serial offenders (Hagglund & Khan, 2023). A potential sexual corruption offence must require a presumption of corruption once there is the abuse of actual or perceived power and must be cognisant of the fear of retaliation possible in these cases.

## D. Investigations and the availability of evidence:

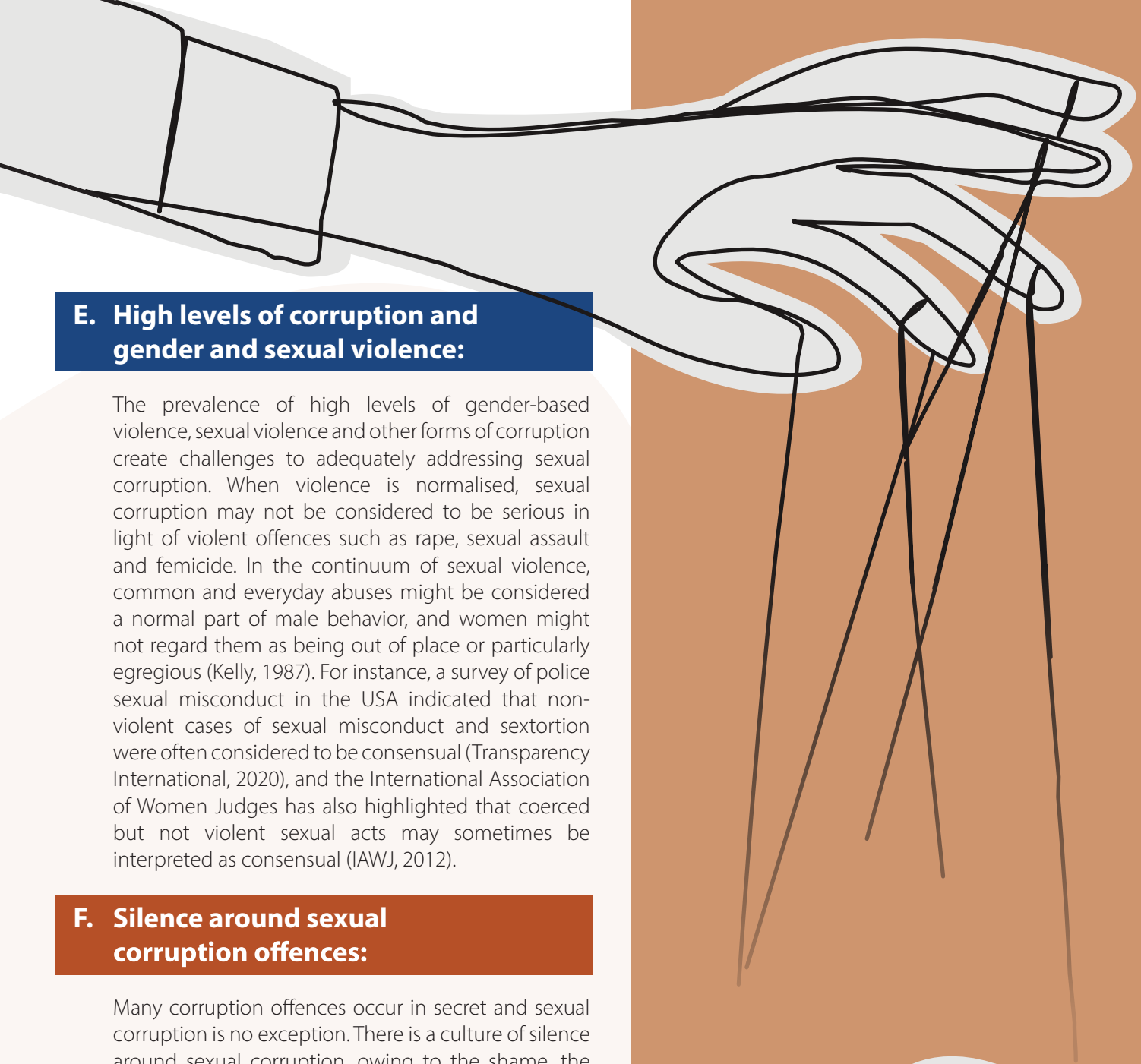
The criminalisation of sexual corruption requires interventions in the criminal justice system, especially in relation to investigating this crime. Most bribery and corruption offences are conceived of as financial crimes and investigators trained to investigate financial crimes may not necessarily be adept in investigating sexual crimes, especially where there is psychological but not physical coercion and thus an absence of "hard" evidence (Hlongwane et al, 2023; Transparency International, 2020). The cases on sexual corruption and sexual harassment often tie the timely reporting of the offence to its believability. Thus, where victims do not report at the time of the offence, courts have inquired as to whether that impacts the credibility of the allegations. This approach does not consider the impact of sexual violence on its victims and how different persons respond to it. Apart from training investigators and prosecutors to investigate sexual corruption as a corruption offence, advocacy on how victims can gather evidence will be required.

## E. High levels of corruption and gender and sexual violence:

The prevalence of high levels of gender-based violence, sexual violence and other forms of corruption create challenges to adequately addressing sexual corruption. When violence is normalised, sexual corruption may not be considered to be serious in light of violent offences such as rape, sexual assault and femicide. In the continuum of sexual violence, common and everyday abuses might be considered a normal part of male behavior, and women might not regard them as being out of place or particularly egregious (Kelly, 1987). For instance, a survey of police sexual misconduct in the USA indicated that non-violent cases of sexual misconduct and sextortion were often considered to be consensual (Transparency International, 2020), and the International Association of Women Judges has also highlighted that coerced but not violent sexual acts may sometimes be interpreted as consensual (IAWJ, 2012).

## F. Silence around sexual corruption offences:

Many corruption offences occur in secret and sexual corruption is no exception. There is a culture of silence around sexual corruption, owing to the shame, the stigma, the power dynamics, the normalisation of sexual harassment and inadequate legal mechanisms for redress. This affects reporting and in SA, sexual corruption is under-reported and is missing from crime reports (StatsSA, 2023). Countering this silence is necessary to successful prosecution of this offence and will need the creation of suitable victim-centred platforms for reporting. One way of addressing this silence is by emphasising sexual corruption as a corruption offence given that it is a both a form of sexual violence (with its proximity to sexual harassment) and a form of corruption. As a corruption offence, there is likely to be more credibility for victims than there currently is for victims of sexual offences (Transparency International, 2020). Historically, sexual offences committed against women often re-victimise the victims, (Transparency International, 2020) as defendants interrogate the credibility of the victim by highlighting the character and clothing of victims to establish consent to the sexual act.



# IV. THE EXISTING LEGAL FRAMEWORK ON SEXUAL CORRUPTION IN SOUTH AFRICA

**There has been ample research (Hlongwane et al, 2023) that indicates that the South African anti-corruption framework does not make adequate provision for sexual corruption as an offence. Although there are several laws that have direct (and indirect) implications for sexual corruption, none of them speak directly to sexual corruption as defined.**

## A. Prevention and Combatting of Corruption Act 12 of 2004 (PRECCA):

PRECCA is South Africa's primary anti-corruption law, and it criminalises both active and passive bribery in the public and private sector, prohibiting persons from giving or receiving "gratification." This gratification includes money, avoidance of a loss or disadvantage, any favour, service, advantage of any description, the exercise or forbearance of the exercise of any right or official power or duty (section 1). PRECCA's offence of bribery prohibits persons from giving or receiving gratification to act in an unlawful manner in the carrying out their duty in a way that amounts to an abuse of a position, a breach of trust and the violation of a legal duty or set of rules (section 3). Although both the meaning of "gratification" and the general offence of bribery may be interpreted as covering sexual corruption, one of the challenges with reading sexual corruption into the Act is that it criminalises both the giver and the receiver in a corrupt transaction. Whilst there are good reasons for doing so in relation to pecuniary corruption, this creates challenges in relation to sexual corruption, where the asymmetry of power, the psychological coercion and threats mean that the perpetrator and the victim should not be considered as equally culpable under the law. This means that reading a sexual corruption offence into PRECCA includes the criminalisation of victims and will significantly limit reporting and thus prosecution of an already underreported crime and will only lead to reports where the victim did not acquiesce to the demand. In cases of sexual corruption where the benefit or deprivation relates to the provision of basic goods and services or to important quality of life services, denial of the request may be impossible for the victim and may often be a risk mitigation strategy where there is a high-power imbalance and the potential for further harms. It may be noted that PRECCA contains a presumption that the giver or receiver of a gratification acted corruptly (section 24), which may be useful to ensuring the prosecution of sexual corruption but will require the partial decriminalisation of the victims. PRECCA also provides that it is not a defence that the receiver of the gratification did not have the power to perform the act for which the gratification was given or did not intend to perform the act (section 25).

## B. The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007:

This Act aims to criminalise all forms of sexual abuse and exploitation. The Act also seeks to provide victims of sexual offences the "maximum and least traumatising protection that the law can provide, to introduce measures which seek to enable the relevant organs of state to give full effect to the provisions of this Act and to combat and, ultimately, eradicate the relatively high incidence of sexual offences…" The Act criminalises inter alia, rape, statutory rape, sexual assault, compelling persons to witness sexual offences, child pornography, sexual offences involving children and prostitution. Under the Act, consent is defined as voluntary or uncoerced agreement and will not exist where the complainant submits to a sexual act as a result of the use of force, intimidation or a threat of harm by the accused person or where there is an abuse of power or authority by the accused person to the extent that the complainant is inhibited from indicating his or her unwillingness or resistance to participate in a sexual act; or where the sexual act is committed under false pretences or by fraudulent means. The definition of consent under the Act will be useful in prosecuting sexual corruption where there is an abuse of power and the sexual act is one that is criminalised under the Act, such as rape, sexual assault, compelled rape and compelled sexual assault etc. However, sexual acts that do not meet the definitions under the Act will not be covered.

## C. The Sexual Offences Act 23 of 1957:

This Act criminalises sexual relations with a person under the age of 16, and also criminalises the enticement of a person under the age of 16 for

the commission of an "immoral or indecent act". This provision is broad enough to criminalise the sextortion of persons under the age of 16. Research by Corruption Watch in 2020 found that 14% of young persons surveyed in South Africa had been faced with requests for sexual favours in order to access public services or obtain employment (Corruption Watch, 2020). This Act may thus be read as criminalising sexual corruption involving minors.

## D. The Cybercrimes Act 19 of 2020:

This Act criminalises blackmail, referred to as "cyber extortion," providing that a person who unlawfully and intentionally commits or threatens to commit any offence by making data available to a person, other than the lawful owner or holder of the data, for the purpose of obtaining any advantage from another person; or compelling another person to perform or to abstain from performing any act, is guilty of the offence of cyber extortion (Section 10). Section 16 further provides for a specific offence of "disclosure of data message of intimate image," providing that any person ("A") who unlawfully and intentionally discloses, by means of an electronic communications service, a data message of an intimate image of a person ("B"), without the consent of B, is guilty of an offence. These offences (section 10 and section 16) could potentially cover sexual corruption that involves non-physical sexual exploitation, where a victim is asked to provide explicit photos in exchange for obtaining a benefit or avoiding a detriment and the receiver "discloses" such an image by sending the image to any other person (section 13). Under section 20, persons who fall victim to and acquiesce to this type of sexual exploitation may approach the courts for a protection order pending the finalisation of the criminal proceedings to prohibit disclosure of the data message which relates to the charge; or order an electronic communications service provider whose platform hosts or discloses the data message, to remove or disable access to the data message. It may be noted that the section 20 measures have not yet entered into force.

## E. The Film and Publications Amendment Act 11 of 2019:

This Act addresses inter alia the classification of films and publications including sexually suggestive content. The Act contains a prohibition against exposing "through any medium, including the internet and social media, a private sexual photograph or film if the disclosure is made without the consent of the individual or individuals who appear in the photograph or film; and with the intention of causing that individual harm (Section 18F). Disclosure is prohibited even if the person who appears in the photograph or film might have consented to the original creation of such photograph or film (van der Linde, 2021). Under the Act, a photograph or film is 'private' if, judging from the context in which the photograph or film is taken or made, it was not intended by any individual in the photograph or film to be seen by others (Section 18F (3)). Essentially this section criminalises what is referred to as 'revenge porn.' It does not require there to be extortion as is the case under section 10 of the Cybercrimes Act. It may be interpreted as applying to the disclosure of intimate images as a means of harming a victim of sexual corruption but does not address sexual corruption directly.

## F. The Employment of Educators Act 76 of 1998:

This Act addresses the conditions of employment and misconduct by educators. an educator is any person who teaches, educates, or trains other persons or who provides professional educational services, including professional therapy and psychological services, at any public school, further education and training institution, departmental office or adult basic education centre. The Act provides that an educator is guilty of misconduct when an educator "behaves in a disgraceful, improper or unbecoming manner, or, while on duty, is discourteous to any person, or commits sexual or any other form of harassment" (section 17 (g)). Section 17 (j) provides that an educator commits an offense where "an educator without prior

permission of the employer, accepts or demands in respect of the carrying out of or the failure to carry out the educator's duties any commission, fee, pecuniary or other reward to which the educator is not entitled by virtue of the educator's office, or fails to report to the employer the offer of any such commission, fee or reward…" Read together, these offences are broad enough to cover sexual corruption by educators. Under the Act, an employer may investigate the misconduct and take disciplinary action against the educator who committed the misconduct.

## G. The Employment Equity Act 55 of 1998:

This Act seeks to promote equality and eliminate unfair discrimination in employment. The Act prohibits discrimination by providing that "No person may unfairly discriminate, directly or indirectly, against an employee in any employment policy or practice on one or more grounds including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth…. Harassment of an employee is a form of unfair discrimination..." (Section 6). This provision covers sexual harassment and may be interpreted as preventing sexual corruption, in so far as it affects a particular gender or sexual orientation.

There is a Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace 2022, which employers are required to comply with in drafting sexual harassment policies and procedures.

The Code defines sexual harassment as unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace, taking into account all of the following factors: (1) whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;(2) whether the sexual conduct was unwelcome; (3) the nature and extent of the sexual conduct; and (4) the impact of the sexual conduct on the employee. Sexual harassment must be of a sexual nature, and includes physical, verbal or non-verbal conduct.

Under the Code, sexual harassment may include, victimisation, quid pro quo harassment and sexual favouritism. Quid pro quo harassment occurs "where a person such as an owner, employer, supervisor, member of management or co-employee, influences or attempts to influence an employee's employment circumstances (for example engagement, promotion, training, discipline, dismissal, salary increments or other benefits) by coercing or attempting to coerce an employee to surrender to sexual advances. This could include sexual favouritism, which occurs where a person in authority in the workplace rewards only those who respond to his or her sexual advances".

The Code prohibits sexual corruption in the employment context and as will be seen through the cases below, is the primary means of addressing sexual corruption in South Africa. However, it is limited to the employment context, meaning that victims outside of this context do not have recourse.

# CONCLUSION

**The upshot of all these laws is that sexual corruption is partly criminalised through a purposive interpretation of a patchwork of laws in the following manner:**

- **Prevention of Corruption Act- can be read as criminalising active and passive sexual corruption and it thus criminalises the "giver" or the victim in the sexual corruption context.**
- **The Criminal Law (Sexual Offences and Related Matters) Amendment Act- could be read as criminalising sexual corruption if the sexual act amounts to rape, sexual assault, compelled sexual assault, and sexual offences involving children.**
- **The Sexual Offences Act- can be read as criminalising sexual corruption if it involves a person under the age of 16 years.**
- **The Cybercrimes Act- can be read as criminalising sextual corruption where the quid pro quo is a threat not to disclose an intimate image in exchange for a sexual act.**
- **The Film and Publications Amendment Act- covers a threat to disclose an intimate image but a quid pro quo is not required and as such does not cover sexual corruption.**
- **The Employment of Educators Act- will cover sexual corruption by educators.**
- **The Employment Equity Act read with the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace 2022 covers sexual corruption in the employment context.**

In sum, sexual corruption is criminalised (without criminalising the victim) only for certain categories of persons and certain contexts - in relation to violent sexual acts, in relation to minors, learners and students, in the employment context and where the threat relates to the disclosure of an intimate image. Other forms of sexual corruption such as abuses in other spheres of the public and private sector are currently not covered by South African law. These gaps mean sexual corruption is not adequately or comprehensively prohibited with accompanying criminal remedies. To remedy this, it is necessary to create a dedicated offence that is expressed both within the anti-corruption and the sexual offences architecture.

## Matrix of laws that may cover sexual corruption.

| Anti-corruption laws | Sexual misconduct laws | Employment laws | Digital/technology/ film laws |
|---|---|---|---|
| Prevention and Combatting of Corruption Act, 2004<br><br>• Criminalises active and passive bribery in public and private sectors.<br>• Prohibits giving or receiving any gratification in order to act unlawfully and abuse trust or position. | Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007<br><br>• Criminalises sexual assault, compelled sexual assault involving a third party and compelled self- sexual assault.<br>• Denies consent where there is the use of force, intimidation or a threat of harm or where there is an abuse of power or authority. | Employment of Educators Act, 1998<br><br>• An educator commits misconduct if he/ she commits sexual harassment or receives a bribe. | Cybercrimes Act 2020<br><br>• Criminalises making data available to a person, in order to obtain an advantage from another person.<br>• Criminalises making data available to a person to force that person to perform or to abstain from performing any act.<br>• Criminalises unlawfully disclosing an intimate image of a person in a way that offends their dignity or amounts to sexual exploitation. |
| | Sexual Offences Act, 1957<br><br>• Criminalises sexual intercourse with a girl under the age of 16.<br>• Criminalises immoral or indecent acts with persons under the age of 16 years.<br>• Criminalises the solicitation or enticement of a person under the age of 16 years to commit an immoral or indecent act. | Employment Equity Act, 1998<br><br>• Prohibits discrimination in employment on a number of grounds including gender and sexual orientation.<br>• Prohibits sexual harassment, defined to include quid pro quo sexual harassment and sexual favouritism. | Film and Publications Amendment Act 11 of 2019<br><br>• Criminalises sharing of sexual images or film without consent in order to cause harm. |

# V. THE LEGAL FRAMEWORK ON SEXUAL CORRUPTION IN FOREIGN JURISDICTIONS

**This section presents the legal framework on sexual corruption in several foreign jurisdictions, providing a summary on how these countries have criminalised sexual corruption to provide guidance for SA. The countries examined were selected for their differing approaches to addressing sexual corruption, their geographical importance or socio-economic similarity to South Africa. The USA and two US states are also examined as examples of how sexual corruption is addressed outside of the global South.**

## A. BRAZIL

In 2023, Brazil passed a law to criminalise sexual corruption through PL 4534/2021. The law provides that an official that solicits sexual favours in the conduct of his/her employment is liable to between two- and six-years imprisonment and if the sexual activity is consummated, is liable to between six and ten years imprisonment. The law states that there is an offence if an official conditions "the provision of a service or the practice of an official duty to the performance of a sexual activity that involves carnal intercourse or the practice of any other lewd act." The offender may be any individual that uses a position of supremacy over the victim (Transparency International, 2022). It is not restricted to public officials, covering cases of sexual corruption in the private sector. The law focuses on the transactional nature of the corrupt exchange and does not address the issue of consent at all. Thus, once there is the request or the receipt of a sexual act by an official, there is a breach of the law. The law does not expressly address non-physical sexual activity, such as requests for intimate images or pictures, although such may be covered by the terms "lewd act."

## B. CROATIA

The Criminal Code of Croatia criminalises sexual intercourse through an "abuse of position". The law provides that where a person abuses his/her position and induces another person to submit to sexual intercourse or an equivalent sexual act and where that person is in a position dependent towards him/her due to harsh material, family, social, health or any other conditions or circumstances shall be punished by imprisonment for three months to three years (Art 191). The Criminal Code also criminalises bribery, and the bribery prohibitions are wide enough to cover sexual bribery. The law provides that whoever gives a gift or promises a gift or any other gain as a counter favour shall be punished by imprisonment for three months to three years. However, where the bribe giver reports the act prior to its discovery might avoid the punishment. Whilst the Croatian provisions address sexual corruption, it appears that the provisions are predicated on a clear power imbalance between the perpetrator and the victim. There is no need for a reciprocal exchange in the abuse of position offence, but this is required for the bribery offence. There is also no criminalisation of the victim or need for coercion under the bribery offence.

## C. INDIA

India has a Prevention of Corruption (Amendment) Act, 2018, which defines the "undue advantage" in corrupt transactions. The Act provides that "undue advantage" means any gratification whatever, other than legal remuneration…the word "gratification" is not limited to pecuniary gratifications or to gratifications estimable in money…" (section 2). Under the Act, any public servant who obtains or accepts or attempts to obtain an undue advantage in the performance of public duty or obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty is punishable with imprisonment for a term of between three and seven years (section 7). In addition, section 8 makes it an offence for a person to give an undue advantage to induce a public servant to perform improperly a public duty; or to reward such public servant for the improper performance of public duty. However, these provisions shall not apply where a person is compelled to give such undue advantage and reports the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage (section 8 (1). These provisions are broad enough to cover sexual corruption, with the potential decriminalisation of the victim where there is coercion.

In 2013, India also passed the Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which addresses sexual harassment in the public and private sectors. The Act defines sexual harassment to include physical contact and advances; a demand or request for sexual favours; making sexually coloured remarks; showing pornography; or any other unwelcome physical, verbal or non-verbal conduct of sexual nature (section 2 (n)).

**The Act provides that the following behaviour also amounts to sexual harassment (which includes behaviour which resembles sexual corruption):**

(i) implied or explicit promise of preferential treatment in employment;
(ii) implied or explicit threat of detrimental treatment in employment;
(iii) implied or explicit threat about present or future employment status;
(iv) interference with work or creating an intimidating or offensive or hostile work environment for a woman; or
(v) humiliating treatment likely to affect a woman's health or safety (section 3).

Under the Act, employers are required to establish an "Internal Complaints Committee" (section 4) staffed by women that is tasked with receiving sexual harassment complaints from employees. Complaints must be made within three months of the incident (section 9) and at the request of the complainant, the matter may be settled by conciliation (Section 10). The internal complaints committee has the power to transfer the complainant or the respondent to a different workplace, to give the complainant three months leave or provide the complainant with any other relief. The internal complaints committee may refer complaints and also pay the complainant a sum of money deducted from the respondent's wages. The Act also addresses malicious complaints. Although this Act is comprehensive, it is limited to sexual harassment and sexual corruption that occurs in the employment context and because of non- adherence to the Act, there have been recent discussions on enhancing its efficacy in India (Munjial, 2023).

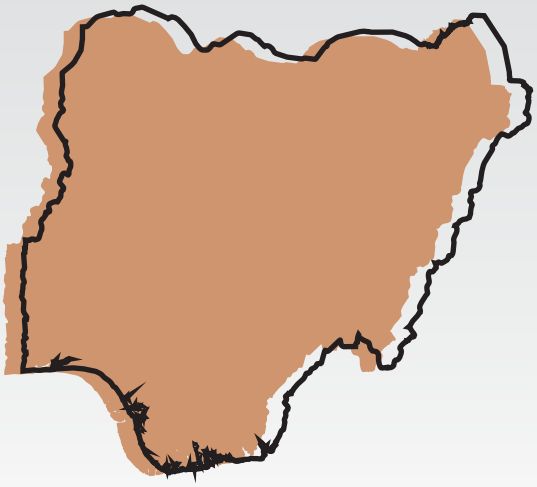
## D. INDONESIA

In 2022, Indonesia passed the Sexual Violence Elimination Law 12 of 2022, which addresses sexual exploitation. The Act defines sexual violence as any act of a physical and/or non- physical nature, directed at the body and/or function of the reproductive organs, using threats, deception or persuasion which results in physical, psychological, sexual suffering or misery and economic loss. The Act criminalises non-physical and (unwanted) physical sexual acts (section 2) as well as acts and threats of violence, deception, lies, a false identity, abuse of trust, abuse of authority, taking advantage of someone's vulnerability, inequality, or dependency, to have sexual relations with any person or use the person's body for sexual purposes (section 5). The Act prohibits retaliation in section 6 and increases the level of punishment for aggravated offences and persons in certain institutions, including educational institutions (section 7). Corporations may also be liable for sexual violence and liable to pay fines if convicted (section 10). Investigators and prosecutors are required to act from a victim and human rights centered perspective (section 14). The Act also deals with several procedural matters including the kind of admissible evidence (section 17), treatment of minor victims (section 17), restitution (section 18), mandatory reporting requirements (section 21), the creation of integrated reporting centres (section 22 and 23) and the examination of victims. The Act also requires the government to foster education and advocacy on sexual violence in the regions and integrate this education in situations of conflict and natural disaster. Relevant government departments are also required to coordinate to ensure that addressing sexual violence measures are effective. The Act is a comprehensive statute, which addresses sexual corruption as a sexual offence. Because it is addressed from the sexual violence perspective, there is no requirement for reciprocity.

## E. NIGERIA

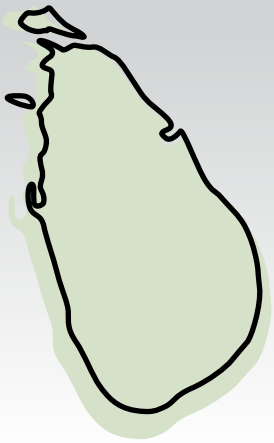
Nigeria has a problem with sexual corruption, and the scale of the problem in the education sector was exposed in the "Sex for grades" scandal (BBC, 2019). In response to these revelations, the Nigerian parliament drafted a bill called the "Prevention, Prohibition and Redressal of Sexual Harassment in Tertiary Educational Institutions Bill, 2019" to protect students against sexual harassment by educators in tertiary educational institutions. The Bill creates a fiduciary relationship between educators and students and provides that an educator shall not exploit a student or his/her relationship with a student for personal gains, sexual pleasure, or immoral satisfaction (section 3). An educator is guilty of an offence or a felony if he/she has sexual intercourse with a student, makes sexual advances to towards a student, directs another person to sexually harass a student, touches the private parts of a student, sends explicit images to a student, or makes sexually suggestive remarks to a student (Section 4). Consent is not a defence to the offence. Criminal proceedings must be filed against the educator who may be liable for up to 14 years imprisonment and will also be liable to a disciplinary proceeding, and a civil claim for a breach of a fiduciary duty. Where a student makes a complaint to an administrative head of an institution and this complaint is not referred, the administrative head shall be guilty of a misdemeanour. The Bill also addresses false complaints and protects students from victimisation.

This Bill was limited to sexual corruption/harassment in the higher education sector but provides guidance in the way in which consent is negated once there is a breach of duty and ensures that administrative heads of institutions refer complaints by making them liable if they fail to do so. The Bill is however limited to tertiary institutions and has not yet been signed into law.



## F. SRI LANKA

Sri Lanka has a 2023 Anti-Corruption law which criminalises active and passive bribery in the public and private sector. Under the Act, it is an offence for a wide range of persons to directly or indirectly solicit, receive or give any gratification. Under the Act, gratification is defined to include sexual favour, which is described as sexual intercourse and any physical, verbal or non-verbal conduct of a sexual nature, including the exposure of a private body part or any act performed by the use of information and communication technology or any other means. (section 162 (2)). The Sri Lankan legislation thus criminalises sexual corruption, but as is the case with most-anti-corruption legislation, also criminalises the victim or the giver of the sexual favour.



## G. TANZANIA

The Tanzanian Prevention and Combatting of Corruption Act, 2007 contains a sexual corruption offence, which criminalises the receipt of "sexual or any other favours". It provides that "any person being in a position of power or authority, who in the exercise of his authority demands or imposes sexual favours or any other favour on any person as a condition for giving employment, a promotion, a right, a privilege, or any preferential treatment, commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both" (section 25). This provision specifies the reciprocity, the abuse of authority as well as the demand for a sexual act. Although it avoids the criminalisation of the victim, it requires the exchange to be for the conferment of a benefit or advantage and not for the avoidance of a detriment, which occurs in many sexual corruption cases.

## H. UNITED STATES

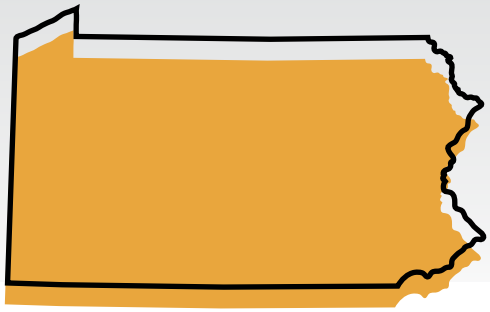
The US federal bribery statute 18 USC 201 criminalises both active and passive bribery of public officials. Thus where a person corruptly gives, anything of value to any public official or offers or promises any public official to give anything of value to any other person or entity, with intent to influence any official act; or to influence such public official to commit or allow any fraud on the United States; or to induce such public official to do or omit to do any act in violation of the lawful duty of such official; or being a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, anything of value personally or for any other person or entity, in return for being influenced in the performance of any official act; being influenced to commit or aid in committing, or allow, any fraud, on the United States; or being induced to do or omit to do any act in violation of the official duty of such official or person shall be fined not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States. It may be noted that "a thing of value" has been interpreted by the courts to cover intangible things and sexual acts. However, as is the case in SA, the anti-bribery law criminalises the victim as well as the perpetrator.

## A. NEW YORK

The State of New York has a sexual harassment law which prohibits sexual harassment that amounts to sexual corruption. The law prohibits unwanted sexual advances or propositions, such as: requests for sexual favours accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments; subtle or obvious pressure for unwelcome sexual activities.

## B. PENNSYLVANIA

The state of Pennsylvania in 2019 amended its law (Title 18 Crimes and Offenses of the Pennsylvania Consolidated Statutes) to create the offence of sexual extortion which covers sexual corruption as well as cyber blackmail. Under the Act, where a person knowingly or intentionally coerces or causes a complainant, to engage in sexual conduct, the simulation of sexual conduct or a state of nudity; or transmits or distributes any image, video, recording or other material depicting the complainant in a state of nudity or engaging in sexual conduct or in the simulation of sexual conduct is guilty of sexual extortion. A person commits sexual extortion where there is harm or a threat to harm the complainant or the property of the complainant, the reputation of the complainant or any other thing of value of the complainant, or the perpetrator withholds or threatens to withhold a service, employment, position or other thing of value or threatens to cause loss, disadvantage or injury, including a loss, disadvantage or injury to a family. This Act criminalises sexual extortion, including sexual corruption as defined, and addresses the issues of coercion, reciprocity and the nature of the sexual act.



# CONCLUSION

The approaches summarised above indicate that many jurisdictions have addressed sexual corruption as a corruption and a criminal offence (Tanzania, Brazil, India, Croatia, Pennsylvania, Sri Lanka). Others criminalise it as part of sexual violence laws (Indonesia) and the others address it as part of the sexual harassment framework in the employment or other context (India, New York, Nigeria).

There are several overarching themes in foreign legislation, which can provide guidance as SA considers the criminalisation of sexual corruption. These are:

1. Detail on the specificity of offences: most of the foreign laws provide a granular level of detail in relation to the kinds of offences that are criminalised, for instance, India, Indonesia, Pennsylvania, Sri Lanka and the Nigerian Bill, specify what kind of sexual conduct offends the law.
2. Inclusion of abuse of trust, abuse of duty or abuse of fiduciary position: this is an important aspect of the laws where the law is based upon and triggered by an abuse of position as we see in Croatia, the Nigerian Bill, Indonesia, and Brazil.
3. Creation of reporting institution: countries like India and Indonesia and the Nigerian bill require the creation of an independent mechanism for reporting the named offences.
4. Clarity on remedies: Most of the laws state the kinds of criminal punishment that may be applied on conviction.
5. Victim centered approaches: This arises in relation to the laws of India and Indonesia, where it is specified that a victim and human rights centred approach must be adopted in dealing with victims.
6. Decriminalisation of victims: The laws in Croatia and India include provisions for decriminalisation of victims. Other laws like Tanzania only address the receiver of the sexual bribe, eliminating this issue.
7. Dealing with malicious complaints: This is seen in relation to Indonesia and the Nigerian Bill and will be important especially in the employment context.

# VI. CASE LAW ON SEXTORTION & SEXUAL CORRUPTION IN SOUTH AFRICA & BEYOND

**This section reviews several court decisions which address sexual corruption directly and indirectly. The cases were selected from jurisdictions including South Africa where the law was examined and where case law was available.**

## A. SOUTH AFRICA

### 1. S v W 1991 (2) SACR 642 (T)

In this case, the appellant, a traffic officer, was convicted for contravening section 2(a) of the Prevention of Corruption Act 6 of 1958 which criminalised bribery through the receipt or acquisition by an agent in a corrupt manner of a gift or compensation in the performance of an act in relation to the affairs or business of his principal. The appellant attempted to persuade a young girl to have sexual intercourse with him in return for him declining to prosecute her for a traffic offence. It was argued that he was not liable for bribery as sexual intercourse did not fall within the ambit of the words 'any gift or consideration' in s 2(a) of the Act and that the trial court had accordingly erred in finding that the offence had been proved. His appeal was dismissed, and it was held that was not only the giving of a financial reward which constituted the crime of bribery, and the attempt to have sexual intercourse also constituted the crime of bribery.

This is the only known case where sexual corruption was prosecuted as a corruption offence under South African law, although it was litigated under an earlier version of the Prevention of Corruption Act. However, it provides precedent for litigating sexual corruption under the current Prevention and Combatting of Corruption Act, although as discussed, this Act criminalises the victim provider of the sexual act. The case did not place any emphasis on the sexual elements of the offence and the victim was not criminalised as she had not agreed to the demands.

### 2. University of Venda v Maluleke and Others

**(JR2125/13) [2017] ZALCJHB 72; (2017) 38 ILJ 1376 (LC) (28 February 2017)**

The respondent was a university lecturer who was dismissed for sexually harassing three female students. He approached them at various times and requested sexual intercourse if they wanted to pass the course he taught. He also touched and kissed one student without consent. The students who refused his advances failed the course. The actions of the respondent were a breach of the university's sexual harassment policy, which defines sexual harassment as unwelcome sexual advances in exchange for favours, or other requests which are objectionable in the context of the working environment, including the intimidation of students into submitting to unwanted sexual advances in return for marks.

The respondent challenged his dismissal before the Labour Court and the case was considered under the Employment of Educators Act and the university's sexual harassment policy issued under the Employment Equity Act. There was no discussion of sexual corruption or bribery. The case focused on the meaning of sexual harassment, stating that sexual harassment must be unwelcome and previous consensual activity does not preclude later actions from being unwelcome. Actions could be unwelcome based on the power dynamic and the relationship between the parties. The case discussed the power differential between the respondent and his victims and also discussed quid pro quo sexual harassment and sexual favouritism under the policy, which stated that "Quid pro quo harassment occurs where a person such as an owner, employer, supervisor, member of management or co-employee, influences or attempts to influence an employee's employment circumstances (for example engagement, promotion, training, discipline, dismissal, salary increments or other benefits) by coercing or attempting to coerce an employee to surrender to sexual advances. This could include sexual favouritism, which occurs where a person in authority in the workplace rewards only those who respond to his or her sexual advances." Although this was a clear case of sexual corruption, the absence of a dedicated law on sexual corruption meant the case was addressed as a civil and not a criminal matter under the university's sexual harassment policy.

### 3. G v Minister of Safety and Security and Another

**(D495/06) [2010] ZALC 312 (18 June 2010)**

The applicant was a member of the South African Police Force (SAPS) who alleged that her area commissioner (also an employee of SAPS) sexually harassed her for three years before she reported

it. She sued the harasser's employer (the Minister for Safety and Security) to hold them liable for the harassment suffered. She claimed that SAPS did not investigate the complaint when it was made, and she was victimised because of the complaint. The allegations are that the area commissioner persuaded her to have sexual intercourse with him if she wanted to be promoted and she acquiesced. After the sexual encounter, the allegation is that he began to blackmail her into continuing to have sexual intercourse with him, threatening to expose her for having had sexual intercourse with him. Because this was at odds with her family's values and she had family members who worked for SAPS, she gave in to the blackmail. She also lent him money at his request, which she obtained from moneylenders. She also alleged that he raped her on one occasion. SAPS found that he did not commit sexual harassment, but committed misconduct and was reprimanded. The court agreed that the relationship was consensual even though the area commissioner had breached several laws and engaged in many corrupt acts. This case highlights that sexual harassment laws and policies will not always be sufficient to address sexual corruption as they focus on issues of consent, the behaviour of the victim, whether there was prompt reporting, and do not give sufficient attention to abuses of authority and coercion.

### 4. Makoti v Jesuit Refugee Service South Africa

**(JS 323B/09) [2011] ZALCJHB 122; (2012) 33 ILJ 1706 (LC) (13 January 2011)**

The applicant alleged that she was sexually harassed by her supervisor on several occasions through requests for sexual intercourse and sexual innuendo, and he had offered her a promotion to another province, which she rejected. She did not report these incidents, although she discussed them with a colleague. After several advances, she told him that she had reported him to her husband, which surprised him and from then on, he became unpleasant and spiteful towards her. She was denied a promotion even though she had been acting in the role and was informed that year that her annual contract would not be renewed, based on her "continued poor performance." In the past, her contract had been renewed without a performance assessment as a pre-requisite for a renewal. The respondent claimed there could not be sexual harassment since she did not report it at the time. The court found that there was sexual harassment under the Employment Equity Act, and she was unfairly dismissed under the Labour Relations Act. She was granted compensation for her unfair dismissal. This case was dealt with as a civil matter even though it was a clear case of sexual corruption with retaliation.

### 5. Tshivhase-Phendla v University of Venda

**(JS1145/12) [2017] ZALCJHB 491 (12 October 2017)**

The applicant was a professor in the respondent university and was dismissed for taking bribes to wrongly influence a university cleaning contract. She alleged that she was sexually harassed and raped by the Vice-Chancellor of the University and was in a coerced relationship with him, where she was rewarded with the post of Dean and a nomination for membership of a foreign research project. She alleged that she was dismissed only when she sought to terminate the sexual relationship. The court found that there were many inconsistencies in her testimony and no evidence that she was subjected to sexual harassment and her dismissal was fair under the Labour Relations Act.

## B. INDIA

### 1. Court of its own motion v State of JK & Anor [2018] High Court of Jammu and Kashmir at Srinagar CMP No 31/2012.

This case concerned an accused who set up an agency to provide support and security staff to hospitals and other organisations. In doing so, the accused employed women from disadvantaged backgrounds and coerced them into having sexual relations with him and coerced these women into having sexual relations with other men. The offence was regarded as a breach of section 22 of the Constitution of Jammu and Kashmir, which secures equality for women, especially, "special protection against discourtesy, defamation, hooliganism and other forms of misconduct" (section 22 (e) Constitution of J & K). The court also directed that the Jammu and Kashmir Prevention of Corruption Act, 2006 be amended to provide stringent penalties for this type of corruption. This case was litigated under the state Constitution but created the impetus for India's first sexual harassment law, dedicated to addressing sexual corruption in the workplace.

## C. SRI LANKA

### 1. Kathubdeen v Republic of Sri Lanka [1998]

**3 Sri LR 107.**

This case turned on whether sexual intercourse amounted to a gratification under section 90 of the repealed Sri Lankan Bribery Act. The accused worked in a government department and requested sexual intercourse from his subordinate in order to effect a work transfer for her. The Act defines gratification as including "any other service, favour or advantage or any descriptive whatsoever." It was held that the word gratification connotes anything which affords

gratification or satisfaction or pleasure to the taste, appetite or mind. The craving for sexual intercourse is an example of mental and bodily desires, the satisfaction of which is gratification, which is not estimable in money. As a result, the accused was rightly convicted under the Bribery Act. This case highlights that an expansive meaning of "gratification" under bribery laws can be used to address sexual corruption. As was seen above, the new anti-corruption law in Sri Lanka expressly includes sexual favours and acts as part of the meaning of gratification for the purpose of the offence of bribery.

## D. TANZANIA

### 1. Republic v Ngilangwa RM Crim Case No 07 of 2010 (Resident Mag Ct of Iringa, June 6, 2011) Tanzania.

In this case, the accused was a secondary school teacher, who requested sexual intercourse from a 14-year-old student to provide her with high marks in his class. The child's mother reported the matter to the police and the teacher was apprehended. He was tried and convicted of demanding sexual favors under Section 25 of the Prevention and Combating of Corruption Act of 2007, and of attempted rape under Section 132(2) (b) of the Penal Code. 2002, which provides that "[a] person attempts to commit rape if, with the intent to procure prohibited sexual intercourse with any girl or woman, he manifests his intention by . . . (b) being a person of authority or influence in relation to the girl or woman, applying any act of intimidation over her for sexual purposes." He was sentenced to five years in jail. This case illustrates that sexual corruption can be prosecuted under a dedicated sexual corruption offence in the African context.

### 2. Onesphory Materu vs Republic

**(Criminal Appeal 334 of 2009) [2011] TZCA 165 (28 March 2011)**

The accused was a police officer who requested sexual intercourse from a 14-year-old girl remanded for a charge of theft in exchange for releasing her from custody. After the sexual intercourse, she was not released, and she reported the matter. She was medically examined, and evidence of the intercourse was found. The officer was convicted under the Penal Code and sentenced to 30 years imprisonment, 24 strokes of the cane and ordered to pay 700,000 shillings to the complainant. This case was litigated under the Penal Code since the victim was a minor, the act also violated the provisions on rape under section 130 of the Penal Code as amended.

## E. UNITED STATES OF AMERICA

### 1. State v. Moore,

**419 So. 2d 963, 967 (La. 1982)**

In this case, a state police officer in Louisiana found two occupants in a car breaching public obscenity laws. He requested the woman occupant of the car to have sexual intercourse with him in order to avoid arrest. At his trial, the accused argued that the state failed to prove an essential element of extortion, namely the intent to obtain anything of value by communication of threats. It was held that sexual favors are "anything of value" under the state extortion law.

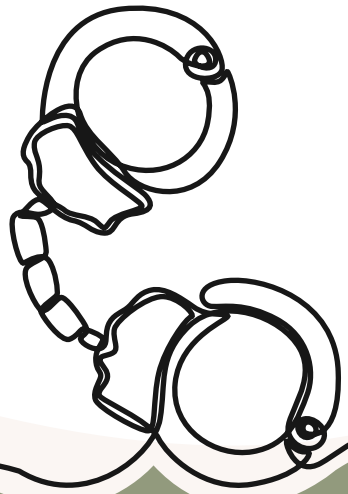
### 2. United States v Moore

**525 F.3d 1033 (11th Cir 2008).**

The two accused were correctional officers at a women's prison and operated a "sex for contraband scheme" where they engaged in sexual contact with the inmates in exchange for contraband. They assisted each other in undertaking these activities and were convicted of conspiracy to commit bribery and bribery. It was held that "a thing of value" covers intangible considerations and monetary worth is not the sole measure of value and sex was covered under this term.

## CONCLUSION:

Case law on sexual corruption is very scant, even in countries which criminalise it. In SA, there is a dearth of litigation on sexual corruption, partly because there is a dearth of litigation on corruption generally and sexual corruption is mostly addressed as a civil matter under the Employment Equity Act. In other countries, most cases are addressed under rape laws (when the victim is a minor) and under sexual harassment law or extortion laws.



# VII. PROPOSED LEGISLATIVE AND INSTITUTIONAL CHANGES TO CRIMINALISE SEXUAL CORRUPTION IN SOUTH AFRICA

**From the review of the legislation and court decisions, sexual corruption in SA is most often addressed as a breach of the sexual harassment provisions of the Employment Equity Act.**

Whilst sexual corruption offence is also covered to a limited extent under the Employment of Educators Act, the sexual offences laws, the Cybercrime Act and under the Amended Code of Good Practice on Handling Sexual Harassment in the Workplace issued under the Employment Equity Act, these are limited to certain conduct and contexts and do not apply to sexual corruption outside these realms. Addressing sexual corruption as a civil matter also means that offenders do not suffer criminal or serious consequences for their actions.

It is recommended that SA creates a dedicated sexual corruption offence, which will address the gaps in the existing legislative framework (Hendry, 2020; IBA 2019; Hlongwane, 2017). Criminalisation is necessary as the criminal law prohibits conduct that is harmful to individuals and to society and warns about conduct that is subject to criminal punishment (Lippman 2018). As South Africa grapples with the fall out of the Zondo Commission report, there is currently the possibility of a legislative window to amend its anti-corruption laws. If a sexual corruption offence is created, this will mean that the issues of consent and coercion become irrelevant, but the law must criminalise the perpetrator alone and avoid criminalising the victims. This report thus makes the following recommendations:

1. Creating a dedicated offence of "sexual corruption": The proposed sexual corruption offence should thus be dealt with as an amendment to the Prevention and Combatting of Corruption Act. It is suggested that the proposed offence models the simplicity of the Tanzanian provision with some modifications.

a. Scope of the offence: the offence must prohibit any request for physical or non- physical sexual acts in exchange for avoiding a detriment or conferring a benefit in a way that amounts to an abuse of authority, trust or position. There will be a presumption of corruption once there is the abuse of authority as is the case with other corruption offences under section 24 of PRECCA. Consent for the sexual act is irrelevant once there is an abuse of position on the part of the perpetrator (the denial of consent is present in Canada and Australia where there is an "abuse of authority" by the offender- Thomson Reuters Foundation, 2015). Psychological coercion is irrelevant and presumed when there is an abuse of position/trust (Gitlin, 2016). In addition, the victim is not criminalised because the law criminalises the demander/receiver of the sexual act and not the giver of the sexual act. The offence should be prohibited in both the public and private sectors in line with the existing corruption offences under the Act. Under the proposed offence, the person in authority will not be able to rebut the sexual corruption allegation on the basis that he/she did not solicit the sexual act. In other words, if the person in authority was offered the sexual act and the person in authority accepted the sexual act in order to abuse his/her position, then the commission of the offence is established. Further, the duty to report offences under the PRECCA will also apply to sexual corruption offences.

b. Elements of the offence: for the offence to be established, there must be a request or the consummation of a physical/non-physical sexual act in exchange for obtaining a benefit or avoiding a detriment and the abuse of position/trust/authority.

As stated, coercion and a lack of consent are irrelevant in corruption offences (Hendry, 2020; Gitlin, 2016). Once there is an abuse of authority, and the request or receipt of for a sexual act in exchange for something, this is sufficient to establish the offence. Non-criminalisation of the victim is ensured by only criminalising the receiver of the sexual act as is the case in Tanzania.

c. Remedies: The law should specify the criminal and other remedies available on conviction for the offence. These may include a term of imprisonment, the option of fines and compensation for the victim.

2. **Victim-centred reporting mechanisms:** As sexual corruption is also a sexual offence, the law must also require that public agencies and police stations provide a safe, confidential reporting mechanism for sexual corruption, and victims are dealt with in a victim-centred and gender-sensitive way. Reporting mechanisms should be able to provide access to appropriate resources, including physical and psychological health services, and financial and legal support. At present, victims of sexual offences in South Africa may utilise the Thuthuzela Care centres located within some public hospitals, which provide legal, medical and psychological support. These or similar bodies may be utilised in cases of sexual corruption, which offer clear guidance on reporting processes (Transparency International, 2020). The reporting mechanisms may include police stations, an independent or ombudsman agency, or an administrative or community agency (IAWJ 2012). For instance, in Tanzania, the anti-corruption agency introduced "gender desks" where victims of sexual corruption can report to women officers (Makoye 2019). There could be reasonable time limits imposed for reporting as occurs in India or the same twenty-year prescription period that applies to criminal offences under section 18 of the Criminal Procedure Act 51 of 1977. There must also be an improvement in whistleblowing mechanisms in the public sector. It may be noted that in SA, the Public Protector is competent to investigate inter alia, abuse or unjustifiable exercise of power or unfair capricious, discourteous or other improper conduct by a person performing a public function, and any dishonest act or omission or offences referred to in part 1 to 4 or section 17, 20 or 21 of chapter 2 of PRECCA in the public administration which results in unlawful or improper prejudice to any other person (section 6 (4) Public Protector Act 23 of 1994). What this means is that victims of sexual corruption may report to the Public Protector who may investigate allegations of sexual corruption in the public sector.

3. **Training on prosecuting sexual corruption:** It will be necessary to provide investigators, prosecutors, and judges with the technical knowledge on investigating, prosecuting, and hearing this offence (Global Judiciary Integrity Network, 2020). Some learning may be obtained from agencies and practitioners who are versed in determining whether sexual harassment occurred in the workplace. South Africa currently has sexual offences courts, which may be suitable. There also exists a special corruption court, which is charged with recovering misappropriated public funds, but this court may not be suited for prosecuting sexual corruption. Prosecutions and convictions will increase the deterrent effect of the law and reduce the impunity with which the crime is committed.

4. **Sustained advocacy:** The criminalisation of sexual corruption alone will not be sufficient to address this problem and must be accompanied by an advocacy campaign.

a. **Sensitisation of the public:** Researchers have highlighted that many victims of sexual corruption do not recognise it as a corruption offence (UNODC, 2020) and do not recognise that they are victims of a crime (IBA, 2019; Elden et al. 2020). As such, advocacy will be necessary to sensitise the public to their rights and available remedies when sexual corruption occurs. This will involve the creation of materials distributed to areas where sexual corruption is rampant, including schools, universities, the judiciary, and municipalities. Municipalities must be responsible for creating community level awareness of this crime, reporting mechanisms and victim support.

b. **Multi-stakeholder collaboration:** collaboration between the courts, the prosecutors, law enforcement, correctional institutions, and community groups (including child, women and LGBTQIA+ groups) is necessary to ensure there is no friction between these groups in addressing sexual corruption, clarify the processes for bringing sexual corruption cases and understand the "legal, social, economic, or other barriers that may keep victims either from availing themselves of those processes or from obtaining effective redress" (IAWJ 2012). This collaboration must also address the reporting process.

c. **Strengthening public service ethics codes**: Sexual corruption in the public sector is a breach of public service ethics codes, and these must be reinforced as a preventive mechanism against all types of corruption, including sexual corruption. Sexual corruption should be included in sexual harassment policies and in public codes of conduct and more work must be done to address public sector malfeasance by taking measures to institute ethics by making conduct important to reward and progression.

5. **Continued efforts to mainstream gender and address sexual violence:** South Africa has a problem with sexual and gender-based violence that is outside the scope of this report, however, in addressing sexual corruption, it is important to recognise that it falls into the sexual violence continuum and work needs to continue to change harmful gender stereotypes, address toxic masculinity tropes and foster a culture of respect for women.

# VIII. PROPOSED ADVOCACY PLAN FOR ADDRESSING SEXUAL CORRUPTION IN SOUTH AFRICA

**This advocacy plan is based on the research which highlighted certain barriers to reporting, investigating and prosecuting sexual corruption. This advocacy plan is intended to address the factors identified in the research and support a broad approach to addressing sexual corruption. The plan seeks to achieve four goals that will increase the reporting, investigation and prosecution of sexual corruption and increase the deterrent effect of the proposed law.**

## ADVOCACY GOALS:

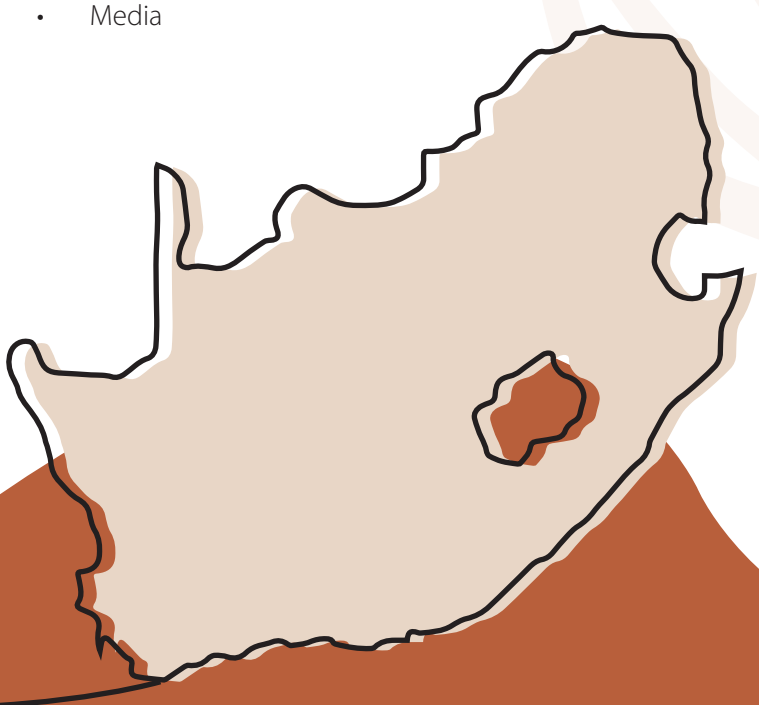
i. Creation of a dedicated offence of "sexual corruption" within the Prevention and Combatting of Corruption Act, 2004.
ii. Create victim centred mechanisms for reporting sexual corruption.
iii. Create awareness of the offence and information on how to report in different spheres and on how to obtain victim support.
iv. Provide training and support to police stations, investigators, prosecutors, and judges on how to handle sexual corruption cases.

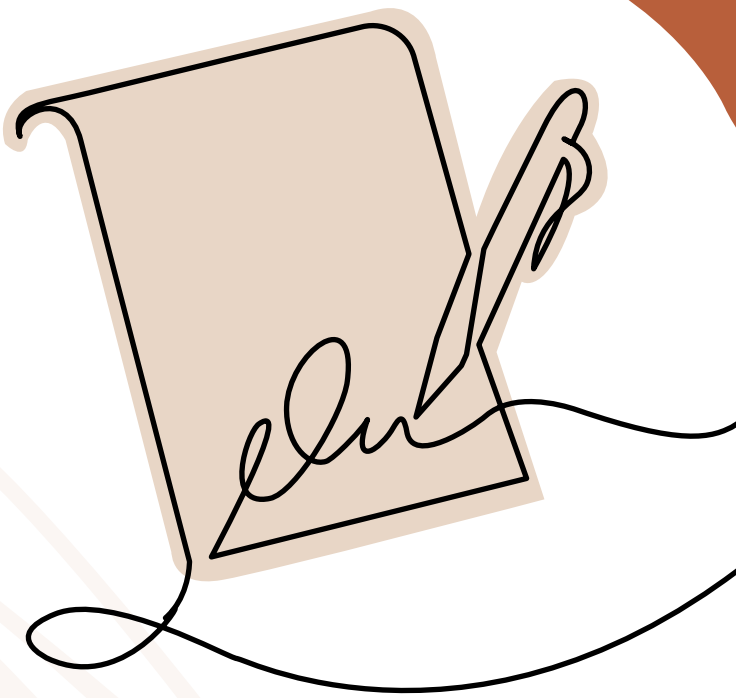
## RESOURCES:

- Department of Justice
- Department of Women, Youth and Persons with Disabilities
- Department of Public Service and Administration
- National Prosecuting Authority
- Commission for Gender Equality
- SA Human Rights Commission
- LGBTI National Task Team
- DOCKDA Rural Development Agency
- UN Women
- National Anti-Corruption Advisory Council
- Corruption Watch
- Office of the Public Protector
- African Procurement Law Unit, Stellenbosch University
- Media

## ALLIES

- National Anti-Corruption Advisory Council
- African Women Against Corruption Network
- Women For Change SA
- Gender Justice
- Southern Africa Defenders
- People Opposing Women Abuse
- Soul City Institute
- Lawyers Against Abuse
- National Business Initiative
- DOCKDA Rural Development Agency
- Black Womxn Caucus
- Nisaa Institute for Women's Development
- Business Women's Association, South Africa
- OUT LGBT Well-being
- Victory Institute
- South African National Child Rights Coalition
- OxFam
- Section 27
- Media





## STAKEHOLDERS

- Presidency
- Parliament
- National Treasury
- Provincial treasuries
- Department of Women, Youth and Persons with Disabilities
- Department of Justice
- Department of Public Service and Administration
- National Prosecuting Authority
- Rural Development Agency
- Commission for Gender Equality
- SA Human Rights Commission
- Office of the Chief Procurement Officer (OCPO)
- Dept of Trade and Industry (DTI)
- All government departments
- State owned enterprises
- Dept of small business development
- Small Enterprise Devpt Agency (SEDA)
- Small Enterprise Finance Agency (SEFA)
- National Economic Development and Labour Council (NEDLAC)

## TARGETS

- Presidency
- Parliament
- National Treasury
- Department of Justice
- Department of Women, Youth and Persons with Disabilities
- Department of Public Service and Administration
- National Prosecuting Authority
- Commission for Gender Equality
- National Anti-Corruption Advisory Council
- SA Human Rights Commission
- Provincial treasuries
- Dept of Trade and Industry (DTI)
- All government departments
- State owned enterprises

## STRATEGY:

a. Engagement with relevant organisations on the need for criminalisation of sexual corruption as an amendment to the Prevention and Combating of Corruption Act 2004 [March 2024 to December 2024].

b. Engagement with the public and private sector on the need to include sexual corruption in anti-harassment and employee conduct policies including public service codes of conduct and the creation of safe and confidential reporting mechanisms [March 2024 to December 2024].

c. Public education and awareness campaign of what amounts to sexual corruption in schools, universities, hospitals and municipalities providing water and sanitation services and in public procurement. Create posters and handbills that specify the prohibited conduct, highlight its corrupt nature and the reporting mechanisms and support available. Rely on public and university radio stations and social media [June 2024-Feb 2025].

d. Convene a national event with all stakeholders to determine responsibilities for implementation and tracking. Aim for end of 2024 or early 2025.

# IX. CONCLUSION

This research report examined the legislative framework on sexual corruption in South Africa and highlighted the gaps in the legal framework. It was seen that sexual corruption is criminalised by reliance on a patchwork of civil and criminal laws, but these laws cause problems for the prosecution of sexual corruption, such as the criminalisation of the victim, and the preoccupation with the issues of coercion and consent under sexual harassment laws. The report determined that it is necessary to change the terminology used in addressing sextortion to "sexual corruption" to avoid confusing sexual corruption with sexual blackmail using intimate images.

The report also examined international experiences with criminalising sexual corruption and determined that it is necessary to criminalise sexual corruption in South Africa, through a dedicated offence of sexual corruption, which may be included in the anti-corruption legislation.

The report concludes that it will be necessary to focus on the abuse of position/ authority as the key element in criminalising sexual corruption, jettisoning issues of consent and coercion once an abuse of position/authority exists. In addition, the presumption of corruption must also apply to a sexual corruption offence, so that when there is a demand for sexual favours accompanied by a power imbalance, an abuse of authority and the conferment of benefits or the imposition of deprivations, then sexual corruption should be presumed, with the burden on the perpetrator to prove there was no corruption. It is also necessary that there are interventions in the criminal justice system to provide safe and victim-centred channels for whistleblowing and reporting and that other support is provided to victims as needed.

The report concludes with recommendations for criminalising sexual corruption in SA, setting out the elements of the offense and further creates an advocacy plan to engage with relevant stakeholders on the need for a dedicated offence, the need for creating public awareness on sexual corruption and its importance to addressing sexual violence and gender equality in SA.

# X. REFERENCES


Aja-Eke, D; Gillanders, R; Ouedraogo, I & Haoua, W; Maiga, E (2023) Sextortion and Corruption, Applied Economics Letters, DOI: 10.1080/13504851.2023.2289894 https://www.tandfonline.com/doi/full/10.1080/13504851.2023.2289894

BBC (2019) Sex for Grades: Undercover in West African Universities. https://www.bbc.com/news/av/world-africa-49907376

Berdahl, J. L. (2007). Harassment based on sex: Protecting social status in the context of gender hierarchy. Academy of Management Review, 32(2), 641–658. https://psycnet.apa.org/record/2007-05201-018

Boehm, F. and E. Sierra (2015) The gendered impact of corruption: Who suffers more – men or women? Bergen: Chr. Michelsen Institute (U4 Brief 2015:9) 4 p https://www.u4.no/publications/the-gendered-impact-of-corruption-who-suffers-more-men-or-women

Bramon, B, Leslie, J, (2012) Slavery and Human Trafficking in Encyclopedia of Applied Ethics (Second Edition),

Centre for Equality and Justice (CEJ), Sri Lanka (2022) Asking For My Soul: A Study Of Sexual Bribery In The Health And Justice Sectors In Sri Lanka Briefing Paper.

Corruption Watch (2020), Our Future is not for Sale. https://www.corruptionwatch.org.za/wp-content/uploads/2020/12/Our_Future_Is_Not_4_Sale-V2D_FINAL_8Dec2020.pdf

DeFour D.C (1990) The Interface of Racism and Sexism on College Campuses in Paludi M. (eds) Ivory Power: Sexual Harassment on Campus https://psycnet.apa.org/record/1991-97140-000

Duby et al (2021) From Survival to Glamour: Motivations for Engaging in Transactional Sex and Relationships Among Adolescent Girls and Young Women in South Africa. Aids and Behaviour 25(10): 3238–3254. https://pubmed.ncbi.nlm.nih.gov/33950338/

Eldén, Å, Calvo, D, Bjarnegård, E, Lundgren, S & S. Jonsson, S. (2020). Sextortion: Corruption and Gender-Based Violence. Sweden: The Expert Group for Aid Studies https://www.wilsoncenter.org/publication/the-link-between-corruption-and-gender-inequality-heavy-burden-for-development-and

Fuentes Téllez, A (n.d) The Link Between Corruption and Gender Inequality: A Heavy Burden for Development and Democracy, The Wilson Center Rule of Law Publication. Available at https://www.wilsoncenter.org/publication/the-link-between-corruption-and-gender-inequality-heavy-burden-for-development-and

Gitlin, S (2016) Sextortion Victims Are Not Guilty of Bribery. The Global Anti-corruption Blog: Law, Social Science, and Policy. https://globalanticorruptionblog.com/2016/07/22/sextortion-victims-are-not-guilty-of-bribery/

Global Judicial Integrity Network (2020), Gender-Related Judicial Integrity Issues. Available at https://www.unodc.org/documents/ji/knowledge_products/gender_paper.pdf

Goetz, A.M. (2007), Political Cleaners: Women as the New Anti-Corruption Force?. Development and Change, 38: 87-105. https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-7660.2007.00404.x

Guy, L (2006) Re-visioning the Sexual Violence Continuum Partners in Social Change Fall 2006, 4. https://www.pcar.org/sites/default/files/resource-pdfs/re-visioning-the-sexual-violence-continuum.pdf

Hagglund K & Khan F (2023) The gendered impact of corruption: women as victims of sextortion in South Africa Journal Of Anti-Corruption Law Volume 7Pages 1-19 https://www.epubs.ac.za/index.php/jacl/article/download/1446/1031/3175

Hendry, N (2020) Sextortion: Sexual offence or corruption offence? Transparency International Blog (14 April 2020). Available at https://www.transparency.org/en/blog/sextortion-sexual-offence-or-corruption-offence

Hlongwane, P (2017) Sextortion in South African Public Sector Institutions An Ethical and Moral Dilemma Administratio Publica, Vol 25 No 2 June 2017, 7. https://journals.co.za/doi/pdf/10.10520/ejc-adminpub-v25-n2-a2

International Association of Women Judges (2012) Toolkit: Naming, Shaming and Ending Sextortion. Available at https://www.unodc.org/res/ji/import/guide/naming_shaming_ending_sextortion/naming_sham ing_ending_sextortion.pdf

Makoye, K (2013) Tanzania Police set up special desks for gender violence cases. Thomson Reuters Foundation News 28 November 2013. https://news.trust.org/item/20131128131537-fitsc/

Kirya, M (2018) The Battle Inside the War: What Stands Between Women in Conflict Situations and Help? 18th International Anticorruption Conference IACC 22-24 October 2018. https://news.trust.org/item/20131128131537-fitsc/

Lippman, M. (2018). Contemporary Criminal Law: Concepts, Cases, and Controversies.

Motala, S. (2021). Unemployed youth vulnerable to sextortion: CW Youth Survey 2020. Available at: https://www.corruptionwatch.org.za/unemployed-youth-vulnerable-to- sextortion-cw-youth-survey-2020/.

Munjal, D (2023) What is the PoSH Act and why has the Supreme Court flagged lapses in its implementation? The Hindu (15 May 2023). Available at https://www.thehindu.com/news/national/explained-the-indian-law-on-sexual-harassment-in- the-workplace/article66854968.ece

Nana, C.N. 2008. Sexual harassment in the workplace in South Africa: The unlimited vicarious liability of employers? Journal of African Law. 52(2):245–267.

Nilsson, MG, Tzani-Pepelasis, C & Ioannou, M. (2019). Understanding the link between sextortion and suicide. International Journal of Cyber Criminology, 13(1): 56-69.

Smit, D. and Du Plessis, V. 2011. Sexual Harassment in the education sector. Potchefstroom Electronic Law Journal. 14(6):173–217.

Srinivasan A, (2021) The Right to Sex: Feminism in the Twenty-First Century (Farrar, Straus and Giroux)

StatsSA (2023), Governance, Public Safety, and Justice Survey GPSJS 2022/23. Available at https://www.statssa.gov.za/publications/P0341/P03412023.pdf

Sundström A and Wängnerud, L (2021) Sexual forms of corruption and sextortion: How to expand research in a sensitive area. Quality of Government Institute Working Paper Series 2021: 10. Available at https://www.gu.se/sites/default/files/2021- 12/2021_10_Sundstrom_Wangnerud.pdf

# LEGAL FRAMEWORK ON SEXTORTION/SEXUAL CORRUPTION IN SOUTH AFRICA

SEXTORTION


+27 12 423 5900

giz-suedafrika@giz.de

www.giz.de/southafrica

P.O. Box 28102, Sunnyside,
0002, Pretoria, South Africa



2030 NDP

german cooperation
DEUTSCHE ZUSAMMENARBEIT

Implemented by:
giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

State Secretariat for Economic Affairs SECO

# SEXTORTION

## GENDERED CORRUPTION IN THE CONTEXT OF GAUTENG, SOUTH AFRICA

Overview and Key Findings

**Published by the**
Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

**Registered offices**
Bonn and Eschborn, Germany
Transparency, Integrity, Accountability Programme (TIP) in South Africa
GIZ South Africa, Lesotho and eSwatini
P.O. Box 28102, Sunnyside, 0002, Pretoria, South Africa
**Phone** +27 12 423 5900
**Email** giz-suedafrika@giz.de
www.giz.de/southafrica

**As at**
May, 2023

**Design**
Variis Media
Gqeberha

**Text**
Prof Paulus Hlongwane
Prof Malose Langa
Dr Sagwadi Mabunda
Mr Robert Gray

**Research**
Health Focus

**On behalf of the**
German Federal Ministry for Economic Cooperation and Development (BMZ)




© 2023 Sextortion as a Means of Gender Specific Corruption in Gauteng, South Africa: An Introductory Study

# LIST OF ABBREVIATIONS

**CECA**
Botswana Convention on the Elimination of Corruption Act

**CEDAW**
The Convention on the Elimination of All Forms of Violence Against Women

**CSO**
Civil Society Organisation

**DHA**
Department of Home Affairs

**GBV**
Gender Based Violence

**IAWJ**
The International Association of Women Judges

**ICPA**
Nigerian Independent Corrupt Practices and Other Related Offences Act

**LGBTQIA**
Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Agender

**NACS**
National Anti-Corruption Strategy

**PCAA**
Tanzania Prevention of Corrupt Activities Act

**PRECCA**
Prevention and Combating of Corrupt Activities Act 12 of 2004

**SADC**
Southern Africa Development Community

**SORMA**
Sexual Offences and related Matters Amendment Act 32 of 2007

**TFSV**
Technology Facilitated Sexual Violence

**TIP**
Transparency, Integrity and Accountability Programme

**UNCAC**
United Nations Convention Against Corruption

**UN**
United Nations

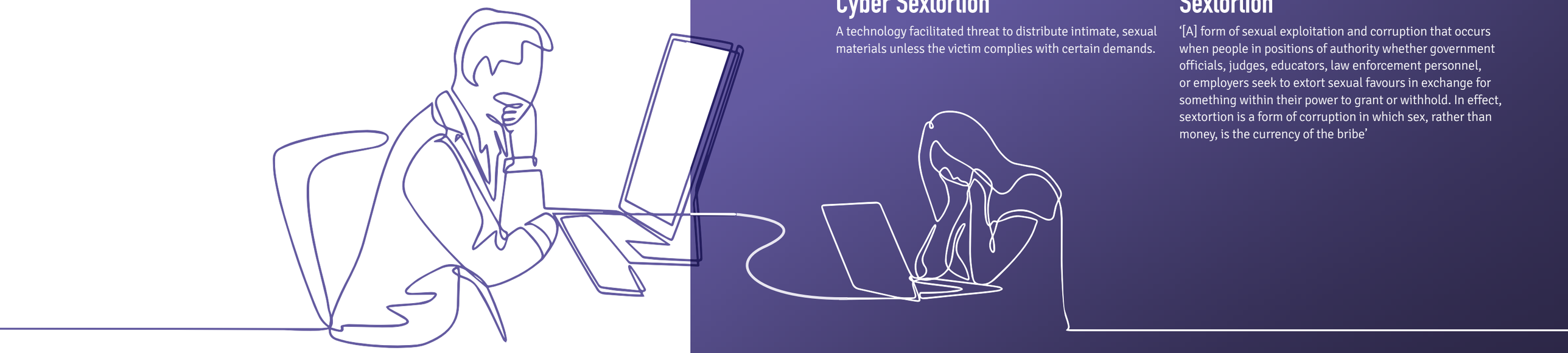
# GLOSSARY OF TERMS

## Cyber Sextortion

A technology facilitated threat to distribute intimate, sexual materials unless the victim complies with certain demands.

## Sextortion

'[A] form of sexual exploitation and corruption that occurs when people in positions of authority whether government officials, judges, educators, law enforcement personnel, or employers seek to extort sexual favours in exchange for something within their power to grant or withhold. In effect, sextortion is a form of corruption in which sex, rather than money, is the currency of the bribe'



© 2023 Sextortion as a Means of Gender Specific Corruption in Gauteng, South Africa: An Introductory Study

# 1. STUDY OVERVIEW

## Background and Motivation

There is consensus that corruption affects vulnerable groups the hardest, especially women and members of the LGBTQIA community (Elden, Clavo, Bjarnegrad, Lundgren & Jonsson, 2020; France, 2022). In addition, it disproportionally affects those living in poverty and leaves them more exposed (Corruption Watch 2020). Corruption also hinders progress toward gender equality and presents a barrier, especially for women and vulnerable groups, to gain full access to their civic, social and economic rights, often stemming from existing patriarchal gender stereotypes and norms.

A particular form of corruption is sextortion, which is the abuse of power to obtain a sexual benefit or advantage.

**The International Association of Women Judges define sextortion as:**

***'A form of sexual exploitation and corruption that occurs when people in positions of authority, whether government officials, judges, educators, law enforcement personnel, or employers seek to extort sexual favours in exchange for something within their power to grant or withhold. In effect, sextortion is a form of corruption in which sex, rather than money, is the currency of the bribe.'***

**(IAWJ)**

The Prevention and Combating of Corrupt Activities Act of 2004 (PRECCA) does not explicitly refer to sex, sexual favours or sextortion as a form of "gratification" that would qualify it for corruption, but it also does not require money to be exchanged for an act to be considered corruption. Theoretically, sextortion could and should be prosecuted under PRECCA. The question is whether the offence is explicit enough to name it corruption because no money is exchanged. During its inception phase, the GIZ Transparency, Integrity and Accountability Programme (TIP) put significant effort into analysing its operational environment within the nexus of corruption, human rights and gender. A reoccurring theme of this analysis was the negative societal impact sextortion has as a form of corruption in South Africa. Yet, it became apparent that while there is much anecdotal evidence, **the subject lacks quantitative data**. Such data could assist in raising awareness and promoting educative programmes as well as inputs on policy and the legal frameworks.

## Problem Statement

Sextortion is not a new phenomenon in the world, yet less efforts have been taken to address its repercussions through legislative and preventive machinery. For instance, **in South Africa, the various legislative frameworks do not mention the word sextortion**. This means it will remain continuously difficult to prosecute sextortion as a criminal offence in South Africa. Furthermore, if the current legislative framework on corruption is not reviewed, **victims of sextortion may be considered willing participants and retraumatised by the justice system**.

Although there is research relating to the topic of sextortion in South Africa, **there is still a paucity of empirical evidence concerning the factors that contribute to sextortion, its manifestation, as well as vulnerable areas or sectors**. Furthermore, the perceptions and opinions of the citizenry on the topic of sextortion in the context of South Africa has not yet been widely researched.

This research has sought to analyse legislative frameworks as it relates to sexual offences or corruption and investigate the perceptions and opinions of the citizenry of the topic of sextortion in Gauteng Province, South Africa.

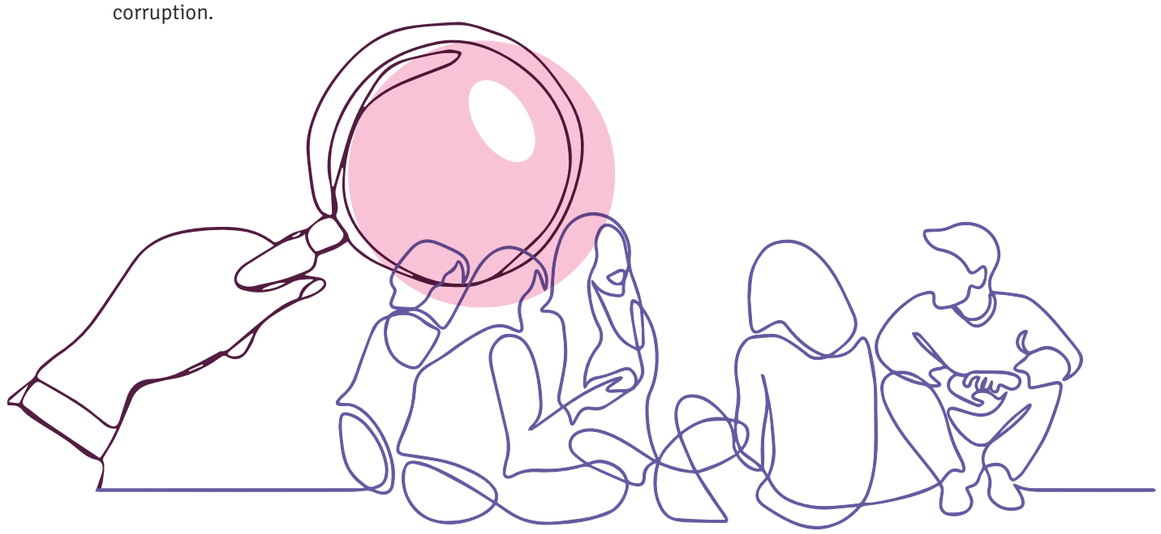
## Research Objectives

**A** **Provide analysis and comparison of legal frameworks** addressing sextortion between South Africa and Botswana, Nigeria and Tanzania to determine whether the current legislation is sufficient to both recognise and prosecute sextortion or if there is a need to introduce amendments that make sextortion a specific offence.

**B** **Provide verifiable data on the nature and occurrence of sextortion across private, governmental and civil society sectors** as a manifestation of corruption.

**C** **Provide a political and sociological interpretation and analysis** of the acquired data, focusing on what the data shows concerning **the causes and manifestations of sextortion** as a form of corruption.

**D** **Identify and analyse vulnerable areas/sectors where sextortion occurs** and the contributing factors in these areas/sectors.



## Research Design and Methodology

**Design**

This study employed a **concurrent mixed-methods design**. Data collection made use of key informant interviews, document analysis of existing literature, and a survey questionnaire.

**Data Collection**

**Qualitative data** was collected using **semi-structured interviews with key informants.**

**Quantitative data** was collected using an **online survey questionnaire** which was developed from the literature. The questionnaire **consisted of 37 items**.


© 2023 Sextortion as a Means of Gender Specific Corruption in Gauteng, South Africa: An Introductory Study
© 2023 Sextortion as a Means of Gender Specific Corruption in Gauteng, South Africa: An Introductory Study

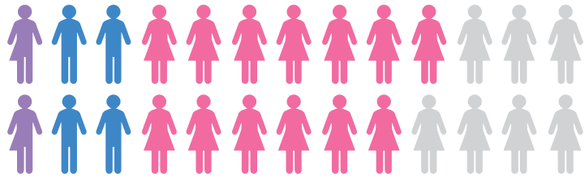
## Sample

**Key Informants**
Key informants were purposively sampled from diverse sectors. In addition, snowball sampling was utilised. **19 key informants were selected from different sectors** as outlined below:

| Sector | Organisation |
|---|---|
| **Government** | |
| DPME | National |
| Home Affairs | National |
| Education | Undisclosed |
| Police | Police Head Office |
| **Civil Society Organisations** | |
| Sex Work | SWEAT |
| Gender | Sonke Gender Justice \| Women for Change \| Matrix Men |
| Refugee | CORMSA \| Corruption Watch |
| Religious | DOXA DEO Church |
| **Independent** | |
| LGBTQIA | 2 x Independent Expert |
| Sex Work | Ex-Sex Worker |
| Education | SA Council for Educators |
| **Private** | |
| Insurance | Undisclosed |
| Legal | Lawyer |
| Retail | Builders Warehouse |
| Info, Comms & Tech | Mintek |
| Security | Private Security Company |

**19**
**key informants interviewed**

13 Females
4 Males
2 Gender non-conforming



## Survey

The survey was distributed through the networks of the key informants who participated in this study and those identified by Health Focus South Africa and their networks. The respondents for the survey were selected through the use of proportional quota sampling. The sample for the survey questionnaire consisted of **128 respondents drawn from the Gauteng Province**.

**128 respondents** drawn from the Gauteng Province

**Data analysis**

- Qualitative data was analysed using **thematic content analysis** developed by Braun and Clarke (2006).
- Quantitative data was analysed using **Data Tab Online Statistical Software**. Cronbach's Alpha was used to measure the reliability and Cohen Kappa for interrater reliability.

**Ethics**

The research protocol and tools were submitted to an **independent ethics board**: The Institute of Public Affairs and Governance, who **provided ethical clearance** for this study.

## Limitations

This study was **confined to Gauteng**, South Africa with specific focus on the victims of sextortion, causes and manifestation of sextortion, factors contributing to sextortion and vulnerable sectors.

The study was conducted within **only four months** which suggests that not all sectors within the Gauteng Province could be explored in relation to the subject of sextortion.

Although the study used both qualitative and quantitative research methods, **the sample was not representative of the population of Gauteng Province** which suggest that the findings of the study cannot be generalised beyond the population studied. However, it must be pointed out that the findings of the study could be transferred to other similar settings

The study **did not focus on a specific sector** within Gauteng to explore the extent of sextortion.

It was not within the bounds of this study to determine the prevalence of sextortion among adolescents. **Only those of 18 years and up** were considered for the study.

It was also **not the aim to understand how institutions respond to sextortion incidents** as there are no clear-cut policies and legislation on the subject matter in South Africa.

# 2. OVERVIEW OF THE LITERATURE

A detailed and comprehensive literature review was completed reviewing latest research, evidence and data internationally, regionally and locally. The literature highlighted that **sextortion is a form of corruption where a person abuses a position of authority in order to coerce sexual acts from a person subject to that authority** (Feigenblatt, 2020). Sextortion is notable as a form of corruption in that it differs significantly from traditional conceptions of corruption, which characterise it almost exclusively in terms of money and material goods (Duri, 2020).

Increasingly there is an awareness of sextortion as a global phenomenon, and a source of significant distress for individuals who experience this form of victimisation (Bicker Caarten et al., 2022; Eldén et al., 2020; Van Heugten et al., 2021). Literature revealed that **women are disproportionately targeted** by this form of corruption; though men, transgender, and gender non-conforming individuals may also be targeted (Feigenblatt, 2020). The nature of sextortion is such that **those victimised are often made to feel powerless** relative to the people extorting them, which has negative implications for their health and mental functioning. It also contributes to the under-reporting of this form of corruption, as **victims feel that there will be no consequences** for those who abuse their positions of authority in this manner (Feigenblatt, 2020). In addition, **a lack of awareness of the existence of sextortion or how it is defined, combined with public perceptions relating to sexual abuse and corruption have resulted in cases of sextortion often being inadequately handled by existing legal frameworks**. Sextortion is not only a corrupt act but another form of gender-based violence which violates the basic human rights of victims.

Cyber-sextortion is often confused with sextortion. However, **cyber-sextortion must be differentiated from sextortion because in the case of cyber-sextortion**:

- **The victims and perpetrators interact online**, which suggest that there is **no physical contact** or interaction. The perpetrator threatens to expose or distribute sexually explicit images and videos of the targeted victim if the victim does not meet certain demands.
- **there is no corruption component** in that the perpetrator is not normally in a position of authority that is entrusted to them by an organisation.
- **the currency is predominantly money**, whereas with sextortion the currency is sexual favours.
- In many ways cyber-sextortion is not true sextortion, because it does not have both the sexual component and the corruption component. It is rather a form of extortion that constitutes a cybercrime.

The main challenge with cyber-sextortion has to do with jurisdiction especially when the aggressor resides in another country. At the same time, another common challenge pertaining to cyber-sextortion is that its perpetrators are not easily identifiable.

**Common sextortion can occur as oppressive or opportunistic**. With oppressive sextortion, perpetrators abuse the entrusted authority to demand sex from their targets before rendering a service to which their targets are rightfully entitled. In the case of opportunistic sextortion, perpetrators are persons who abuse their positions of authority to demand sexual favours from the vulnerable, uninformed and helpless in society. These two forms of sextortion are indicative of the callousness of perpetrators as well as the extent to which sextortion encroaches on the dignity of its victims. Although vulnerability and greed create an opportunity for sextortion to flourish, it must be noted that the **patriarchal social norms and values play a role in perpetuating it**.

**Literature has shown that sextortion occurs across a variety of sectors**. For example, sextortion was found to be prevalent is the employment sector where unsuspecting job applicants are pressurised to offer sexual favours to perpetrators before they could be appointed to positions. Also, educators in the education sector demand sexual favours from learners in order to give them improved grades. In the safety and security sector, policemen demand sexual favours from sex workers so that they could allow them to go without arrest, while in the immigration sector the victims who happen to be migrants or refugees are subjected to sextortion to be granted legal asylum status in a receiving country.

**Sextortion is not only a corrupt act but another form of gender-based violence which violates the basic human rights of victims.**

Unfortunately, as is the case with other forms of gender-based violence, **the literature found that most of the victims of sextortion are women, young girls and people who identify as females as well as the LGBTQIA community**. Although men do experience sextortion as victims, **literature has shown that men are the main perpetrators. This was attributed to societal norms and values as well as the structural power imbalances that prevail in society**. The governments of different countries including South Africa need to introduce policies and legislation that will respond decisively to the significant challenges presented by the sextortion.


© 2023 Sextortion as a Means of Gender Specific Corruption in Gauteng, South Africa: An Introductory Study

# 3. COMPARATIVE ANALYSIS OF LEGAL FRAMEWORKS

A comparative analysis of the legal frameworks was conducted between South Africa, Botswana, Nigeria and Tanzania. The International Association of Women Judges (IAWJ), the Philippine Women Judges Association and the Tanzania Women Judges Association published a toolkit aimed at shining the light on sextortion as a form of corruption and providing countries with the means with which to combat sextortion in their respective jurisdictions (IAWJ, 2012). A key tenet from this, is that **sextortion is distinguishable from other types of sexually abusive conduct by the fact that it needs both a sexual component and a corruption component**. Therefore, in order to call something sextortion, it must contain both these components. Anything short does not amount to sextortion (IAWJ, 2012). **This is one of the key reasons why sextortion is best placed under corruption legislation rather than sexual offences acts**.

South Africa, Botswana, Nigeria and Tanzania each have anti-corruption legislation which can be read to address sextortion. South Africa's anti-corruption legislation is the Prevention of Corruption and Corrupt Activities Act, 2004 (South Africa's PRECCA). The Nigerian counterpart is the Independent Corrupt Practices and Other Related Offences Act 5 of 2005 (Nigeria's ICPA). Botswana has the Corruption and Economic Crime Act 13 of 1994 (Botswana's CECA) and Tanzania, the Prevention of Corrupt Activities Act, Chapter 329 (Tanzania's CPAA). South Africa, Botswana and Nigeria have provisions in their anti-corruption legislation which are similarly phrased and can address sextortion when interpreted accordingly. Tanzania, however, has taken a different approach by criminalizing sextortion directly under the heading of sexual extortion.

Compared to **Botswana and Nigeria, South Africa** has better prospects at addressing sextortion under its current **anti-corruption framework**, but it **still falls short in that it is unable to adequately protect victims by treating them the same as the perpetrator**. This makes the victim susceptible to criminal prosecution. The consequence of not differentiating between the perpetrator and the victim is that **it takes power away from the victim by limiting or even removing the option of legal protection**. The threat of criminal sanctions to the victim may embolden perpetrators to continue abusing their power and give them a further weapon with which to threaten the victim. Sextortion already carries with it great challenges such as being difficult to prove, subject to social stigma and traumatic for the victim. The prospects of facing criminal prosecution should the victim seek to vindicate themselves, makes justice even more untenable.

> **The Tanzanian legislation and approach is the most preferable to all the countries compared because it recognises sextortion as a specific crime and differentiates the victim and perpetrator**.

It is clear that the provision in Tanzania's PCAA was drafted with a clear understanding of what sextortion is. The other countries may address sextortion through interpretation of existing provisions in their anti-corruption legislation but there remains serious gaps which may end up doing more harm than good. It is recommended that South Africa should follow the Tanzanian approach and amend the PRECCA to include an offence specific to sextortion.

© 2023 Sextortion as a Means of Gender Specific Corruption in Gauteng, South Africa: An Introductory Study

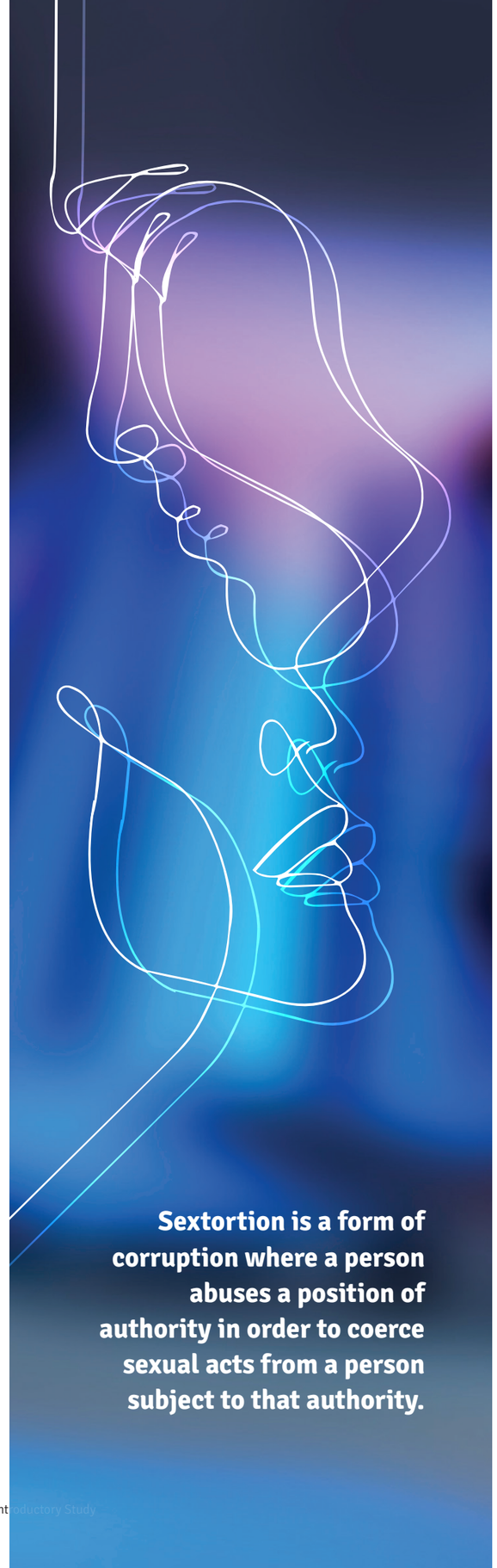
# 4. KEY STUDY FINDINGS

**Based on the empirical findings emanating from this study is it clear that sextortion is prevalent across the various sectors studied in Gauteng, South Africa**. The findings of this study have also shown that **much is not known about sextortion and individuals are not always aware of the process and procedures for reporting sextortion**. There are still major **impediments relating to reporting incidents of sextortion particularly in workplaces**. This is attributable to the degree of power that perpetrators of sextortion wield in different institutions. **Black females remain the main targets of sextortion especially young females between the age of 18 and 30 years**. Sextortion manifests through requests for sexual favours from unsuspecting beneficiaries of basic services while some perpetrators abuse their authority to appoint or employ people to positions in exchange for sexual favours. Whichever way sextortion manifests itself in society, it should be seen and interpreted as another form of corruption.

The study has also found that **socio-economic factors contributed significantly to incidents of sextortion**. Among other key factors, **poverty and unemployment were found to be the key contributing socio-economic factors**. These two factors render unsuspecting victims extremely vulnerable to perpetrators who are in positions of authority, particularly when the victim does not know their rights or is unable to exercise their rights due to their state of vulnerability. This is exacerbated by the power imbalances between victims and perpetrators. In addition, **a lack of accountability of perpetrators in higher positions, also exacerbates the situation**. Dealing with the issues raised above could be difficult without enhancing and ensuring appropriate application of ethical standards and codes of conduct in different spheres of the society.

The study identified that **sextortion was found to be prominent in the formal and informal employment sectors, basic public service provision sectors and even the religious sector**. Although education and law enforcement sectors ranked lower in terms of prevalence of sextortion incidents, the study found that these sectors were also breeding grounds for sextortion cases.

Primarily, **study respondents suggested the following approaches for dealing with sextortion incidents**: The use of **an integrative approach**, provision of **psychological services**, setting up **clear reporting mechanisms** and **criminalising sextortion incidents** are among other approaches suggested to deal with sextortion cases successfully when they are reported.





© 2023 Sextortion as a Means of Gender Specific Corruption in Gauteng, South Africa: An Introductory Study

# 5. STUDY RECOMMENDATIONS

## Further research

- More research is required into the prevalence of sextortion within specific sectors and across South Africa.

## Criminalizing sextortion

- Sextortion needs to be seen as a form of corruption and addressed under corruption laws as this will better equip the legal and law enforcement sectors to address it.
- Adopting the approach used in the Tanzanian anti-corruption legislation is the most preferable because it recognises sextortion as a specific crime and differentiates the victim and perpetrator.

## Clear reporting mechanisms

- Developing clearer channels for reporting sextortion will be valuable for addressing it.
- Promoting policies and practices which protect people who report sextortion across all sectors is important.

## Raising public awareness about sextortion

- Raising awareness around sextortion may equip people to effectively address and resist acts of sextortion.
- Developing awareness campaigns and programmes and educating people on how to protect themselves and their communities from sextortion.
- Collaboration between awareness campaign organisers and government organisations may be useful for increasing the reach of these campaigns and promoting a consistent understanding of sextortion.
- Public officials and police officers should receive targeted awareness campaigns and training to ensure a clear and formal understanding of sextortion and protocols for managing cases of sextortion.
- With regard to cyber-sextortion, parents should be educated and encouraged to assist and supervise their children's use of digital technology in order to ensure that children are appropriately aware of risks relating sextortion and sexual imagery.

## Targeting specific sectors to prevent sextortion

- Targeting sectors with high incidents of sextortion will be useful for identifying and addressing sextortion, as this will allow efforts to focus on identified areas of concern without needing to develop potentially more costly interventions for broader society.

## Protecting vulnerable groups against sextortion

- Understanding which groups experience sextortion more often than others can be useful for setting priorities in addressing the issue of sextortion in an effective and responsive manner.
- Collaborating and educating influential or prominent figures within marginalised or subordinated communities may allow for the dissemination of information and development and reporting channels that allow members of elevated risk communities to learn about sextortion and access support for dealing with it.

## Psychological services for victims of sextortion

- It is important to provide adequate psychological support for people who have experienced sextortion in order to facilitate healing and recovery from the experience.
- It is important to ensure that support services available for addressing the psychological impact of sextortion have sufficient independence in the contexts where they operate to effectively support victims.

## An integrative approach

- Addressing the issue of sextortion needs to be understood using an integrative approach which highlights the magnitude of role players across different sectors.
- Activism that addresses sextortion should be explicit about the ways in which sextortion can affect a variety of different people and underscore the fact that all people have a role to play in addressing sextortion.
- Reporting mechanisms for addressing sextortion should be adapted to reduce the burden placed by present reporting mechanisms on victims of sextortion and on the SAPS.
- Collaboration between police and other organisations can improve quality of care for victims and facilitate efforts to address sextortion wholistically.

© 2023 Sextortion as a Means of Gender Specific Corruption in Gauteng, South Africa: An Introductory Study

Implemented by:

giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

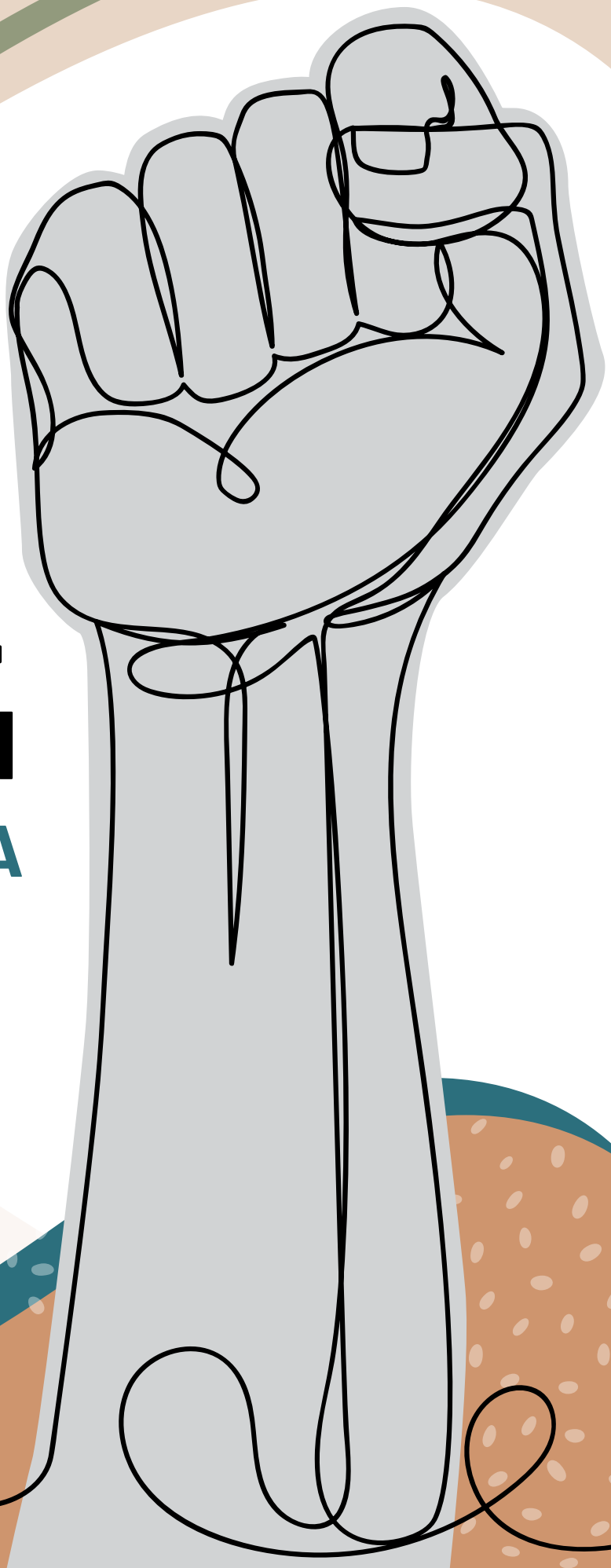
Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

**State Secretariat for Economic Affairs SECO**

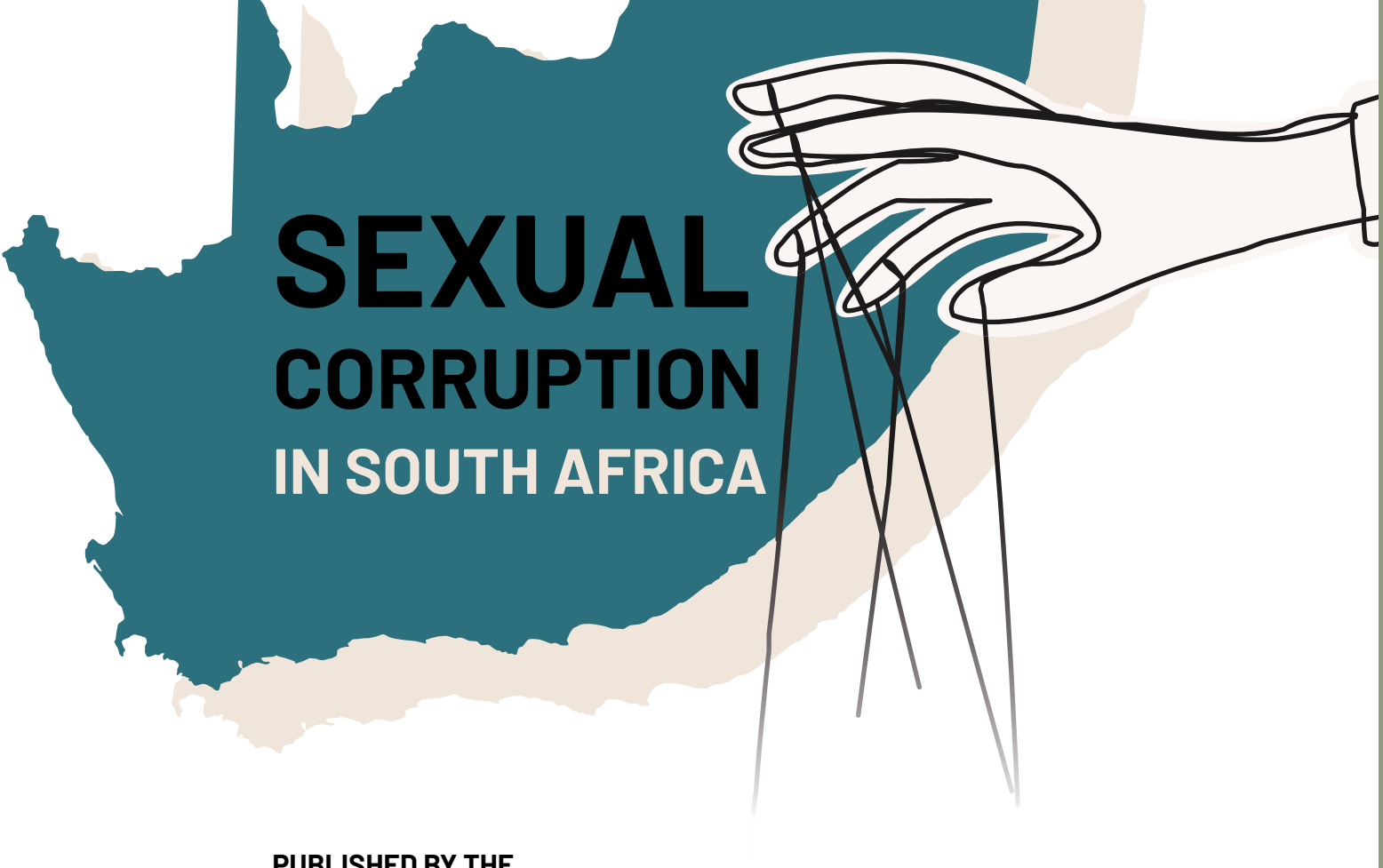
REPORT

# SEXUAL CORRUPTION IN SOUTH AFRICA

## Understanding prevalence and context



African Centre for Development
Research and Evaluation



# SEXUAL CORRUPTION IN SOUTH AFRICA

**PUBLISHED BY THE**
Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
Bonn and Eschborn, Germany

Transparency, Integrity, Accountability Programme (TIP) in South Africa
GIZ South Africa, Lesotho and eSwatini

P.O. Box 28102, Sunnyside, 0002, Pretoria, South Africa

Phone +27 12 423 5900

giz-suedafrika@giz.de

www.giz.de/southafrica

**AS AT**
April 2025

**DESIGN**
Grounded Media

On behalf of the
German Federal Ministry for Economic Cooperation and Development (BMZ)

# CONTENTS


1 Introduction ..... 1

2 Methodological approach ..... 4

3 Awareness and Knowledge ..... 7

4 Vulnerable groups and sectors ..... 15

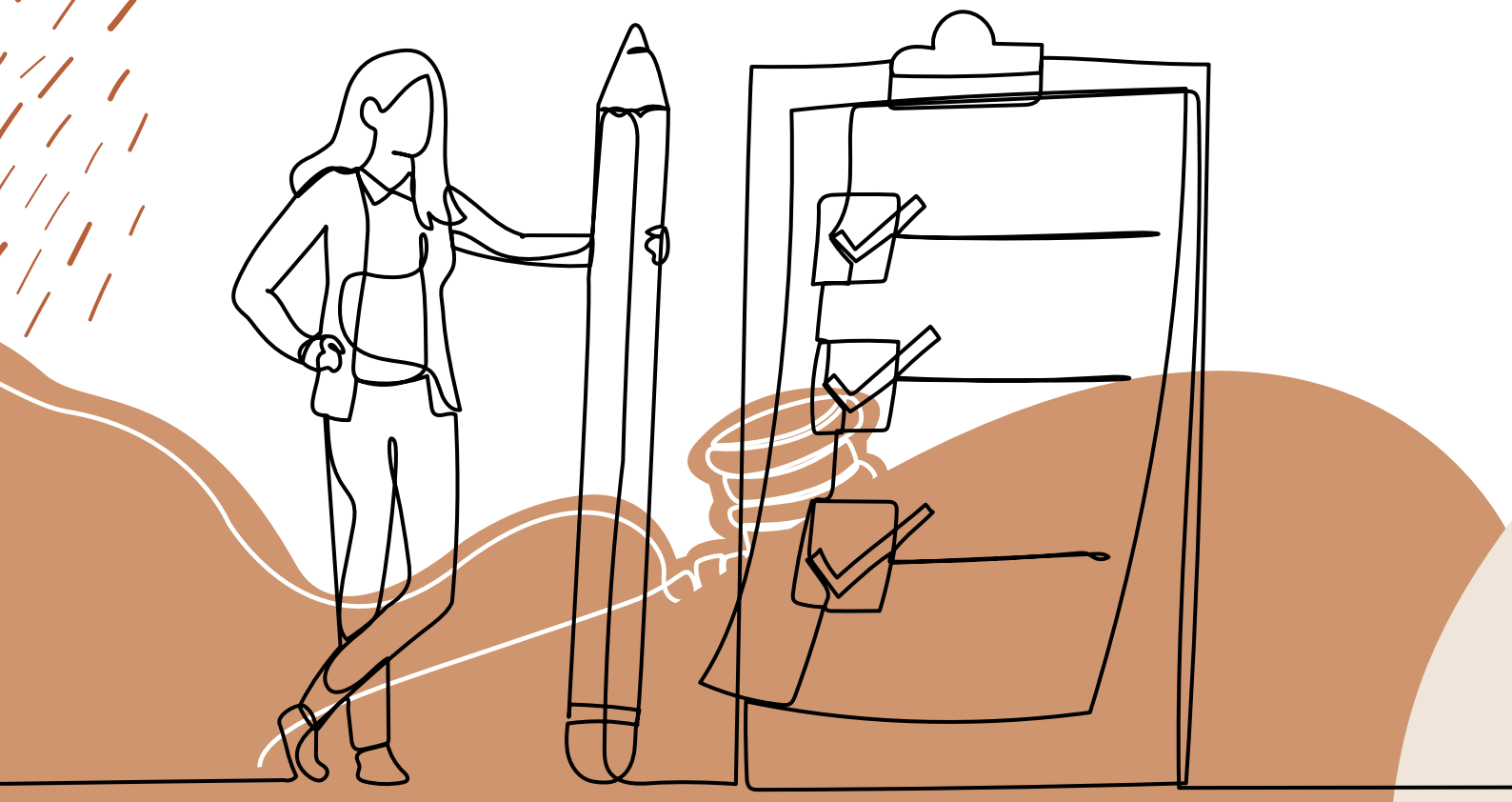
5 Scope and magnitude ..... 17

6 Mapping the way forward ..... 32

# 1 INTRODUCTION

**STUDY OBJECTIVE**

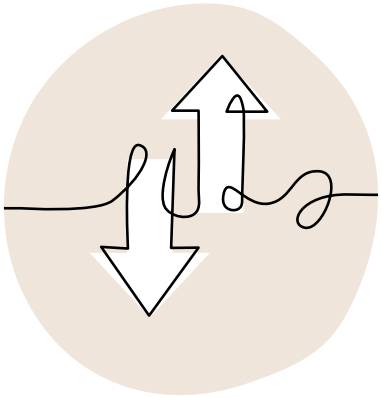
- Determine awareness of sexual corruption
- Understand scope and magnitude
- Frequency of sexual corruption
- Identify vulnerable groups
- Record the experiences of survivors
- Recommendations for advocacy, awareness raising, and policy change



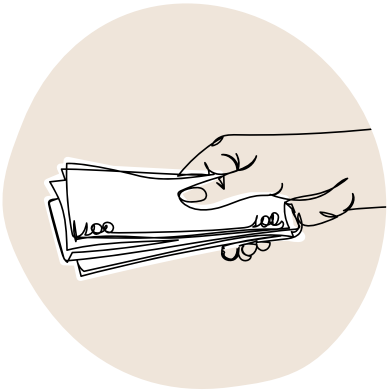
## UNDERSTANDING SEXUAL CORRUPTION

Sexual corruption, also known as sextortion, occurs when a person abuses their entrusted authority to obtain sexual favors in exchange for services or benefits (Bjarnegård et al., 2024). It has three key components:

**Abuse of authority:**
Power is abused by someone with entrusted authority for personal gain.



**Quid pro quo exchange:**
A service or benefit connected to the entrusted authority is conditioned on a favour.



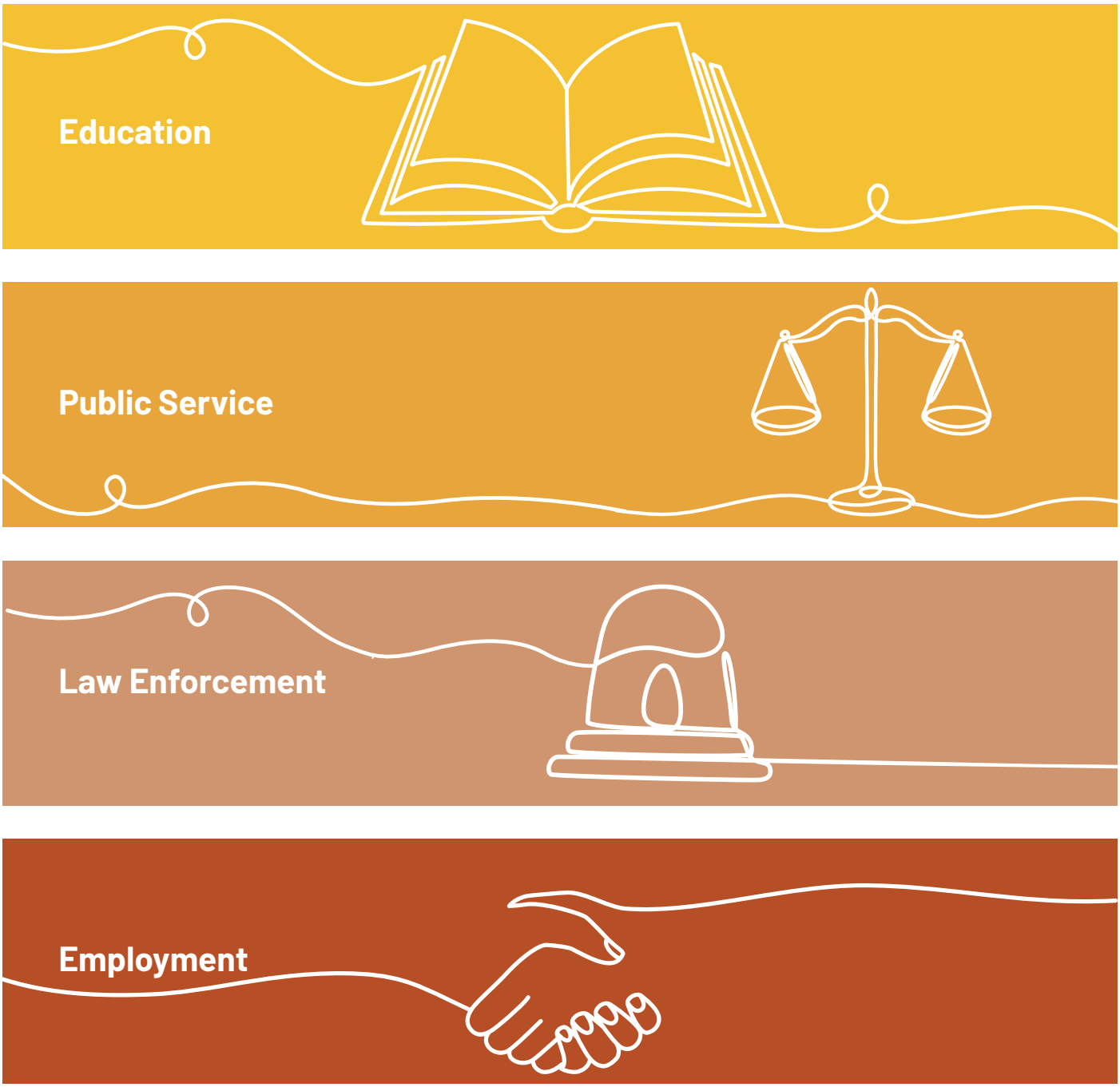
**Sex as a currency:**
The currency of the transaction is a sexual favour.

Sexual corruption is both a form of corruption and gender-based violence, disproportionately affecting women and girls (Eldén et al., 2020). It perpetuates gender inequalities and undermines social, economic and political development (United Nations, 2020).

**People's indifference is the best breeding ground for corruption to grow**

Delia Ferreira, Transparency International

## SEXUAL CORRUPTION OCCURS ACROSS VARIOUS SECTORS GLOBALLY




- 20% of individuals in Latin America and MENA region experienced sexual corruption or know someone who has (Feigenblatt, 2020)
- 57% of respondents in Zimbabwe reported having to offer sexual favors for employment, services or schooling (Feigenblatt, 2020)
- Higher incidence reported in Johannesburg compared to Bogota, particularly in the water sector (UNDP-SIWI Water Governance Facility, 2017)
- A study by Leach et al. (2014) found that sexual harassment and abuse by teachers were widespread in schools across sub-Saharan Africa, with girls being the primary targets.

# METHODOLOGICAL APPROACH

2

**Systematic and scoping review of existing literature**

**Quantitative survey (n=1560) at household level across South Africa projected to the 18+ population demographics (42,692,575)**

**27 In-depth interviews with survivors of sexual corruption**

## QUANTITATIVE METHODOLOGY

To ensure national representativity and minimize potential bias, a rigorous random probability sampling technique was employed to select participants from diverse geographical locations and demographic backgrounds across the country.

### Survey Methodology

| Market | South Africa |
|---|---|
| **Province** | Nationwide |
| **Methodology** | CAPI (Face-to-Face) Random probability sampling |
| **Survey length** | 20 Minutes |
| **Survey language** | English, Sesotho, Sepedi, Zulu, Xhosa, Afrikaans |
| **Sample achieved** | 1,560 (Unweighted) & 42,692,575 (Weighted) |
| **Fieldwork duration** | 5 Weeks with a 2 week break for the Festive Season |

**Target Respondent**

**AGE**
**18 years and older**

**RACE**
**All ethnicities**

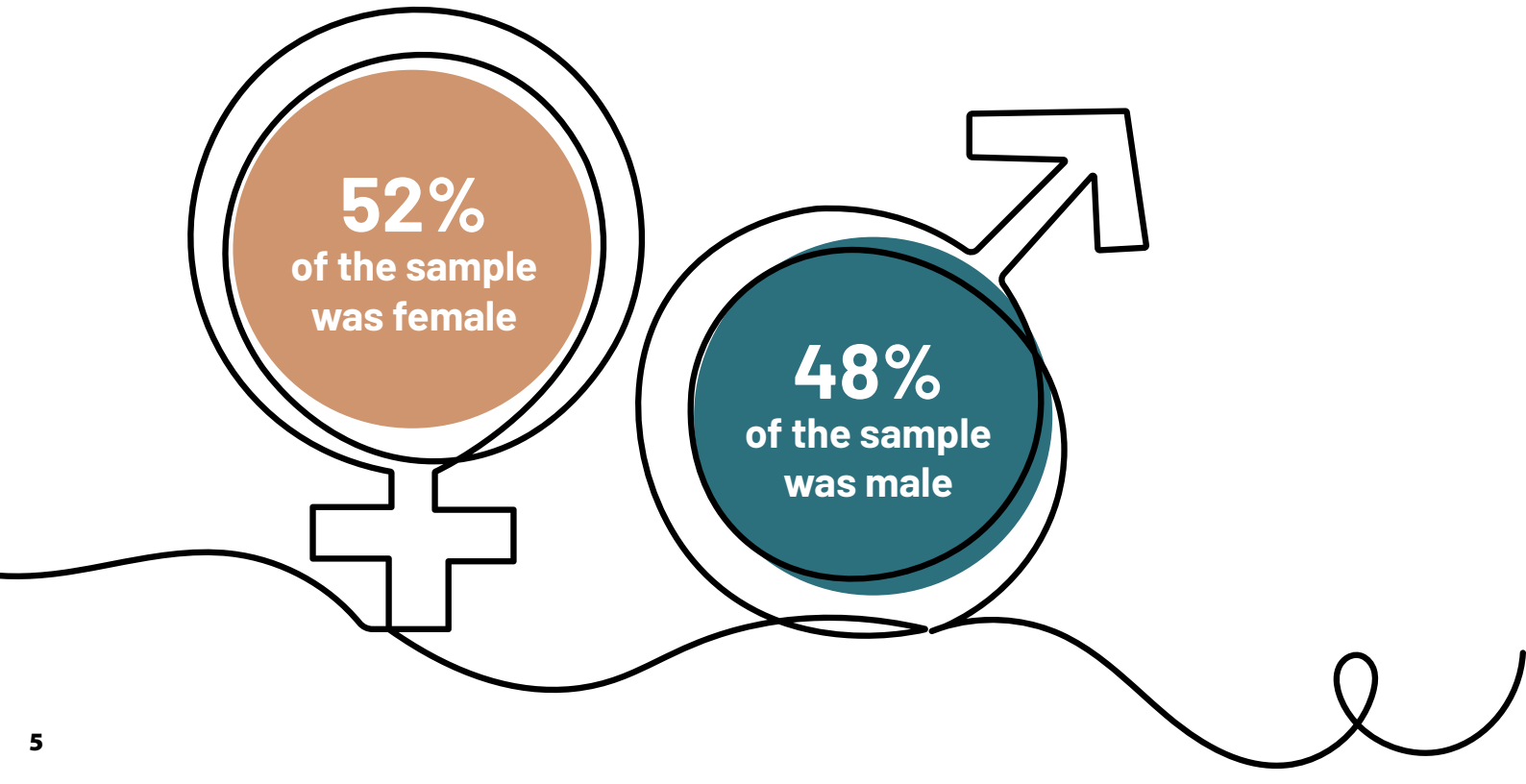
**GENDER**
**Male and Female**

**COVERAGE**
**Nationwide**

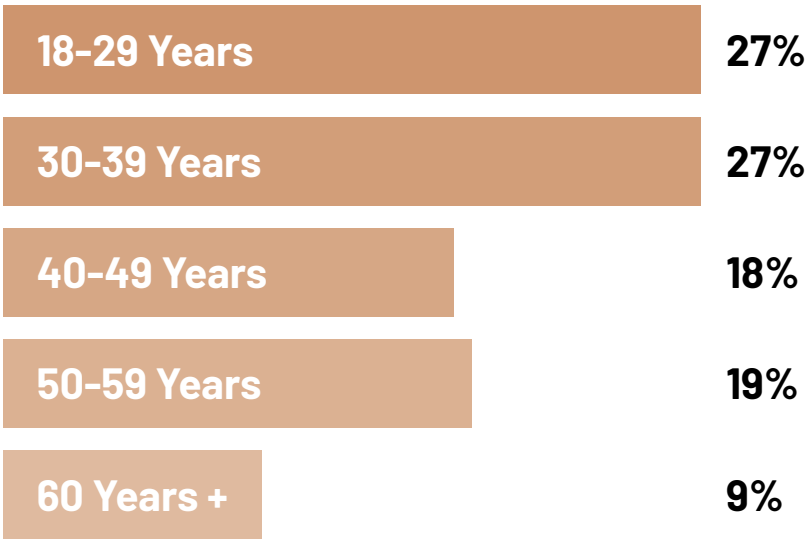
**WEIGHTED RESPONDENT PROFILE (N = 42,692,575)**

The infographics below provide the profiles of the respondents that were interviewed in the study.

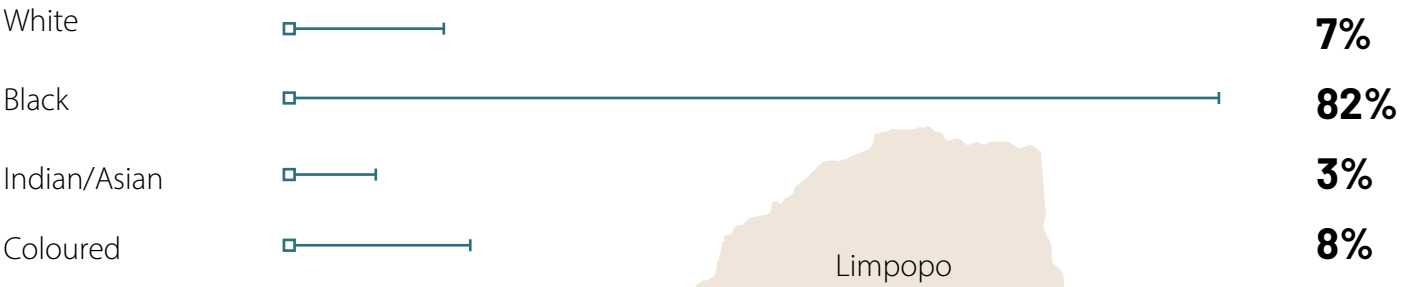
**Gender**

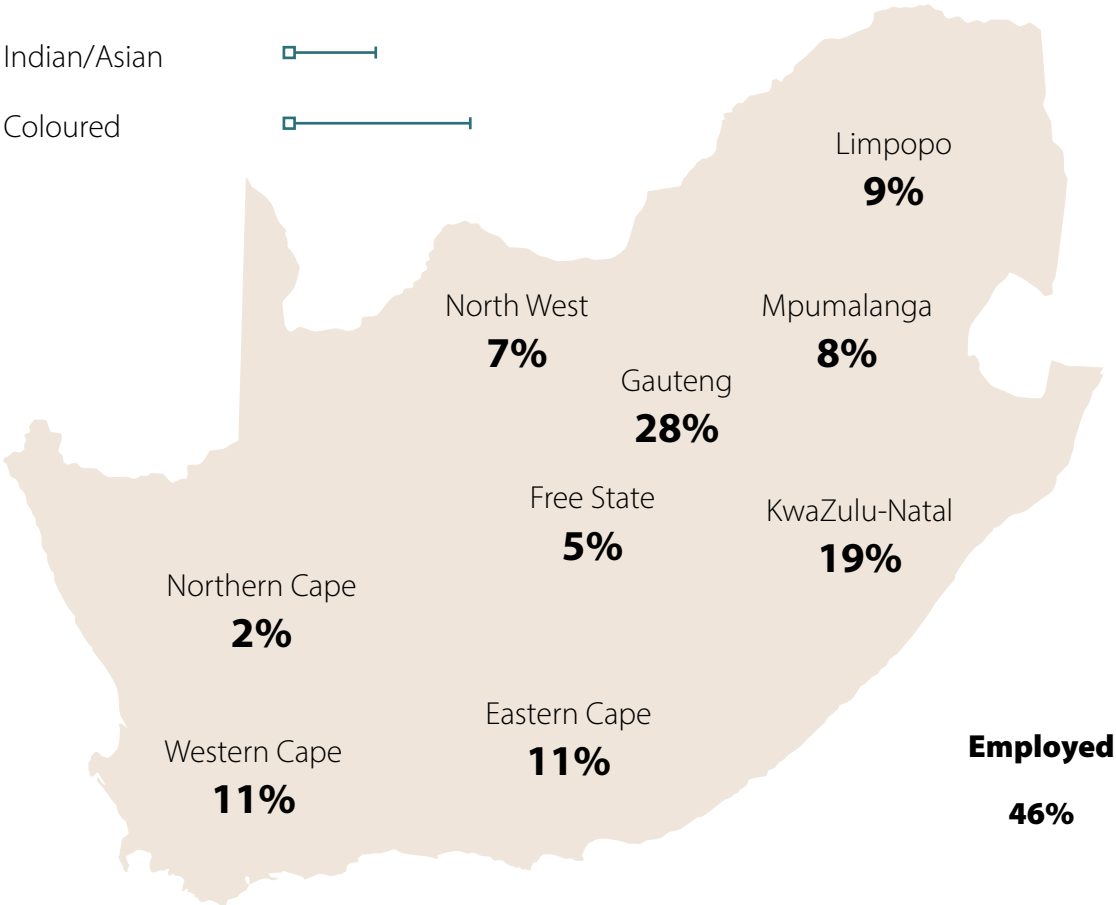


## Age of Respondents




## Race of Respondents




| Employed | Unemployed |
|---|---|
| 46% | 54% |

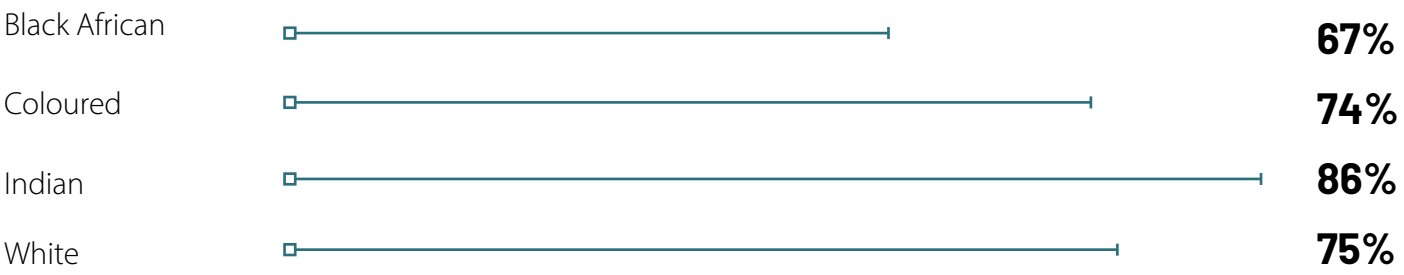
# AWARENESS AND KNOWLEDGE

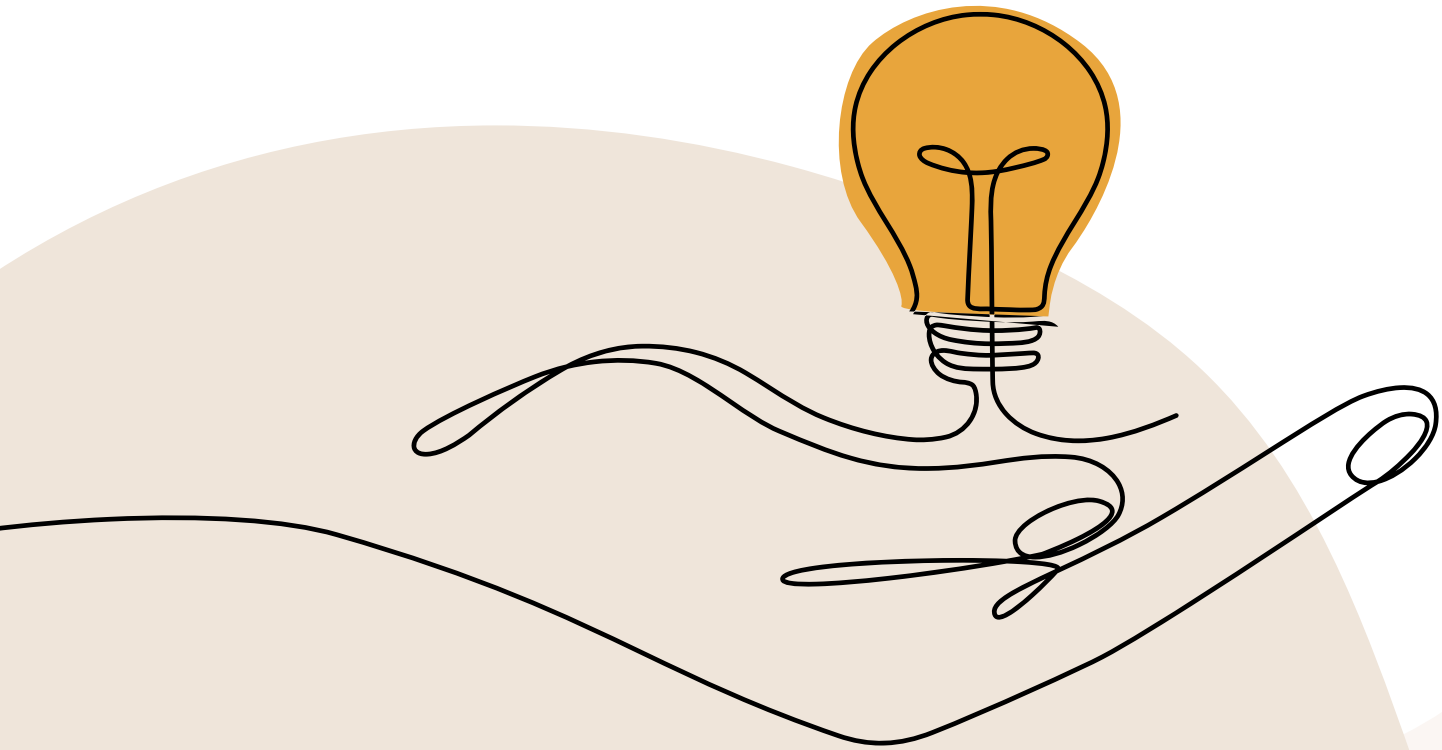
3

**69% are familiar with the term 'sexual corruption'. This is relatively even amongst men and women, and across age groups.**

Findings suggest that a large portion of the population are familiar with the term 'sexual corruption', this was prior to providing them with the definition. Awareness is lowest in the Western Cape but highest in the Northern Cape and greater amongst those with a tertiary education. Furthermore, it was found that awareness is relatively similar in all household income levels but becomes slightly higher with each income band. Interestingly, it is highest in the R15,000.00-R20,000.00 category with 83% being familiar with the term.

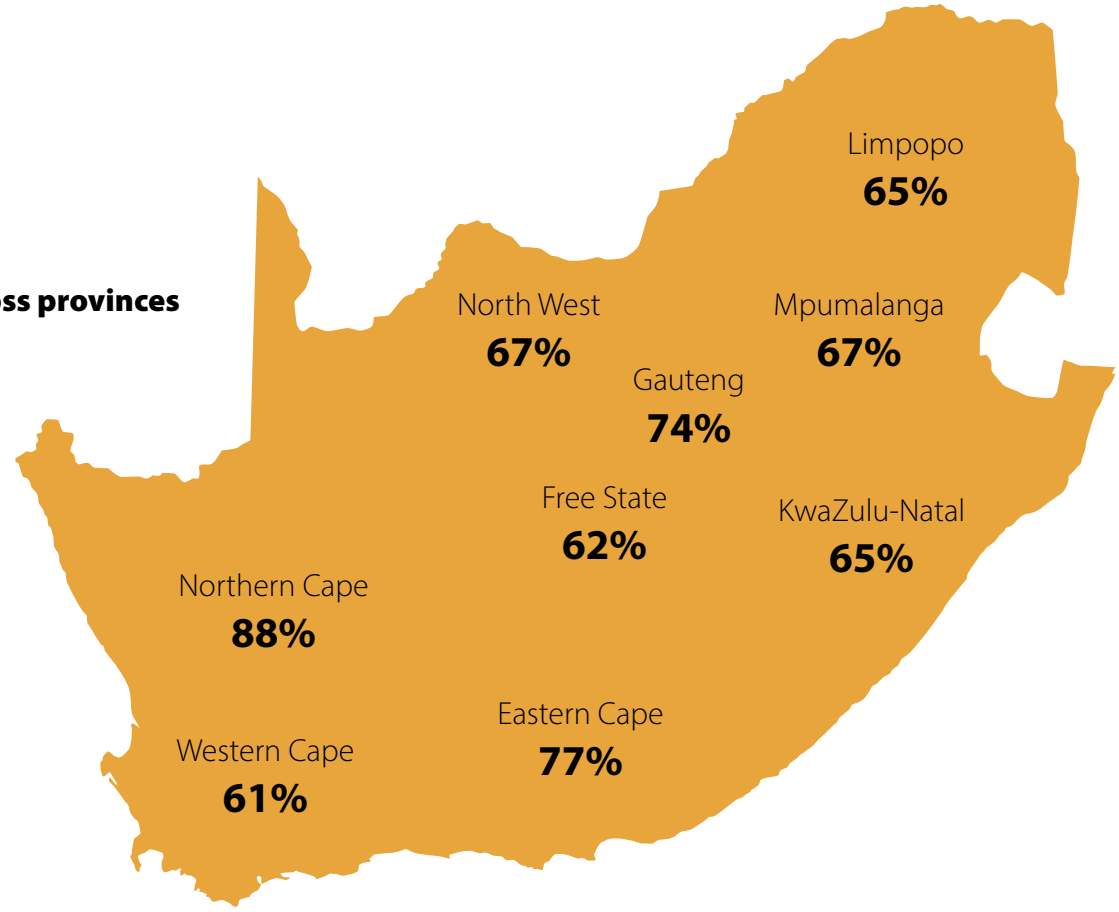
**Awareness across race groups**



**QB1: Are you familiar with the term-sexual corruption?**

**Awareness across provinces**




**Awareness across education levels**

| | |
|---|---|
| Postgraduate degree completed | 94% |
| University degree completed | 86% |
| Technikon diploma/degree completed | 79% |
| Certificate, technical/secretarial | 71% |
| High school completed | 70% |
| Some high school | 63% |
| Primary school completed | 70% |
| Some primary school | 33% |
| Literate but no formal school | 45% |

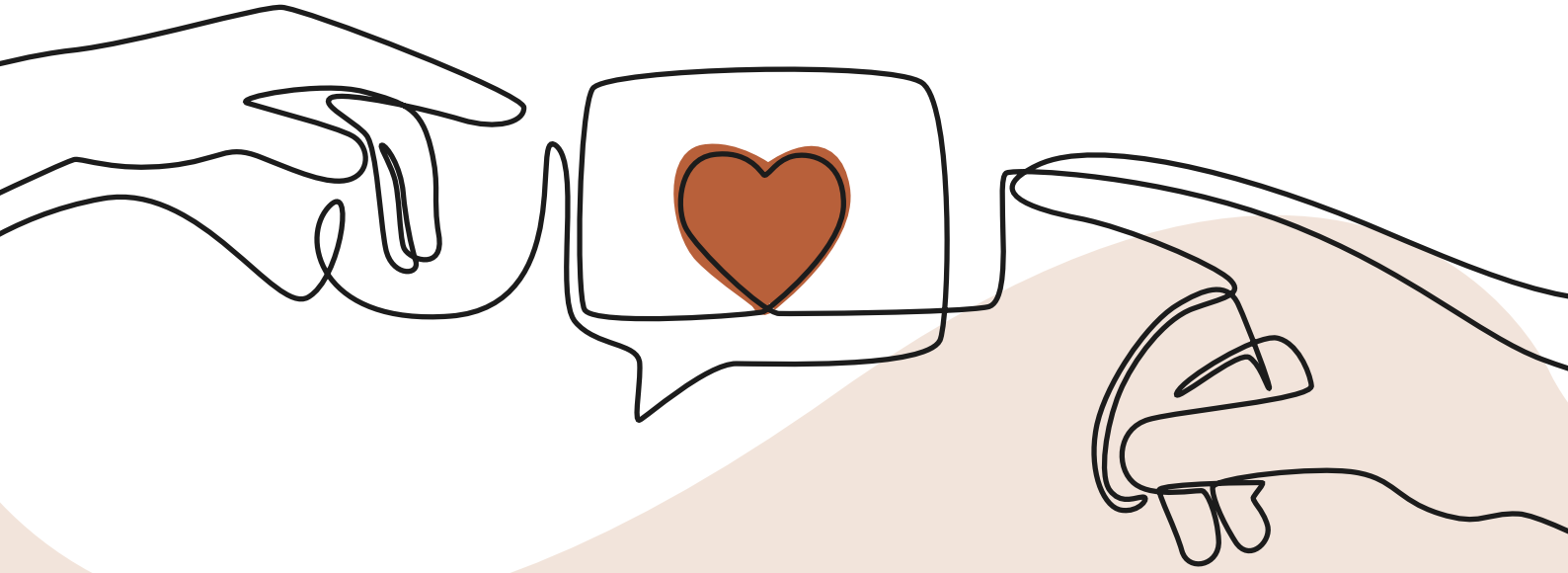
**QB1.1: How did you come to be familiar with the term "sexual corruption"?**

## SOCIAL MEDIA IS THE LARGEST SOURCE OF INFORMATION

The individuals were questioned on familiarity with the term sexual corruption prior to providing a conceptualisation and in this instance, 53% of respondents became familiar with the term 'sexual corruption' through social media. Once conceptualised, 23% of respondents noted that they became familiar with the term through social media.

**How individuals became familiar with sexual corruption – first mention**

| | |
|---|---|
| I know someone who has experienced sexual corruption | 24% |
| I am a victim of sexual corruption | 7% |
| Social media | 53% |
| Advocacy campaigns | 2% |
| Workplace training | 4% |
| Public discourse | 2% |
| Cultural representations (films, books etc.) | 1% |
| Personal conversations | 5% |
| Radio | 1% |
| TV | 1% |

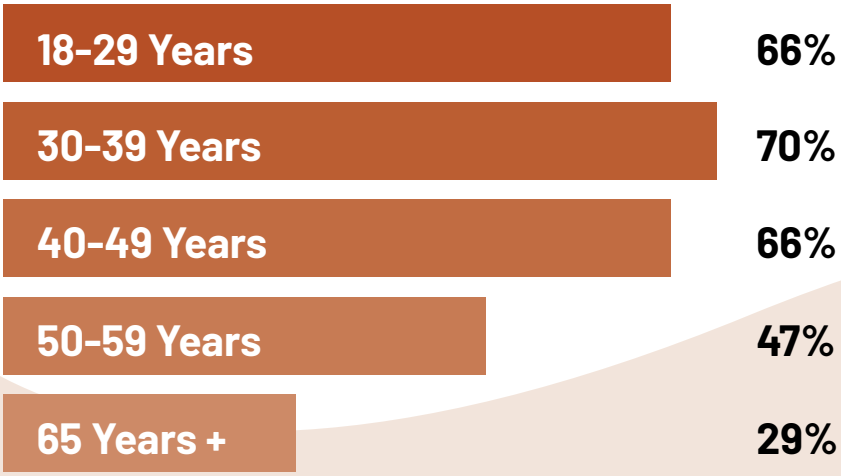


**How individuals became familiar with sexual corruption – second mention**

## OTHER TERMS TO DESCRIBE SEXUAL CORRUPTION

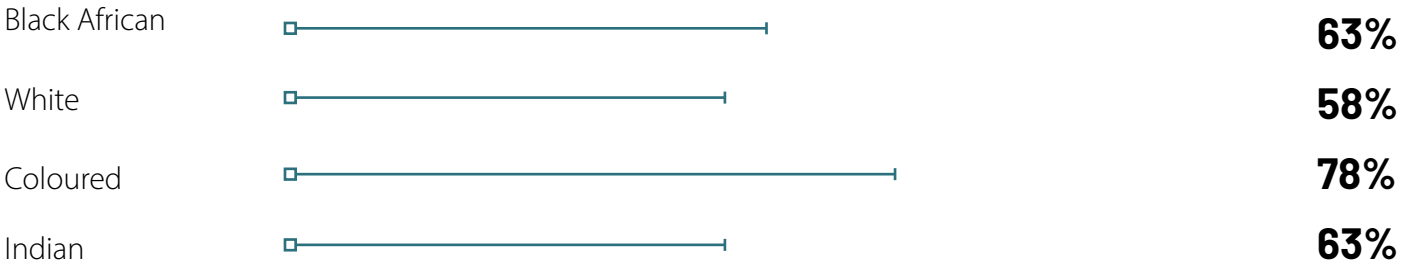
**63%** of respondents are familiar with other terms used to describe the act of demanding sexual favours in exchange for services, employment or other benefits. Younger groups are more likely to refer to sexual corruption in other terms and this is specifically high in the Indian race group. Furthermore, the Northern Cape, Eastern Cape, Gauteng and Kwa-Zulu Natal are the provinces that are most likely to refer to sexual corruption in a different term.

**Familiarity with other terms across age groups**

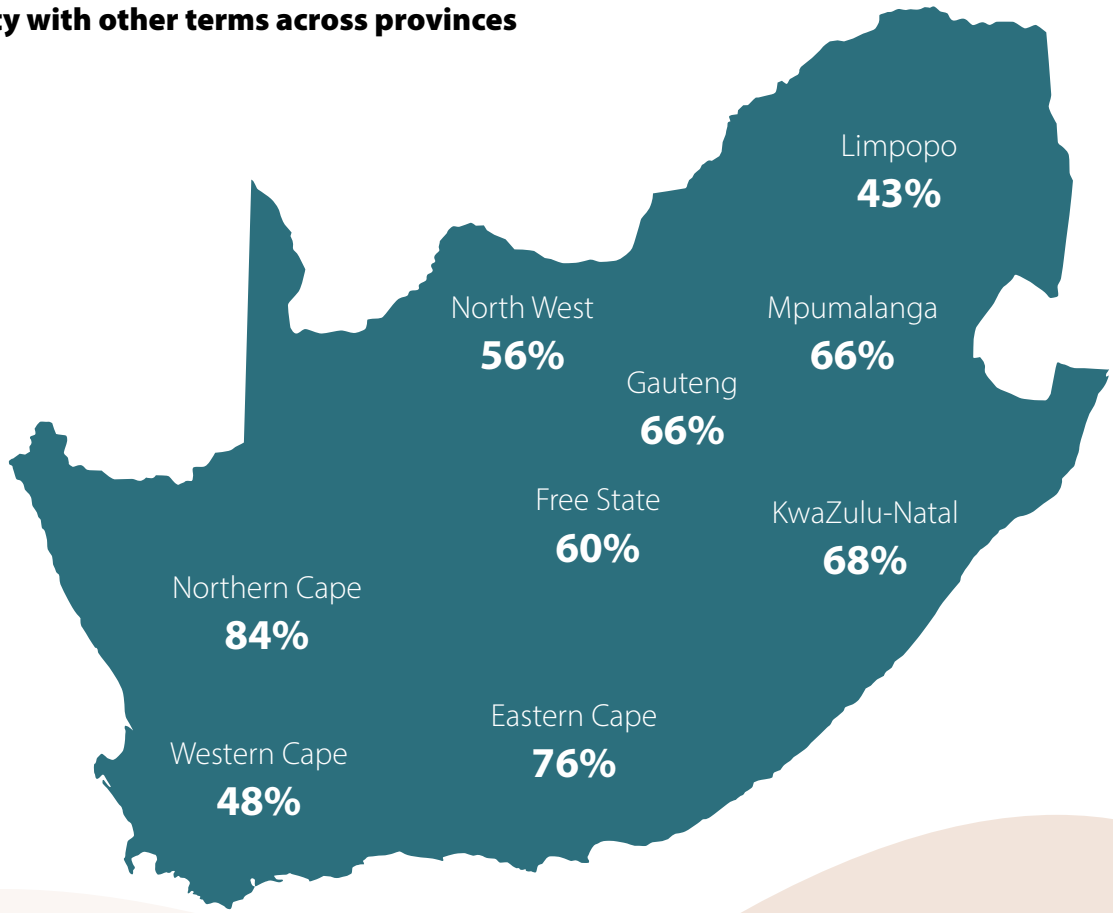


**QB2: Have you heard of any other terms used to describe the act of demanding sexual favours in exchange for services, employment, or other benefits?**

### Familiarity with other terms across race groups



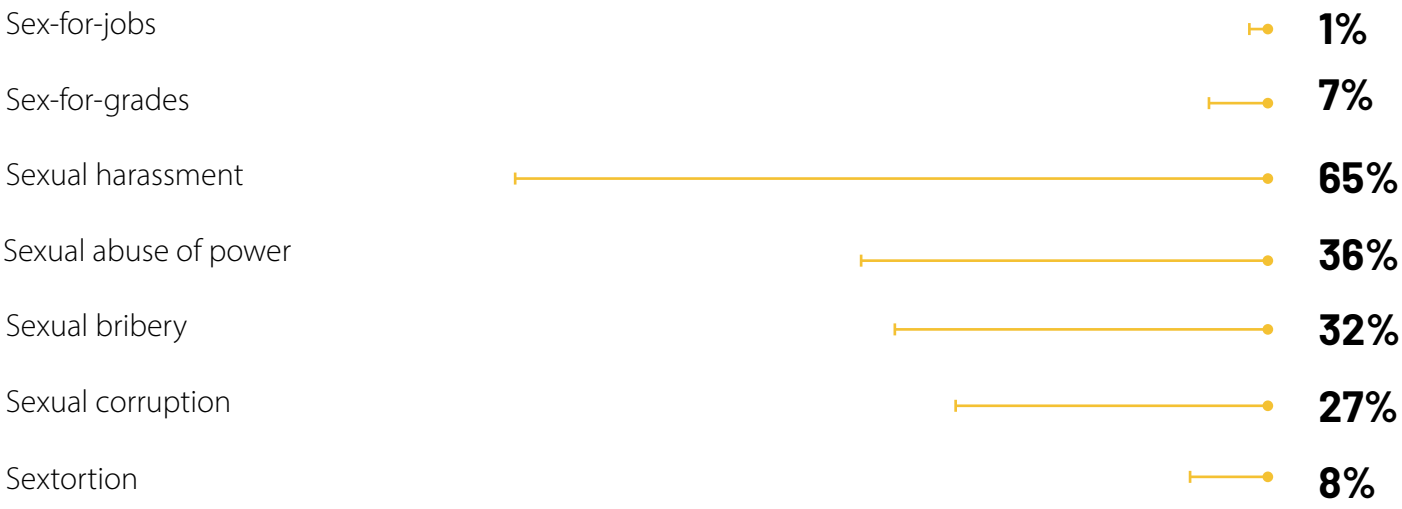

### Familiarity with other terms across provinces



## SEXUAL CORRUPTION AND SEXUAL BRIBERY ARE THE MOST COMMON TERMS

Alternative terms, like sexual bribery and sexual harassment are more likely amongst younger generations and black and Indian communities. Sexual abuse of power is also a common term, suggesting that individuals are aware that this happens in cases where one individual has power over another or occupies a position of power.

### Most popular terms




### Single mention of other terms

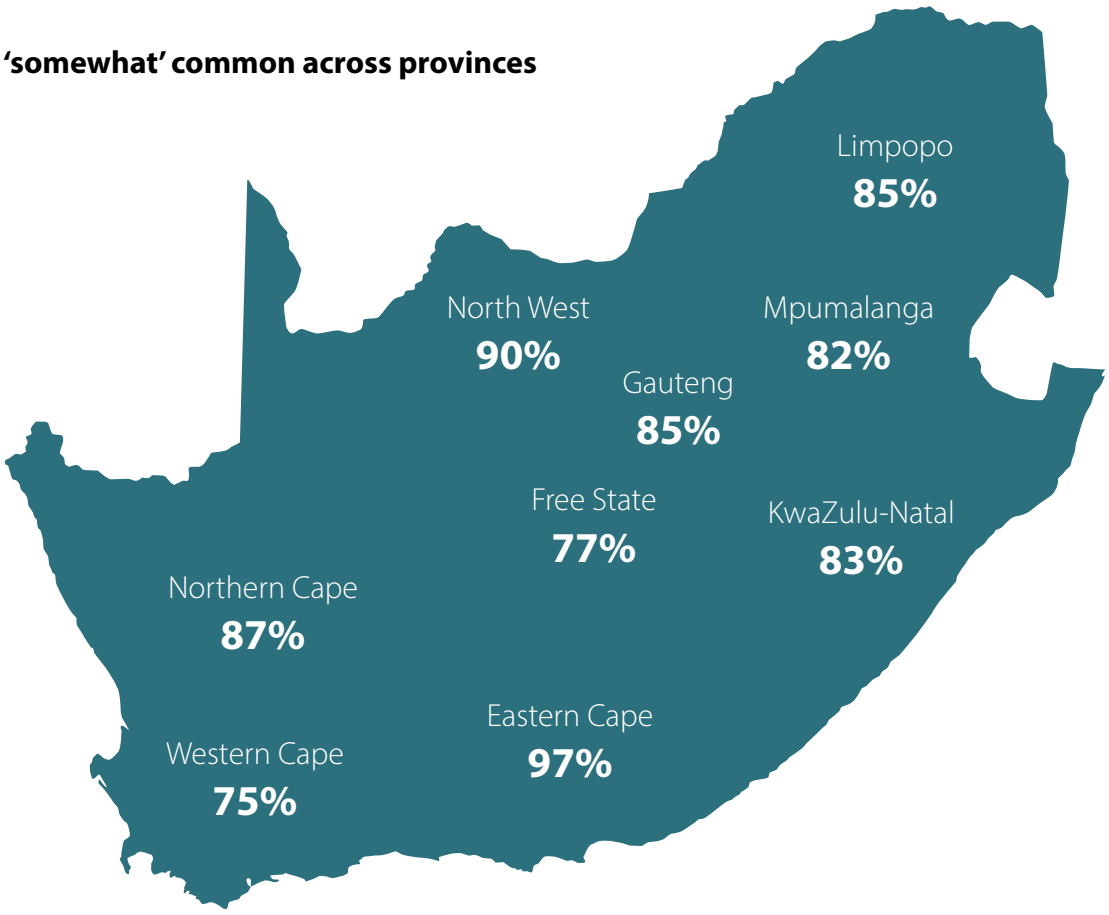
## QB3: How common is sexual corruption in South Africa?

### SEXUAL CORRUPTION IS COMMON ACROSS MOST PROVINCES

**84%** **describe sexual corruption as a somewhat or very common practice in South Africa.**

Eastern- Cape, North-West and the Northern Cape illustrate that a higher portion of respondents, consider sexual corruption as common and this may suggest higher degrees of exposure. In addition, slightly more females (57%) than males (55%), describe sexual corruption as very common.

**'Very' and 'somewhat' common across provinces**

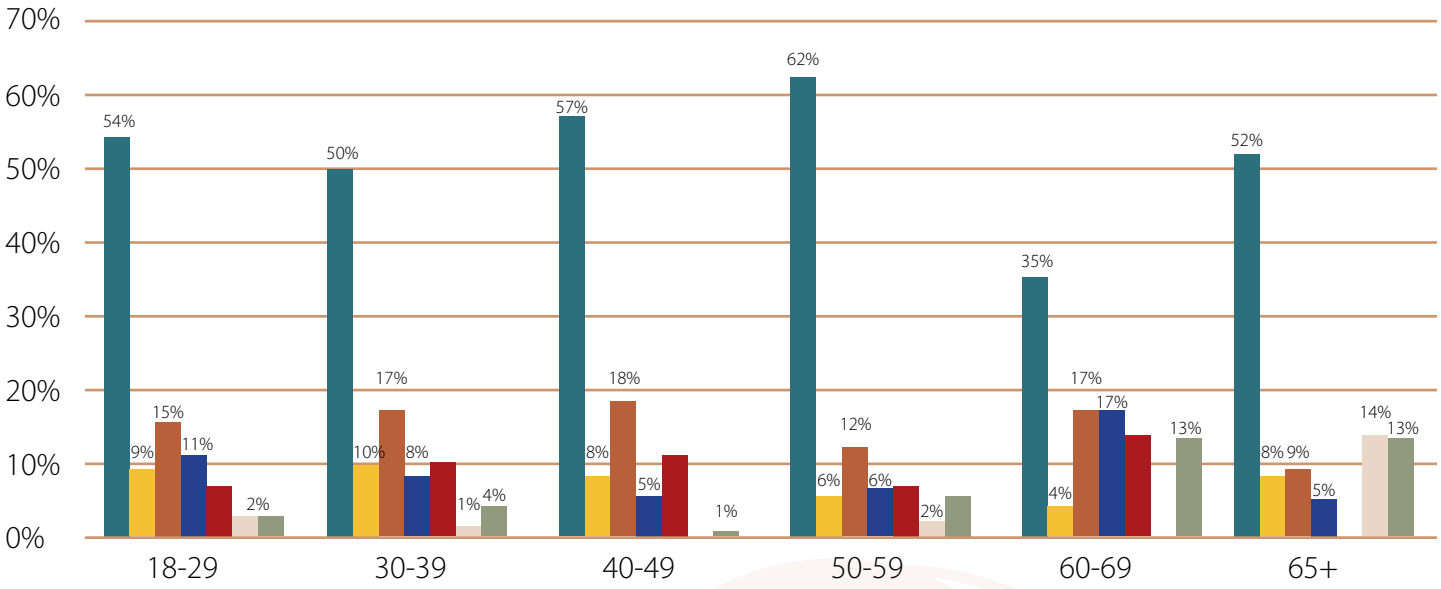



### GENDER INEQUALITY IS THE BIGGEST SOCIAL NORM CONTRIBUTING TO SEXUAL CORRUPTION

Most believe that gender inequalities are the largest contributing factor normalising sexual corruption and this resonates most with those aged 50-59. 17% of respondents over the age of 60 highlight the culture of silence as an issue, and this is similarly echoed across other age groups. Across age groups, few regard abuse of power in hierarchical settings, normalisation of transactional sex and economic vulnerability as contributing factors.

**QB4.1: What are the three most popular social norms and behaviours that you believe contribute to this normalization**

## Perceptions on contributing social norms by age



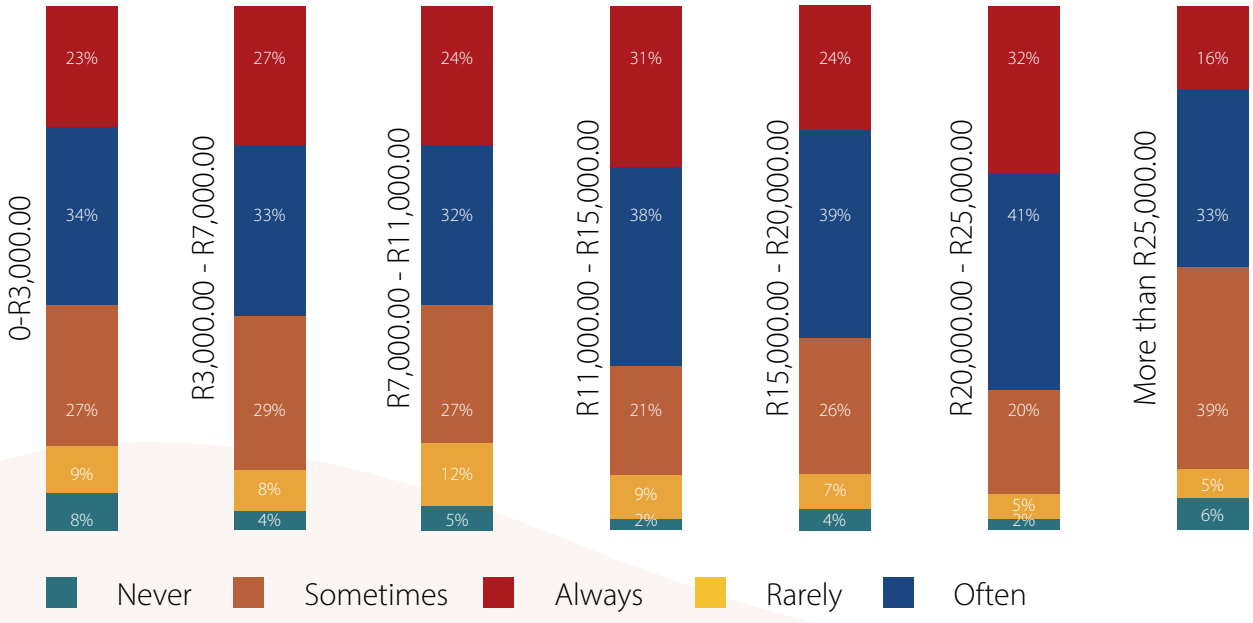
# VULNERABLE SECTORS AND GROUPS

**Almost 6 in 10 respondents state that sexual corruption happens always or often in South Africa**

Across household income, there is a relatively evenness on the frequency of sexual corruption. This may suggest that all income earners are aware of how frequent sexual corruption occurs because most people occupy a seat in a chain where they are ruled by management, seeking promotions, or even better jobs.

**Familiarity with other terms across age groups**

**Frequency of sexual corruption across household income**



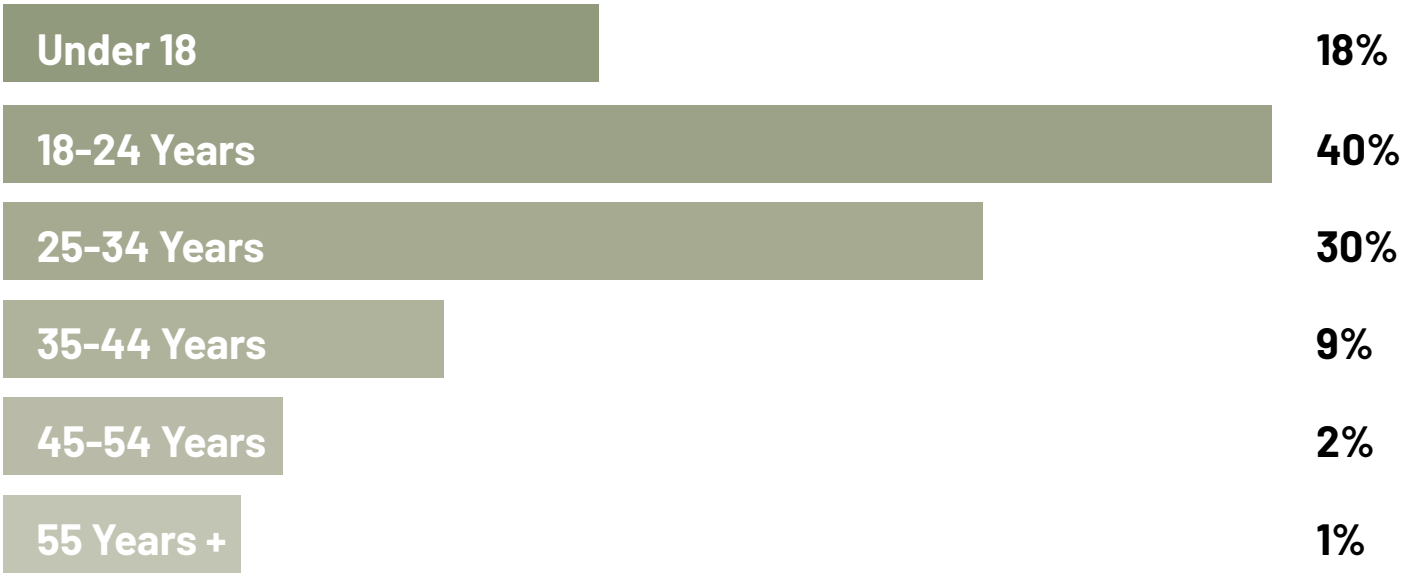

**QC1. How often does sexual corruption occur as an intentional and equal exchange of sex/sexual favours for a benefit?**

**QC2: In your opinion, which age group is most vulnerable to sexual corruption?;**
**QC3: In your opinion, which gender is most vulnerable to sexual corruption?;**
**QC4: In your opinion, which sector has the highest prevalence of sexual corruption?**

## 18-24 YEAR OLD FEMALES ARE MOST VULNERABLE

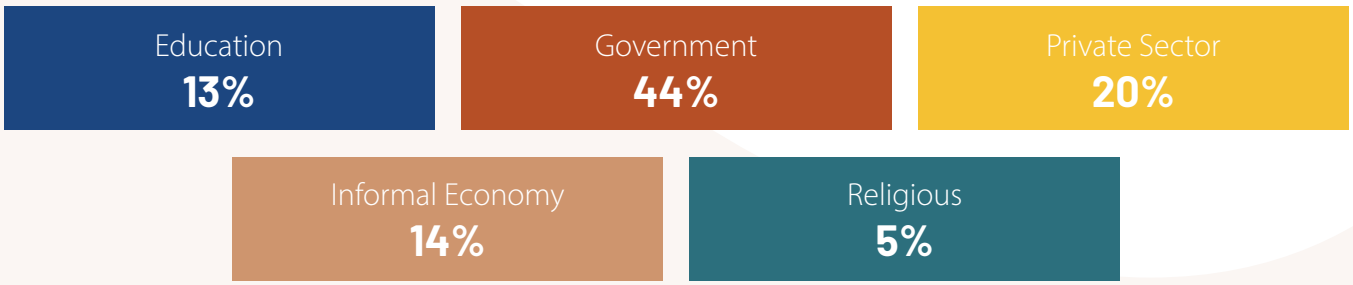
18-24 year olds, followed by 25-34 year old females are the most vulnerable to sexual corruption and this may be for a plethora of reasons, taking place in academic institutions or even as new entrants, deemed young and vulnerable' in the workplace. Many respondents regard government as the sector with the highest prevalence for sexual corruption, this may be either in service delivery or in context of a working environment.

### Most vulnerable by age




### Most vulnerable by gender

### Sectors with the highest prevalence of sexual corruption



# SCOPE AND MAGNITUDE

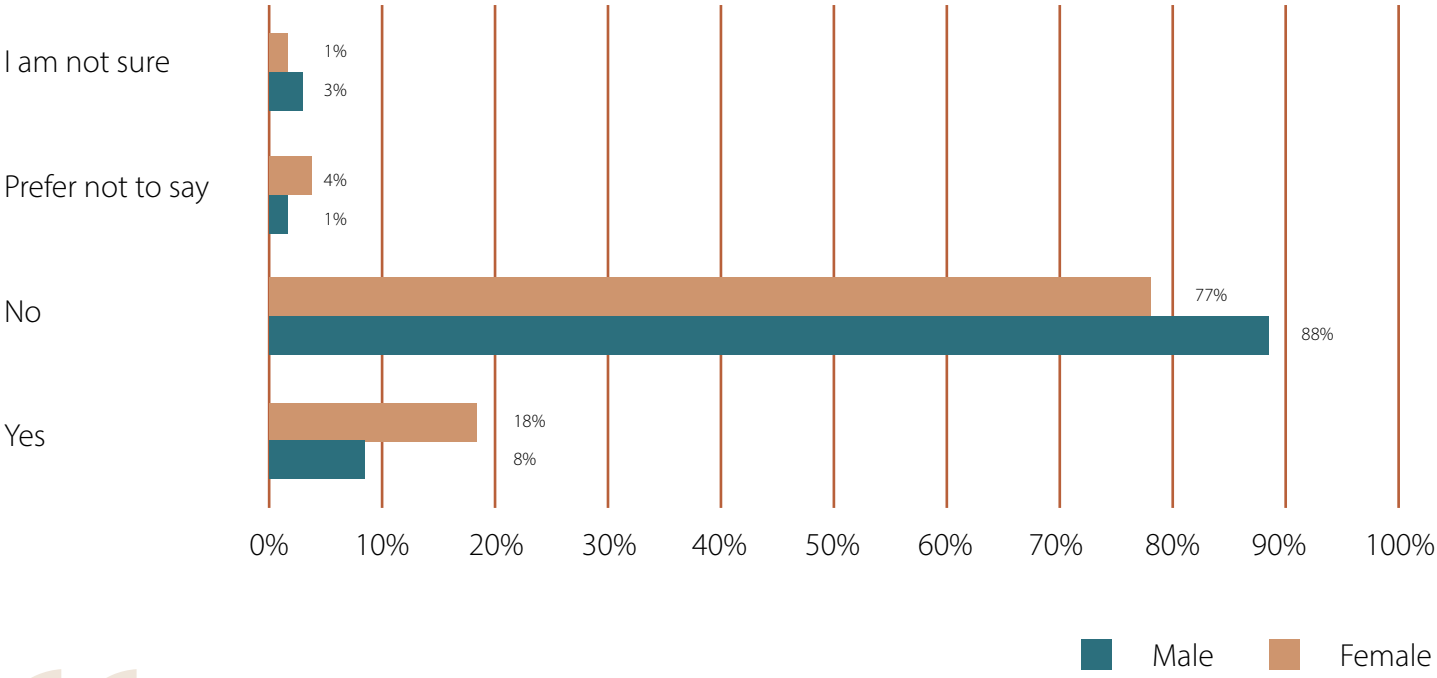
5

## UNVEILING PREVALENCE AND DISPARITIES OF SEXUAL CORRUPTION

### Prevalence

> **It's mostly common to women.**
> North-West Participant, Male: 18-29

### Prevalence amongst gender

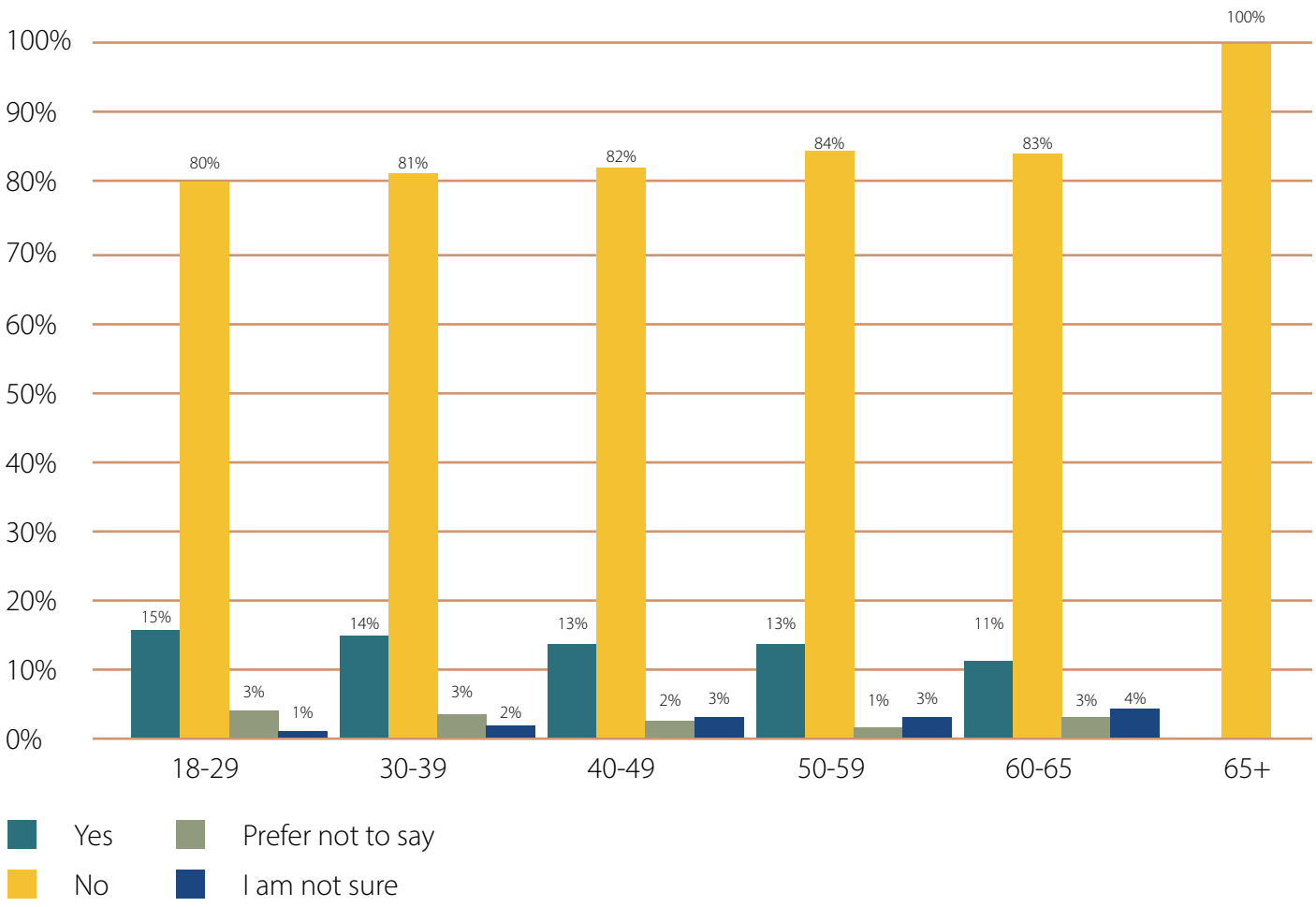



> **It is mostly happening to black females.**
> Limpopo Participant, Female: 30-39.

**QD1: Have you ever been in a situation where someone used their position of authority to seek sexual favors from you, either directly or indirectly?**

## MOST PREVALENT AMONGST 18-29 YEAR OLDS

### Prevalence by age




**I first gave in, agreed to the whole set-up but as time went on, I just couldn't you know, I just couldn't.**

Gauteng Participant, Female: 18-29.

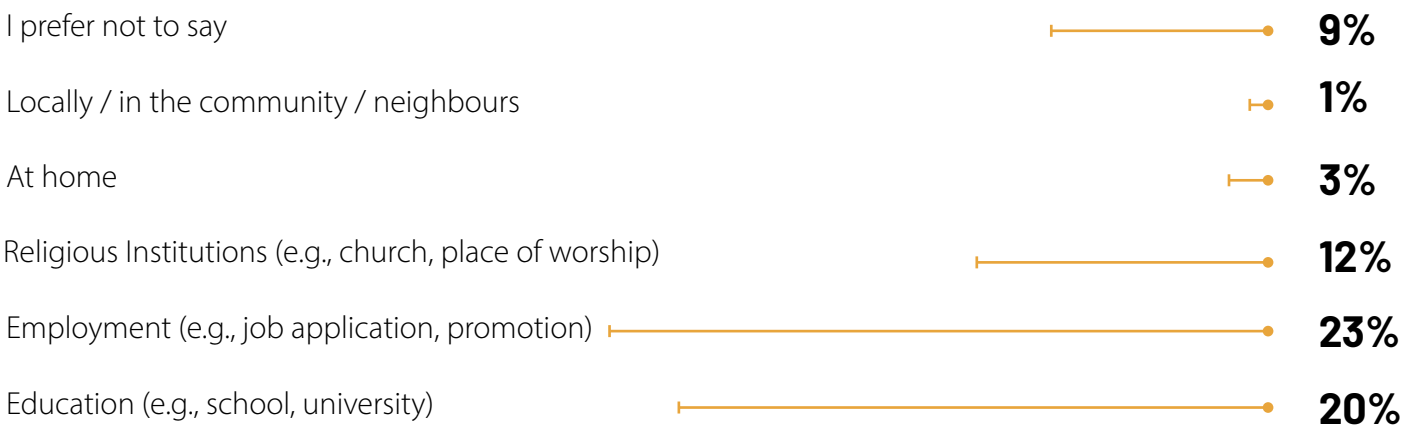
**I don't have much confidence, and I have flashbacks of what happened. I don't know any services that can help me.**

North-West Participants, Male: 18-29

**QD1.1: Please indicate the general setting or circumstance in which an incident of sexual corruption took place**

## MOST HAVE EXPERIENCED SEXUAL CORRUPTION IN PLACES OF EMPLOYMENT

### Where sexual corruption occurs




**The guy then told me that he has the job, but he will need me to sleep with him first, I asked him to buy me alcohol so the shyness can go away, he did buy me and we went to the hotel and the rest was history but he did give me the job afterwards.**

Limpopo Participant, Female: 30-39.

**So with me, my boss pressured me into engaging in sexual activity in exchange of a promotion. He actually promised me a lot of things hey, career advancement which included work trips, exposure and so forth.**

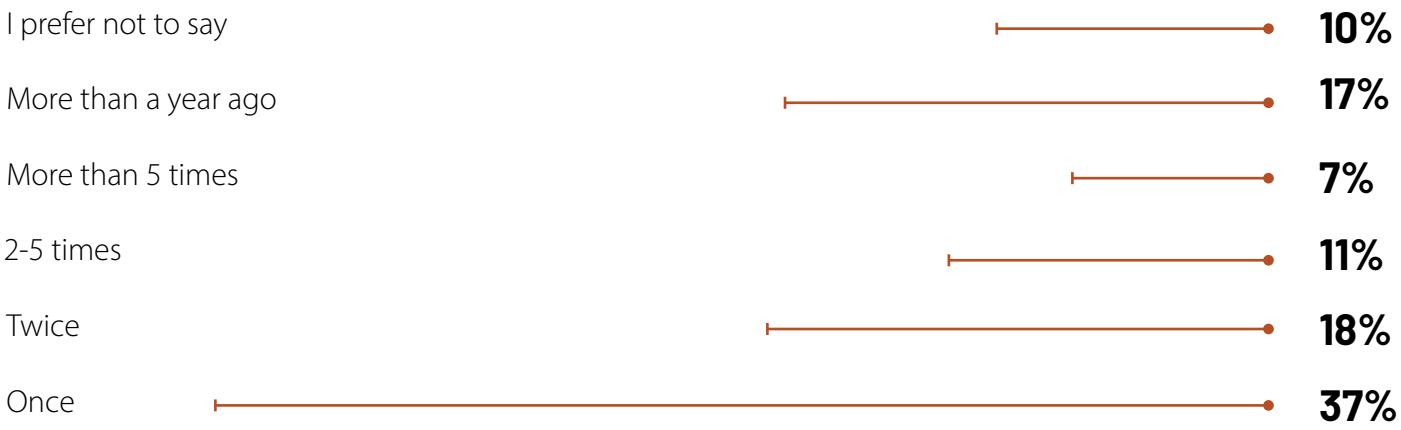
Gauteng Participant, Female: 18-29.

**QD1.2: In the past 12 months, how frequently have you either personally experienced or observed a situation that seemed to involve someone attempting to use their position of authority to obtain sexual favors?**

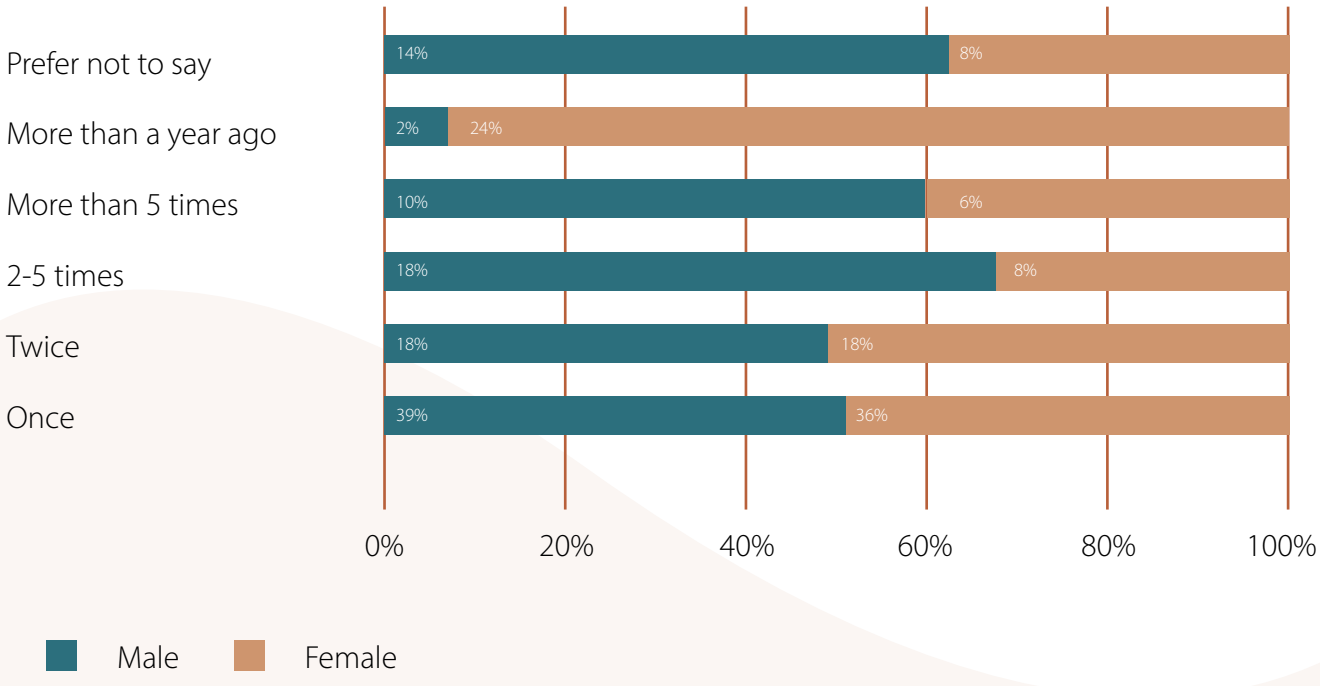
## DEMOGRAPHIC TRENDS IN SEXUAL CORRUPTION EXPERIENCES

37% of the total sample and 39% of males state that they have experienced sexual corruption at least once. 56% of this being between the ages of 18 and 29. Individuals aged 30 and above, and more specifically 50-59, have experienced sexual corruption on more than one instance. Furthermore, 36% of men, report experiencing sexual corruption two or more times.

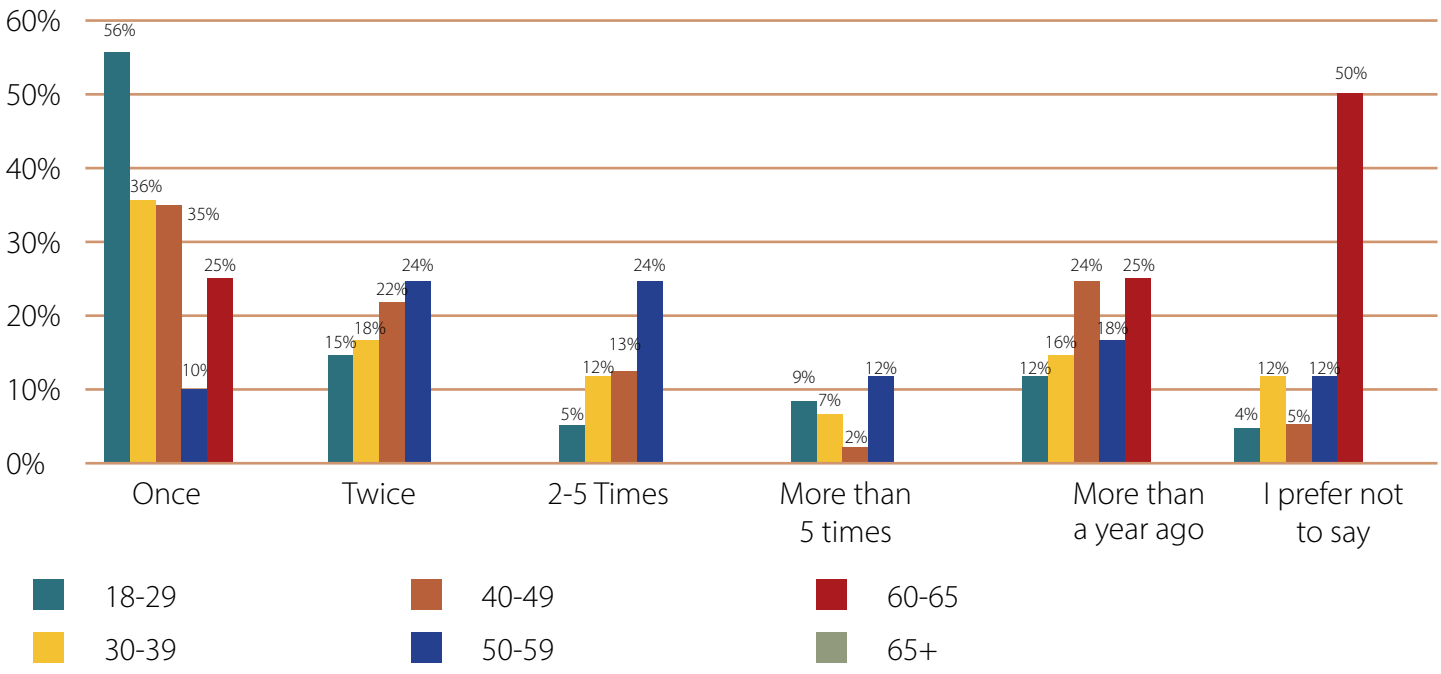
### Frequency across general population




### Frequency by gender

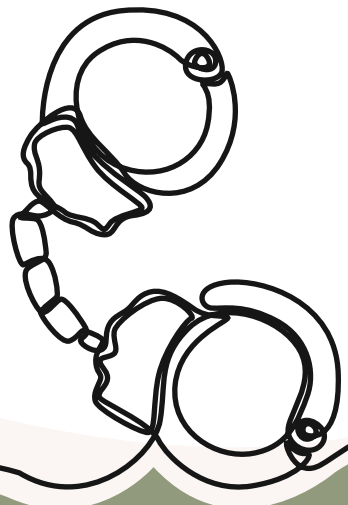


## Frequency across age groups



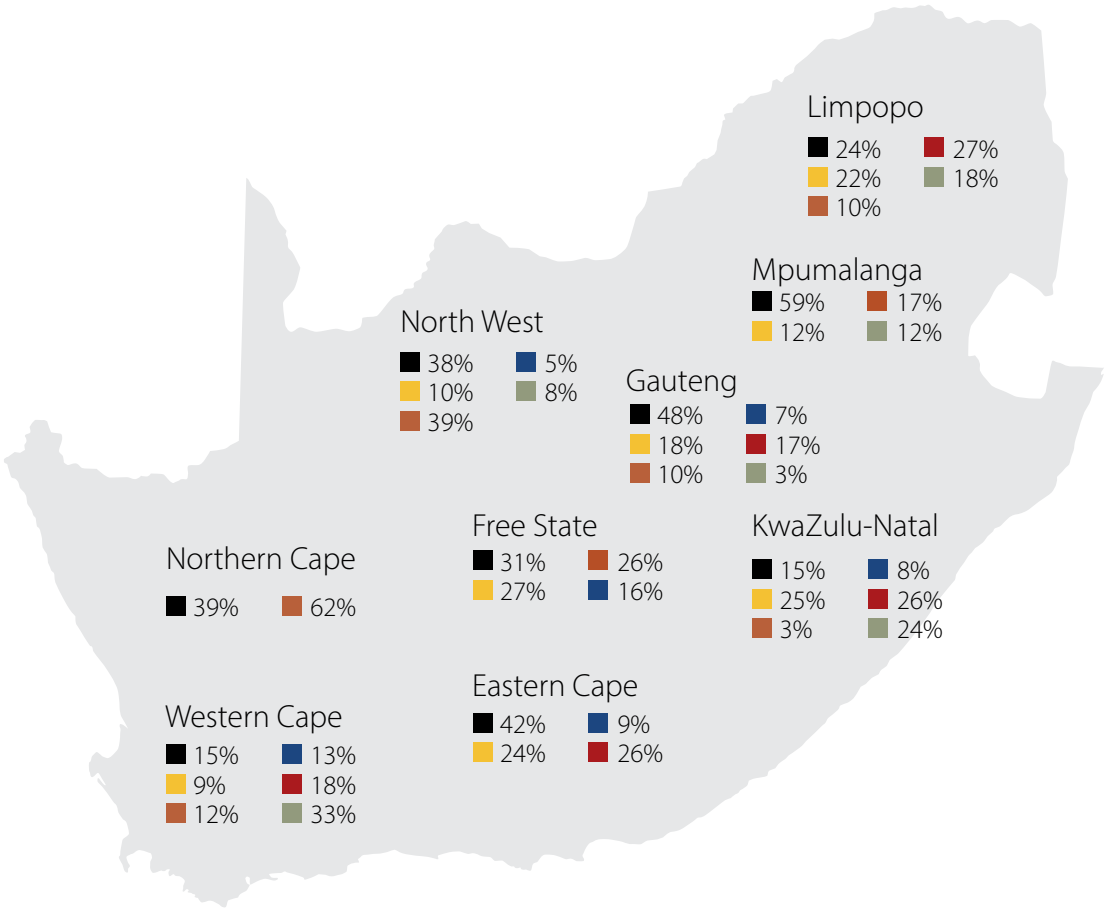

**I was once violated back in school by my teacher, at first I took it as a normal thing, she manipulated me into believing that what was happening was normal irrespective of how uncomfortable I was of the situation.**

Free-State Participant, Male: 18-29.



## FREQUENCY OF OBSERVED OR EXPERIENCED SEXUAL CORRUPTION INCIDENTS IN SOUTH AFRICA

### Frequency across provinces



## PERPETRATORS ARE LIKELY TO ACT AGAIN

In most cases, those who have experienced sexual corruption more than once, it occurred with the same individual and in the same context. This is also the case for individuals residing in low income households. For those residing in higher income homes ( R20 000 and above), it is evident that individuals experience sexual corruption on more than one occasion, with different individuals and in different scenarios. Furthermore, roughly 24% of the respondents experience sexual corruption on more than one occasion, in different contexts and with different individuals.

### Instances of sexual corruption

**32%**
**It occurred with the same individual in the same context**

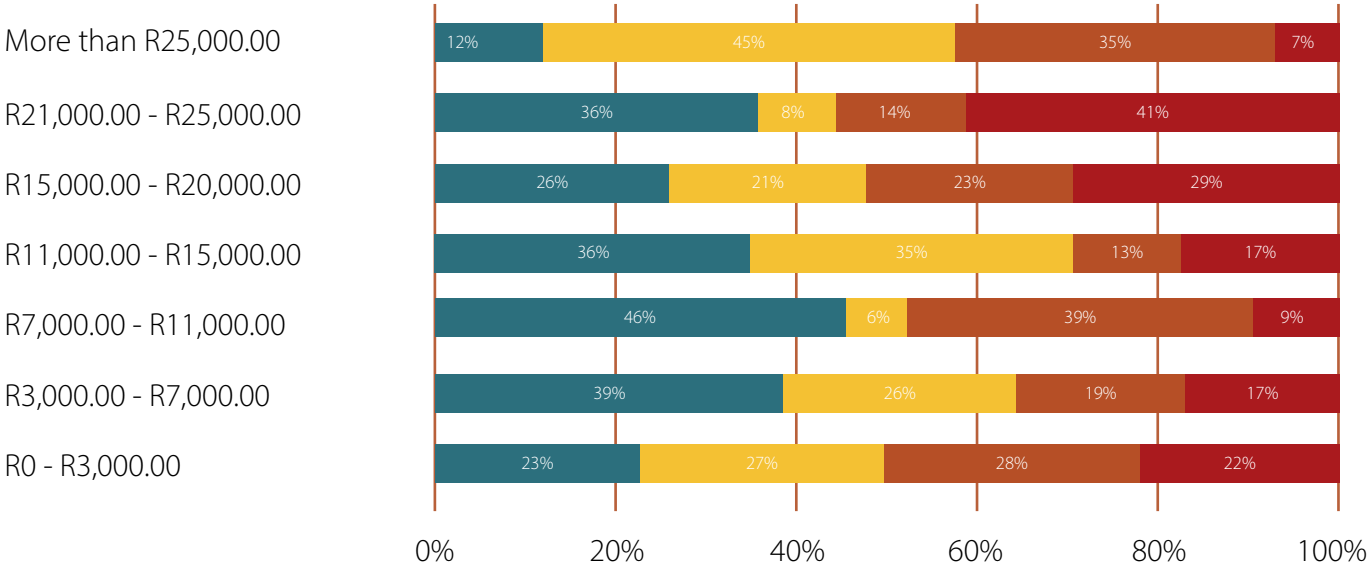
**26%**
**It occurred in the same sector with different individuals**

**24%**
**It occurred in different sectors / context with different individuals**

**18%**
**I prefer not to say**

> **My boss pressured me into engaging in sexual activity in exchange for a promotion. He actually promised me a lot of things hey, career advancement which included work trips, exposure and so forth.**
>
> Gauteng Participant, Female: 18-29.

**Instances across household income**




- It occurred with the same individual in the same context
- It occurred in the same sector with a different individual (i.e., Education, Healthcare Services etc.)
- It occurred in different sectors / context with different individuals
- I prefer not to say

> **It started in high school with a teacher then ended up also happening in my company where I was working.**
>
> North-West Participant, Male: 18-29.

**QD1.4: Do you think this is a crime; if so, who would you report it to?**

## 41% STATE THAT SEXUAL CORRUPTION IS A CRIME, AND IT MUST BE REPORTED.

5% of respondents stated that sexual corruption is not a crime and they would not report it because they're unaware of who to report it to (1%), some are afraid of receiving death threats or experiencing other consequences (2%), and some feel that reporting the crime is pointless and nothing will be done about it (3%). 3 respondents (1%) also highlighted the power dynamics of sexual corruption stating that they cannot report it as one individual holds power over another.

| | | |
|---|---|---|
| **28%** Police | **8%** Employee / senior management / HR | **1%** Relevant authorities |

**Many cases go unreported due to fear, shame, or lack of trust in the system.**

Northern Cape Participant, Female: 50-59

**Another thing, it is not easy to report such cases because your job will be on the line. I would just tell my sister and she would advise me to be patient because my job is important.**

Mpumalanga Participant, Female: 30-39.

**QD1.6: Who did you report your case to?**

## ONLY 26% OF VICTIMS HAVE REPORTED THEIR CASE OF SEXUAL CORRUPTION

### Total number of incidences per province

| | | | | |
|---|---|---|---|---|
| Eastern Cape - 10 | Free State - 3 | Gauteng - 61 | KwaZulu Natal - 22 | Western Cape - 20 |
| Limpopo - 12 | Mpumalanga - 3 | North West - 8 | Northern Cape - 1 | |

### Total number of reported cases

| | | | | |
|---|---|---|---|---|
| Eastern Cape - 4 | Free State - 1 | Gauteng - 16 | KwaZulu Natal - 5 | Western Cape - 5 |
| Limpopo - 0 | Mpumalanga - 1 | North West - 1 | Northern Cape - 1 | |

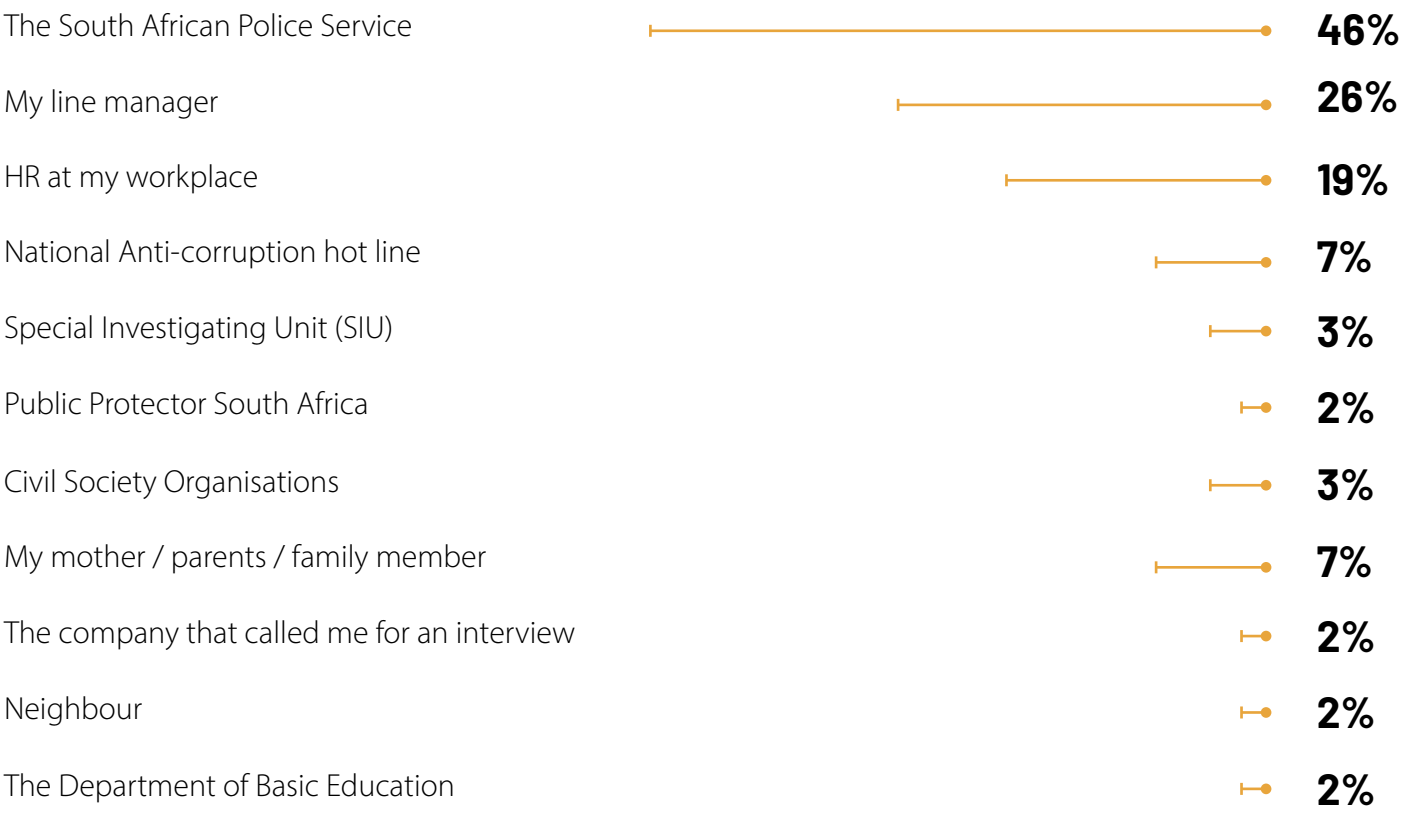
### % Of reported cases

| | | | | |
|---|---|---|---|---|
| Eastern Cape - 54% | Free State - 23% | Gauteng - 31% | KwaZulu Natal - 19% | Western Cape - 19% |
| Limpopo - 0% | Mpumalanga - 30% | North West - 13% | Northern Cape - 100% | |

> **Many cases go unreported or are dismissed due to lack of evidence, allowing perpetrators to continue their abuse. The legal system often fails victims, making it difficult for them to seek justice**
>
> Limpopo Participant, Male: 18-29.

## MOST REPORT THEIR CASES TO THE SAPS

### Place of reported cases




**46%**
**of victims have reported their cases to the South African Police Service**

**26%**
**have reported it to their line manager**

**19%**
**have reported it to the HR department at their workplace**

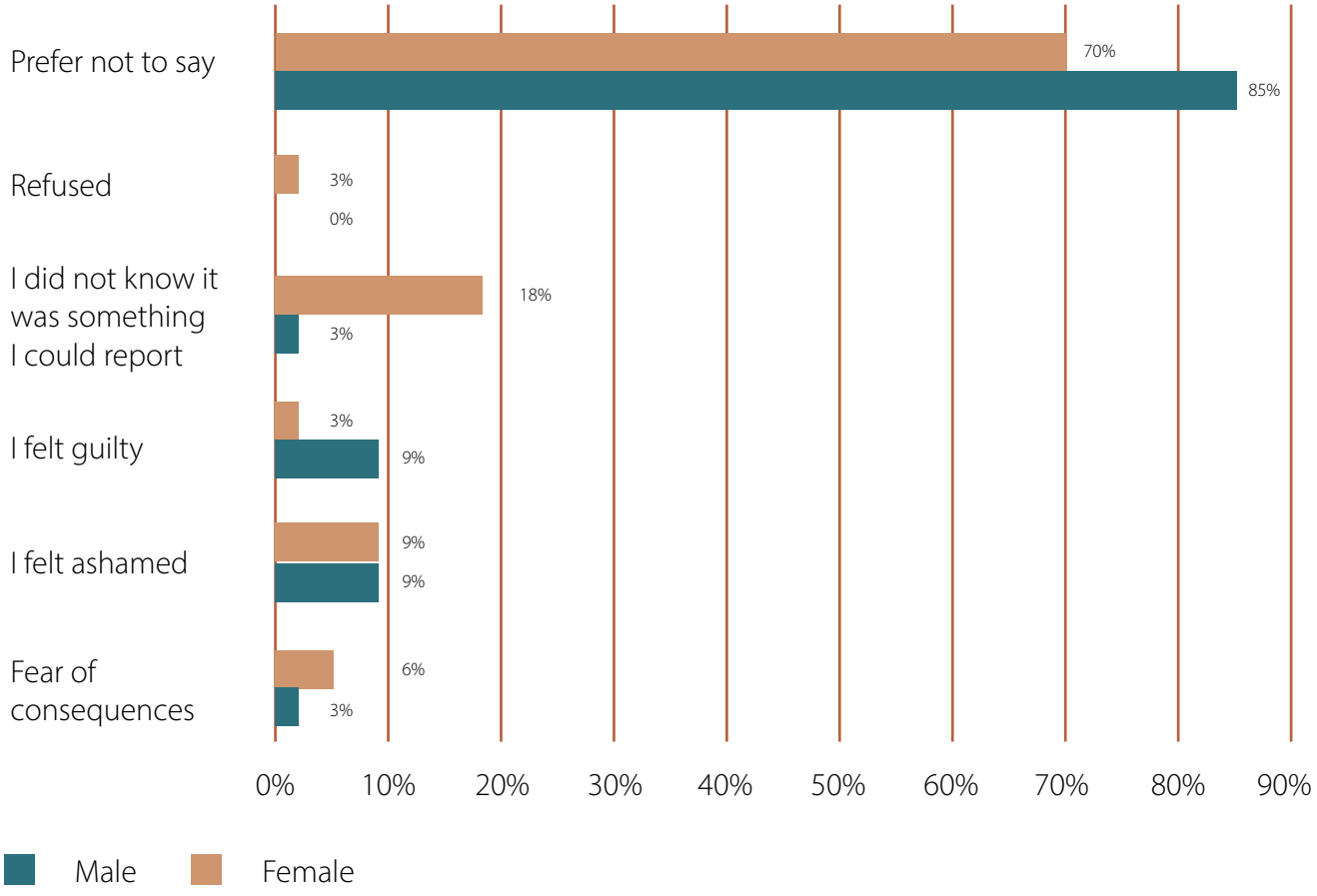
**7%**
**told a family member**

**QD1.7: Please indicate which of the following factors, if any, influenced your decision**

## VICTIMS ARE FEARFUL OF THE CONSEQUENCES, FEEL ASHAMED AND DO NOT KNOW THEY CAN REPORT WHAT HAS HAPPENED TO THEM.

The data on reasons for not reporting experiences of sexual corruption reveals significant gender differences and a pervasive reluctance to disclose information. The most striking observation is the high percentage of both males (85%) and females (70%) who preferred not to say why they didn't report their experiences, suggesting deep-rooted hesitancy to discuss the issue, possibly due to fear, shame, or cultural taboos. A notable finding is that 18% of female respondents did not know they could report sexual corruption, compared to only 3% of males, highlighting a significant gender gap in awareness about reporting mechanisms and rights. Both women and men were likely to cite shame as a reason for not reporting (9%) while men were slightly more likely to cite guilt (9% vs 3% for women), indicating that emotional and psychological factors play a role in underreporting, with gender-specific impacts. Fear of consequences, such as victimization or losing benefits, was cited by 6% of women and 3% of men, suggesting that power dynamics and potential repercussions are significant deterrents to reporting for both genders. Overall, the data suggests that women face more barriers to reporting than men, being more likely to feel ashamed, fear consequences, and be unaware of reporting options.

**Rationale for not reporting by gender**

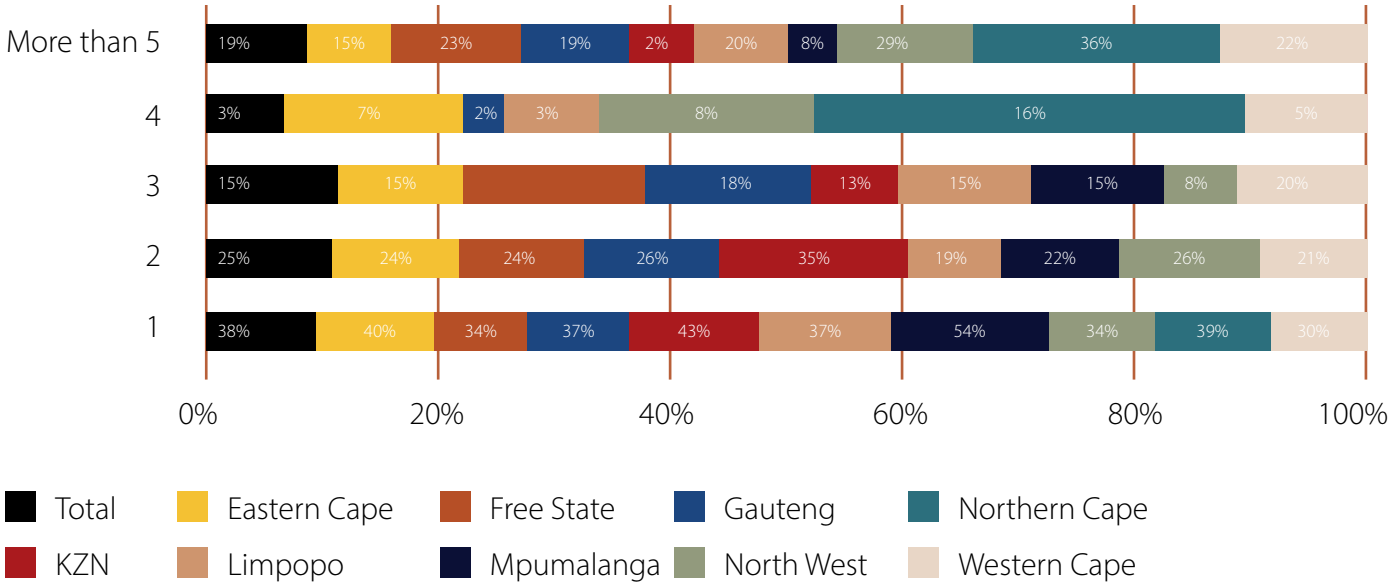


**QD2: Do you know of someone else that has experienced sexual corruption?**
**QD2.1 How many individuals do you know that experienced sexual corruption?**

## RESPONDENTS ARE AWARE OF BETWEEN 2 AND 3 CASES OF SEXUAL CORRUPTION AMONG PEOPLE THEY KNOW

**36%** **of respondents know someone else who is a victim of sexual corruption.**

Sexual corruption is widespread in South Africa, with 62% of respondents knowing two or more victims, and 19% knowing more than five. This aligns with the country's broader challenges of gender-based violence and systemic corruption. The prevalence reflects deep-rooted issues stemming from historical inequalities, power imbalances, and economic vulnerabilities. Underreporting is likely, given the discrepancy between those knowing multiple cases (62%) and those affirming knowledge of "someone else" (36%). This mirrors South Africa's struggle with underreporting of sexual crimes due to fear, stigma, and lack of faith in the justice system. These findings underscore the urgent need for strengthened efforts to combat gender-based violence and corruption at both societal and institutional levels, supporting initiatives like the National Strategic Plan on Gender-Based Violence and Femicide.




**I decided to leave everything behind, never reported the matter because the person had money. Its either he was going to make the case go away or hire people to kill me. Money has power and influence. I just resigned after some time, when seeing that the guy wanted to constantly sleep with me.**

Limpopo Participant, Female: 30-39

**QD2.2: What is the gender of the individual/s that experienced sexual corruption?**
**QD2.3 In what sector did the sexual corruption occur to the individual/s?**

*These questions allowed for multiple responses and therefore may not add to *100.*

## CORRUPTION'S GENDER GAP: WHERE POWER MEETS VULNERABILITY

**Other sectors where sexual corruption occurred include taverns, local communities and circle of friends/ family.**

Sexual corruption primarily affects women (93% of victims). It's most prevalent in employment (61%), followed by education (28%), public services (25%), and religious institutions (16%). The workplace is the main concern, necessitating strong anti-harassment policies. Educational settings raise alarms about student safety. The issue's presence in public services calls for improved governance. These findings highlight the widespread nature of sexual corruption across sectors, emphasizing the need for comprehensive prevention strategies and victim support.

### Gender of sexual corruption victims

### Sectors where sexual corruption took place

**Those that are looking for jobs are the target market especially your entry level jobs.**

Limpopo Participant, Female: 30-39.

**The employment sector has a lot of sexual corruption.**

Gauteng Participant, Female: 50-59.

**QD3: Has there ever been a time when someone who had authority over access to certain opportunities (such as an employer, public official, supervisor or teacher) either directly or indirectly suggested providing you with a service, job, or other benefit in exchange for intimate or sexual activity, and you turned down this suggestion?**

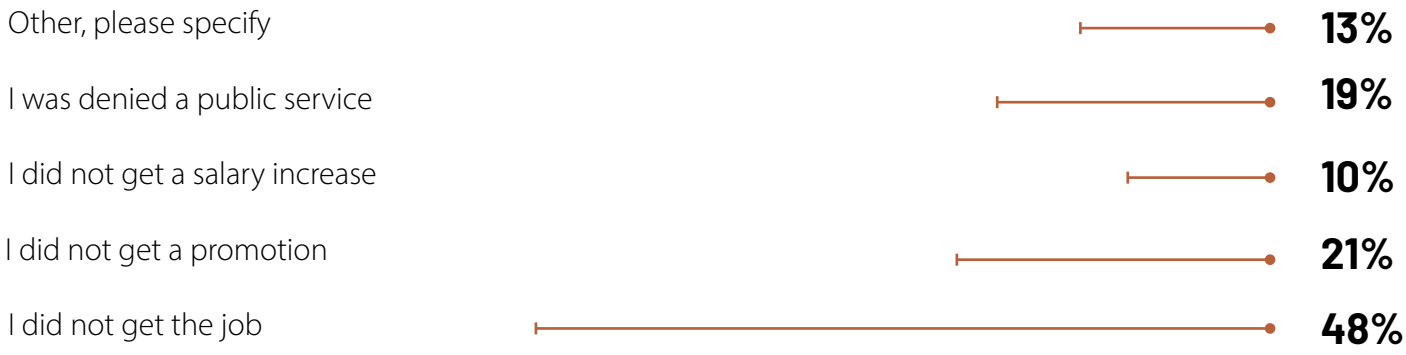
**QD3.1 What were the consequences of the rejection?**

## THERE IS A PRICE FOR SAYING "NO" TO QUID PRO QUO

Rejecting sexual propositions from authority figures primarily led to professional consequences. Not getting the job (48%), promotion (21%), or public service (19%) were the most common outcomes, accounting for 80% of responses. The "Other" category (13%) showed diverse impacts such as denied leave, ill treatment and academic repercussions. Positive outcomes were rare, and only 3% reported no consequences. The data highlights the severe career impact of rejecting such propositions.

**Incident of respondents declining sexual propositions for benefits**

**Consequences of rejecting sexual propositions**



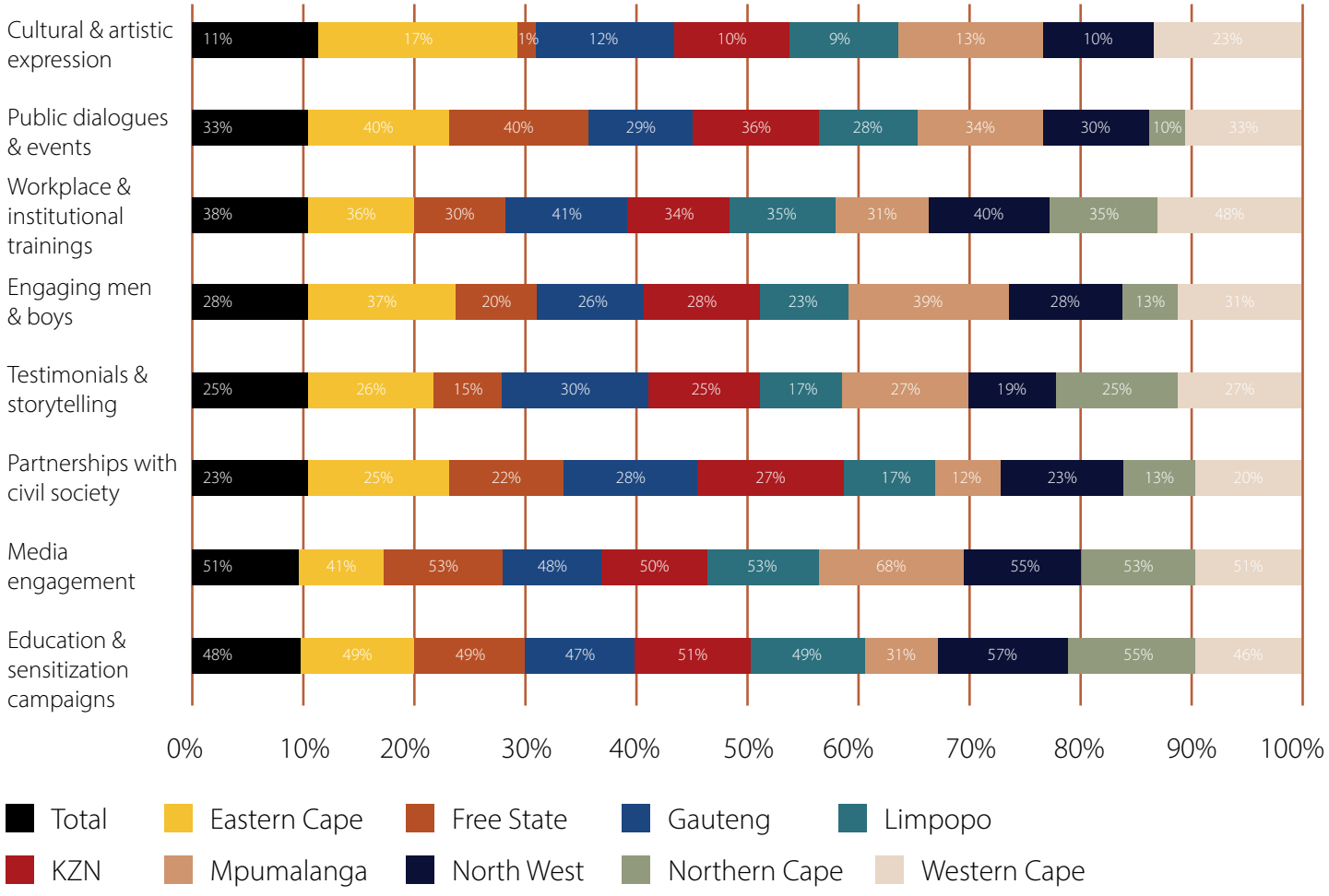

> **I cannot go sit down and speak with someone about my matters cause I also don't know what they're going to do with my matters so I just keep it to myself and we just sat down and spoke with a few friends at the Tavern and yeah you know life moves on.**
>
> Free State Participant, Female: 30-39.

# MAPPING THE WAY FORWARD

## STRATEGIES TO ENHANCE PUBLIC AWARENESS ON SEXUAL CORRUPTION

Media engagement and educational campaigns are the most effective strategies for raising awareness about sexual corruption in South Africa. Significant provincial variations underscore the necessity for tailored, region-specific approaches.

### Recommendations for raising awareness




**More awareness programmes, more awareness campaigns**

North-West Participant, Male: 18-29.

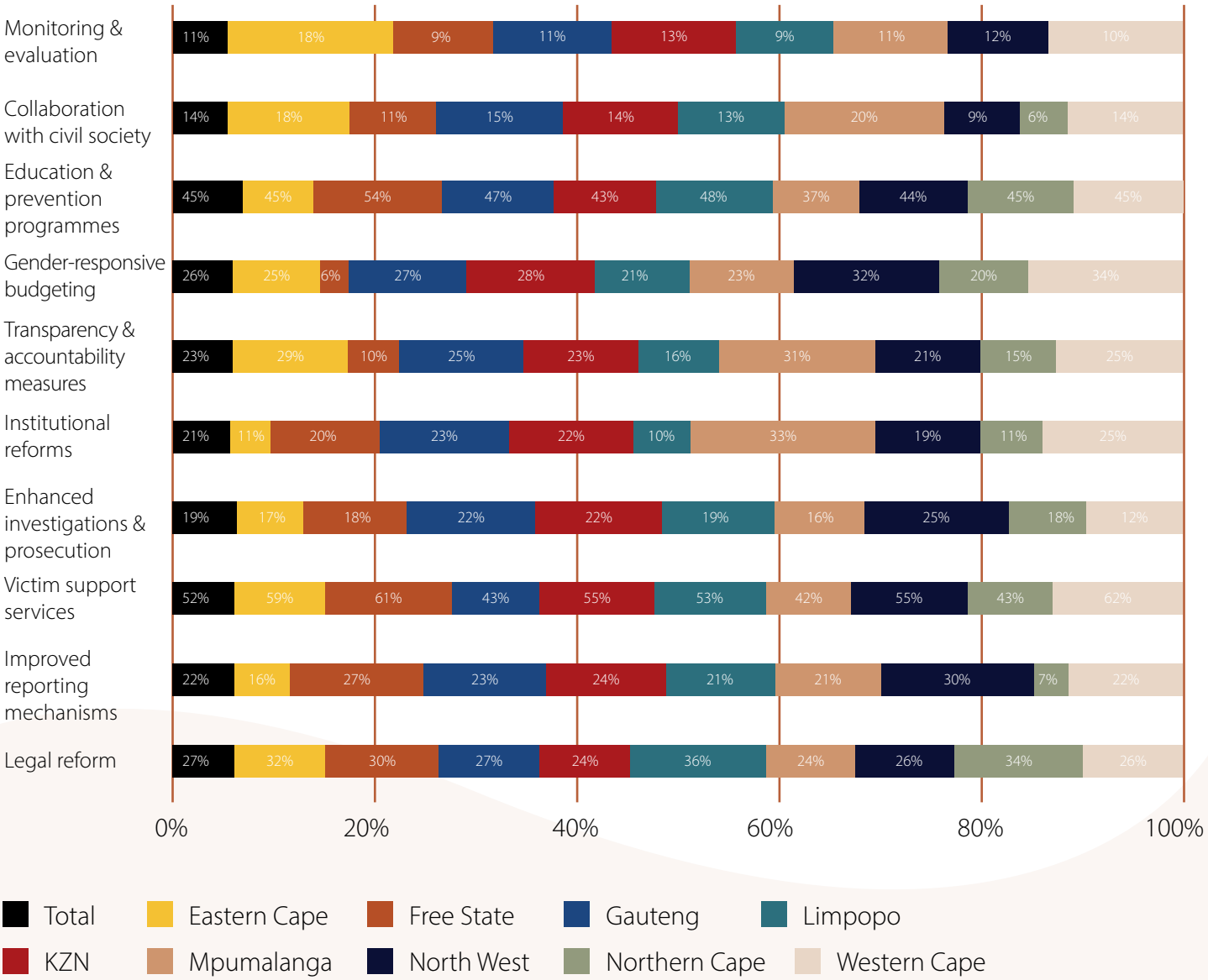
**QE1: What recommendations would you suggest for raising awareness about sexual corruption in South Africa?**

**QE2: What policy changes do you think are necessary to address sexual corruption in South Africa?**

## PRIORITIZING ENHANCED VICTIM SUPPORT INITIATIVES IS ESSENTIAL

To address sexual corruption in South Africa, the most strongly supported policy changes are enhancing **victim support services** (52%) and implementing education and prevention programs (45%). Legal reform (27%) and gender-responsive budgeting (26%) also receive significant backing. While enhanced investigations and prosecution (19%) and institutional reforms (21%) have moderate support, they are seen as less crucial. The data suggests a multi-faceted approach is necessary, with a primary focus on supporting victims and prevention through education, complemented by legal and budgetary reforms. Regional variations in support for different strategies indicate that tailored, province-specific approaches may be more effective than a one-size-fits-all national policy.

### Recommendations on policy changes



## PROFILE OF INDIVIDUALS AT RISK OF EXPERIENCING SEXUAL CORRUPTION

The individuals most vulnerable to sexual corruption in South Africa are likely to be:

- Women
- Residing in Gauteng, with potentially elevated risk in North West, Limpopo, and Western Cape (though not statistically significant).
- Employed full-time
- Earning a middle-income (R15,000 - R20,000 per month)
- Having previously experienced and accepted offers of sexual corruption

It's crucial to note that while the Eastern Cape serves as the reference category, residents there are still at risk, potentially more so than in provinces like Northern Cape. The non-significant results for Limpopo, North West, and Western Cape suggest that targeted interventions in these areas may also be beneficial, as the lack of statistical significance doesn't necessarily mean the absence of risk.

> **There should be awareness campaigns in our communities, so people know where to go when faced with this problem.**
>
> Limpopo Participant, Female: 30-39.

**Create transparent reporting mechanisms and ensure cases are handled with urgency and fairness.**

Northern Cape Participant, Female: 50-59

> **Provide holistic support services, including legal aid and counseling, to encourage victims to come forward.**
>
> Western Cape Participant, Male: 40-49

**Have more therapists and social workers in place for victims.**

Gauteng Participant, Female: 18-29.

| BACKGROUND CHARACTERISTICS | (N = 42 692 575) | | |
|---|---|---|---|
| | EXPERIENCED SEXUAL CORRUPTION | | |
| **Awareness of sexual corruption** | aOR | p-value | 95% CI |
| Yes | Ref | | |
| No | 0.64 | 0.08 | 0.39 - 1.05 |
| **Know another person that has experienced sexual corruption** | | | |
| Yes | Ref | | |
| No | 0.82 | 0.35 | 0.55 - 1.23 |
| **Individual offered a service, job, or benefit by someone in authority in exchange for sexual activity and declined?** | | | |
| Yes | Ref | | |
| No | 0.05 | 0.000*** | 0.03 - 0.08 |
| **Gender** | | | |
| Male | Ref | | |
| Female | 2.15 | 0.001*** | 1.39 - 3.34 |
| **Race** | | | |
| Black | Ref | | |
| White | 0.82 | 0.70 | 0.31 - 2.16 |
| Coloured | 1.38 | 0.42 | 0.62 - 3.05 |
| Indian | 1.64 | 0.42 | 0.48 - 5.58 |
| **Age group** | | | |
| 18 - 29 | Ref | | |
| 30 - 39 | 0.74 | 0.24 | 0.44 - 1.22 |
| 40 - 49 | 0.61 | 0.11 | 0.33 - 1.12 |
| 50 - 59 | 0.79 | 0.55 | 0.37 - 1.67 |
| 60 years and older | 1.35 | 0.75 | 0.20 - 9.07 |
| **Province** | | | |
| Eastern Cape | Ref | | |
| Free State | 0.85 | 0.81 | 0.22 - 3.19 |
| Gauteng | 2.45 | 0.02* | 1.12 - 5.34 |
| KwaZulu-Natal | 0.98 | 0.97 | 0.40 - 2.41 |
| Limpopo | 1.71 | 0.24 | 0.69 - 4.23 |
| Mpumalanga | 0.94 | 0.91 | 0.28 - 3.09 |
| North West | 2.00 | 0.24 | 0.62 - 6.42 |
| Northern Cape | 0.19 | 0.02* | 0.04 - 0.80 |
| Western Cape | 1.46 | 0.50 | 0.47 - 4.47 |

| BACKGROUND CHARACTERISTICS | (N = 42 692 575) | | |
|---|---|---|---|
| | EXPERIENCED SEXUAL CORRUPTION | | |
| **Employment status** | | | |
| Working full-time | Ref | | |
| Working part-time | 0.49 | 0.04* | 0.24 - 0.97 |
| Stay at home individual | 1.01 | 0.98 | 0.26 - 3.85 |
| Pensioner/Retired | 0.23 | 0.17 | 0.02 - 1.93 |
| Student | 0.35 | 0.01** | 0.28 - 0.89 |
| Unemployed (looking for work) | 0.50 | 0.01** | 0.28 - 0.89 |
| Unemployed (not looking for work) and prefer not to work | 0.28 | 0.03* | 0.09 - 0.90 |
| **Total net monthly household income** | | | |
| R0 - R3 000 | Ref | | |
| R3 000 - R7 000 | 1.07 | 0.80 | 0.59 - 1.96 |
| R7 000 - R11 000 | 1.62 | 0.16 | 0.81 - 3.23 |
| R11 000 - R15 000 | 1.37 | 0.39 | 0.66 - 2.86 |
| R15 000 - R20 000 | 2.56 | 0.03* | 1.08 - 6.05 |
| R21 000 - R25 000 | 1.68 | 0.33 | 0.58 - 4.82 |
| More than R25 000 | 0.73 | 0.55 | 0.26 - 2.03 |
| **Educational attainment** | | | |
| No education and incomplete education | Ref | | |
| Primary | 0.39 | 0.34 | 0.05 - 2.73 |
| Secondary | 1.02 | 0.92 | 0.58 - 1.81 |
| Tertiary | 1.01 | 0.96 | 0.50 - 2.05 |
| **Marital status** | | | |
| Never married | Ref | | |
| Married | 0.67 | 0.19 | 0.37 - 1.22 |
| Widowed | 0.79 | 0.84 | 0.08 - 7.18 |
| Divorced | 2.07 | 0.20 | 0.67 - 6.34 |
| Separated | 0.91 | 0.84 | 0.38 - 2.16 |
| Prefer not say | 0.77 | 0.73 | 0.17 - 3.40 |
| Ref = Reference, aOR: Adjusted Odds Ratio; CI: confidence interval; p<0.05*; p<0.01**; p<0.001*** | | | |

## UNVEILING THE SHADOW: SEXUAL CORRUPTION IN SOUTH AFRICA'S LANDSCAPE OF INEQUALITY

The study reveals a **concerning prevalence of sexual corruption in South Africa,** with 15% of respondents reporting personal experiences. This issue **disproportionately affects women (19%) and young adults aged 18-29 (17%),** underscoring its gendered nature. Alarmingly, 93% of known victims were female, highlighting the urgent need for gender-sensitive interventions. These findings must be understood within South Africa's broader context of **deep-rooted inequality, pervasive gender-based violence, high unemployment rates, and limited access to opportunities and services for many citizens.**

**The employment (56%) and education (23%) sectors emerged as the most common settings** for these incidents, reflecting the vulnerability of individuals seeking jobs or educational advancement in a country grappling with an unemployment rate exceeding 30%. This prevalence in key developmental sectors points to how s**exual corruption intersects with and exacerbates existing socio-economic challenges,** potentially widening the gulf of inequality and limiting upward mobility for vulnerable groups.

Despite its prevalence, sexual corruption remains **significantly underreported,** with only 24% of victims coming forward. This low reporting rate, **attributed to fear of consequences and a lack of awareness about reporting mechanisms,** mirrors broader issues of underreporting in gender-based violence cases in South Africa. It indicates not only a pressing need for improved support systems and public education but also reflects a deeper societal issue of normalized violence against women and a lack of trust in institutional responses.

## WHERE TO FROM HERE?

By addressing sexual corruption through a comprehensive, multi-faceted approach, South Africa can work towards creating safer environments and promoting gender equality across all sectors of society.

1

### Awareness and Education

- Implement targeted media campaigns and educational programs, especially for vulnerable groups.
- Engage men and boys in prevention efforts.

2

### Strengthen Reporting Mechanisms

- Establish safe, confidential reporting channels.
- Increase awareness of existing reporting options.

3

### Victim Support

- Enhance support services for survivors, including legal aid and counseling.
- Implement gender-responsive budgeting to ensure adequate resources.

4

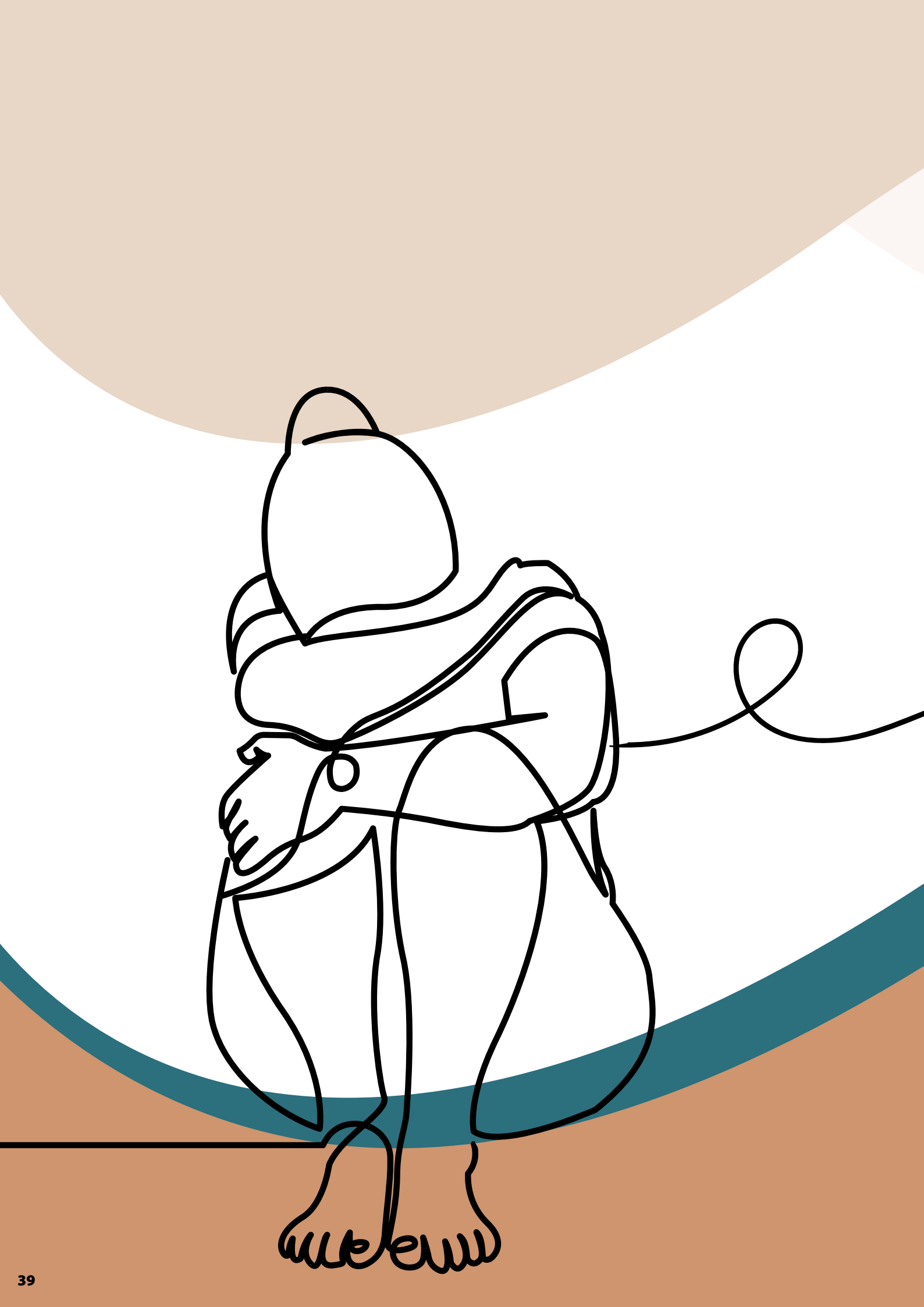
### Policy and Legal Reform

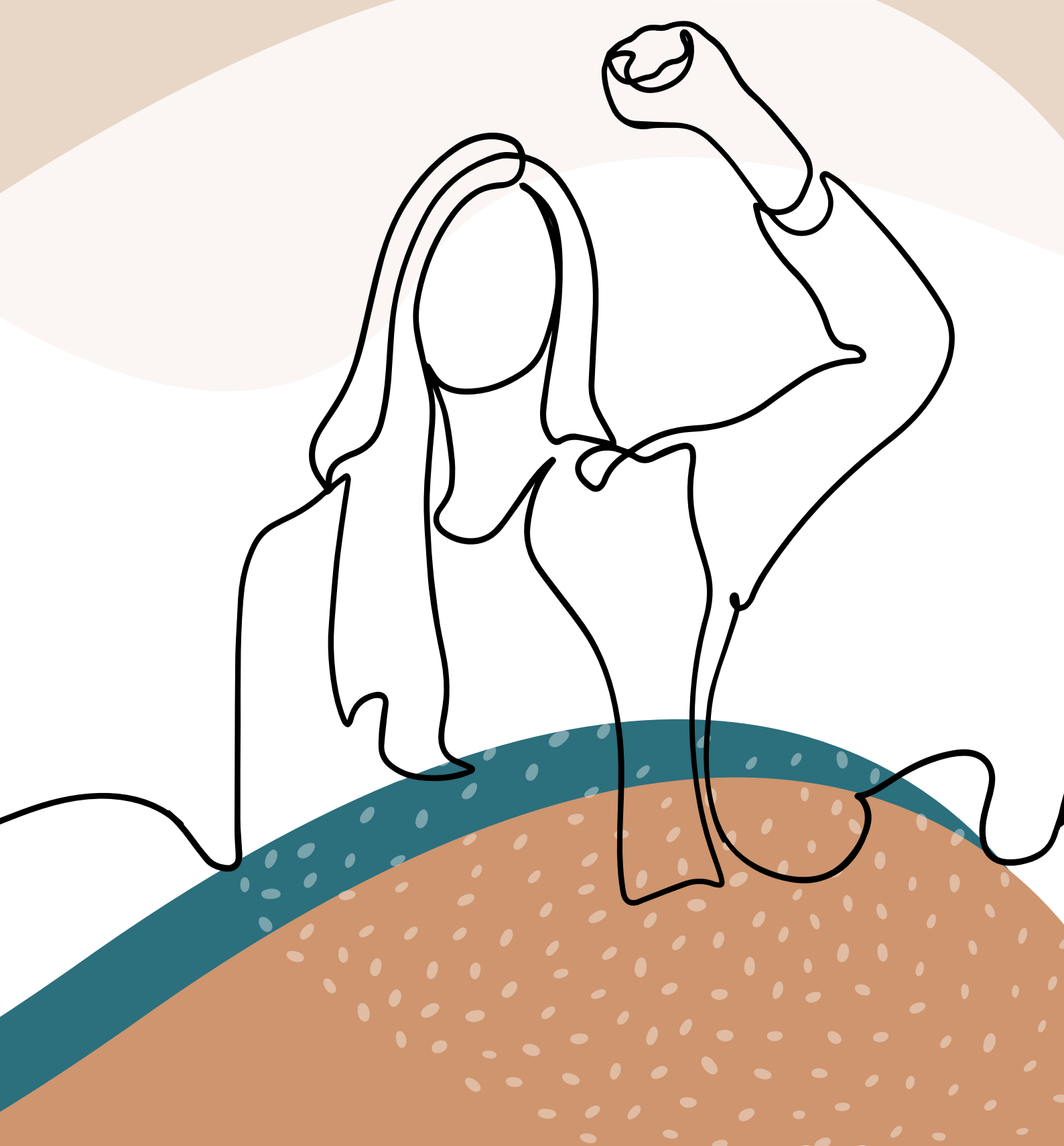
- Strengthen legal frameworks to explicitly criminalize sexual corruption.
- Improve investigation and prosecution processes.

5

### Institutional Change

- Implement workplace training and anti-harassment policies.
- Increase transparency and accountability measures in high-risk sectors.

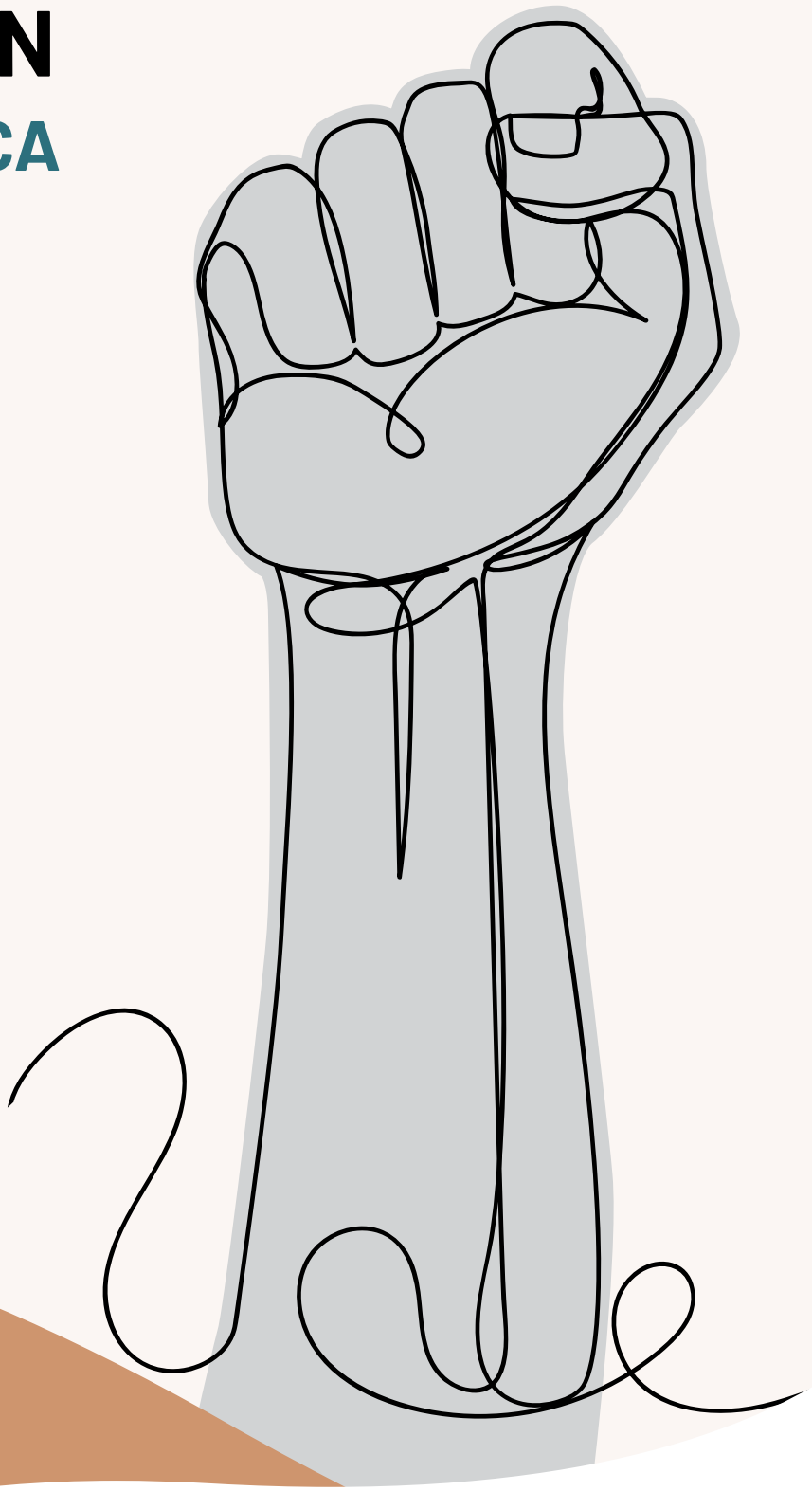




**NO ONE SHOULD CHOOSE BETWEEN DIGNITY & SURVIVAL.**

# SEXUAL CORRUPTION IN SOUTH AFRICA

## Understanding prevalence and context




+27 12 423 5900

giz-suedafrika@giz.de

www.giz.de/southafrica

P.O. Box 28102, Sunnyside,
0002, Pretoria, South Africa



2030 NDP

german cooperation
DEUTSCHE ZUSAMMENARBEIT

Implemented by:
giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

State Secretariat for Economic Affairs SECO

*"No one is born a good citizen; no nation is born a democracy. Rather, both are processes that continue to evolve over a lifetime. Young people must be included from birth. A society that cuts itself off from its youth severs its lifeline; it is condemned to bleed to death. You are the guardians of that lifeline. Nurture it; develop it; give it strength."*

Koffi Anan

**Introduction and Background**

The Ahmed Kathrada Foundation's Youth Activism Programme, in partnership with GIZ South Africa's Transparency, Integrity and Accountability Programme (TIP), the United Nations Office on Drugs and Crime (UNODC), and the National Anti-Corruption Advisory Council (NACAC) hosted a two day National Youth Dialogue on Anti-Corruption on the 16th and 17th of November at Birchwood Hotel and OR Tambo International Conference Centre. This conference was a lead-up event to the National Dialogue on Anti-Corruption in December where stakeholders from around the country and from all walks of life will converge to validate the NACAC's proposals on anti-corruption reform. This event was dedicated to hearing and acknowledging the voices of the youth, and the outcomes of this event are to be presented at that National platform.

**Problem Statement**

Since the adoption of the National Anti-Corruption Strategy (NACS), there have been some important developments. The NACAC has been appointed by the President with the mandate of to advising the President on the implementation of the NACS as well as the recommendations of the Commission of Inquiry into State Capture. In addition, they are tasked with hosting an annual 'National Summit' on the theme of anti-corruption.

However, observations have been made, thus far, of the absence of youth voices in discussions with the NACAC, except in relation to youth as a target audience for communications work. It is an unfortunate truth that youth have not been consulted in the development of the NACS, even though the consequences of today's corruption will be felt in years to come. That means that there may be elements of the NACS that could impact young people. There also may be factors and issues that affect youth that have not been considered. Thus, as the momentum and energy to fight corruption continues to build in South Africa, it was essential to room for youth to be part of the important conversations and decisions that will be made on South Africa's anti-corruption architecture and programmes that are intended to be executed in the near future. This time around, the National Anti-Corruption Advisory Council wants to ensure that the youth voice is heard, that inputs from the youth are included and that the creativity and ideas of young people are harnessed.

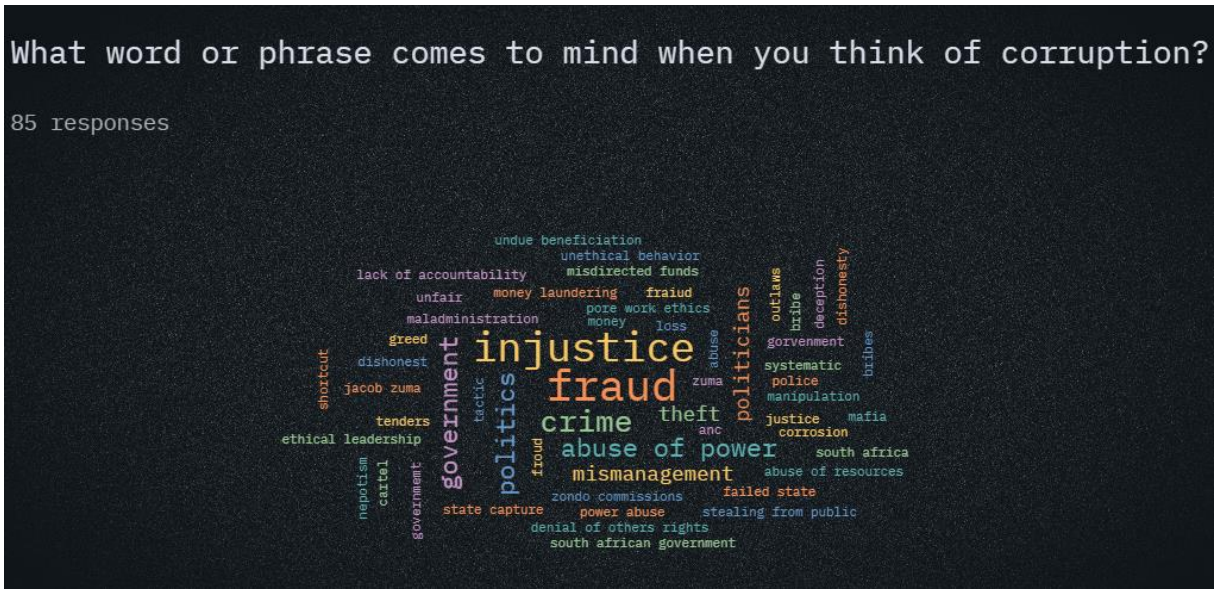
Thus theYouth Activism Programme (YAP), a flagship programme of the Ahmed Kathrada Foundation (AKF), will run a longer-term programme on anti-corruption and accountability. This program is designed to strengthen and deepen democracy through the promotion of active citizenship amongst organised youth clubs in various communities across the province of Gauteng and with the broader National Youth Coalition Network. The Programme adopts a community-based membership and theory of change model that centers on creating and developing an active citizenry as a mechanism to deepen democracy and give voice (and skills and capacity) to young people for constructive engagement and challenging contemporary societal challenges.

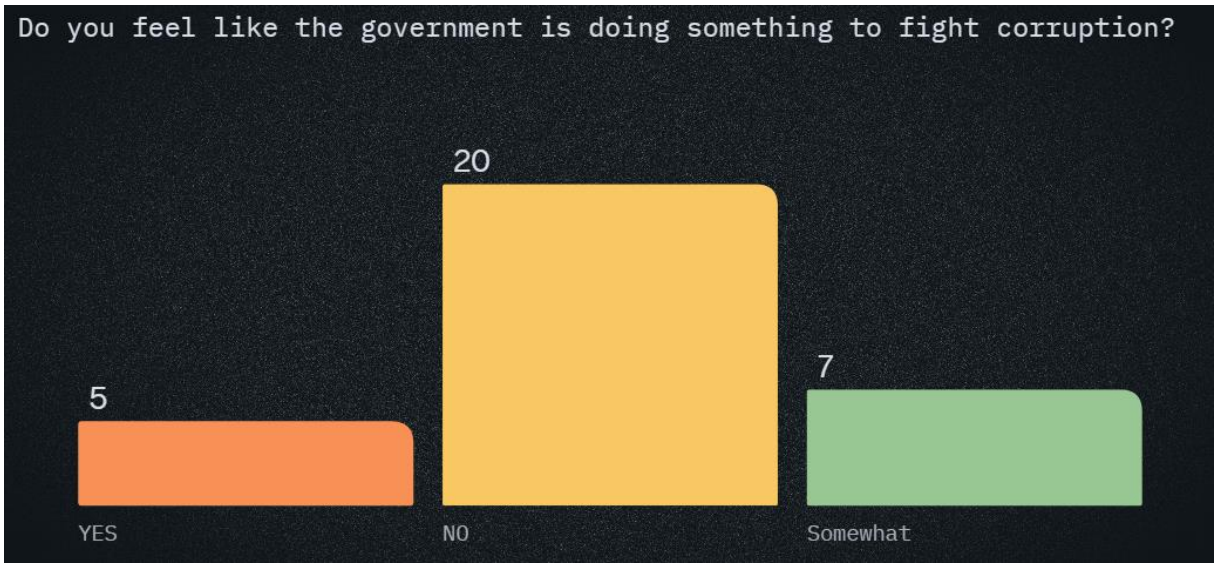
**National Youth Dialogue on Anti-Corruption Outcomes**

The event convened over 65 youth persons from around the Gauteng province. There were introductory presentations from Sabeehah Motala from TIP who gave a welcome, framing and context of the event.

This was followed by a Mentimenter exercise that was facilitated by Esihle Dube from TIP and Moeketsi Kaohelo from the National Youth Council. Given that the NACS adopts a whole-of-government, whole-of-society approach, the Mentimeter sought to gather the youth's perspectives on the role of organized business (private sector), civil

society, and the youth themselves in fighting corruption. However, first they had to get a sense of their understanding of corruption and on whether they feel like the government is doing something to fight corruption. These were some of the findings:



## What can organised business (private sector) do to fight corruption?

32 37

Be compliant with anti-corruption laws and policies!

Act with transparency

Build coalition with the community on the ground to validate efforts against corruption

comply with csi + csr

Skills development in the community and world issues uplifting

Invest in anti.corruption initiatives

Be transparent...

Seeing the accused that are foung guilty being sent to prison

Job creation

invest in intel

Normalise the use of BlockChain Tech to help make the flow of money more Transparent and Accountable

be accountable

Skills development and implementation

Fight change

Hold the accountable for the misconduct

Implement stringent methods to hold government accountable and ensuring the culprits pay for their actions

They can organise programs where they involve youth and also empower them and then talk with the government to do advocacy for people so that they will know what is needed by people

Support government

Have strict policies on issues of corruption.

Corruption is taking place in private sector aswell. They cant do much because they participate in the corruption in the country.

1. Create awareness 2. Hold people who participate in corruption accountable

humanise cooparations again - all they care about is revenue

Be more inclusive when holding anti corruption campaigns.Creat more job opportunity in the sector as I believe corruption also starts from poverty

They must actively engage in strategies to fight corruption from their side because often they are the corruptors, which is not spoken about enough.

Practise a High Standard themselves, which they dont. Fund initiatives to fight corruption, as GTZ is doing.

They must actively engage in strategies to fight corruption from their side because often they are the corruptors, which is not spoken about enough.

Be responsible

Hold those who are corrupt accountable

Be leaders in the business space and allow for more room for small businesses and society to grow with them and not just have a monopoly over the economic sector. Corruption stems from what we see.

Promote ethical behavior. Provide support to people

What they can do i think they should start working with the government by adding job opportunities for people so that unemployment rate be solved

Normalise ethical standards and promote them in their general business practice

Help the justice system be strong and firm. Provide training and educational workshops on right and responsibilities.

Practise a High Standard themselves, which they dont. Fund initiatives to fight corruption, as GTZ is doing.

Hold people accountable Strengthen integrations leadership Involved ethical trainings

Invest more on their safety and support the community in fitting corruption.

Teach the youth the advantages of anti corruption, and the disadvantages of corruption in that case we will have less corruption in the next coming generation

Not add to the corruption (being partners in corruption, allowing it to become normalised in society). Change narratives/mindsets to make ethical behavior key.

Start with reporting themselves for corruption

## What can civil society do to fight corruption?

28 36

Report Corruption activities

whistle blow!

Be united

Educate and advocate.

Work with all stakeholders and hold both government and private sector accountable through activism!

Discourage , corrupt people , report corrupt cases

Report on activities of corruption

Use the available spaces to hold our leaders accountable to the promises they made when we voted for them.

Hold government accountable

Report those who are corrupt and hold them accountable

Create a greater support system

Civil society should be in the forefront in protecting wistleblowers and keep corrupt officials to account.

To not allow to the corrupt leader

Highlight institutions and means available to the public to Report and Flag Corrupt activities in their communities

Practice fairness

Provide people with more education and provide safety skills

Have organisations that has no fear or favour to no one when it comes to accountability towards government

Align with Trusts, Foundation and relevant Conscientious bodies to support the anti corruption efforts as a collective utilising law and constitution as a main barometer

Change the constitution to uplift the black community in democracy

unite campaigns on corruption not work in silos as a sector

Speak out, question Be corageous in the face of corrup leaders at all levels. Demand transparency and accountability from leaders. Expose corrup practises. Avoid being corrupted

Whistle blow

Appreciate whistle blowers

What they can do they should start by being Transparent and face the truth they should mobalise more Leadership in every province and face the government all political parties should do they duties

Lobby to hold State and private actors to account. Promote a new culture of ethical promotion and accountability.

try to not enable corrupt activities

Form coalition with all conscientious bodies, institution and community using the law and constitution as a barometer

Report especially IDP municipal core of the corruption

Ensure that communities are educated on these issues and empowered in a safe environment to voice out any issues around corruption.

Report corruption

Trouble shoot where there's a gap that can open a window for corruption Engage in structures to combating corruption

Continue with the CPF which is crime prevention forum and also work with the law enforcement because I believe the are still good police

Practice what we preach.

Stop participating in corruption. Stop normalizing corruption

Educate and create awareness to my peers about corruption

Be a person of integrity. Have ethical behaviors in order to educate others

## What can you do to fight corruption?

27 34

- Become the president of South Africa.
- Not partake in corrupt activities and report corruption
- Be a responsible citizen
- Speak out. Engage and stand for what is right .
- Report it
- SPEAK UP!
- Firstly not engage in it, report those who does, join and motivate anti corruption campaignes
- Speak out Mobilise against corruption. Be transparent in all ways
- Encourage people to parcitipate in voting wisely, keeping in mind the choice doesn't only affect current generation.
- Report any illegal activity going hand in hand with corruption and do follow ups oanonymously so ( wouldnt want to find myself dead)
- Start getting rid of those who are corrupt and old people who are in power...YOUNG PEOPLE MUST LEAD!!
- Pay less cooldrink. Engage with my circle on the topic maybe pay my traffic fines?
- Dont pay for 'coldrinks' 👀
- speak about it
- Report and live a corruption free life. One cant accuse people of corruption when they corrupt themselves
- Contribute to forums like this and support the work of organisations already spearheading this work. Duplicating efforts is counter productive
- raise aw
- Pratice what we preach.
- Ethically conduct myself in all aspects
- Report corruption , and make sure im not corrupt to
- Teach my community people what I've learnt on the programs that I attend so that we can be united and fight against corruption
- Take accountability for my corrupt actions , educate young ones the good in anti corrupt
- Engage youth on preventative measures to fight corruption from an early age and advocate for teaching of ethics from primary school. Ethics are central to fighting corruption

**Introduction to the National Anti-Corruption Strategy**

This session was facilitated by Councilor Nkosana Dolopi from the NACAC who provided the background of the NACS that led to the establishment of the NACAC. He further provided overview of who the NACAC are, their mandate, including their advisory role on the implementation of the NACS, in strengthening SA's anti-corruption architecture and engaging citizens on what can be done to combat corruption through anti-corruption summits as well as advising the president on the implementation of the recommendations from the Zondo Commission.

To do this, the NACS established sub-committees that are: institutional architecture, legislative reform, communication and engagement, and whistleblowing on public procurement and monitoring and evaluation. After some time, this was reconstituted, and it was decided that there is a need for three sub-committees. In these sub-committees, there is one that deals with the establishment of the office of public integrity, law enforcement agencies and then communication. The approach that is adopted by the NACAC emphasizes prevention rather than adaptation as the main way to address corruption which highlights the need for behaviour change, consciousness, building a movement, education, and awareness.

As a result, the current overall recommendation of the NACAC to the President is the establishment of a Chapter 9 institution, called the Office of Public Integrity (OPI),

particularly because there is a view that the fight against corruption must have a dedicated kind of effort and institution. The OPI, therefore, would be an institution designed to address and fight against corruption and would work closely with law enforcement agencies. It would also serve as an advisory body to the law enforcement agents.

Thus, the NACAC made a call to encourage young people to play an active role in the fight against corruption as leaders of tomorrow. This is particularly because when government and public institutions fail because of corruption, it affects young people's everyday lives in very personal ways. Thus, young people were asked to personalize politics and take an active role in shifting the public narratives about themselves being removed from it, they were encouraged to rise and mobilize themselves in the fight against corruption in the country and in their societies. They were also consulted on the recommendations of the establishment of the OPI by the NACAC, specifically to provide their reflections on the OPI concept, as it relates to its function, governance, resources it would require to function well and institutions it could collaborate with.

**Youth Feedback: The Social Norms of Corruption and Questions on the OPI**

***Social Norms Leading to Corruption:***

- Capitalist System and Corruption- It was argued that capitalism inherently promotes corruption due to its emphasis on wealth accumulation and exploitation of labor. The high societal standards set by capitalism create a drive for material success, leading some, especially the historically disadvantaged, to resort to corruption in an attempt to "catch up."
- Perception of Corruption Among Disadvantaged Groups- Due to historical inequality, black people are often seen as more corrupt because they strive to achieve the artificial standards of wealth and success established by those who own the means of production.
- Service Delivery and Corruption of Convenience: Slow and inefficient service delivery systems were highlighted as a cause of "corruption of convenience," where people resort to bribery to expedite processes.

***Questions Raised by Young People:***

- Integrity in Public Sector Roles: "*How do we restore integrity and accountability in sectors like the police, where once-respected roles are now viewed with disgrace?*"
- Youth, Technology, and Whistleblowing: *"How can the youth be protected when using technology to combat corruption, given the current threats to whistleblowers? Does the council have any structural or tangible advisory measures in place to address this issue?"*
- Chapter 9 Institution Criteria: *"Regarding your recommendation for a Chapter 9 institution to address corruption, what criteria would ensure its integrity, especially considering concerns around cadre deployment and potential corruption within the institution itself?"*
- Accountability and Institutional Proliferation: *"There's concern about avoiding accountability by creating multiple institutions. How would a proposed anti-corruption Chapter 9 institution differ from existing bodies like the Public Protector? What powers or resources would it need, and is there consideration for a specialized anti-corruption court, similar to those in Botswana, Cameroon, and Kenya?"*

**<u>Youth reflections on the OPI:</u>**

**What does a well-functioning OPI look like?**

1. Meets its objective, investigate corruption, carries out effective/ informative awareness on broader social media (accessible), protection of whistleblowers for effective reporting, clearly defined criteria of what it constitutes or who sits in OPI.
2. Well-coordinated, Well-funded, Capacitated expertise, Inclusive, Independent
3. The OPI must be accessible and there should be a coalition between it and civil society. It must formulate structures, policies that suit society at large
4. Must have a clear mandate
5. Should be accountable, have integrity and be transparent
6. A well-functioning OPI that involves a youth directorate

**How should it be governed?**

1. Independent (public call for application, transparent and free from government influences), no cadre deployment, short-term contracts (rotational power), and is answerable to the judiciary and the NPA
2. It should be governed by parliament but should act independently
3. Proactive approach to systemic corruption, investigative autonomy, governance of code of ethics, framework for collaboration with SCOPA
4. Independent from the state, employed by NACAC based on qualifications
5. Should be governed with transparency: weekly gazettes or public newspapers to the communities

**What resources does it need?**

1. CARA model of funding- GBV recovery, Rotary club model- Volunteers
2. Strictly chapter 9 institutions
3. 60% of legal independent practitioners

**Which institutions does it need to collaborate with?**

1. Churches, Businesses, CSO, Other existing Chapter 9 institutions
2. Law enforcement agencies, civil society, private sector, government
3. SIS, NPA, SCOPA and civil society
4. Multi-stakeholder partnership. The public protector (sub/ wing structure)
5. CSOs, government leaders, community leaders, legal fraternity, business, and SIU to prevent capture of the office.

**Which key areas should OPI focus on?**

1. Public procurement
2. Oversight of public institutions including employment into those institutions
3. Research
4. Investigations
5. Advocacy, public awareness and education
6. Supporting community organizing against corruption
7. Education, health, and law enforcement
8. Systematic corruption not dealt with by other institutions
9. Establishment of formalized procedures with state institutions that combat corruption/ maladministration

10. Collaborating with AG in monitoring the implementation of mandatory improvements as per plans
11. Prosecution on Zondo Commission/new crimes

**How can OPI include youth in its design so that youth issues are not excluded?**

1. Capacitation, consultation, 50%+ youth representation, cultural restructuring, directory for submissions for recommendation
2. Involving youth in the sub-committee, speak to issues that affect youth, corruption awareness at a basic education level
3. Including the youth for brainstorming fresh ideas, choosing a proper candidate to lead the rest of the youth and they must be a certain age. The candidate must be responsible, accountable and reliable with reliable resources
4. Youth engagement at grassroots levels, communication language is key, including the youth from inception and logo design or art competition
5. Employ youth, amplify youth voices on anti-corruption, target youth where they are through edutainment (poems, sketches, sports events and youth imbizos)

**What are normalized behaviours among youth that contribute to corruption?**

1. Lack of information, poor participation, lack of pursuit to education
2. Drunk driving, cheating, lying/ dishonesty, not whistleblowing, modelling bad behaviour/ examples (youth looking up to corrupt politicians)
3. Lack of accountability (culture), being socialized into challenging authorities, abuse (substance, physical and GBV), lack of knowledge (living according to your own understanding), idolizing corrupt authorities
4. Skhothane culture, peer pressure, societal normalization of corruption, corruption on a macro-level not micro as well as nepotism
5. Bribing of public servants, popularism, instant gratification (short cut), substance abuse or underage drinking and irresponsible drinking, nepotism, ignorance (looking away)
6. Paying cooldrink (complacency), fake IDs for clubs, peer pressure, soft life, apathetic, and turning a blind eye.

**How can youth address these behaviours**

1. Introduction to civic education.

2. Raise awareness, social media, making sure everyone is valid.
3. By engaging in skills programmes within schools, using technology to your advantage (responsible use of the internet), after-school programmes and exploring talent, accepting accountability and responsibility at all spheres of social institutions.
4. Re-wiring the mind and enhanced emphasis on ethics.
5. Do not participate in corruption, do your research (judge on actions), conscientise and moral behaviour, putting pressure on the government for efficient and effective service delivery, rehabilitation centres must offer skills development programmes
6. Normalising inclusivity throughout processes (seat at the table), instilling new/ positive values (curriculum), socio-economic upliftment, normalising whistleblowing (make it valuable), and active citizenry

**How can OPI work with youth to address them?**

1. Find information that should be fun and attractive to the eye, OPI must include the youth in their council
2. Education on types of corruption, awareness/ support on reporting, relate to youth (social media etc)
3. It needs to provide a safe space for young people to engage freely in civic spaces, funding students that actually cannot afford and fund their studies, monitoring systems that lead to corruption, de-normalising the culture of corruption among systems
4. Establish youth advisory board, youth led campaigns, customized training/ services aimed at operationalizing the role of youth in implementation
5. Co-create for leadership with integrity using government reward program, workshops (awareness campaigns) like school roadshows and hosting training programs on how people should do research (specifics) and creating a safe space for youth to voice out their issues (youth desk, fast tracking and creating an information sit on integrity)
6. Employ them and take into consideration that they might be experienced, active social media platforms, collaboration with dept that deals with youth (eg DBE), youth programmes and take recommendations from youth (have a platform for submissions)

7. OPI needs to provide a safe space for the youth in order to engage freely in civil society

**Whistleblowing: Changing the Culture**

The issue of whistleblowing in South Africa is particularly a sensitive topic that is also perceived negatively because it is often viewed as a significant risk to one's safety. Thus, as part of its mandate, NACAC recommended to the President an implementation of robust protective measures for Whistleblowers as highlighted in the Zondo Commission's recommendations. In addition to protection, NACAC has proposed the establishment of a dedicated, well-funded whistleblowing unit under the OPI that would address not only the safety of the whistleblowers but also the broader impact on their loved ones. This is particularly because threats extend beyond the individual who exposes corruption to their family members, spouses, children, and even extended relatives. Therefore, there is a need for a unit to consider comprehensive protection strategies to safeguard whistleblowers.

Another important aspect that the NACAC emphasizes is finding a balance between offering financial rewards and fostering a sense of public duty. While financial incentives are necessary to encourage whistleblowers, they have argued that there should not be an overemphasis on monetary rewards. Instead, the focus should remain on the collective responsibility to eradicate corruption for the greater good of society. The ultimate goal is to cultivate a culture where individuals are motivated not just by financial gain but by a shared commitment to protecting the country from corruption, regardless of personal benefit.

Thus, as part of this broader effort, the NACAC also actively consulted with youth on how to shift the negative perceptions surrounding whistleblowers and promote a culture of whistleblowing as well as their protection. This was to reshape public attitudes, particularly among youth by emphasizing the important role whistleblowers play in safeguarding democracy and integrity. This was done through a video screening of *Politically Aweh's* video on Whistleblowing. The aim of this video was to change culture, bring about a shift in the views that people hold against Whistleblowers to foster a culture where whistleblowers are seen as defenders of justice, ultimately encouraging more people to step forward and contribute to the fight against corruption.

This was done through the combination of journalism, comedy and existing research on Whistleblowers and the session was facilitated by Karabo Makwela from GIZ-TIP.

***Feedback from the Youth Regarding Changing the Culture around Whistleblowers:***

- The youth expressed that whistleblowing in South Africa carries a deeply negative stigma, often associated with terms like *impimpi* or spy, which deters people from coming forward. They highlighted the reality that whistleblowers are frequently targeted and even killed, making it a high-risk action. This fear is compounded by the lack of trust in existing protection channels, as institutions like the police or senior government officials are often seen as compromised. They also pointed to the case of Babita Deokaran as a tragic example of how dangerous whistleblowing can be, which emphasized how there's currently no guaranteed safe space for whistleblowers. Additionally, they suggested that the term "whistleblower" itself is problematic, evoking trauma and fear. Instead, they proposed rebranding whistleblowers as "human rights defenders" or "influencers of change" to create a more positive and empowering image. This, they believe, could help shift the narrative and encourage more people to report wrongdoing without fear of stigma or retaliation.
- One perspective shared was that the way society views whistleblowers needs a complete overhaul. Instead of seeing them as mere informants, there needs to be recognition of their critical role in exposing corruption and holding power to account. Without their courage, there would be no commissions of inquiry or advisory panels addressing corruption today. Whistleblowers risk their lives and livelihoods daily, facing demotion, dismissal, and even death, yet their contributions often go unrecognized or undervalued. A pressing concern raised was the immediate danger whistleblowers face while legislative processes and discussions about their protection continue. In light of this, it was suggested that existing resources, such as funds from confiscated criminal assets, could be repurposed to provide urgent support. This support could cover essential needs like psychosocial assistance, legal representation, and financial aid, ensuring whistleblowers have the protection they need now, rather than waiting for future policy changes.

- Another insightful perspective highlighted the transformative power of digital audio-visual media in shaping societal opinions and driving conversations. This medium is seen as a powerful tool for shifting public narratives in ways that traditional reports and documents often cannot. The concern raised was that while conferences like this produce detailed reports and physical documents, these outcomes are unlikely to reach or resonate with the average citizen. Instead, there is a call to leverage engaging, relatable content that ordinary people can connect with. The suggestion was to explore how creative media, like short films, podcasts, or social media videos, could be used to distill complex issues into accessible formats. This approach would ensure that the insights and outcomes of discussions are not confined to formal spaces but are translated into media that can inspire awareness and action in broader society.
- Ther was another insightful point about the need to integrate technology into whistleblower protection. Particularly a need to have a widely accessible platform where whistleblowers can securely log information, upload documents, and maintain their anonymity. It was emphasized that, in a post-modern era, such digital solutions should be part of the conversation

**Corruption Watch Youth Activism Toolkit:**

Corruption Watch launched an anti-corruption toolkit accompanied by an innovative board game called Bribes and Whistles. The toolkit was developed to empower young people to actively participate in the fight against corruption by providing essential resources, information, and strategies. It offers multiple definitions of corruption, drawing from Corruption Watch, Transparency International, and South African legal frameworks to ensure that young people understand corruption from various perspectives. The toolkit highlights key forms of corruption affecting youth, such as bribery, sextortion, and employment irregularities, while also addressing the broader impacts on education, economic opportunities, and public trust.

Additionally, the toolkit provides practical steps for young people to take action, including raising public awareness, holding leaders accountable, engaging with their communities, and using social media to promote transparency. It also outlines the importance of reporting corruption through established channels like the South African Police Service, the Office of the Public Protector, and various civil society

organizations, while emphasizing the need for whistleblower protection. A facilitator guide is included to support trainers who are conducting workshops with youth organizations to ensure that the material is effectively communicated.

To complement the toolkit, Corruption Watch designed Bribes and Whistles, a board game aimed at making learning about corruption interactive and engaging. The game encourages players to navigate ethical dilemmas and complex situations, that foster critical thinking and ethical decision-making. This game was developed through a collaborative process that involves Corruption Watch staff, and the game draws inspiration from Snakes and Ladders and Bad People, adapted to focus on corruption-related scenarios. The game is intended to be made publicly available after further testing.

***Feedback from the Youth:***

- In response to the launch of the toolkit and the accompanying Bribes and Whistles game, the value of integrating this initiative into broader societal efforts to combat corruption was emphasized. It was suggested that, rather than focusing solely on establishing a Chapter 9 institution dedicated to corruption awareness, initiatives like this toolkit could effectively raise awareness at the community level. This would resonate with young people by presenting corruption in a way that is relatable and easy to engage with- encouraging proactive participation. The potential of incorporating anti-corruption education into the school curriculum, particularly through the Life Orientation learning area was highlighted. There was a recognition that was made that Life Orientation offers an interactive platform that encourages students to actively engage and reflect on societal issues. Therefore, integrating the game into this subject could foster a deeper understanding of corruption from a young age to build awareness progressively from primary school through matric. They suggested that lobbying for this integration at a national level could significantly contribute to early conscientization, that would shape a generation of young people to be more attuned to ethical decision-making and civic responsibility.

***Documentary Screening (Rising Voices)***

In the evening of Day1, the African Women Against Corruption Network's documentary on sexual corruption was screened. *Rising Voices: Unmasking Sexual Corruption in South Africa* shares stories of survivors of sexual corruption, examines the legal deficiencies in South Africa's legal landscape and discusses the need to tackle the issue. Following the screening there was a short discussion where participants in the room expressed that they knew of this happening, that there was a need to raise awareness further, that there is also a need to create safe spaces for men to talk about this happening to them as well.

## DAY 2

### The socio-economic impact of corruption

A presentation was delivered by Defend Our Democracy to highlight the socio-economic impacts of corruption in South Africa. It focused on the severe consequences of corruption and state capture, particularly how they have deeply affected communities and weakened public trust in institutions. The presentation discussed the role of corruption networks in both the public and private sectors, linking them to politically motivated crimes, such as the murders of whistleblowers Babita Deokaran and Philemon Ngwenya, who exposed fraudulent activities. High-profile scandals, like the VBS Mutual Bank collapse and the misuse of public funds in the Vrede Dairy Farm project, were used to illustrate the devastating effects of corruption on both financial stability and community development.

The presentation also shed light on the personal costs faced by whistleblowers, who often endure job loss, mental health struggles, and social isolation, making it difficult for others to come forward. Despite these challenges, this presentation emphasized that progress is possible through collective action and a strong call for ongoing activism, policy reform, and collective efforts to hold leaders accountable, prevent corrupt individuals from returning to power, and a need to build a culture of integrity and transparency was made.

Feedback:

- Is privatization, particularly in the local government space, sometimes driven by corruption? Specifically, could excessive corruption on a large-scale prompt multi-stakeholder engagement to seek alternatives, such as privatization, to 'save' municipalities? Does the entry of the private sector lead to improvements? And would you say that privatization in local government is a byproduct of corruption, or does corruption sometimes stem from privatization?

- Another point raised highlighted the concerns about the narrow focus on the Guptas in discussions of state capture, suggesting that corruption in South Africa is more deeply rooted and systemic. The speaker emphasizes the need for a holistic approach to corruption that includes historical contracts,

monopolistic influence, and broader structural issues, rather than targeting specific individuals or groups. This perspective calls for an objective, informed analysis of corruption to avoid bias and oversimplification.

**Youth-Participation on implementation of various pillars in the NACS**

The youth were split into groups, and they were allocated a specific pillar in the NACS to discuss and unpack. The point was to get the youths input on how to best implement the NACS and some of the strategies attached to it. Below is the feedback received from different groups:

**Group 7**

**Open public procurement (Pillar 4)**

1. Group 7 stated that we do not need a new public procurement system instead we should aim for uniformity between the PFMA and MFMA, so we can standardize them. Implement ONE policy counter; Absolute power equals to abuse of power.
2. The PFMA and MFMA could be administered differently, yet uniformity will improve the current system.
3. M & E system/ implement robust M & E system
4. Goods and services should have a standardizedthreshold/mark ups of procurement or pricing
5. Abuse of deviations: emergencies used as an excuse to deviate (i.e. Covid-19) solution. Regulatory body for procurement all together
6. Platform where public can access and be exposed to the adjudication of big tenders. Who gets them and why equals to encourage transparency.
7. Companies that do not deliver goods and services on previous or existing tenders must be disbarred which equals to remove from service provider list
8. Phased approach: e.g. Phase 1: Deliverables presented before we pay. Follow up on progress (support SMMEs) so that they are not excluded.
9. Scrutinise contracts: e.g. How catering companies bidding for construction tender.

**Group 6 (Pillar 3)**

**What can we do to hold those involved in corruption accountable?**

1. Educate ourselves/ communities about existing accountability mechanisms

| Political | Legal |
|---|---|
| Mampara; Name and shame list of politicians currently charged. | Establishment of accountability framework that links communities to accountability mechanisms and institutions |
| Corrupt politicians should be made individually liable for any losses | Corrupt officials should be made individually liable for any losses |
| Pressure to implement the Zondo Commissions | |

2. Introduce further accountability mechanisms
3. Restraint of trade agreements against senior civil servants and politicians @ all levels of government in trading with the state.
4. Introduce a public referendum mechanism that triggers a legislature sitting to remove officials (requires 2/3rds of residence to trigger)
5. New legislation that bars corruption charged and convicted individuals from holding public offices
6. Special judicial court to expedite corruption cases

**Group 5 (Pillar 1)**

**What is our plan for oversight of corruption in our communities?**

1. External/ auditing that encourages or fosters public participation and community insight- be transparent to the public.
2. Bring back imbizo- meaningful engagement.
3. Involve youth and local individuals in mayoral office and other community-based councils (someone monitor the councils)
4. Identify role-players -community organisations, churches, schools/ broaden scope of focus to be wider than just municipalities
5. Building accountability forms: involving business sectors, schools, faith based organisations, NPOs etc. all stakeholders
6. Must be clear tools of monitoring and evaluation
7. Must clearly understand roles of councillors, service delivery

8. Community service delivery accountability and corruption forum
9. Understand that the business sector (white dominated) is also involved in corruption and how to tackle this
10. Rural communities could work with chiefdoms and rural leadership
11. Responsible citizenry- environmental corruption, how to hold corporates and government organisations accountable for pollution and poor service delivery affecting livelihoods
12. Youth must be deeply involved in all anti-corruption structures

**Group 2 (Pillar 2)**

**What plan can we develop to encourage whistleblowing?**

1. Develop an online website or directory to report corruption anonymously and leverage the power of AI
2. Strengthen the safety of WB and their loved ones through dedicated state houses and specialized security unit
3. Establishment of a clear policy for anti-corruption, accompanied by a specialized police unit
4. Change language of WB from “impimpi” to for instance change champions to change the negative into positive
5. Bringing the conversation closer to home: Taxi ranks, schools, churches, traditional leaders/ healers and groove
6. Finding innovative ways to educate people about the importance of WB through games
7. Fostering a supportive culture or leadership commitment
8. Strong cancel culture against those accused of corruption should there be merit/ evidence to warrant investigation
9. Capacitation of law enforcement to sensitively deal with cases of corruption
10. Proper protection of identity of WB (particularly the media): accountability from media leaking their identity
11. Encourage change of perception of whistle blowers
12. Communities should apply Ubuntu philosophy
13. Introduce a culture of ‘snitching’ and protecting
14. Community profiling: local consensus- now your community to accurately monitor service delivery claims

**Group 4 (Pillar 4)**

How are we to enforce accountability in our government and communities

1. Educate the public on civic matters through IDPs, CBPs, Budget, SIDBS and awareness of access
2. The communities are the government and the government is the community
3. Working together is a must not a choice
4. Communities must hold government accountable because government is placed by the community
5. Public participation: where you reward system of participation and working, lure and bait system, kasi heroes: acknowledgement and valued inputs. Create monitoring and evaluation forums where you track records and follow ups and reviews
6. Effective use of technology including apps, impactful games, toll free lines, social media and informative pop up adds

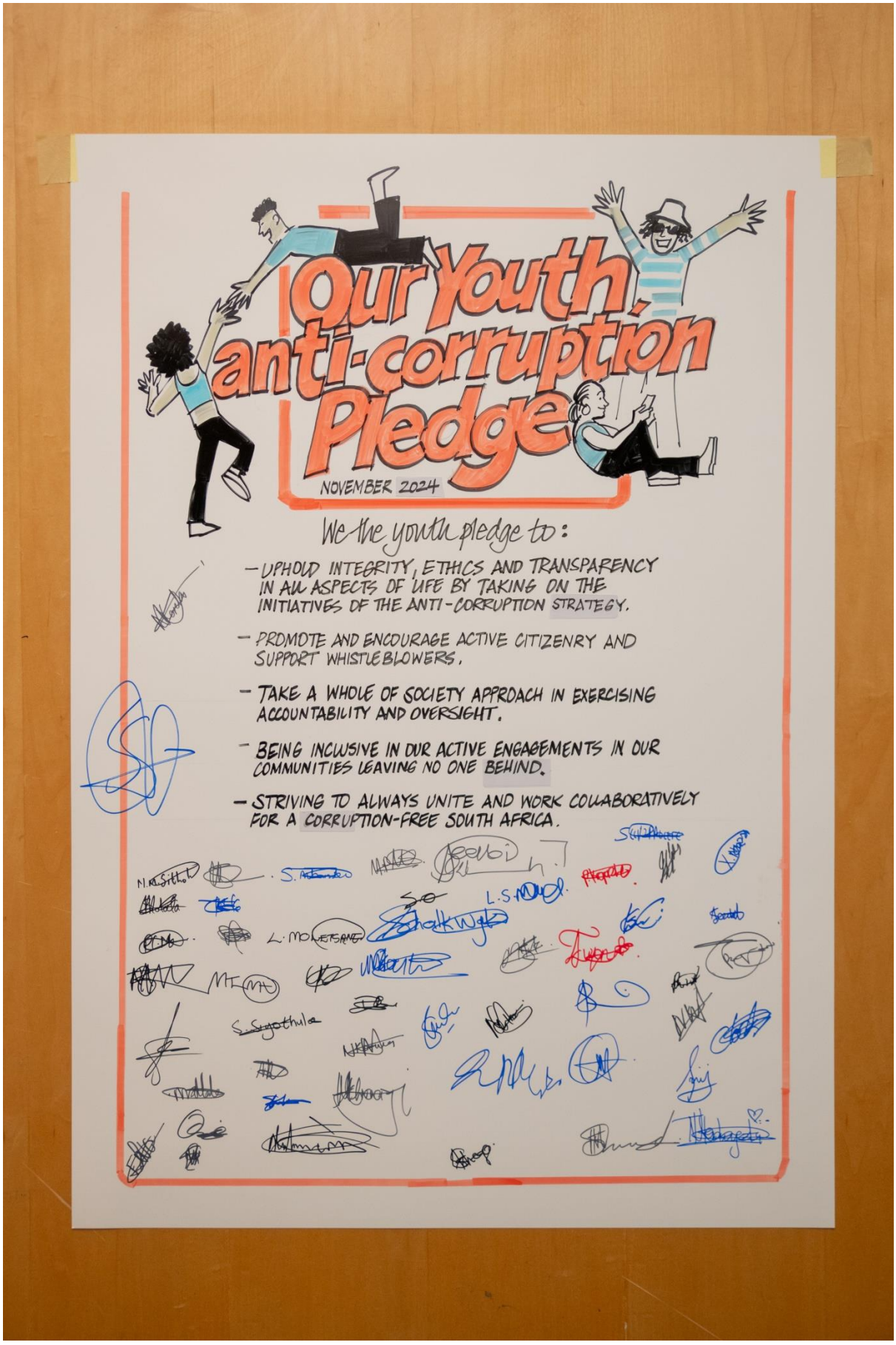
**Group 1 (Pillar 1)**

Promote and encourage active citizenry, whistleblowing, integrity and transparency in all spheres of society

The mobilization plan:

1. Education and empowerment around civic issues:
    - Workshops/ webinars
    - Social media
    - Edutainment
    - Civil society organization promotion
    - Public education (schools and universities as well as media)
2. Participation in community projects
    - Kenya case study: project oversight
3. Encourage others to report
    - Know safe whistleblowing channels
4. Develop networks of support
5. Utilise technology
6. Promote a positive culture around anti-corruption work like Integrity Icon awards

7. Incentivise like providing merch (badges), scholarships, fun activities
8. Partner with sports icons
9. Promote ani corruption careers and provide funding
10. Make it relatable to youth and the impact- patriotism (school LO)
11. Connect with international youth organisations and learn best practices


Our Youth, anti-corruption Pledge
NOVEMBER 2024
We the youth pledge to:
- UPHOLD INTEGRITY, ETHICS AND TRANSPARENCY IN ALL ASPECTS OF LIFE BY TAKING ON THE INITIATIVES OF THE ANTI-CORRUPTION STRATEGY.
- PROMOTE AND ENCOURAGE ACTIVE CITIZENRY AND SUPPORT WHISTLEBLOWERS.
- TAKE A WHOLE OF SOCIETY APPROACH IN EXERCISING ACCOUNTABILITY AND OVERSIGHT.
- BEING INCLUSIVE IN OUR ACTIVE ENGAGEMENTS IN OUR COMMUNITIES LEAVING NO ONE BEHIND.
- STRIVING TO ALWAYS UNITE AND WORK COLLABORATIVELY FOR A CORRUPTION-FREE SOUTH AFRICA.

NACAC
National
Anti-Corruption
Advisory Council

PPLAAF

# STRENGTHENING WHISTLEBLOWER PROTECTION MECHANISMS IN SOUTH AFRICA

## Conference Report

GLOSSARY OF TERMS 2
SUMMARY 3
BACKGROUND OF THE CONFERENCE 4
DAY 1 - 5 MARCH 2025 5
1. Setting the Scene: The Perspectives of PPLAAF, NACAC & UNODC 5
2. In Conversation: Protecting Whistleblowers in South Africa 6
Discussion 7
3. International Standards for Protecting Whistleblowers: The UNCAC and Domesticating the Convention 7
Discussion 8
4. PPLAAF'S Recommendations: Amending the PDA 8
5. Courage and Consequence: Two Whistleblower Experiences 8
Discussion 9
6. An Independent Whistleblowing Authority or a Regulatory Body? Challenges and Prospects 9
Discussion 10
7. Plenary Discussion: The Road to Rewards, Awards, and Recognition 10
Discussion 11
DAY 2 - 6th MARCH 2025 11
1. A NACAC Perspective and Journey 11
2. IN-DEPTH WORKSHOPPING SESSIONS 12
Group 1: Extending the Scope of Recipients of Disclosures: The Role of Civil Society Organisations 12
Group 2: Strengthening Support to Whistleblowers Beyond Legislation 13
Group 1: Extending Protection to Third Parties and Entities Supporting Whistleblowers, including Media and Investigators 13
Group 2: Beyond Labour – Retaliation, Reversion the Burden of Proof 14
3. SIU Approach to Whistleblowing and Investigations – Challenges and Opportunities 14
4. Way Forward and Concluding Remarks 15

**GLOSSARY OF TERMS**

| | |
|---|---|
| ADV | Advocate |
| CARA | Criminal Assets Recovery Account |
| DPCI | Directorate for Priority Crime Investigation |
| GEAC | Gauteng Ethics Advisory Council |
| LEA | Law Enforcement Agencies |
| NACAC | National Anti-Corruption Advisory Council |
| OPI | Office of Public Integrity |
| PDA | Protected Disclosures Act |
| PP | Public Protector |
| PPLAAF | Platform to Protect Whistleblowers in Africa |
| PSC | Public Service Commission |
| SIU | Special Investigating Unit |
| SA | South Africa |
| UNCAC | United Nations Convention Against Corruption |
| UNODC | United Nations Office on Drugs and Crime |
| WB/s | Whistleblower/s |

# SUMMARY

The National Anti-Corruption Advisory Council (NACAC) and the Platform to Protect Whistleblowers in Africa (PPLAAF) hosted a joint conference on ***Strengthening Whistleblower Protection Mechanisms in South Africa*** on the 5-6 March 2025 in Cape Town, South Africa. The conference brought together key stakeholders, including legal experts, civil society leaders as well as public and private sector representatives, with a collective focus on strengthening the protection of whistle-blowers in South Africa.

Attendees had the opportunity to engage in thought-provoking plenary discussions, interactive breakaway discussions, and networking sessions designed to foster collaboration. Notable speakers included former Chief Justice Raymond Zondo, Public Protector Adv. Kholeka Gcaleka, Adv. Andy Mothibi Head of the Special Investigating Unit (SIU), amid other distinguished experts. Two whistleblowers shared their experiences reporting irregularities in their workplaces, which grounded the discussions in whistleblowers' lived realities.

The conference made key resolutions to improve whistleblower protection in South Africa. There was a shared commitment by multiple stakeholders to:

- **Strengthen legislation to protect whistleblowers and corruption resistors/blockers in South Africa.** These legislative reforms include consolidating fragmented laws on whistleblowing, broadening the scope of protection, and expanding whistleblower disclosure channels. It was also noted that laws and policies need to be gender responsive to encourage whistleblowing, whilst being cognisant that women whistleblowers experience corruption and retaliation for whistleblowing differently to their male counterparts.

- **Adopt and enforce a wide range of protective measures to ensure safety and support for whistleblowers,** including public education and awareness raising on whistleblower protection, recognition and rewards to encourage people to blow the whistle, and psycho-social support once they do.

- **Establish an independent whistleblower protection agency/body** led by a retired judge. The new agency will be embedded in an *all of society* approach to foster collaboration with the private sector, as well as for financial contributions towards setting up a fund to provide financial support to whistleblowers.

# BACKGROUND OF THE CONFERENCE

The Judicial Commission of Inquiry into Allegations of State Capture, or the Zondo Commission, headed by the then Deputy-Chief Justice Raymond Zondo, highlighted the extent to which corruption has penetrated the core of the South African State. Importantly, the Zondo Commission emphasised the critical role of whistleblowers in combating corruption and protecting the economic foundation which South Africa depends on to eradicate the inequalities of the previous apartheid state and advance its developmental goals.

In 2022, the Zondo Commission published recommendations arguing that legislation protecting whistleblowers in South Africa needed to be improved. Following this, in June 2023, a discussion document on proposed reforms for the whistleblower protection regime was published by the Department of Justice and Correctional Services (DOJ).
Since the Zondo Commission, the role of whistleblowers has been magnified in South Africa. Yet, whistleblowers continue to face retribution for disclosing wrongdoing, and although legislation offers protection from retaliation in the workplace, whistleblowers still risk defamation, financial ruin, death threats, and even assassination. To continue to fight the persistence of corruption, the misappropriation of public funds, and the safe harbouring of ill-gotten gains in South Africa, whistleblowing needs to be a common practice. However, citizens must be protected when they report corruption, theft, and maladministration. Supporting the development of a stronger whistleblower protection regime is thus essential in ensuring citizens can expose wrongdoing without fear of retaliation.

On 28 August 2022, President Cyril Ramaphosa appointed the National Anti-Corruption Advisory Council (NACAC), as a recommendation emerging from the National Anti-Corruption Strategy (NACS). This multi-sectoral advisory body was established with the primary purpose of being an advisory body to monitor the implementation of the Strategy. It is anticipated, through the successful implementation of the Strategy, that the result will be significantly reduced levels of corruption and improved investor and public confidence in South Africa. Objective measures such as better audit outcomes for state institutions, improved ratings in the corruption perception index, reduction in illicit financial flows, and citizen trust in institutions, will serve as some of the indicators of progress in this regard. This entails an ***all of society*** effort, with government, business, and civil society working together.

As such, the NACAC whistleblowing work stream has been refining and improving the PDA and the broader whistleblower protection system in South Africa. These improvements, culminating in a new Bill, aim to create an enhanced culture of whistleblowing in South Africa and to practically improve protection from a whistleblower-first perspective. These improvements also hold the promise for necessary dialogue on creating a supportive whistleblowing ecosystem at regional and continental levels. It is within this context that the PPLAAF and NACAC collaborated in bringing together anti-corruption entities and activists over two days to discuss how best to strengthen whistleblower protection mechanisms in South Africa.

# DAY 1 - 5 MARCH 2025

## 1. Setting the Scene: The Perspectives of PPLAAF, NACAC & UNODC

The Executive Director of the Platform to Protect Whistleblowers in Africa (PPLAAF), Henri Thulliez, opened the conference and emphasised PPLAAF's commitment to support whistleblowers who expose wrongdoings that impact the African public interest. PPLAAF does this by providing expertise to both protect whistleblowers and to improve protection mechanisms in South Africa and the rest of the continent

Councillors Thandeka Gqubule-Mbeki, Kavisha Pillay, and Nkosana Dolopi represented NACAC at the conference. Councillor Gqubule-Mbeki highlighted that the mandate of the NACAC is to advise the President on the progress made in the institutionalisation of the National Anti-Corruption Strategy (2020-2030), in strengthening the preventative and reactive measures to combat corruption, and to assess the progress made in implementing the recommendations from the Zondo Commission. She acknowledged the critical role civil society plays in influencing the current reforms of the Public Disclosure Act (PDA), which seeks to strengthen whistleblower protection and support. She further reported that, in its mid-term report, NACAC recommendations include the function of the proposed Office of Public Integrity (OPI) to hold public hearings. The role of whistleblowing in early detection, prevention, and combating of corruption, whistleblower protection and support, including incentives, will all be included in further research into the establishment of the OPI. She proposed that the draft lobby bill investigate the matter of accountability of business in corruption.

Councillor Nkosana Dolopi indicated the NACAC's approach is to mobilise the whole of society and to encourage all South Africans to expose corruption, which impacts all of society and results in job losses. He emphasised the role of civil society in the fight against corruption and the role of the culture of Ubuntu and spiritual values like the adage of "thou shall not steal" in influencing social norms of individual and communal behaviour to be honest and act with integrity.

Councillor Kavisha Pillay reported on the work of NACAC, highlighting the strengthening of legislation to arrest corruption – in particular amendments to the Prevention and Combating of Corrupt Activities Act (PRECCA) to expand the definition of corruption. NACAC has also provided advice to the President on the reforms of whistleblower legislation, political party funding, and the Public Procurement Bill. She reminded the conference that the Council is currently engaging stakeholders on its mid-term report and recommendations.

Pillay outlined that the second phase of NACAC's work includes a technical advisory report to the President based on further research on the establishment of the Office of Public Integrity, serving to strengthen the preventive side of corruption as well as reforms to strengthen the anti-corruption architecture. NACAC's term ends in September 2025.

Dr Louise Portas from the UNODC (via video) reflected on the challenges faced with regards to the reluctance of society to report corruption. She further indicated that their office continues to receive state requests for technical assistance on strengthening the legal framework for whistleblower protection. She reflected on the collaboration between PPLAAF & UNODC that has resulted in technical capacity being built to support whistleblowing. Dr Portas also reflected on how UNODC has followed South Africa's progress in revising the Protected Disclosure Act.

## 2. In Conversation: Protecting Whistleblowers in South Africa

- **Justice Raymond Zondo:** Former Chief Justice of South Africa
- **William Bourdon:** Chair and Founder, PPLAAF

Justice Raymond Zondo reflected on the following three questions:

**What informed recommendations on the protection of whistleblowers?**
In his opening statement, Justice Zondo said that the conference came at an important time in South Africa, where it marks almost 3 years since submission of the Zondo recommendation to the President. The reports relate to the observation of the depth of corruption in SA and indicated that his process was encouraged by whistleblowers who came forward to testify. Ideally the law should protect the whistleblower from challenges such as dismissals, suspension, loss of livelihood, or difficulty in finding work afterwards. According to Justice Zondo, whistleblowing is a vital pillar in fighting corruption, but it is also vital to protect corruption resistors who are preventing corruption happening in the first place thereby risking their lives.

**Why are incentives important in fighting corruption?**
Justice Zondo noted that blowing the whistle is the right thing to do, however the level of corruption in South Africa requires us to encourage people to blow the whistle by providing incentives. Parliament's provision suggests the awarding of a percentage of funds recovered to everybody who contributes to a successful conviction. Rewards in other countries are implemented by receiving a defined percentage of the recovery. South Africa should explore establishing a fund to assist when retaliatory actions are being imposed on whistleblowers.

**What are the steps towards a landmark law?**
Justice Zondo reflected that the South African constitution is the best in the world, but as South Africa emerges from the state capture era, the country has a wide scope to improve on whistleblowing protection. The PDA, South Africa's primary whistleblower protection legislation, offers no protection and/or immunity to whistleblowers from civil and criminal proceedings. He noted that PPLAAF should play a key role in the drafting of the legislation and further noted his support for the setting up of a fund to assist whistleblowers.

William Bourdon: Chair and Founder, PPLAAF

**What can we do better?**
Mr Bourdon emphasised how whistleblowers are the worst enemies of corruption, and their protection should be prioritised. He reflected on the limited scope of whistleblowing protection in SA, and the continued atmosphere of fear & intimidation. He advised that the delegates be imaginative to ensure that South Africa is exemplary to the world with regards to whistleblowing and whistleblower protection.

In response to the question of **Setting up the fund and hiring retired judge to head the process,** Mr Bourdon stressed that retribution against whistleblowers destroys them in all ways and that funds should be allocated to lessen these ramifications. The amended law should investigate a rewards system, and constitutionalising whistleblower protection.

***Discussion***

**Constitutionalising whistleblower protection – is the constitution able to accommodate whistleblower protection or will it require amendment?**

Justice Zondo noted that an amendment to the constitution will be great, however, we need to guard against constantly changing the constitution. While it will be helpful in drafting legislation, a strong civil society aids whistleblower protection. However, Mr Bourdon felt that more whistleblowers will be protected if it is constitutionalised: it could be a strong symbol and could be done by using just one sentence.

For corruption prevention, corruption resistors/graft blockers are unsung heroes who suffer enormous trauma and need more support from society and incentives too.

The issue of corruption in local government was highlighted and whether there is capacity, mechanisms, and systems in place to protect whistleblowers? The example of KZN Cllr Mandeni who was shot dead, was given. This led to a discussion on South Africa's violent environment as well as citizens' right to access and receive information.

Participants also discussed the use of Artificial Intelligence and Technology to create a "fit for purpose" when drafting the Act to include NACAS & Zondo's recommendations

## 3. International Standards for Protecting Whistleblowers: The UNCAC and Domesticating the Convention

Tersia Lewis reflected on the continued support from the UNODC to assist South Africa to improve participation in implementation of the UNCAC. She noted the need to strengthen whistleblower protection as a global challenge, emphasising the need for reasonable belief rather than good faith as per Article 33, the necessity to involve the banking sector in the space, the overall understanding what whistleblowing entails including the stigma attached thereto, the broader need for behavioural change, as well as brand protection in the private sector. She also questioned the media salience once the whistleblower is cleared and the need for on-going media on the matter being investigated.

Her presentation focused on the following UNCAC articles:

**Article 8:** establishing measures to protect whistleblower
**Article 13:** anti-corruption bodies are known for reporting & encouraging anonymous reporting
**Article 32:** states measure to Protecting witnesses
**Article 33:** need for measures to protect whistleblower
**Article 37:** measure for cooperating individuals
**Resolution 8/10**: Protection of reporting persons

The points to consider are as follows:

- SA should focus on the legal framework
- Expand the scope of the witness protection
- Improve internal reporting mechanisms for whistleblowers

- Adopt a wide range of protective measures including protection against retaliation and physical threats
- Implement recognition and rewards for whistleblowers to ease the hardships encountered.

Dr Liezl Groenewald, the CEO of the Ethics Institute, focused on the domestication of the UNCAC convention as a global instrument to protect whistleblowers. She emphasised confidentiality & anonymity, legal protection, clear reporting channels, remedial action and compensation, education and public support.

The general challenges observed are weak enforcement mechanisms, lack of independent structures, stigma attached to whistleblowing and legal loopholes.

Challenges to the implementation of the UNCAC include limited scope of existing legal frameworks such as the PDA, fragmented legal frameworks, cultural & institutional barriers that discourage whistleblowing, insufficient implementation and enforcement mechanisms, and the need for international cooperation and concrete domestic policies.

There is therefore a need for independent oversight bodies, the provision of legal and financial support, and the national government's enforcement of international standards that value transparency and accountability.

***Discussion***
Whilst the DoJ is revising the legislation on whistleblowing, organisations and civil society must focus public awareness, education, and the setting up of a fund for whistleblowers that can be overseen by a retired judge. There is no need to wait for the law.

The new legislation should promote the values of whistleblowing: Focus on changing the narrative by not always focusing on the negative but rather concentrating on showing society how their bravery will have an impact. The country should have avenues available for advice on how to blow the whistle to protect themselves. E.g., the Whistleblower House Guidebook for non-retaliation.

It was also noted that the International Anti-Corruption Court is currently still under consideration.

## 4. PPLAAF'S Recommendations: Amending the PDA

Roshnee Narrandes, PPLAAF Southern Africa Regional Director reflected on the gaps in the current South African legislation, and the vulnerability of whistleblowers by recommending the following amendments to the PDA: establishing an independent whistleblower authority, consider rewards, awards and recognition for the whistleblower equivalent to 10% of assets recovered, expanding whistleblower disclosure channels, and addressing retaliation and the burden of proof, and extending the scope of protection to third parties.

## 5. Courage and Consequence: Two Whistleblower Experiences

Cynthia Stimpel, a whistleblower for South African Airways (SAA) explained how she played an important role being a corruption blocker who saved the airline R256 million by not processing irregular payments. Her experience indicated the vulnerability of whistleblowers as internal reporting systems in many instances cannot be relied upon. The gaps observed in the use of

internal hotlines where the disclosures are used against internal officials leading to unfair labour practices, job loss, lost assets, and accumulated debt has a psychological impact on the whistleblower. Whistleblowers require legal support and counselling. In addition to support from PPLAAF, there is a need for public education to combat the stigma and to ensure that there is behavioural change in society.

Biswick Kaswasa from Malawi worked for Trinity Energy Company Ltd in South Sudan where he discovered corruption in the office he was employed in. Unfortunately, he received the harshest retaliation, being imprisoned for a long court trial, and was acquitted after 16 months. Some of the retaliatory actions he experienced included death threats, being deprived food, a court battle leading to incursion of high legal costs, fake evidence being presented against him including character assassination and negative media stories, dismissal from work, loss of assets, and a lack of government support. He developed health issues as a result, and noted that support from civil society organisations such as PPLAAF was of great relief.

Zakhona Mvelase, the founder of African Women Against Corruption Network (AWACN) spoke to the gendered nature of corruption, noting that women are more vulnerable than other genders as women become victims of sexual extortion e.g. in the education sector, girl learners are coerced into having "sex for marks". Ms. Mvelase advocated for policies to be gender responsive to encourage whistleblowing.

***Discussion***

As regards changes in organisational culture of their former employers and shifts in the leadership attitude to avoid retaliation, Ms Stimpel noted that with SAA having gone through continuous business rescue and, while there may have been a cultural change, that could not have made any difference. However, changes in organizational culture are influenced by media reports published.

Questions were raised on protection orders to protect whistleblowers from suffering harassment and intimidation by journalists, given the trauma in retelling the story. Whistleblowers face shattered dreams, and reputational damage deepens with how the matter is covered by the media. The discussion was concluded by pointing out the need to deal with corruption in the private sector, and to bring the private sector on board to fight corruption.

## 6. An Independent Whistleblowing Authority or a Regulatory Body? Challenges and Prospects

Councillor Kavisha Pillay led the discussion centred on the need to broaden the whistleblower scope, implementing compensation and rewards, and increasing whistleblower protection support. She reflected on the National Anti-Corruption Strategy's (NACS) Pillar 1 which proposes the establishment of a centralised whistleblowing agency. The reality is that it is expensive to establish the agency, hence the proposal by NACAC to introduce the Office of Public Integrity with a broadened mandate to include whistleblower protection. Currently the key challenge observed includes the overlapping of mandates of the various agencies, the need for clear lines of operation, and to address the limited public trust in existing organisations. The proposal advocates for an independent new organization with new leadership focused on investigating whistleblower disclosures.

It is further proposed that the new entity should have an independent budget, follow transparent appointment processes, have independence on decision-making, provide protection, incentives, safety, and psychosocial support, reduce the risks faced by whistleblowers, and align with constitutional values, with an emphasis on fighting corruption. It is important to know where the agency is located and how it will be funded to enable it to make a meaningful difference to whistleblowing in the country.

***Discussion***

An attempt to resource the interim whistleblowing structure could be through extending the mandate of the Criminal Assets Recovery Account (CARA), thereby tapping into this fund. Only victims of crime and whistleblowers will qualify to access the services of the new structure. Securing funds for the new structure could also explore Public Private Partnerships (PPP) to donate towards the fund with SARS offering tax incentives.

Whistleblowing is about fighting corruption and procurement irregularities where there is a need to improve internal capacity. The solution to corruption lies in focusing on public education and on grassroots values. Regulations should go together with education as regulation alone is inadequate. To drive the education part of the solution, there is a need to identify social drivers/agents such as family, the church, and the media.

Prof Fikeni noted that Chapter 9 institutions involve changing the constitution, citing the Public Service Commission (PSC) legislation that took 7 years, and requires 66% political parties to agree. Due to lack of common sense and greed, corruption has become the fibre of society and questioned the permissible level of the elite in South Africa.

## 7. Plenary Discussion: The Road to Rewards, Awards, and Recognition

Vladimir Radomirović, Editor-in-Chief of Pištaljka (via video contribution) regards whistleblowing as a social issue that needs extensive support to encourage whistleblowers to report in good faith. In his country whistleblowing law is currently being implemented with whistleblowers rewarded in dollars from proceeds recovered. Whistleblowers are prohibited from speaking publicly about their reports. He invited conference participants to a conference in October 2025 to have a discussion on whistleblower protection.

Adv Kholeka Gcaleka, the Public Protector of South Africa, shared that her office is investigating the Protected Disclosures Act (PDA). Her assessment is that enablers of corruption are the leaders in the public sector. She further reflected on the single authority structure that could be prone to capture, and that the solution lies in strengthening existing agencies with anti-corruption mandates e.g., SIU, PP, and the PSC.

She aligned with the suggestion that whistleblowers require compensation (this is broader than rewards e.g., social and psychological support) during trial, as corruption cases drag on for a long time. She cited the example of the Asset Forfeiture Unit (AFU), SIU Tribunal and that the road to asset recovery is lengthy.

The Public Protector further shared the recommendations to the amendment of the Public Protector's Act, as submitted to the DoJ in 2023, regarding the receipt and handling of protected disclosures. With regards to compensation, she advised that this should be subjected to due

processes. In her concluding remarks she advised that locating whistleblowers in the Human Rights Commission (HRC) needs to be reassessed thoroughly as the Commission's power does not relate to corruption and they have no investigative powers.

***Discussion***

With regards to the limitation of the power of the Public Protector to investigate the private sector, Adv. Kholeka indicated that their investigations indirectly investigate the private sector, as it focuses on businesses that do business with the state. She said, "we follow the money," and further advised that there is a need to focus on the enablers and root causes of corruption. Corruption cases are not finalised quickly on the normal court roll, and the SIU Tribunal could be considered as a solution. However, more importantly, the Public Protector's recommendations are being implemented. The MoU between the PP and the DoJ assists with the collaboration process for referrals. There is a need for reforms in central reporting of corruption matters, however, currently the Law Enforcement Agencies (LEAs) have a relationship where matters are referred on when the allegations are not part of their mandate.

# DAY 2 - 6th MARCH 2025

## 1. A NACAC Perspective and Journey

The NACAC Chairperson, Prof Cachalia reflected on NACAC's role in reform efforts and researching whistleblowing that resulted in an advisory from which the following emerged:

- An interim structure should be established and led by a retired judge.
- Establish a fund for whistleblowers within the structure.

The chair pointed out that the appointment of a new Minister in the Department of Justice presents an opportunity to support the work of the Council and whistleblower policy. NACAC has recently met with the Minister.

He further described NACAC's engagement with key stakeholders:

- NACAC's OPI recommendation was presented to the Director-General of the Justice Cluster.
- The DoJ Minister supports the idea of engaging the Minister of Police.
- The recommendations received support from the SIU and the Directorate for Priority Crime Investigation (DPCI) heads; and,
- The OPI proposal will be presented to Cabinet through the Department of Justice.

The approach advised by the NACAC included the following:

- SA to establish a stand-alone whistleblowing structure.
- There is a need to articulate a clear link to whistleblower protection and anti-corruption reform. Those who investigate corruption should have a whistleblowing function, e.g., the OPI or the PP. Placing the whistleblowing body in the OPI or PP poses a risk of mandate expansion that could compromise the bodies. How to reinforce the role of whistleblowing in the fight against corruption? Overlapping mandates are still an issue to review for an *all-government* solution.
- There is a need to focus on systemic corruption, including a focus on prevention; and,
- Whistleblower reform requires a combination of innovation in the context "with financial constraints" and conservatism in bureaucracy.

## 2. IN-DEPTH WORKSHOPPING SESSIONS

### Group 1: Extending the Scope of Recipients of Disclosures: The Role of Civil Society Organisations

Mr. Mazibuko from Moral Regeneration Movement (MRM) noted that whistleblower protection is a moral imperative as corruption erodes public trust and whistleblowers fear retaliation for exposing corruption. He posed three questions:
1. Does the authority need capacity? Should they be equipped to investigate?
2. Is extending the scope viable?
3. We need to weigh the benefits/limitations of this approach – what are the safety risks?

South Africa requires a legal framework for whistleblowers. Employers must be regulated by law enforcement and kept accountable. Employees should be able to report corruption to outside organizations. Journalists and the CSO were urged to report whistleblowing responsibly, and the law should enable this.

Ms Dube from the PSC advised how the media in South Africa has been successful in exposing corruption, e.g., the Thabo Bester case. The media have mechanisms in place to protect whistleblowers, however, the problem faced by whistleblowers is in the public and private sectors. It is advisable therefore that the institutional framework should be independent of the employer. Trends have shown that witnesses who go to court risk being shot within the court precinct as their safety has been compromised. There is a need for the protection of witnesses and their sources of information.

Reflecting on SA history, apartheid demonised whistleblowers as “impimpis”. In this era, there is a need to glorify whistleblowers as heroes and to instill values in people to appreciate whistleblowers. Currently, CSOs are required to be strong in the value-based, education side of the whistleblowing campaign. The value of the whistleblowing report in required monetary terms, e.g., misappropriation of funds in the education sector or funds not benefiting the communities where it is needed. During the awareness sessions, it is key to use words in indigenous languages when addressing the public. As we expand the scope of recipients of whistleblower reports, the issue of capacity comes into play as well as the availability of trauma counselling.

A representative from the Gauteng Ethics Advisory Council (GEAC) suggested that there is a need for support for coaching of potential whistleblowers on how to report and ethical reporting. There is an urgent need for LEAs to be thorough in protecting whistleblowers. PPLAAF must explain the risks to whistleblowers, alert them to avoid hasty reporting, as whistleblowers are forgotten after the story is exposed by the media. The PSC suggested that initiatives be aligned with Section 195 of the Constitution – thereby creating a value-based system. There is a need to make the environment safe for whistleblowers by creating a support structure to help the whistleblower.

**Group 1 Summary Outcomes**

- Extend the scope of disclosures to CSOs, religious organizations and other groups as they play a key role in receiving allegations.

- The Institutional framework should be independent from the employer.
- Whistleblowers require more protection at the prosecution phase, when they testify as they face victimization by employers or are killed.
- CSOs need to focus on value-based public education initiatives – due to past injustices, the "impipi" term is negatively perceived and there is a need to encourage heroism in blowing the whistle.
- Expansion requires the use of language understood by the members of the public; and,
- All efforts are needed to make the environment safe for whistleblowing and to create a support structure to help the whistleblower.

### Group 2: Strengthening Support to Whistleblowers Beyond Legislation

Adv Selby Makgotho, representing Adv Doctor Mashabane from the Department of Justice and Constitutional Development, provided the group with progress made by the department with regards to the amendments to the Protected Disclosure Act. He provided an overview of the Act and highlighted the limitations and gaps in the current legislation in relation to protection and support to whistleblowers.

He assured the group that the current amendments will include, amongst others, the extension of whistleblowing beyond traditional labour relations and will also include protection of whistleblowers by criminalising retaliation. He argued that strengthening support for whistleblowers beyond legislation will include establishing a fund for whistleblowers, providing psychosocial support, and security within the context of the Witness Protection Act.

The role of civil society in contributing to shaping the reform of current legislation was acknowledged, and he informed the group that the Department of Justice will keep all sectors informed on progress.

### Group 1: Extending Protection to Third Parties and Entities Supporting Whistleblowers, including Media and Investigators

This group deliberated on how extending protection would involve all groups, including civil society organizations and the media. Civil society organizations play a critical role in raising awareness. Whilst the law encourages the citizens to make disclosures, whistleblowers face the risks of being dismissed.

The group reflected on the need to build solidarity with whistleblowers by building a network of protection. The group considered consulting Parliament to mobilise society. Ms. Stimpel advised that investigators are at risk and require protection, and depending on the case they may require legal support, and that law enforcement officials are often targeted.

Henri Thilliez advised that the law in France protecting targeted whistleblowers is extended to protection against legal reappraisal/labour reappraisal and death threats.

The group reflected on:

- Investing in educating the public on whistleblowing and on how to disclose to avoid revealing their identity.
- The need for media to avoid malicious efforts/ill intent/motives; and,

- The need for whistleblowers to qualify for witness protection programmes.

A representative from Open Secrets advised that whistleblower legislation should not work in isolation. Reporting corruption has to do with accountability, trust, and removing stigma. There is a trust deficit in members of the public and whistleblowers are disappointed by prosecutorial outcomes. Awareness campaigns are important to educate the public not to feel ashamed for speaking out, as there is power in speaking up.

**Group 1 Summary Outcome**

- There is a need to build solidarity with whistleblowers in building a network for protection in consultation with Parliament.
- Physical protection when appearing in court is required.
- A risk assessment should be done on case-by-case basis.
- There is a disconnect between law and reality; and,
- Continued engagement in whistleblower protection is needed.

### Group 2: Beyond Labour – Retaliation, Reversion the Burden of Proof

The key theme of this session was to focus on strengthening support to whistleblowers beyond legislation. Summary of the key issues based on the presentations from Amina Mwaikambo (MHPSS Practitioner and Counselling Psychologist, Centre for Violence and Reconciliation); Dr Salomon Hoogenraad – Vermaak, Chief Director (DPSA) includes:

- The need for a holistic, humanistic, trauma-informed psychosocial support for whistleblowers, including financial and legal support.
- Promotion of ethics and integrity in the public service to prevent corruption and capacitation of ethics officers in government departments.
- Strengthening whistleblower protection and support as a key component of the anti-corruption programme.
- The need for urgent reform of the Protected Disclosure Act to be addressed by the Department of Justice; and,
- The critical role of civil society organisations holding the government accountable with civil society contributing to the dialogue on reforming legislation and to track progress.

## 3. SIU Approach to Whistleblowing and Investigations – Challenges and Opportunities

In his presentation, the Special Investigating Unit Head, Adv. Mothibi, informed delegates on how the Unit engages whistleblowers. The process involves the receipt of allegations nationally by whistleblower via the SIU Whistleblower Hotline or by direct approaches, the allegations are registered and assessed within a prescribed timeframe and the outcome communicated to the whistleblower (either directly or through the SIU Hotline).

The challenges faced by whistleblowers include threats, intimidation, financial loss, stress and perceived poor protection of whistle-blowers, threats against disciplinary cases and job losses, need for psychological counselling, financial loss and legal costs, and the stigma associated with whistleblowing.

Advocate Mothibi indicated that whistleblower protection laws are splintered and fragmented and therefore we need to proactively and reactively assist whistleblowers with legal, financial, psychological, physical safety, and risk management support. Currently, statutory whistleblower protection is reactive and limited to formal employment relationships (PDA), and whistleblowers should not be seen in a negative light such as “snitching”.

Whistleblowing protection measures in place at the SIU includes:

- Protection of SIU employees, witnesses and a whistleblowers policy is in place.
- The SIU has the resources in place to be used as and when its investigators, witnesses, or whistleblowers are under immediate or severe threats.
- Once the whistleblower calls and reports that his or her life is under threat, the SIU conducts a preliminary threat and risk assessment, which will indicate if the assistance is needed immediately, while also checking if that whistleblower can be accommodated in the NPA witness protection program.
- In the current financial year, the SIU established a good relationship with Whistleblower House, and they have assisted in two cases where whistleblowers were under threats.

The following interventions were mentioned to strengthen an enabling environment for whistleblowing: the Department of Justice is leading the review of the PDA legislation; whistleblowing benchmarks were done with Canada, and the need to consider the establishment of an independent whistleblower agency, as alluded to in the Zondo Commission Report.

The Acting Chief National Investigation Officer, Ms Xesibe, shared statistics of the corruption allegations received to date that indicate that whistleblowers trust the SIU to deal with the irregularities observed. She reflected that some of the allegations are outside their mandate, and as such are referred to the relevant law enforcement agency.

## 4. Way Forward and Concluding Remarks

As a way forward the conference delegates recommended forming two working groups:

***Working Group One- Whistleblower Legislation***
The structure will be composed of civil society organisations, PPLAAF and NACAC to investigate the legislative process and involve participation to ensure that the bill is adopted by the end of the year.

For this working group, NACAC’s support includes the support and enhancement of a potential citizens' bill emanating from civil society. This bill would assist in ensuring that the voices of citizens and whistleblowers are amplified and that they are directly represented in the house of parliament during the legislative process leading to the development of new whistleblower law. Further, the LRC expressed willingness to help with the completion of the legal drafting of the citizens' bill.

This would also include NACAC meeting with the Department of Justice to build relations and assist with the legal drafting process.

***Working Group Two - Communication, Education and Advocacy***

This structure should focus on issues relating to social behavioural and normative change. There is a need to explore collaborating with the Human Science Research Council (HSRC) for research on changing social norms. Some of the key stakeholders to involve are the Public Ethics Network of SA.

The Legal Resource Centre (LRC) advised that for the above to come to fruition there is a need for a multifaceted approach to whistleblowing to discourage the silencing of whistleblowers or retaliatory actions. Whistleblowers fuel investigations and it is regarded as the first step to accountability.

It was agreed that behavioural change approaches would be investigated for a mass communication campaign on whistleblowing in South Africa, aiming at normalising and destigmatising whistleblowing in the country.

As alluded above, funding will be required to support whistleblowing reforms. The drivers of the structures are advised to review the Gift of the Givers model to try and replicate it. Commitment for participation was sought from Open Secrets, LRC, PSC to contribute to changing public perception. There is a need for checks and balances to ensure that the funds benefit the course it is established for. MRM invited the delegates to a national campaign during family week in Bloemfontein.

The PPLAAF's Executive Director closed the conference by reflecting that whistleblowers should act in good faith and that the information disclosed should be true, focusing on the credibility of the information. However, when receiving disclosures, it is advisable to investigate the matter on a case-by-case basis. Due to the commitment of CSOs, whistleblowing protection is being strengthened. He urged the delegates that change is led by all of us and not the authorities, as legislation alone is not enough to protect whistleblowers. PPLAAF prides itself on providing support to whistleblowers on the African continent.

PPLAAF

## Contacts


**Email**
info@pplaaf.org

**Site Web**
www.pplaaf.org

**Médias sociaux**
@pplaaf

RESEARCH REPORT

JUNE 2024

# TRACKING SOCIAL NORMS AND BEHAVIOUR CHANGE IN SOUTH AFRICA:

## MEASURING ATTITUDES TO CORRUPTION

HEADLINE FINDINGS FROM THE SASAS 2023 MODULE AND EXPERT SURVEY 2023/24

HSRC Human Sciences Research Council | DCES Developmental, Capable & Ethical State

# TRACKING SOCIAL NORMS AND BEHAVIOUR IN SOUTH AFRICA:

## MEASURING ATTITUDES TO CORRUPTION

HEADLINE FINDINGS FROM THE SASAS 2023 MODULE AND EXPERT SURVEY 2023/24

## RESEARCH REPORT

**JUNE 2024**

**Authors**
Dr Steven Gordon and Adv. Gary Pienaar

HSRC Human Sciences Research Council | DCES Developmental, Capable & Ethical State

**Report prepared by**
Human Sciences Research Council (HSRC)
Developmental, Capable & Ethical State (DCES) research division

**Authors**
Dr Steven Gordon and Adv. Gary Pienaar

**For enquiries and comments contact:**
sgordon@hsrc.ac.za
gpienaar@hsrc.ac.za

**Acknowledgements**
Special thanks to Ruan Kitshoff and Rabea Kaas from the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

**Copyright © 2024 Human Sciences Research Council**
All rights reserved. No part of this project report may be reproduced, stored, transmitted, or disseminated, in any form, or by any means, without prior written permission of the HSRC, to whom all requests to reproduce or use should be directed in writing.

ISBN: 978-1-991248-15-2

Images: AdobeStock/iStock

Designed and typeset by COMPRESS.dsl | 800900_D | www.compressdsl.com

# Contents


**List of figures** iv

**List of tables** v

**Acronyms** vi

**Acknowledgements** 1

Report contributors 1

**Introduction** 2

The sample design 3

Data collection protocol 3

Research methodology 3

Fieldwork procedures and training 4

Data capturing and weighting 6

Expert survey 8

**Results** 9

What kind of society do we have? 9

What is seen as good? 12

The political mood 14

Perceived level of corruption 17

Exposure to corruption 21

Perceived level of sextortion 25

Attribution and responsibility 28

Lawbreaking norms and values 31

Reporting corruption 33

Government efforts to fight corruption 37

**Conclusions** 40

**References** 42

**Glossary of statistical terms** 43

**Glossary of other terms** 44

**Endnotes** 45

# List of figures

**Figure 1**: An example of a small area layer map used to assist the fieldwork teams to navigate to the correct areas 5

**Figure 2**: Public level of pride in South African economic and democratic functioning, 2023 15

**Figure 3**: Public trust and distrust in four political institutions, 2023 16

**Figure 4**: Public evaluation of the commitment of the public service to the people of South Africa, 2004 and 2023 17

**Figure 5**: Assessment of the involvement of types of leaders in corruption, 2023 18

**Figure 6**: Evaluations of the involvement of public service in corruption, 2004 and 2023 19

**Figure 7**: Appraisals of how much corruption has impacted on the economic situation, 2023 20

**Figure 8**: Perceived level of neighbourhood corruption across types of geographic area, 2023 22

**Figure 9**: Perceived community level of public sector corruption across type of geographic area, 2023 23

**Figure 10**: Self-reported exposure to petty public corruption, 2006 and 2023 24

**Figure 11**: Public agreement and disagreement with three statements about sexual chauvinism, 2023 26

**Figure 12**: Self-reported exposure to stories about sextortion in the public sector, by gender, 2023 27

**Figure 13**: Appraisals of how often public sector sextortion occurs in, by gender, 2023 28

**Figure 14**: Perceived morality of reporting the unlawful behaviour of ingroup members, 2023 35

**Figure 15**: General evaluations of government efforts to combat corruption, 2021 and 2023 37

# List of tables

**Table 1**: Sample realisation for South African Social Attitudes Survey, 2023 6

**Table 2**: Sample characteristics (unweighted and weighted), 2023 7

**Table 3**: Public agreement and disagreement with the five abridged Material Values Scale statements, 2023 11

**Table 4**: Mean scores on perceived importance of different citizenship norm scales (0–100), 2014 and 2023 13

**Table 5**: Mean scores on perceived importance of different democratic rights (0–100), 2014 and 2023 13

**Table 6**: Main attributions identified for why there is corruption among ordinary people (multiple response), 2023 29

**Table 7**: Main attributions identified for why there is corruption among powerful elites (multiple response), 2023 31

**Table 8**: Perceived justification scales (0–100) of different lawbreaking activities, 2023 32

**Table 9**: Main attributions identified for why many people do not report corruption (multiple response), 2023 34

# Acronyms

| | |
|---|---|
| **GCB** | Global Corruption Barometer |
| **GIZ** | Deutsche Gesellschaft für Internationale Zusammenarbeit |
| **HSRC** | Human Sciences Research Council |
| **MTSF** | Medium-Term Strategic Framework |
| **NACAC** | National Anti-Corruption Advisory Council |
| **NACS** | National Anti-Corruption Strategy |
| **REC** | Research Ethics Committee (of the HSRC) |
| **SALs** | Small area layers |
| **SASAS** | South African Social Attitudes Survey |
| **SOE** | State-owned enterprise |
| **SSU** | Secondary sampling unit |
| **VCS** | Victims of Crime Survey |
| **WVS** | World Values Survey |

# Acknowledgements

The team would like to express their appreciation to the following people who contributed to the successful completion of this study.

- The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH team (Transparency, Integrity and Accountability Programme) for their support, guidance, advice and input throughout the study.
- The 3 112 South African adults who participated in the representative survey and shared their attitudes and behavioural preferences.
- The 66 experts who contributed to the online survey, sacrificing their time to participate and share their opinions and views.
- The team responsible for managing the electronic data collection platform, most notably Mr Craig Schwabe, Mr Katiso Rachabane and Mr Bob Currin, as well as the Human Sciences Research Council's (HSRC) Dr Saahier Parker for programming and monitoring support for the expert survey.
- The HSRC project administrators who managed the contract and logistics, including Ms Koshen Govender, Ms Busisiwe Mamba and Ms Deshanie Reddy.
- The HSRC team for conceptualising the study and managing the project. These included Dr Steven Gordon, Adv. Gary Pienaar, Dr Benjamin Roberts, Dr Yul Derek Davids, Dr Ngqapheli Mchunu, Dr Jarè Struwig and Dr Shanaaz Dunn, with executive oversight provided by Prof. Narnia Bohler-Muller.

## Report contributors

Dr Steven Gordon, Adv. Gary Pienaar, Dr Benjamin Roberts, Dr Ngqapheli Mchunu and Prof. Narnia Bohler-Muller

# Introduction

Corruption is a major problem in South Africa and the country has struggled to combat it. The rise and entrenchment of neo-patrimonialism and corruption in the public sector appears to be especially acute. There is growing evidence that corruption has worsened over the last 20 years (Afrobarometer, 2022; Corruption Watch, 2024; DPME, 2023, p.20; NPC, 2023, p.17). This change has had adverse political, social, economic and security-related repercussions for the nation's entire population. At this critical juncture, the South African government has adopted the National Anti-Corruption Strategy (NACS) 2020–2030 (The Presidency, 2020b). This strategy identifies the need for credible, evidence-informed approaches to reverse the destructive and debilitating effects of corruption. One of the main anti-corruption tactics prioritised by the NACS is a whole-of-society approach that incorporates changing social norms[1] and values in South Africa.

In most contexts, social norms and values play a pivotal role in driving human behaviour. Accordingly, participation in, or opposition to, corrupt behaviour can be influenced by these norms and values. Despite the challenge that corruption has come to represent in South Africa, there is a dearth of high-quality public opinion research on this important topic. As a result, not enough is currently known about social norms and values related to corruption in the country. There is a need to address this knowledge gap, promoting a discussion on the future of South African society and the post-apartheid constitutional order. The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH commissioned the Human Sciences Research Council (HSRC) to provide credible evidence-based data that aims to help close this knowledge gap. The focus here is on social norms and values that underpin both corrupt practices and anti-corruption behaviour.

In accordance with the NACS, the research team conducted a nationally representative public opinion survey to assess existing social norms, values and behaviours on corruption in South Africa. This first survey round will serve as a baseline assessment, and subsequent survey rounds will be compared against the baseline. Social norm change will be assessed over time, identifying those subgroups that display the least and greatest levels of change. The overall aim of the study is to identify and track social values, norms and behaviours that encourage and discourage corruption. This research is intended to help support the National Anti-Corruption Advisory Council (NACAC) and the Department of Planning, Monitoring and Evaluation (DPME) in their efforts to develop, assess and adapt strategies to combat and prevent corruption in accordance with the NACS. This work also contributes to the goals of the Medium-Term Strategic Framework (MTSF) 2020–2024 (The Presidency, 2020a), which emphasises the need to promote ethical governance.

# Research methodology

Data from the 2023 round of the South African Social Attitudes Survey (SASAS) were used for this report. The nationally representative SASAS series has been conducted on an annual basis by the HSRC since 2003. This section presents information on the details of the survey, including questionnaire design and sampling framework. The first subsection explains the sample design of the survey, the second describes the data collection protocols, the third explains fieldwork preparation, and the fourth outlines the data capturing and weighting processes. To provide additional insight into our understanding of the public opinion data gathered for this study, a survey with relevant experts was fielded alongside SASAS 2023. The methodological design and sample of this supplementary survey is outlined in the final subsection.

## The sample design

In accordance with the SASAS research infrastructure's standard approach, the survey was designed to yield a representative sample of 3 500 adults aged 16 years and older living in South Africa. The sample was spread across the country's nine provinces and was restricted to adults living in private residences. SASAS has three sampling stages. Small area layers (SALs) were the primary sampling units, and in the first stage 500 SALs were drawn. Estimates of the population numbers for various categories of the census variables were obtained per SAL. Data for this stage were drawn from the 2011 census and updated using mid-year population estimates. Three explicit stratification variables were used to draw the SALs: province, geographic type and majority population group. When drawing the sample, special institutions (such as hospitals, military camps, old age homes, schools and university hostels), recreational areas, industrial areas and vacant SALs were excluded.

Dwelling units (also known as visiting points) in each SAL were taken as the secondary sampling unit (SSU). A dwelling unit is defined as a 'separate (non-vacant) residential stand, address, structure, flat, homestead, etc.' In the second stage, seven SSUs were selected per SAL. SSUs were drawn with equal probability in each of the selected SALs. SSUs were selected using a random starting point and counting an even interval between households. The interval was calculated using the total number of households in the SAL. Finally, in the third sampling stage, a person was drawn with equal probability from all persons 16 years and older living at each selected visiting point (SSU). This person (i.e. the respondent) needed to be 16 years or older and have resided at the visiting point for at least 15 out of the past 30 days. The fieldwork period started in August and ended in October of 2023.

## Data collection protocol

The HSRC subscribes to a strict internal Code of Ethics. The study design and research tools were submitted for approval by the HSRC's Research Ethics Committee (REC). Each interview conducted by the HSRC is fielded only if the REC has approved it. Before each interview was conducted, the following protocols were observed:

***Adult respondents and informed consent (older than 18 years)*:** All respondents aged 18 years and older were asked for informed consent. A digital consent form explained the purpose of the study, emphasised that participation was voluntary and explained the likely duration of the interview. The form made clear how confidentiality would be preserved, and offered an earnest appraisal of the risks/discomforts and benefits associated with participation in the study. Respondents were provided with details of the HSRC's toll-free ethics hotline and survey coordinator contacts.

***Minors and written informed consent (persons under the age of 18 years)*:** In instances where the selected research participant was a minor aged 16–17 years, the informed consent process adhered to the HSRC's guidelines on research with orphans and vulnerable children. A dual consent process was required, both from the minors and their parent/guardian.

***Ensuring confidentiality of information*:** All personal information on the respondent was removed when the data were captured and analysed. Codes to identify respondents were used instead. Personal information is stored electronically with password protection at the HSRC. The SASAS team is compliant with all relevant legislation that protects the data of respondents.

## Fieldwork procedures and training

The following general protocol guidelines for data gathering were implemented:

- Fieldworkers and supervisors were required to notify the relevant local authorities that they would be working in the specific area. The purpose was twofold: (i) to increase safety protocols for fieldworkers; and (ii) to reassure respondents that the survey was certified. Official letters describing the project and its duration and relevant ethical issues were distributed to the authorities. This was done not only as a form of research and ethical protocol but also to ensure the safety of the fieldwork teams.
- Supervisors were advised to inform the *Inkosi* or *Induna* in a traditional authority area, while in urban formal or urban informal areas they had to report to the local police station. In some areas, the local councillor was also met and informed of the study prior to commencing fieldwork.
- When approaching a farm, fieldworkers were advised to enter with caution and that they should report to the local Agri South Africa (Agri SA) offices before doing so. Fieldwork supervisors were issued with specialised letters for farmers which contained information on the purpose of the study and contact details in case they received queries.
- Consent forms needed to be completed prior to initiating each interview. Informed consent was built into the online questionnaire on the hand-held devices, with respondents being asked to sign approval before proceeding with the interview. In instances where the respondent did not wish to sign, verbal consent was secured from the respondent.
- Fieldworkers were issued with name tags and letters of introduction to be used in the field. The introduction letter was translated from English into eight other official languages.
- Fieldworkers had to present their identity cards when introducing themselves.

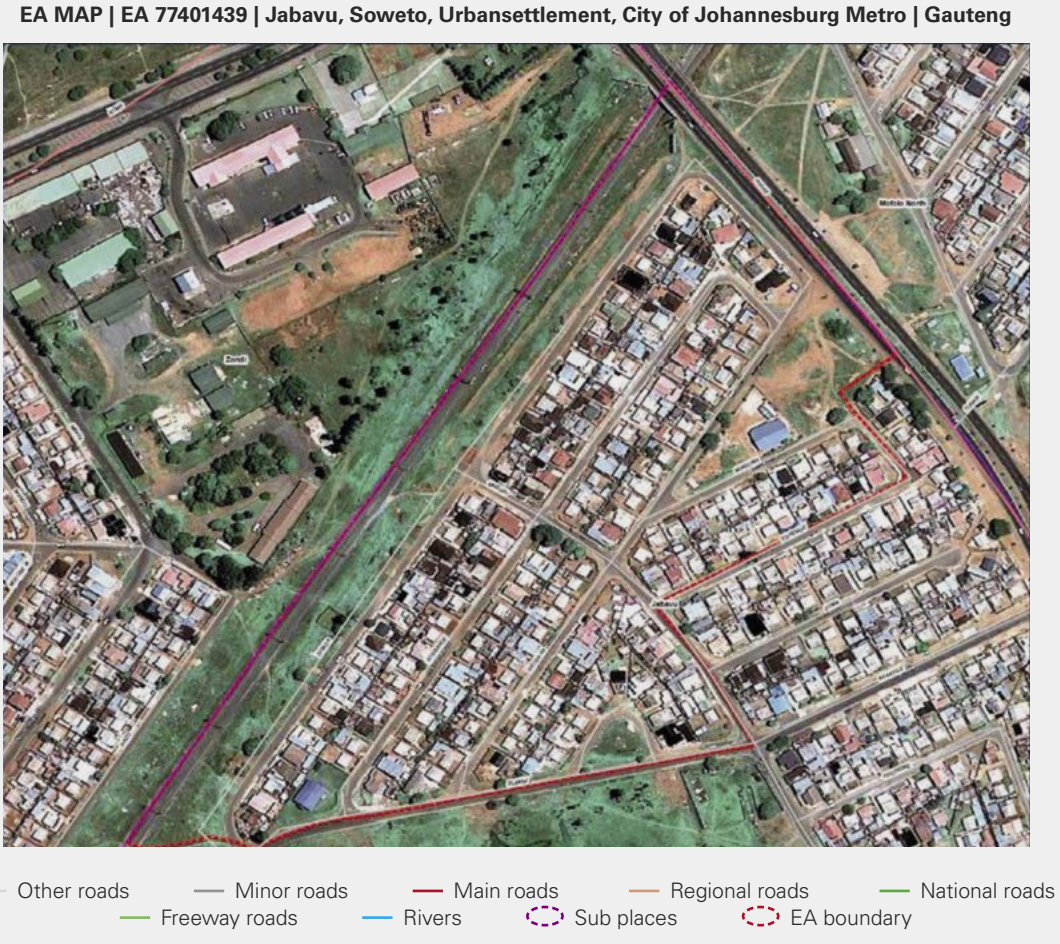
A network of locally based fieldwork supervisors in all parts of the country assisted in data collection. Competent fieldworkers with a thorough understanding of the local areas were employed as part of this project. Two-day training sessions were held in each of the provinces. The training session included lessons on selection and sampling of households, fieldwork operating procedures, research protocols and ethical considerations. The content of the questionnaires was dealt with in-depth in English and in translation, and the use of the forms on the tablets was a further area of focus. As far as possible, the

training was designed to be participatory, practical and interactive, and gave fieldworkers the opportunity to seek clarification. A training manual was also developed as part of the training toolkit. All relevant remarks and instructions discussed during the training session were included in the training manual.

Once the training sessions were completed, a navigational toolkit was provided to fieldwork teams. These toolkits were developed to assist the field teams in finding the selected SALs. The kits assisted the supervisors and fieldworkers to locate the exact SAL where the interviews were to take place. The navigational kits included:

- Route descriptions, to assist the teams to navigate their way into the selected areas.
- Maps that, using aerial photographs as a base, identified the exact geographic location of the area to be sampled.
- More detailed maps that identified the exact area, pinpointing street names and places of interest such as schools, clinics and hospitals. These maps also included latitude-longitude GPS coordinates indicating the centroid of the SAL. An example of a map is depicted in **Figure 1**.

**Figure 1: An example of a small area layer map used to assist the fieldwork teams to navigate to the correct areas**



HSRC researchers conducted random visits to selected areas and worked with the fieldworkers for a certain period to ensure that they adhered to ethical research practices and that they understood the intent of the questions in the questionnaire. HSRC researchers also ensured that the correct selection protocols were followed to identify SSUs and respondents in the household. The researchers also checked on the procedures followed in administering the research instrument. Field backchecks were also conducted in all nine provinces. Telephonic backchecks were done on at least 10% of the total sample.

## Data capturing and weighting

In each SASAS round, an external service provider conducted data capturing. The final dataset was converted into Stata and SPSS and a data manager embarked on a data-cleaning exercise. Data were checked and edited for logical consistency, permitted ranges, reliability on derived variables and filter instructions. After data cleaning, the analytical team received the realisation rates of the survey. SASAS normally has a high interview realisation rate. SASAS 2023 was no different, with a realisation rate of 89% (or 3 112 out of 3 500) achieved in this round (**Table 1**). Our high realisation rate was partly achieved due to the fact that communities were well informed about the survey.

**Table 1: Sample realisation for South African Social Attitudes Survey, 2023**

| Province | Number of SALs | Ideal sample (N) | Realised sample (N) | Realisation rate (%) |
|---|---|---|---|---|
| Western Cape | 65 | 455 | 323 | 71 |
| Eastern Cape | 65 | 455 | 442 | 97 |
| Northern Cape | 37 | 259 | 219 | 85 |
| Free State | 38 | 266 | 244 | 92 |
| KwaZulu-Natal | 93 | 651 | 611 | 94 |
| North West | 37 | 259 | 212 | 82 |
| Gauteng | 83 | 581 | 538 | 93 |
| Mpumalanga | 38 | 266 | 256 | 96 |
| Limpopo | 44 | 308 | 267 | 87 |
| **Total** | **500** | **3 500** | **3 112** | **89** |

In order to ensure representativity of smaller groups (e.g. Northern Cape residents or Indian/Asian people), weights needed to be applied. The data were weighted to take account of the fact that not all units covered in the survey had the same probability of selection. The weighting reflected the relative selection probabilities of the individual at the three main stages of selection. The marginal totals for the benchmarking of variables were obtained from mid-year population estimates as published by Statistics South Africa. The final dataset (unweighted and weighted) characteristics are presented in **Table 2**, based on select key demographic variables.

**Table 2: Sample characteristics (unweighted and weighted), 2023**

| | Unweighted | | Weighted | |
|---|---|---|---|---|
| | N | % | N ('000) | % |
| **South Africa** | 3 112 | 100 | 43 148 | 100 |
| **Gender** | | | | |
| Male | 1 410 | 45 | 20 784 | 48 |
| Female | 1 701 | 55 | 22 363 | 52 |
| **Age group** | | | | |
| 16–19 years | 141 | 5 | 4 180 | 10 |
| 20–29 years | 629 | 20 | 9 742 | 23 |
| 30–39 years | 727 | 23 | 10 817 | 25 |
| 40–49 years | 551 | 18 | 7 595 | 18 |
| 50–64 years | 681 | 22 | 6 958 | 16 |
| 65+ years | 383 | 12 | 3 855 | 9 |
| **Population group** | | | | |
| Black African | 1 923 | 62 | 34 126 | 79 |
| Coloured | 558 | 18 | 3 897 | 9 |
| Indian/Asian | 329 | 11 | 1 256 | 3 |
| White | 293 | 9 | 3 869 | 9 |
| **Geographic type** | | | | |
| Metropolitan urban | 1 223 | 39 | 18 778 | 44 |
| Non-metropolitan urban | 1 119 | 36 | 11 653 | 27 |
| Rural | 770 | 25 | 12 716 | 29 |
| **Province** | | | | |
| Western Cape | 323 | 10 | 5 468 | 13 |
| Northern Cape | 442 | 14 | 4 367 | 10 |
| Eastern Cape | 219 | 7 | 918 | 2 |
| Free State | 244 | 8 | 2 061 | 5 |
| KwaZulu-Natal | 611 | 20 | 7 815 | 18 |
| North West | 212 | 7 | 2 967 | 7 |
| Gauteng | 538 | 17 | 12 338 | 29 |
| Mpumalanga | 256 | 8 | 3 357 | 8 |
| Limpopo | 267 | 9 | 3 858 | 9 |

## Expert survey

To gauge expert perspectives and policy-relevant insights into the social values and norms that encourage and discourage corrupt behaviours in South Africa, an expert opinion survey was designed. The survey was devised as a complement to the national survey described in the previous subsections. The objective of this survey was to invite a range of experts to complete a questionnaire designed according to project objectives and key research questions. The selection of experts for inclusion in the study was purposive, with experts identified from a wide range of academic disciplines, professional institutions, civil society organisations as well as government departments and agencies. The questionnaire was administered via the SurveyMonkey platform, with a weblink emailed to individual experts. The expert survey was conducted over a period ranging between 18 December 2023 and 25 February 2024.

**We designed an expert opinion survey to gauge expert perspectives and policy-relevant insights into the social values and norms that encourage and discourage corrupt behaviours in South Africa**

A hundred and seventy experts were identified as part of the sample selection process. The individuals approached were all well-established and acknowledged experts in their fields. Most had previously published in accredited publications and engaged in public debates concerning related matters, and/or occupied senior positions in their organisations. Responses from 67 persons were received, with the remainder failing to respond or refusing to participate in the available period.

The team received responses from a wide range of different organisations, including universities, research institutes and non-governmental organisations. Survey participants identified themselves as experts in a range of different areas. Governance and public administration (70%) were the most common, followed by political science (40%), law (37%) and social policy (25%). Of those who participated, 61 fully completed the questionnaire while six were coded as partially completed.

# Results

Drawing on the SASAS 2023 data, this report presents a headline breakdown of the results of the national survey as well as the online expert survey. In this section, the research team looks at social tolerance of corruption as well as the level of general exposure to corrupt practices. Lay attributions of responsibility are then considered, followed by perceptions of anti-corruption efforts, with a distinction between government efforts and those actions that can be taken by ordinary citizens. To provide a comparative perspective, data from other relevant surveys are (where possible) compared with our data. As this is a headline analysis of the data, it focuses *only* on providing a concise overview of the main findings from the SASAS module. This report does not make a wide-ranging assessment of subgroup variations or the interconnection between variables. This level of analysis will be provided in a later comprehensive report.

## What kind of society do we have?

The vision of the NACS is a South Africa where most citizens uphold ethical values, including trust, honesty, probity and fairness.

The vision of the NACS is a South Africa where most citizens uphold ethical values, including trust, honesty, probity and fairness. As a foundation for cooperation, social integration and harmony, such prosocial values are at the centre of the whole-of-society approach envisioned by the NACS. The goal is to encourage ethical consciousness and principled conduct among the general public. Yet do we know what kind of social values and norms ordinary citizens in South Africa hold? Do these values and norms, for example, tend to be individualistic or collectivistic, distrusting or trusting? In an effort to better understand South African society, we look at these questions in this section. In particular, we are concerned with materialistic values and norms related to wealth and avarice. Given the ethical focus of the NACS, an understanding of such values was considered to be particularly important.

We begin this section by asking what the defining social values and norms that characterise South African society are, with insight gained from our expert survey data. As part of that survey, respondents were read a list of different social norms and then asked how prevalent they regarded them to be in the country. Most were divided on whether South African society was individualistic (a

place where people are viewed as 'good' if they are self-reliant and independent). A minority of the experts said that the country was individualistic to a great extent (14%) or to a considerable extent (10%). This finding does not, however, mean that our expert sample tended to characterise the country as collectivistic (a place where people are viewed as 'good' if they value the needs of the community over the needs of the self). Indeed, only a small minority told us that the country was collectivistic to a great extent (1%) or a considerable extent (10%). Our expert sample was quite pessimistic about the character of South African society. When asked what words or phrases could be used to describe the country today, few chose positive responses, such as 'compassionate' or 'altruistic'.

On the whole, the experts interviewed for this study were doubtful that South Africa could be designated as either an individualistic or a collectivistic society. However, this group was not divided on whether our society is materialistic (a place where people assign great importance to material wealth and possessions). About three-quarters of this group asserted that South African society was materialistic to either a great (35%) or considerable extent (35%). In other words, they felt that society tends to place a lot of personal value on material wealth, and also that the country is more materialistic today than it was in the past. When asked to select what words or phrases best describe South Africa 30 years ago, only 5% of experts chose the term 'materialistic'. Yet 43% of this group selected 'materialistic' when asked what words or phrases best describe the country today.

**When asked to select what words or phrases best describe South Africa 30 years ago, only 5% of experts chose the term 'materialistic' – but 43% chose this word to describe the country today**

What do the public opinion data tell us about the level of materialism within South African society? SASAS participants were requested to answer a set of questions designed to gauge the degree to which they personally held materialistic values. A set of questions[2] focusing on the degree of centrality of materialism to individual desires was used for this purpose. Respondents were read a set of five statements about material wealth and asked whether they agreed or disagreed with them. The results are displayed in **Table 3** and show that most people agreed that the accumulation of material possessions is admirable, and that wealth is very important to happiness. Consider, for example, that 58% of the general public said that they admired people who own expensive homes, cars and clothes. An even larger proportion (73%) stated that buying things gave them pleasure. The implication seems to be that material acquisition is a core aspect of the aspirations of a a clear majority of South Africans. These findings confirm those found by Roberts and colleagues (2022a) based on a fielding of the Material Values Scale (MVS) in the 2020 round of SASAS.

**Table 3: Public agreement and disagreement with the five abridged Material Values Scale statements, 2023**

| | I admire people who own expensive homes, cars and clothes. | Buying things gives me a lot of pleasure. | I like a lot of luxury in my life. | I'd be happier if I could afford to buy more things. | It sometimes bothers me quite a bit that I can't afford to buy all the things I'd like. |
|---|---|---|---|---|---|
| Strongly agree | 19 | 25 | 21 | 36 | 33 |
| | (0.128) | (0.141) | (0.127) | (0.154) | (0.151) |
| Agree | 39 | 48 | 41 | 48 | 45 |
| | (0.157) | (0.159) | (0.161) | (0.158) | (0.159) |
| Neither agree nor disagree | 16 | 14 | 17 | 9 | 12 |
| | (0.107) | (0.097) | (0.109) | (0.086) | (0.091) |
| Disagree | 20 | 10 | 16 | 5 | 8 |
| | (0.125) | (0.084) | (0.104) | (0.060) | (0.080) |
| Strongly disagree | 6 | 3 | 5 | 2 | 2 |
| | (0.060) | (0.044) | (0.065) | (0.040) | (0.041) |
| (Do not know) | 0 | 1 | 1 | 1 | 1 |
| | (0.033) | (0.302) | (0.031) | (0.064) | (0.031) |
| **Total agreement** | **58** | **73** | **62** | **84** | **78** |
| **Total disagreement** | **26** | **13** | **21** | **7** | **10** |

*Note: Linearised standard errors in parenthesis.*

*Source: South African Social Attitudes Survey (SASAS), 2023*

Given the importance attached to integrity in the NACS, it is worth asking how prevalent the social norm of trust is in South Africa. As part of the SASAS module, participants were asked if they thought that people could be trusted or whether you cannot be too careful when dealing with others. Only a minority (7%) of the general public stated that people can almost always be trusted, with 21% indicating that people can usually be trusted. A noteworthy share (43%) stated that you usually have to be careful of other people and a further 28% claimed that you almost always have to be careful. It would be informative at this stage to compare South Africa with other countries around the world on this matter of social trust. A recent report by Ipsos shows that social trust varies substantially between different countries (Boyon, 2022). Ipsos found that social trust in South Africa was significantly lower – about three times lower – than what was observed in China and India. On this measure, the nation was ranked alongside countries like Turkey, Malaysia and Brazil.

The data suggest that the social norms of trust and honesty are weak in South Africa. But what about fairness and altruism? SASAS respondents were asked whether they thought people tried to take advantage of others if they got the chance. A fifth said that people almost always behaved this way, while 36% said that people tried to take advantage of others most of the time. By contrast, a minority

(29%) thought that people were fair most of the time and 11% told us that people were fair almost all the time. In sum, it appears that a majority of adults in South Africa have a difficult time trusting others and tend to view other people as manipulative. This is not a once-off finding and has been common to SASAS and other survey examinations of social trust in the country over the past two decades. In sum, the general public was discovered to have a rather cynical view of human nature, viewing others as distrustful and disingenuous.

## What is seen as good?

The NACS outlines public adherence to democratic constitutional values as the cornerstone of the strategy. Civic and democratic values and social norms, as outlined in the South African Constitution, are considered essential to the success of the strategy, which aims to create a zero-tolerance environment towards corruption. This corresponds with the aims of the MTSF 2020–2024 to promote ethical and accountable behaviour among all members of the public. Yet, what values and social norms do the general public see as important for good citizenship and good democracy? The previous section investigated views on certain prosocial values and norms. This section briefly looks at the perceived importance of different social norms around citizenship and democracy. Special consideration is given to how attitudes have changed over time, evaluating the period 2014 to 2023, based on results from identical questions in both the 2014 and 2023 SASAS rounds.[3]

To assess what social norms people thought would constitute good citizenship, respondents were first told: 'There are different opinions as to what it takes to be a good citizen.' Then fieldworkers read them a list of different actions and asked them to rate how important each was for being a good citizen. Interviewee responses were recorded on a 1–7 scale, with higher values representing a greater level of importance. These can be best understood as descriptive social norms of good citizenship. To assist the reader, each scale has been converted to a range of 0 to 100. The mean scores on each of these scales are presented in **Table 4** and show that certain norms (e.g. duty to obey the rule of law) were seen as more important than others. But we found a robust level of intercorrelation between the scales depicted in the table. Thus, if a person thought that one action was important for good citizenship, then they were more likely to think other actions were also important.

**Table 4: Mean scores on perceived importance of different citizenship norm scales (0–100), 2014 and 2023**

| | SASAS 2014 | | SASAS 2023 | |
|---|---|---|---|---|
| | Mean | Std Err | Mean | Std Err |
| Never to try to evade taxes | 79 | (0.779) | 69 | (1.068) |
| Always to obey laws and regulations | 85 | (0.618) | 77 | (0.872) |
| To keep watch on the actions of government | 75 | (0.730) | 75 | (0.997) |
| To help people who are worse off than yourself | 77 | (0.682) | 76 | (0.831) |

*Note: Linearised standard errors in parenthesis.*

*Source: South African Social Attitudes Survey (SASAS), 2014, 2023*

An identical set of questions on citizenship norms were asked in SASAS 2014 and the evidence showed that for some norms (such as helping others) we did not observe a significant change over time. However, for other norms, we found that the average perceived importance had declined. For instance, the mean importance on the taxation compliance norm was 79 (SE=0.779) during SASAS 2014, ten index points above what was observed in SASAS 2023. Another significant change between the two periods was noted for duty to obey the law. Mean scores on this scale decreased from 85 (SE=0.618) in SASAS 2014 to 77 (SE= 0.872) in SASAS 2023 (**Table 4**). Although this change was not substantial, in the sense that large majority shares continue to regard them as salient, it is concerning that this type of social norm is declining in South Africa.

We now turn to what social norms were viewed as important within a democracy. Rather than explore obligations, as in **Table 4**, here the focus is on the *rights* that people have in a democracy. To evaluate the perceived importance of different democratic rights among the public, SASAS respondents were first told: 'There are different opinions about people's rights in a democracy.' Then a list of different democratic rights was read out to them by fieldworkers. These questions were designed to identify descriptive social norms associated with democracy. Following this, respondents were questioned on how important each right is for democracy, with answers recorded on a 1–7 scale. Higher values on this scale represent a greater level of importance. The scale was converted to a 0 to 100 score to make it easier for the reader to interpret. The mean scores on each of these scales are displayed in **Table 5** for both SASAS 2014 and SASAS 2023.

**Table 5: Mean scores on perceived importance of different democratic rights (0–100), 2014 and 2023**

| | SASAS 2014 | | SASAS 2023 | |
|---|---|---|---|---|
| | Mean | Std Err | Mean | Std Err |
| All citizens have an adequate standard of living | 85 | (0.670) | 78 | (0.858) |
| Government authorities respect and protect the rights of minorities | 81 | (0.709) | 75 | (0.782) |
| Opportunities to participate in public decision-making | 81 | (0.650) | 76 | (0.818) |
| Acts of civil disobedience against unpopular government actions | 62 | (0.852) | 65 | (1.084) |

*Note: Linearised standard errors in parenthesis.*

*Source: South African Social Attitudes Survey (SASAS), 2014, 2023*

As can be observed from **Table 5**, it appears that the general public viewed certain rights as less important than others. Although support for the right to civil disobedience was slightly stronger in 2023 than in 2014, it was rated relatively poorly in both survey rounds. This finding corresponds with what was observed in **Table 4**, which showed that most people supported deference to the rule of law. Social welfare ('All citizens have an adequate standard of living') was seen as the most important democratic right in each survey round, although support for it has declined, as has support for two of the other three rights. There was some change in how people felt about the democratic right of all citizens to have an adequate standard of living between SASAS 2014 and SASAS 2023. We noted a decrease of seven points on this scale between the two periods. After statistical testing, we discovered a significant level of interdependence between the scales portrayed in **Table 5**. If a person thought that one democratic right was essential, then they were more likely to think other rights were also important.

## The political mood

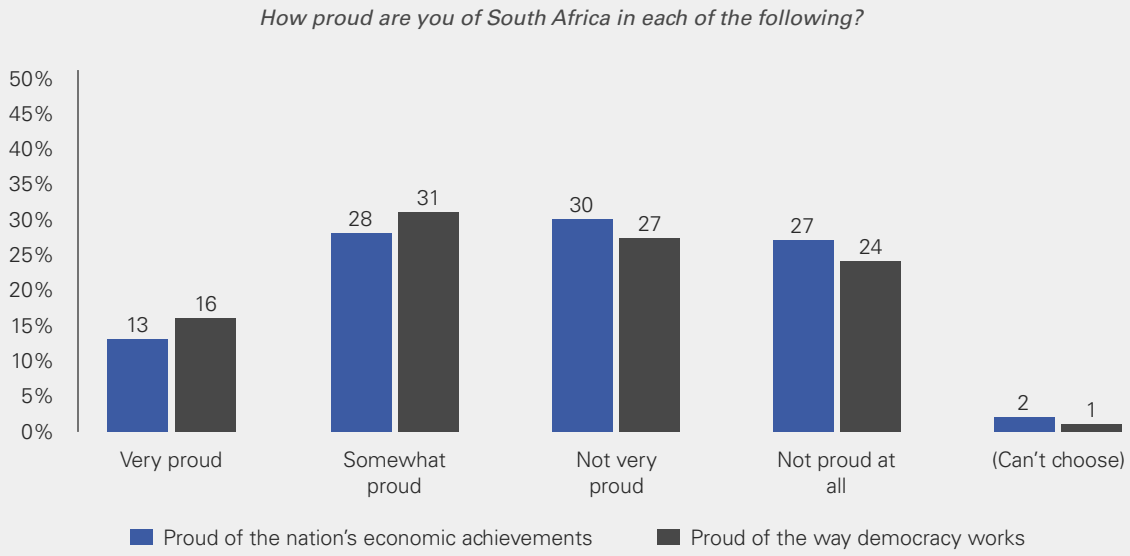
The NACS identifies the declining level of citizen confidence in the state as a problem. A lack of confidence in the public service is seen as particularly detrimental

The NACS is premised on the principle of good governance and that the state should be viewed as a protector and promoter of the rights of its citizens. The NACS identifies the declining level of citizen confidence in the state as a problem. A lack of confidence in the public service is seen as particularly detrimental. This problem is also recognised by the MTSF 2020–2024, which acknowledges that the public has low levels of confidence in the developmental state. Rebuilding public trust in government has been identified as a cornerstone of the NACS. Yet, what is the scale and nature of declining public confidence in South Africa's political institutions? This section provides a concise assessment of regime approval in the country, evaluating whether members of the adult public think the current system is working for them. It provides helpful insights into contemporary social values and norms around governance in the country. Given the centrality of public administration in the NACS, special attention is paid to attitudes towards the public service.

To evaluate how the general public viewed the status quo, respondents in SASAS 2023 were asked how proud they were of: (i) South Africa's economic achievements; and (ii) the way democracy works. Public responses to these items are portrayed in **Figure 2**, and show polarisation in opinion. Many people were not proud of economic and political developments in the country. Nearly three-fifths (57%) said that they were not very or not at all proud of the country's economic achievements, while 51% told us that they had limited or no pride in how democracy was functioning. Despite this

criticism, many people still felt a strong sense of loyalty and pride when asked about South Africa. Around two-fifths (41%) were very or somewhat proud of economic achievements, and 47% were proud of democratic performance in the country. Furthermore, a clear majority (77%) of adults agreed that they would rather be a citizen of South Africa than of any other country in the world.

**Figure 2: Public level of pride in South African economic and democratic functioning, 2023**

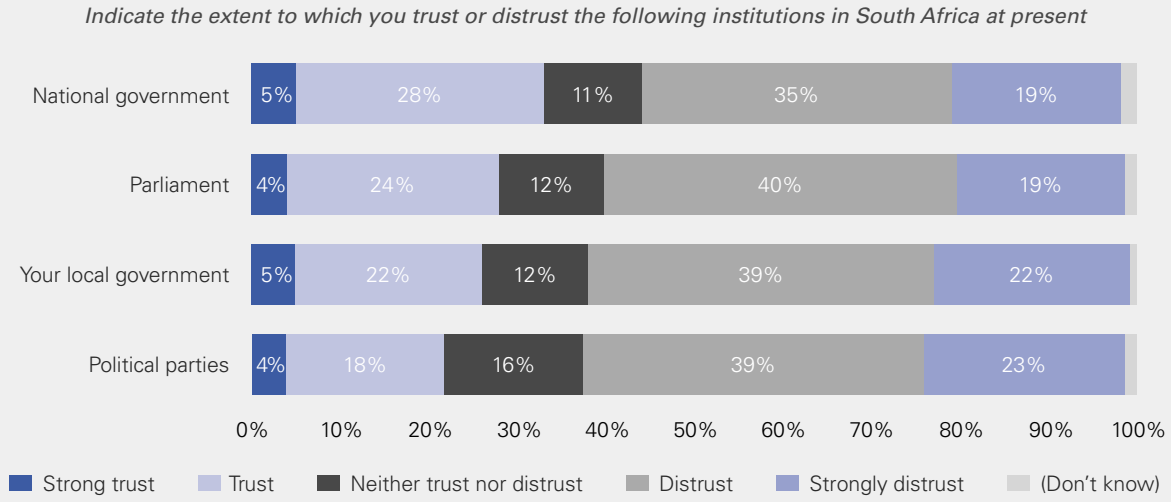



*Source: South African Social Attitudes Survey (SASAS), 2023*

Given the findings outlined in **Figure 2**, it is unsurprising that many people in South Africa feel alienated from contemporary politics. Survey respondents in the SASAS 2004 and SASAS 2023 rounds were asked if they agreed or disagreed with the following statements: (i) 'People like me don't have any say about what the government does'; and (ii) 'I don't think the government cares much what people like me think'. In 2004, 54% of the adult population agreed with the first statement, and an even smaller share (47%) agreed with the second. It appears that political alienation grew substantially between 2004 and 2023. In the 2023 survey round, 66% of the general public agreed with the first statement and 72% agreed with the second.

It is apparent from the data presented above that the general public are, on the whole, quite discontented with how politics works in South Africa. To provide further insight into public perceptions of state performance, survey respondents were asked to indicate whether they trusted or distrusted four key political institutions in South Africa. We find that most citizens do not have confidence in these institutions (**Figure 3**). For instance, the proportion who distrusted the national government was 54% in SASAS 2023. This high level of distrust was, however, lower than that observed for parliament (59%), local government (61%) and political parties (62%). In contrast to the widespread distrust of these political institutions, people were more divided on the role of the media in politics. Approximately half (49%) of the general public agreed that media coverage about politics in South Africa was biased, while 19% disagreed. The remainder were either neutral in their response (28%) or did not know how to answer (4%).

**Figure 3: Public trust and distrust in four political institutions, 2023**

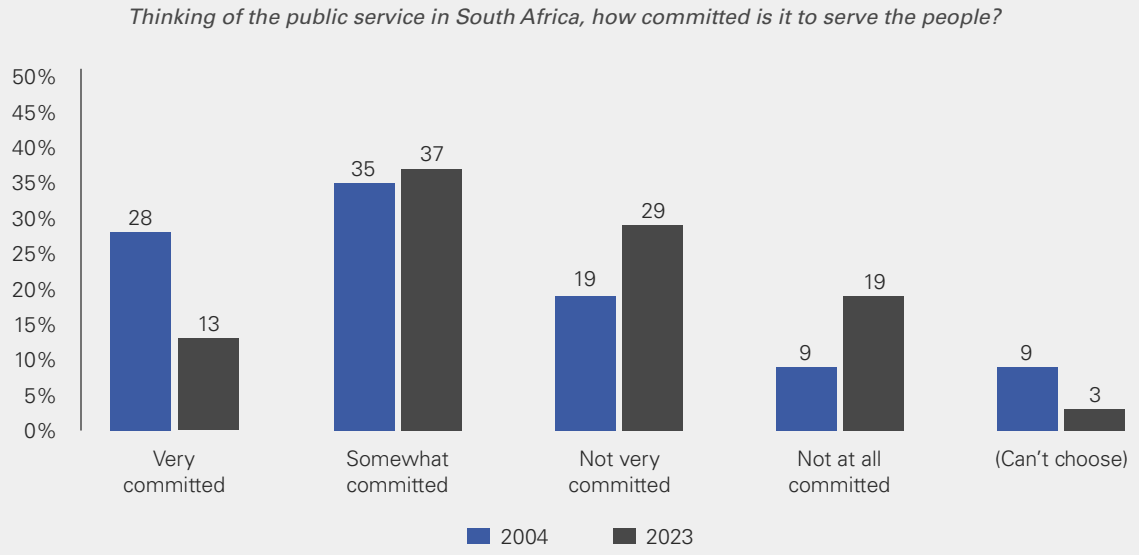



*Source: South African Social Attitudes Survey (SASAS), 2023*

In view of the high level of political distrust observed, it is worth narrowing our focus and looking at attitudes towards the public service. Participants in both the 2004 and 2023 SASAS rounds were asked: 'Thinking of the public service in South Africa, how committed is it to serve the people?' Public responses to the question are presented in **Figure 4** and show a significant change over time. More than a quarter of the general public in SASAS 2004 described the public service as either not very committed (19%) or not at all committed to the people (9%) – a combined total of 28%. By comparison, 29% in SASAS 2023 said that the public service was not very committed to serving the people, while a further 19% maintained that it was not at all committed – adding up to 48%, an increase of 20 percentage points. It would therefore appear that the South African public has become far more negative about the public service over time.

Our data show that a noteworthy share of the general public was dissatisfied with the direction in which the country was heading and felt that they could not trust their political institutions. These findings are consistent with prior public opinion research conducted by the HSRC, which found that popular anger against the status quo has grown over the last few years (Roberts et al., 2022b). A significant segment of the adult population is losing confidence in the ability of the current system to deliver for them (see also Struwig et al., 2016). The dire political mood identified among the public so far in this section was also evident in the expert survey data. When asked to list the words or phrases that describe South Africa today, our experts tended to give quite negative responses. The most popular choices included 'divided' (78%), 'angry' (67%) and 'pessimistic' (63%), with only a minority opting for positive responses such as 'optimistic' (15%).

**Figure 4: Public evaluation of the commitment of the public service to the people of South Africa, 2004 and 2023**




*Source: South African Social Attitudes Survey (SASAS), 2004, 2023*

## Perceived level of corruption

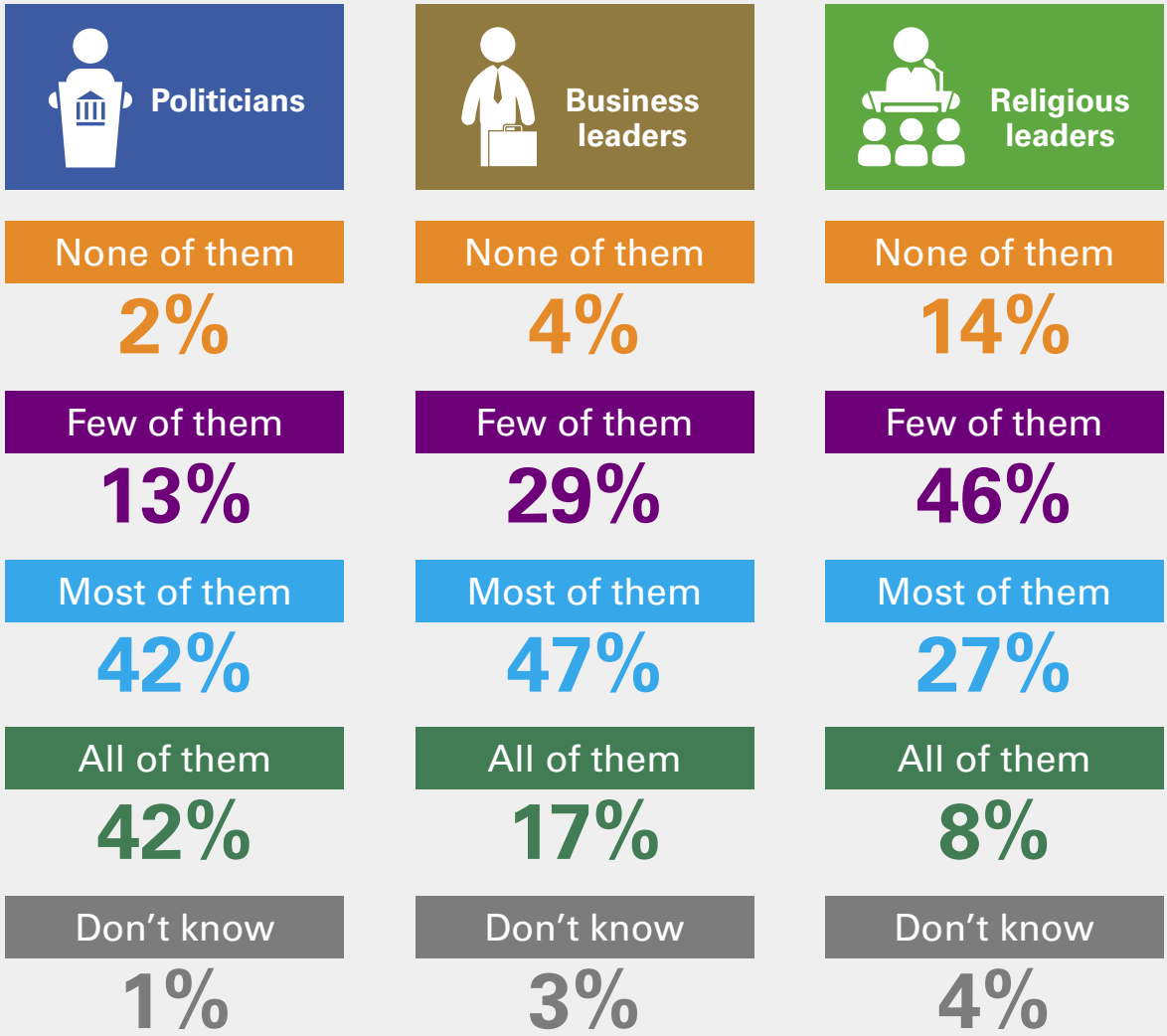
The NACS describes corruption as endemic in South Africa, a problem that has manifested itself in all spheres of society. One of the key goals of the strategy is to raise awareness about the negative impacts of corruption on our society. The NACS envisages that this will help create societal values and norms aligned with transparency, accountability and active citizenship. Greater awareness will also help support champions of anti-corruption activities by making people more cognisant of the need for action. This section briefly examines public awareness through the lens of the perceived level of corruption in the country, with an emphasis on corruption at elite levels. It also looks at perceptions of the impact of corruption on the economy and on the nation's state-owned enterprises (SOEs).

There is growing concern among policymakers that corruption has become more pervasive in South Africa. The 2016 NACS Diagnostic Report identified evidence of the escalating level of corruption in various government departments, as well as local government and the public service (The Presidency, 2016). Although the authors acknowledged the lack of data available, the report also recognised significant concerns about corruption in the private sector. These findings from the Diagnostic Report were acknowledged in the NACS, which expressed grave concern about the scale of corruption in South African society.

Similarly, many experts interviewed for this study were concerned that the problem of corruption had worsened in recent years. John Clarke, whistleblower activist and anti-corruption campaigner, believes that corruption has increased a lot since 2015, a view shared by 43% of his fellow experts. A quarter thought that corruption had increased a little, while only a small minority (3%) believed that corruption had decreased since 2015.

Which types of leaders in South Africa are considered most likely to engage in corruption? As part of our expert survey, respondents were read a list of different types of leaders and asked: 'How many [of the following] do you believe are involved in corruption?' Politicians were ranked as the most corrupt. Nearly nine-tenths of this group said that either almost all politicians were corrupt (35%) or that quite a lot were (52%). Many experts also regarded business leaders as corrupt. About half of those interviewed thought that either quite a lot of business leaders were corrupt (49%) or almost all were (6%). Our expert data can be judged against results from equivalent questions included in the general public opinion survey. As part of SASAS 2023, respondents were read a list of three different types of leaders and asked how many of each group were involved in corruption.[4] The results are presented in **Figure 5**.

**Figure 5: Assessment of the involvement of types of leaders in corruption, 2023**



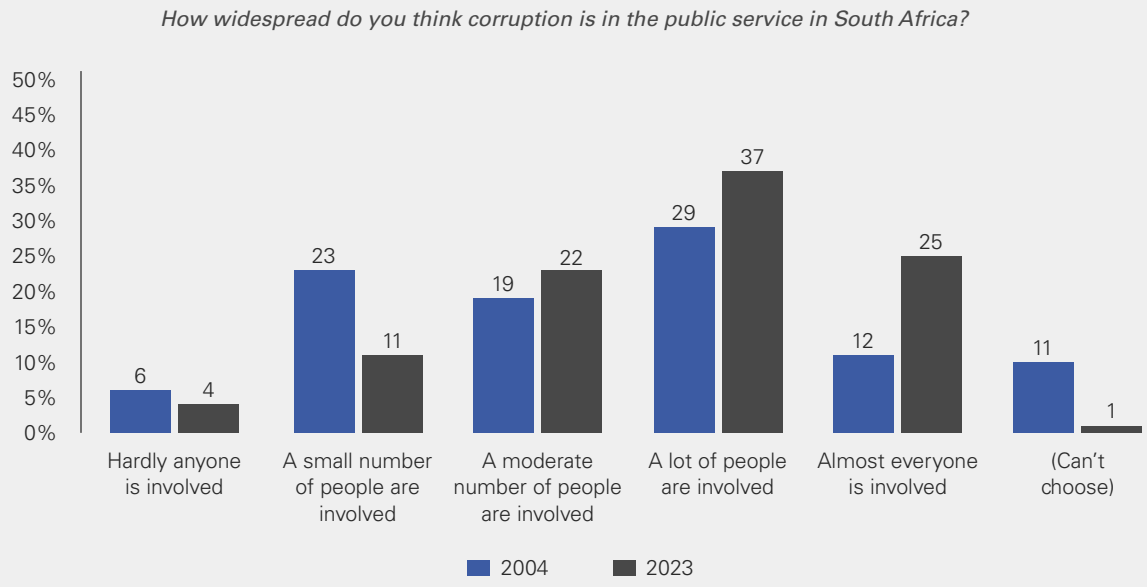

*Note: Respondents were asked: '[A]mong the following groups of people, how many do you believe are involved in corruption?'*

*Source: South African Social Attitudes Survey (SASAS), 2023*

Consistent with what we saw from the expert survey data, the general public tended to perceive politicians as the most corrupt kind of leaders in South Africa. Approximately two-fifths (42%) of the populace believed that all politicians were involved in corrupt behaviour. Other public opinion research also tends to produce comparable results. The data presented in **Figure 5**, for example, are comparable to data from the 2019/2021 wave of Afrobarometer (Afrobarometer Project, 2022). The Afrobarometer data make a distinction between different types of politicians (parliamentarians, local government councillors and the president). According to that data, South Africans, on average, viewed these different types as all quite corrupt and did not really view one type as significantly less corrupt than others. In our survey, non-political leaders were seen as far less corrupt than their political counterparts: only 17% of adults thought that all business leaders were corrupt and 8% believed the same about all religious leaders. The public were slightly more negative than the experts we surveyed about the scale of corruption among political leaders, but the reverse was true of business leaders.

It is apparent from **Figure 5** that the general population was quite concerned about corruption among politicians. We now narrow our focus and concentrate on the public sector. The following question was put to survey participants in both SASAS 2004 and SASAS 2023: 'How widespread do you think corruption is in the public service in South Africa?' Public responses from both survey rounds are displayed in **Figure 6**. On the whole, it is evident that the public was quite worried about corruption among public sector officials. When asked about the issue in SASAS 2023, a quarter of adults (25%) said that almost all public officials participated in corrupt behaviour. A notable proportion (37%) of the public felt that quite a lot of them were implicated, while 22% thought that only a moderate number were involved. These results can be juxtaposed against what we found in the expert survey. Jay Kruuse, Director of the Public Service Accountability Monitor, believed that quite a lot of public service employees in South Africa participated in corruption. His position was supported by more than two-thirds (69%) of surveyed experts, who said that many civil servants were involved.

**Figure 6: Evaluations of the involvement of public service in corruption, 2004 and 2023**

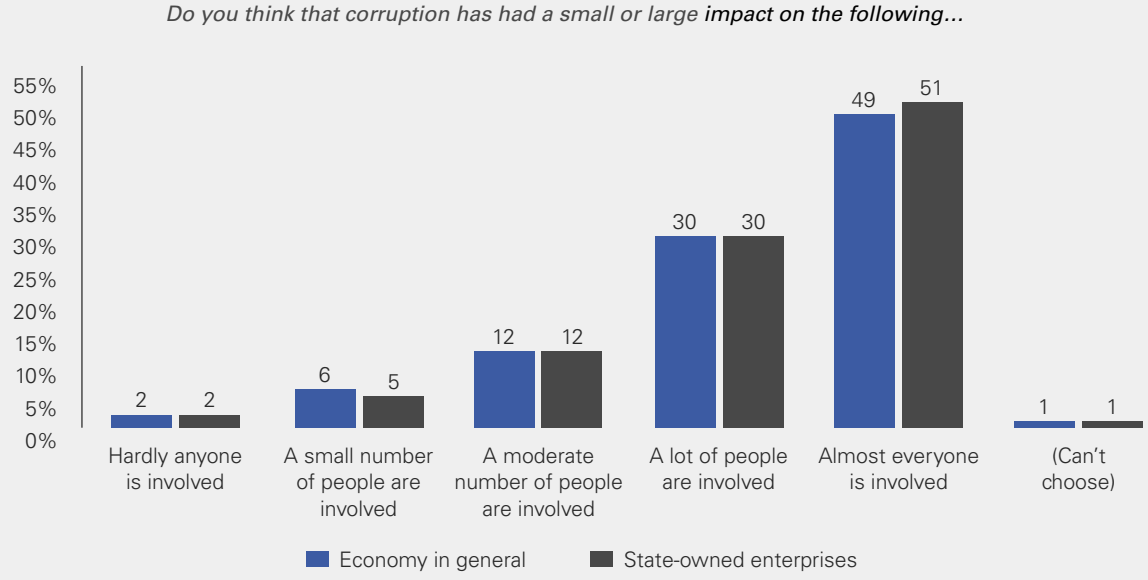



*Source: South African Social Attitudes Survey (SASAS), 2004 , 2023*

Comparing the SASAS 2023 data on perceived public service corruption to what we observed in SASAS 2004, it is evident that the public has grown more disapproving of the conduct of officials over time. The growth of perceived corruption within the public service is even more pronounced if SASAS 2023 data are compared to similar public opinion data from the 1990s. If we consider data from the World Values Survey (WVS), we can see how attitudes on this subject have changed over a longer time period (Inglehart et al., 2022). The following question was asked of South Africans during the 1994/1998 wave of the WVS: 'How many public officials in South Africa are involved in corruption?' At the time, 15% of the adult public said that almost all public officials were involved in corruption and 30% stated that most were involved. When comparing the WVS results to the SASAS 2004 and 2023 data, it is evident that the perceived pervasiveness of public sector corruption remained relatively stable between the 1994/1998 WVS wave and the SASAS 2004 round, but has increased appreciably since 2004.

We conclude this section by looking at mass evaluations of the impact that corruption has had. Survey participants in SASAS 2023 were asked to evaluate the perceived scale of impact that corruption has had on the South African economy in general. More than three-quarters (79%) of the adult population believed that the economic impact of corruption had been large (**Figure 7**). This high figure can be compared to data from the 2006 Global Corruption Barometer (GCB),[5] which showed that slightly more than half (56%) of the general public in 2006 felt that corruption had influenced the business environment to a large extent. It could be argued that growing concern among the public about corruption in SOEs is part of the reason for rising public apprehension about the economic impact of corruption observed here. As a follow-up to the question about the impact of corruption on the general economy, SASAS 2023 respondents were asked to state the degree to which they thought corruption had impacted SOEs in the country. Four-fifths (81%) of all adult South Africans said that the impact was large. Less than a tenth (7%) thought the impact was small, and 12% responded that the impact was neither small nor large.

**Figure 7: Appraisals of how much corruption has impacted on the economic situation, 2023**




*Source: South African Social Attitudes Survey (SASAS), 2023*

## Exposure to corruption

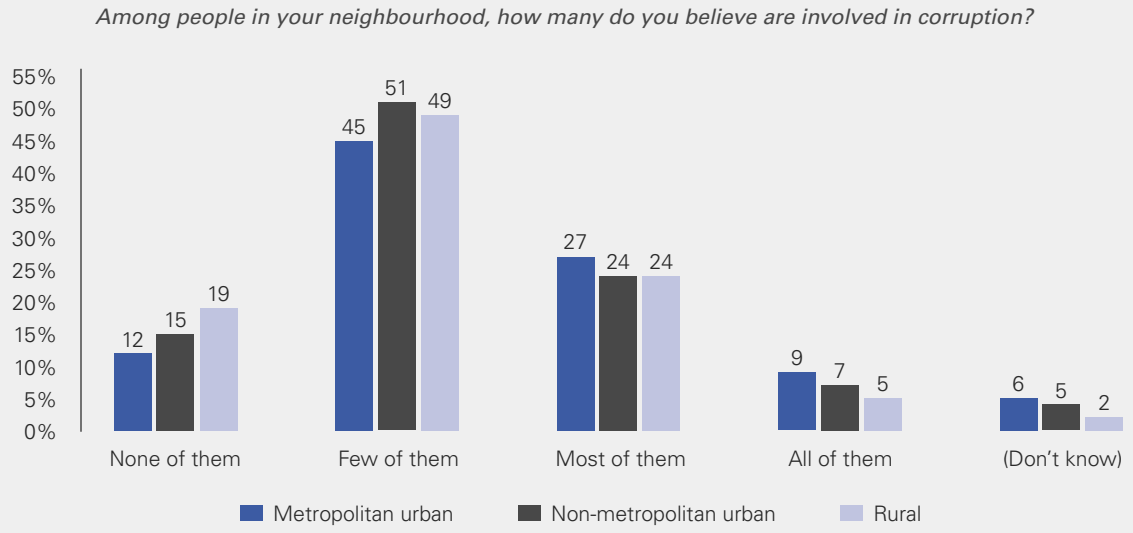
The NACS identifies respect for the rule of law as essential for its anti-corruption approach. It envisages a country whose citizens are not exposed to corrupt practices. The strategy places a significant emphasis on preventing the extortion of bribes (in whatever form) by public officials in exchange for entitled services or special treatment. Yet, what level of exposure has the general public had to corrupt practices, including bribery? In this section we investigate corruption experiences among the general public, with an emphasis on the public sector. Although experience is crucial for our study purposes here, we should recognise that response bias[6] may be a problem. Survey participants may be reserved about reporting their experiences of corruption to fieldworkers and may underreport the level of corruption that they encounter.

With respect to the perceived level of corruption within the South African population, more than half (56%) of experts interviewed believed that a lot of people were involved in corruption, and 8% thought that almost everyone was. Our expert sample tended to think that people living in urban areas engage in corrupt behaviour more often than those in rural areas. About two-thirds of this group thought that urban dwellers engaged in corruption either quite often (41%) or very often (21%). This can be compared to about a quarter of experts who believed that rural dwellers participated in corrupt behaviour quite often (21%) or very often (5%). These expert findings can be contrasted with SASAS data on whether an individual has been exposed to corruption in their community. SASAS 2023 respondents were asked to estimate the level of corruption in their neighbourhood. It is clear from the responses that many people thought that they were surrounded by corrupt neighbours.

**Compared to those living in rural or non-metropolitan urban areas, adults living in large cities tend to feel that their neighbourhoods are more corrupt**

As part of the SASAS 2023 module, the following question was put to participants: 'Among people in your neighbourhood, how many do you believe are involved in corruption?' This is a good proxy for injunctive social norms about corruption at the neighbourhood level. Most of the adult population across all different types of geographic areas (geotypes) said that at least some of their neighbours were involved in corrupt behaviour, while only a small percentage (15%) said that no one in their neighbourhood was involved. Close to half (48%) of the general public, across all geotypes, believed that a few of their neighbours were involved, and 25% stated that most of them were. Remarkably, we found that 7% of adults claimed that all of their neighbours were involved in corruption. Compared to those living in rural or non-metropolitan urban areas, adults living in large cities tended to feel that their neighbourhoods were more corrupt. However, this differential was not especially strong, as can be observed from the pattern of results presented in **Figure 8**. This finding can be juxtaposed against the expert survey data, which suggested a much wider disparity between urban and rural dwellers.

**Figure 8: Perceived level of neighbourhood corruption across types of geographic area, 2023**

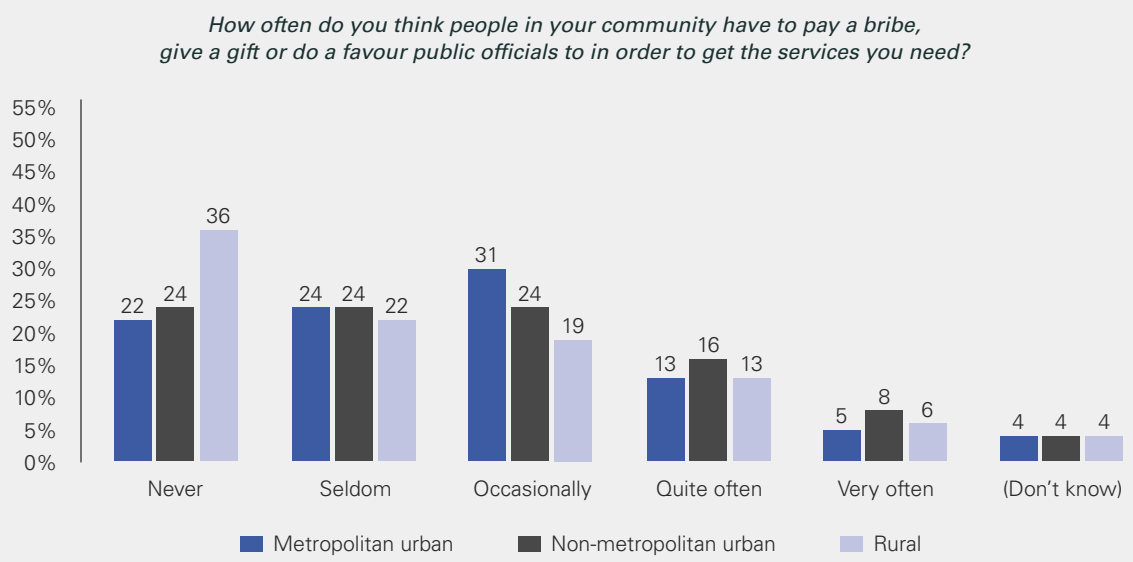



*Source: South African Social Attitudes Survey (SASAS), 2023*

There is anecdotal evidence that public officials sometimes refuse services to South African residents unless they pay a bribe of some kind. The SASAS 2023 questionnaire included a question exploring the frequency of exposure to this type of public sector corruption. Data results show that, on average, only a small proportion (27%) of all adults believed that they lived in communities that were free of public sector extortion. Nearly half (48%) of the public thought that it occurred infrequently in their community, with 23% stating that it happened seldom, and 25% claiming that it took place occasionally. A fifth (20%) believed that corruption in their community was fairly common, with 14% answering 'quite often' and 6% 'very often' in response to this question. As can be seen from **Figure 9**, there was a significant difference in perceived levels of public sector corruption by geotype group. Residents of rural areas believed that their communities were less corrupt than those in urban areas. Residents of non-metropolitan urban areas thought that corruption was somewhat more frequent in their communities than their metropolitan counterparts.

In order to understand how exposed the general public is to corruption, respondents in both the SASAS 2006 and 2023 rounds were asked the following question: 'In the last five years, how often have you or a member of your immediate family come across a public official who hinted they wanted, or asked for, a bribe or favour in return for a service?' During the 2006 round, 63% of the adult population told fieldworkers that this had not happened to them during the specified timeframe. Levels of exposure were 18 percentage points higher in SASAS 2023, a significant increase over the time period (**Figure 10**). The 1998 Victims of Crime Survey (VCS) also included a similar question on whether a public official had asked for a bribe in the five years prior to the survey.[7] The vast majority (96%) of the adult public reported that this had not occurred in the five years before the VCS interview. Although the response options provided to VCS respondents were not analogous with those of SASAS, the difference between the two time periods is striking.

**Figure 9: Perceived community level of public sector corruption across type of geographic area, 2023**




*Source: South African Social Attitudes Survey (SASAS), 2023*

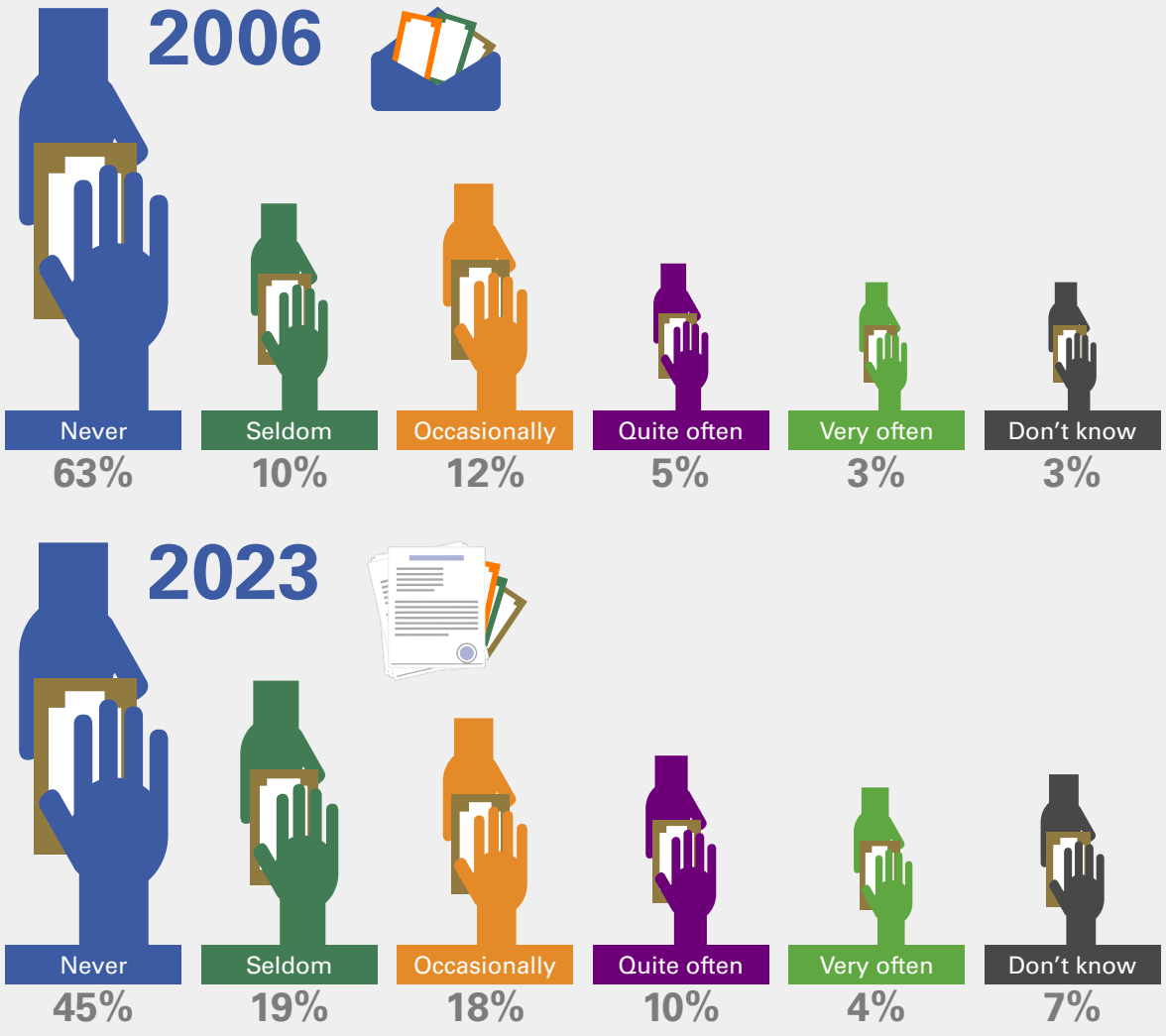
Reviewing the data provided in **Figure 10**, it is evident that there was a significant increase in the frequency of self-reported petty public corruption experience in the country between 2006 and 2023. Assessing how people answered the exposure question in SASAS 2023, we can see that a significant segment of the general public experienced corruption on a regular basis during the 2018–2023 reference period. A substantial minority of the adult population reported that they have been recently solicited for a bribe by a public official either quite often (10%) or very often (4%). Nearly a fifth (18%) said that it had happened occasionally and 19% told fieldworkers that this had taken place only seldom. In sum, and looking at different data sources, South Africans were, on aggregate, *far less* likely to report recent exposure to public sector corruption in the mid-2000s (or late 1990s) than they were in 2023.

It could be argued that the level of self-reported corruption experience presented in this section is lower than what we may have expected. Indeed, a considerable proportion of the experts interviewed thought that most people in the country were involved in corruption. We could be observing underreporting in SASAS due to social desirability response bias in the national dataset. Although we should not discount the possibility of response bias, it is important to consider that corruption experience is also informed by barriers to participation. Many poor and economically inactive South Africans simply do not have the financial resources to frequently participate in corrupt practices. In addition, many people (especially those in rural areas) have limited interactions with government officials of any kind. This would reduce their exposure to corruption in the public sector.

As part of SASAS 2023, participants were invited to rate how corruption was affecting their personal and family life. Only about a fifth (18%) of the general public said that corruption had a small impact on them and their family. A clear majority (64%) of the public told us that corruption had a large effect on them and their family. The remainder told fieldworkers that it had neither a small nor a large

impact (17%) or that they were uncertain of how to respond (1%). For a comparative perspective, according to data on the same issue from the 2006 round of the GCB survey, around half the population claimed that corruption had little effect on their personal and family life. Only a small share (32%) indicated that it had a large effect on their private life. Even considering the fact the GCB 2006 and SASAS 2023 do not use equivalent phrasing, the disparity between the two is remarkable. Adults in South Africa were, on the whole, *far more* likely to view corruption as having a sizeable effect on their lives in 2023 than in 2006.

**Figure 10: Self-reported exposure to petty public corruption, 2006 and 2023**




*Note: Respondents were asked how often they or an immediate family member had encountered a public official in the last five years who wanted a bribe or favour in return for a service.*

*Source: South African Social Attitudes Survey (SASAS), 2006, 2023*

## Perceived level of sextortion

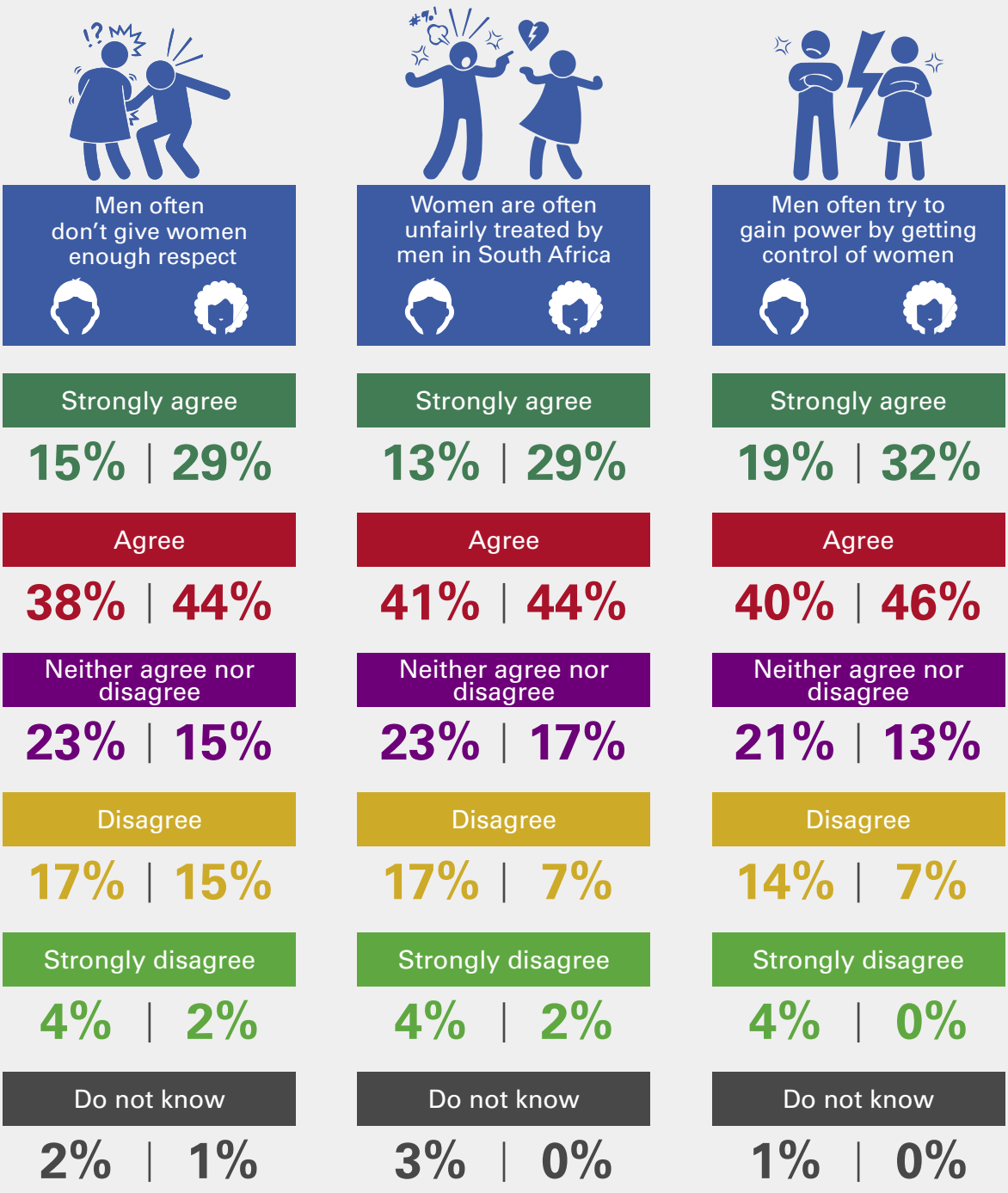
At the international level, sextortion is increasingly attracting considerable attention. Transparency International defines sextortion (also known as sexual corruption) as occurring when those 'entrusted with power use it to sexually exploit those dependent on that power' (Feigenblatt, 2020, p.2). While women are typically targeted, all gender groups are affected by sextortion. There is growing concern about sextortion in South African society, particularly that perpetrated by public sector officials (Gary, 2023). Among policymakers, however, the issue of sextortion has often received far less attention than other kinds of corrupt behaviour. For example, the NACS does not apply a gendered lens in its analysis of the corruption problem. This section explores the issue of sextortion in South Africa, with a specific interest in cases of sextortion in the public sector.

Before looking at sextortion, this section examines values and social norms related to sexual chauvinism. It is hypothesised that these may be related to the perceived prevalence of sextortion within South African society. To gain insight into the level of patriarchy within our society, we first turn to our expert survey data. A large share of the experts interviewed for this study viewed South Africa as exhibiting a patriarchal culture (one where male dominance and the control of women are viewed as 'good'). Vanja Karth, Director of the Democratic Governance and Rights Unit (DGRU) at the University of Cape Town (UCT), thought that South African society was very patriarchal. A sizeable proportion of surveyed experts agreed with her and described the country as a patriarchal society to a great (29%) or a considerable (42%) extent. Given this result, it is not surprising that most of this group also thought that many South Africans hold attitudes that are sexist or misogynist. Nearly two-fifths (37%) thought a majority held such attitudes and 49% said that a moderate proportion did. The full report will identify whether or not there was general agreement or substantial variation in views based on the gender of the experts.

> There is growing concern about sextortion in South African society, particularly that perpetrated by public sector officials

The expert data can be contrasted with the perceived level of patriarchy in society reported by the general public. SASAS respondents were asked whether they agreed or disagreed with three different statements about male chauvinism in South Africa. The responses are displayed in **Figure 11** and show that most people agreed that sexism is a common problem in the country. Approximately two-thirds (63%) of the adult public agreed that South African men often do not give women enough respect. A similar proportion (64%) believed that men often treat women unfairly, while 69% thought that men often try to gain power by controlling women. There was a distinct gender differential in how these questions were answered. Male adults were found to be significantly less likely to agree with the statements about patriarchy than female adults. However, it is important to acknowledge that the dominant male response is still one that acknowledges patriarchy/sexism in the country. In closing, both our expert survey and the general public recognised the prevalence of sexist social norms and values in South Africa.

**Figure 11: Public agreement and disagreement with three statements about sexual chauvinism, 2023**




*Note: Respondents were asked if they agreed or disagreed with three statements about men and women in South Africa.*

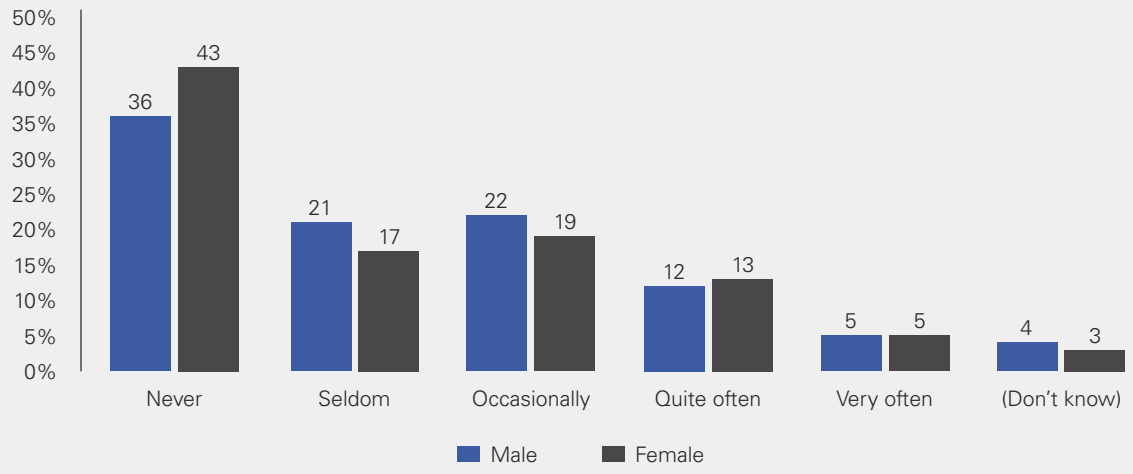
*Source: South African Social Attitudes Survey (SASAS), 2023*

Before participants in SASAS were asked about sextortion, they were read this statement: 'Sometimes public officials will ask for sexual favours in exchange for a government service, a job, or to avoid a fine. This could include sexual intercourse, inappropriate touching, or posing for sexual photos.' As part of SASAS 2023, respondents were requested to indicate whether they had 'heard about an official making requests of a sexual nature from someone you know in exchange for a government service or benefit in the last five years?'[8] Responses to this question can be used as (an imprecise) proxy for exposure to sextortion. Given societal taboos against discussing sexual behaviour, respondents may have been restrained when talking about this topic to a fieldworker whom they do not know.

Nevertheless, SASAS 2023 data show that most of the adult public in South Africa had heard about people in their social network being victims of public sector sextortion during the last five years. A large percentage had heard about such incidents recently happening to people they know quite often (13%) or very often (5%). The remainder claimed that they had seldom (19%) or occasionally (20%) heard about this happening recently to people they know. Two-fifths (40%) of the adult population claimed not to have heard about such a crime happening to someone they know in the five years prior to the interview. The data presented in **Figure 12** show that men were somewhat more likely than women to report having heard that someone they know was a victim of sextortion.

**Figure 12: Self-reported exposure to stories about sextortion in the public sector, by gender, 2023**

*How often have you heard about an official making requests of a sexual nature from someone you know in exchange for a government service or benefit in the last five years?*



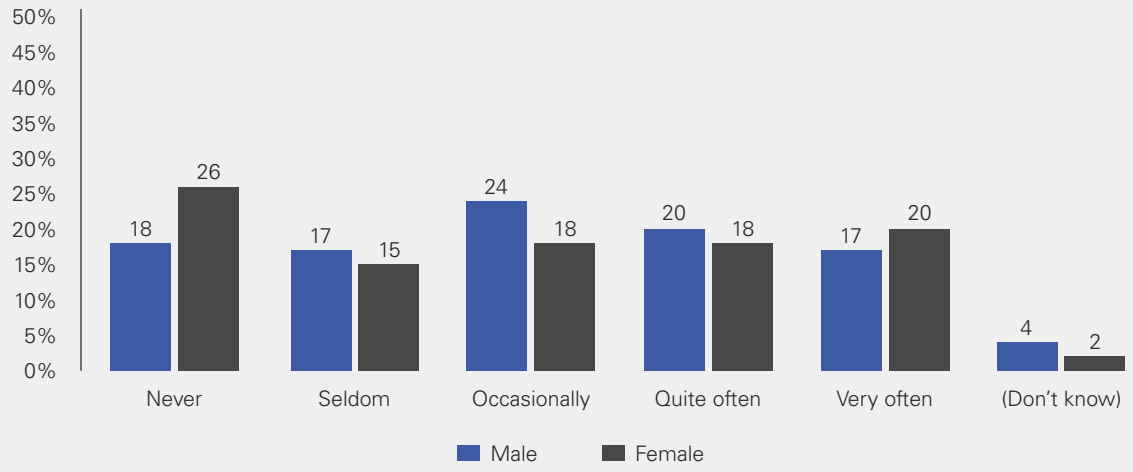

*Note: The share of the public self-identifying as non-binary is too small to report their pattern of responses to the question.*

*Source: South African Social Attitudes Survey (SASAS), 2023*

Turning to the perceived level of public sector sextortion in South African society, SASAS respondents were asked to indicate how often they think sextortion in the public sector occurs in South Africa. Three-quarters (75%) of all adults reported that this crime did occur, with only 22% claiming that it never took place, and 3% stating that they did not know how to respond (**Figure 13**). Around two-fifths (38%) thought it occurred either quite often or very often. The rest of the general public asserted that it

happened less frequently, with 16% responding with 'seldom' and 21% 'occasionally' when answering this question. The outcomes portrayed here can be compared against the results from our expert survey. Feminist and activist Sharon Ekambaram thought that sextortion occurred very often, a view shared by 16% of our expert sample. About a third (37%) of experts thought it happened quite often and 29% said it took place occasionally. Only a small minority said that this kind of crime occurred rarely (2%) or seldom (5%).

**Figure 13: Appraisals of how often public sector sextortion occurs in, by gender, 2023**




*Note: The share of the public self-identifying as non-binary is too small to report their pattern of responses to the question.*

*Source: South African Social Attitudes Survey (SASAS), 2023*

We found that men were more likely than women to claim that the crime of sextortion was commonplace. This gender differential is apparent from the pattern of results presented in **Figure 13**, and may be explained by what we observe in **Figure 12**. In other words, if a person had heard about their friends and family being victims of public sector sextortion, then they were more likely to think that this crime was quite common in South Africa. In sum, we find that sextortion is perceived as quite a major problem in South Africa. This important finding builds on small-scale preliminary research by Gary (2023) and Merkle (2023), which identified sextortion as a significant issue in the country.

## Attribution and responsibility

When individuals seek to solve a problem, they first ask themselves *what* is causing the problem. The solutions that they pursue are often informed by the answer to this question. Social psychologists term this process 'lay attribution', defining attributions as the causal explanations used by ordinary people (or non-experts) to explain a phenomenon. In this section, we look at the main causal attributions for what is causing corruption. Since not all types of corruption are the same, a distinction is made between corruption among ordinary people and corruption at the elite level. This provides unique insight into how citizens understand different types of corrupt conduct in South Africa.

The SASAS 2023 questionnaire contained this question about the reasons that ordinary people might participate in corrupt practices: 'In your opinion, what are the main reasons why ordinary people in South Africa might engage in corruption?' Respondents were then read a list of options and requested to select all that applied. Responses are depicted in **Table 6**, which shows that most people were able to answer the question. Only a small share was unable to provide a response, with 3% (SE=0.006) saying they were unsure and 1% (SE=0.002) remarking that there was no corruption in South Africa. Many members of the general public provided multiple responses, with only a third providing a single response when asked to answer this question. When delineating lay attributions, special consideration was given to distinguishing internal from external factors.[9]

**Table 6: Main attributions identified for why there is corruption among ordinary people (multiple response), 2023**

| | % | | [95% Conf. Interval] | |
|---|---|---|---|---|
| **Psychological factors** | | | | |
| People are greedy and want to get rich quick | 50 | (1.586) | 46 | 53 |
| People want better treatment | 35 | (1.508) | 32 | 38 |
| People are by nature dishonest | 29 | (1.422) | 27 | 32 |
| People think corruption is normal | 26 | (1.373) | 24 | 29 |
| **System justification** | | | | |
| It is the only way to get access to essential services | 23 | (1.275) | 20 | 25 |
| People want to avoid government harassment | 12 | (1.081) | 10 | 14 |
| **Other responses** | | | | |
| The courts and police do not punish people for corruption | 27 | (1.241) | 24 | 29 |
| Poor socio-economic conditions lead to corruption | 27 | (1.324) | 24 | 29 |
| Other reason | 1 | (0.330) | 1 | 2 |
| **Non-response** | | | | |
| There is no corruption among ordinary people | 1 | (0.245) | 0 | 1 |
| Do not know | 3 | (0.558) | 2 | 5 |

*Note: Linearised standard errors in parenthesis.*

*Source: South African Social Attitudes Survey (SASAS), 2023*

The most common lay attributions offered in **Table 6** involved psychological (internal) factors, with 82% of public opinion identifying at least one of these factors as among the main reasons for corruption. Of the four different internal factors listed, greed and the pursuit of quick wealth (50%; SE=1.586) was the most popular response, followed by a desire for better treatment (35%; SE=1.508). Given that an earlier section ('What kind of society do we have?') showed that most of the general public holds a materialistic view of success, this finding seems unsurprising. Although the least popular internal attribution concerned the belief that corruption is normal, 26% (SE=1.373) of all adults selected this option. Although external (environmental) factors were less common, many people still mentioned them. The most common were the lack of political will to fight corruption (27%; SE=1.241)

and poor socio-economic conditions (27%; SE=1.324). The least common external factors concerned system justification, which defends the decision to engage in corrupt behaviour based on the need to access essential services and avoid harassment from the state.

Participants in the expert survey were also asked about the primary drivers of corruption in South Africa. The data received showed that a range of factors are at play, including: (i) greed and materialism; (ii) low levels of personal morality and responsibility; (iii) the state bureaucracy being so inefficient or corrupt that participating in corruption is the only way to access basic services; (iv) a lack of opportunities in the legitimate economy; and (v) the absence of consequences for corrupt activities due to an inefficient and ineffective criminal justice system.

A number of experts favoured system justification responses. Ralph Mathekga, Senior Expert at Geopolitical Intelligence Services, echoed the sentiments of many when he pointed to 'a lack of connectedness with others and [a] sense of being overwhelmed by the system…[so that] one has to pay [a] bribe or else be inconvenienced a great deal'. Collette Schulz-Herzenberg, Professor at Stellenbosch University, expressed related sentiments: 'A breakdown in trust in democratic institutions, coupled with high levels of poverty and unemployment, motivate people to pay bribes for services.' A respondent who preferred anonymity also indicated that a combination of factors encourage or enable corruption in urban settings: 'They need to access services and can get away with bribing officials without being caught. It is not wrong if everyone is doing it, is the thinking.'

As noted earlier, the general public is quite concerned about corruption among their leaders in South Africa. It appears that many believe that corruption is prevalent among the country's rich and powerful. SASAS included the following attribution question to try to understand how the general public saw corruption among the elite: 'In your opinion, what are the main reasons why the rich and powerful people in South Africa might engage in corruption?' Survey participants were then read a list of options and asked to select the most appropriate. The results, presented in **Table 7**, show that most people provided multiple responses to this question. The average number of responses was two, and only a nominal share of all adults did not provide an answer. A small proportion (3%; SE=0.0558) responded 'do not know' and 2% (SE=0.245) gave an answer that was not on the list provided to respondents.

A varied assortment of different lay attributions for elite corruption were selected by the general public. The most common responses concerned internal (psychological) factors, with three-quarters of the public selecting such a factor (**Table 7**). The most popular factor here was greed (48%; SE=1.582), followed by the normalisation of corruption (33%; SE=1.456) and inherent dishonesty (28%; SE=1.334). Another rationale for elite corruption was the lack of political–legal constraints, with three-fifths of all adults selecting enforcement factors. Nearly two-fifths (38%; SE=1.488) of the adult population attributed it to a lack of political will, and 32% (SE=1.530) blamed the inaction of the courts and the police. A significant minority, perhaps surprisingly, justified elite corruption within the confines of the current system. A quarter of the public said that this form of corruption was the only way to get things done in the country.

**Table 7: Main attributions identified for why there is corruption among powerful elites (multiple response), 2023**

| | % | | [95% Conf. Interval] | |
|---|---|---|---|---|
| **Psychological factors** | | | | |
| Elites are greedy and want to get rich quick | 48 | (1.582) | 45 | 51 |
| Elites think corruption is normal | 33 | (1.456) | 30 | 35 |
| Elites are by nature dishonest | 28 | (1.334) | 26 | 31 |
| **Enforcement factors** | | | | |
| Politicians do not do enough to fight corruption | 38 | (1.488) | 35 | 40 |
| The courts and police do not punish people for corruption | 32 | (1.530) | 29 | 35 |
| Anti-corruption policies are not enforced | 19 | (1.134) | 16 | 21 |
| **System justification** | | | | |
| It is the only way to get things done in this country | 25 | (1.410) | 22 | 28 |
| Elites want to avoid government harassment | 9 | (0.894) | 7 | 10 |
| **Other responses** | | | | |
| Other reason | 1 | (0.580) | 0 | 2 |
| There is no elite corruption | 0 | (0.151) | 0 | 1 |
| Do not know | 4 | (0.608) | 3 | 5 |

*Note: Linearised standard errors in parenthesis.*

*Source: South African Social Attitudes Survey (SASAS), 2023*

## Lawbreaking norms and values

One of the strategic objectives outlined in the NACS is that citizens should be empowered with knowledge about what constitutes corruption and about the negative effects of corruption on the state and society. Education is therefore considered essential for changing social values and social norms towards corruption. It is hoped that education will strengthen ethical consciousness, integrity and principled conduct. The concern of the NACS is that if a community does not view a particular act as unlawful and unjustified, then the moral cost of any community member engaging in such an act is reduced. For this reason, understanding the social tolerance for certain behaviours is considered vital. This section briefly looks at the perceived justifiability of unlawful acts, with an emphasis on corrupt behaviours such as nepotism, bribery and sexual exploitation.

Experts tend to think that the South African public do not adhere to social norms of law and order. Respondents interviewed for our expert survey were divided about whether people in the country value the rule of law. Paul Holden, Director of Investigations at Shadow World Investigations, thought that a majority did show respect for the law. Only a small segment (24%) of experts agreed with him on this issue. Gareth Newham, Head of Justice and Violence Prevention at the Institute for Security Studies, stated that only a minority of the public respected and valued the law. More than a quarter (28%) of experts surveyed supported his position, and 3% said that almost no one respected the law. Indeed, when asked what words

or phrases best describe South Africa in the present, 57% of experts said that the country was lawless, and 62% opted for violent. In sum, our expert survey data suggest that the South African public generally do not respect the rule of law. But what does the public opinion data from SASAS tell us?

To assess societal norms against participating in unlawful behaviours, we turn to our public opinion data. As part of the SASAS 2023 survey, respondents were presented with the following statement: 'Please tell me for each of the following actions whether you think it can always be justified, never be justified, or something in between.' Survey participants were then read a list of eight different types of unlawful behaviour, ranging from petty types of crime (e.g. avoiding paying for public transport) to extreme types (e.g. violence against other people). Responses were captured on a 0–10 scale, with 0 representing 'never justifiable' and 10 representing 'always justifiable'. These questions were designed to measure descriptive social norms around criminal behaviour. For ease of interpretation, each scale was converted to a 0 to 100 range. Mean scores on these scales are presented in **Table 8**, with the results showing that mean justifiability scores ranged between 26 and 33 out of 100 for the eight unlawful activities.

**Table 8: Perceived justification scales (0–100) of different lawbreaking activities, 2023**

| | Mean justifiability score (0=never justifiable; 100=always justifiable) | | [95% Conf. Interval] | |
|---|---|---|---|---|
| **Defrauding the state** | | | | |
| Avoid paying for public transport | 33 | (0.962) | 31 | 35 |
| Improper claiming of social grants | 30 | (0.933) | 28 | 32 |
| Cheating on your taxes | 29 | (0.914) | 27 | 31 |
| **Corrupt behaviour** | | | | |
| Having sex with someone to get a job | 26 | (0.923) | 24 | 28 |
| Accepting bribes | 27 | (0.882) | 26 | 29 |
| Nepotism in the public sector | 27 | (0.912) | 25 | 29 |
| **Contact crime** | | | | |
| Stealing goods from a shop | 27 | (0.831) | 25 | 28 |
| Violence against other people | 27 | (0.872) | 25 | 29 |

*Note: Linearised standard errors in parenthesis.*

*Source: South African Social Attitudes Survey (SASAS), 2023*

It is apparent from the data presented in **Table 8** that a noteworthy minority share of the public viewed both major and minor acts of lawbreaking as acceptable. It is worth noting that we need to be cognisant of the possibility of response bias here. Given that respondents may feel reticent about admitting that they find certain types of unlawful behaviour acceptable, the high scores evident on certain measures are astonishing. The unlawful behaviour that was seen as most acceptable was avoiding paying for public transport (M=33; SE=0.962) and unlawful social grant claims (M=30; SE=0.933). The least justified behaviour concerned sexual favours for employment (M=26; SE=0.923).[10] It was surprising to note that a sizeable number of people viewed contact crime as justifiable. The observed mean justifiability score for stealing from a shop (M=27; SE=0.831) was not too different from the justifiability scores for less serious crimes (such as not paying for public transport).

The bribery question portrayed in **Table 8** has been included in each WVS round conducted since the 1990s. If we examine data on the perceived justifiability of bribery from these rounds, we find a significant increase in the societal acceptability of this kind of corruption over time.[11] WVS data show that bribery was viewed as far less acceptable in South Africa in the 1990s than it was in SASAS 2023. When the question was included in the 1994/1998 WVS round, the mean score on this variable was 10 out of 100 (SE=0.372). The mean score on the scale increased to 17 (SE=0.525) in the 1999/2004 round, remained in a similar range at 15 (SE=0.459) in the 2005/2009 round, and rose more substantially to 34 (SE=0.563) in the 2010/2014 round. Looking at this change from another perspective, 85% of the general public scored below 30 on the scale in the 1994/1998 WVS round. When the question was fielded in SASAS 2023, slightly over half (56%) of the adult population scored below 30 on the scale. The mean justifiability of bribe taking in South Africa is now much higher than in most other countries in the WVS.[12]

The perceived acceptability of one kind of unlawful act was found to be correlated with the acceptability of others. In other words, if a person thought that one unlawful act (e.g. avoiding paying for public transport) was acceptable, then they were more likely to think that others (e.g. accepting bribes or nepotism) were similarly acceptable. Statistical testing showed that the contact crime items represented in **Table 8** were very strongly interrelated with the corrupt behaviour items. Of all the items in the table, the one that was most strongly associated with the corruption items was the acceptability of stealing. In short, this analysis suggests that the perceived acceptability of corrupt behaviour evident in this section is part of a general se t of social norms that disrespect the rule of law.

## Reporting corruption

The NACS aims to promote an active citizenry that is empowered to hold leaders and organisations accountable. The strategy acknowledges that public vigilance, exercised through tireless monitoring, will be the key to success. Indeed, the first of the six strategic pillars of the NACS calls for all members of the public to take personal responsibility in preventing and addressing corruption. This pillar identifies reporting corruption as one of the best methods to forge an ethical and accountable political system, economy and society. Reporting will help create the social values and social norms of transparency and accountability that are needed to achieve a society free of corruption. This section examines public attitudes towards reporting corruption, exploring the values and social norms that inform this behaviour. A particular emphasis is placed on *why* many people do not report corruption to the authorities.

SASAS respondents were informed that they would be questioned about what they would do if they experienced or witnessed corrupt behaviour. To assist them to answer the question, two examples of corrupt behaviour were included: 'the misuse of funds' and 'requests for bribes'. Survey participants were then asked: 'If you experienced or witnessed corrupt behaviour, how likely is it that you would report it?' Respondents were divided about how they would act if faced with such a scenario. Roughly half thought it was likely they would report it, with 21% stating that it was very likely and 31% that it was likely. A similar proportion considered it unlikely that they would report corrupt behaviour: 30% believed that it was not very likely while 15% said that it was not at all likely.

Survey participants were requested to provide a rationale for why many people in South Africa do not report corruption. The question was: 'Some people say that many incidents of corruption are never reported. Based on your experience, what do you think is the main reason why many people do not report corruption when it occurs?' A wide variety of different options were read out and multiple options could be selected. Responses are shown in **Table 9**; only a small percentage of the public were unable to provide an answer. Indeed, about two-thirds of the population provided multiple responses when queried about the main reasons for not reporting corruption, with two-fifths providing more than two responses.

As indicated in **Table 9**, the most commonly selected responses involved environmental (external) factors. Nearly nine-tenths (86%; SE=0.010) of the general public identified factors related to the law enforcement system as one of the main reasons for a lack of corruption reporting. Of the four different external factors listed, lack of punishment for the guilty scored highest (51%; SE=1.584), and this was followed closely by a lack of protection for those reporting corruption (49%; SE=1.578). Unfortunately, we found that 30% (SE=1.415) of the public stated that the reporting structures themselves were corrupt. Slightly more than half (55%) of the population listed psychological (internal) factors as drivers of non-reporting. The most common internal factor selected was the normalisation of corruption, with 27% (SE=1.376) stating that no one bothers because corruption is normal and everyone does it. Similar proportions of the public also selected a lack of knowledge (23%; SE=1.251) and concerns about ingroup loyalty (21%; SE=1.296).

**Table 9: Main attributions identified for why many people do not report corruption (multiple response), 2023**

| | % | | [95% Conf. Interval] | |
|---|---|---|---|---|
| **Psychological factors** | | | | |
| Corruption is normalised | 27 | (1.376) | 25 | 30 |
| People don't know where to report it | 23 | (1.251) | 21 | 26 |
| No one wants to betray anyone | 21 | (1.296) | 19 | 24 |
| **Environmental factors** | | | | |
| Those responsible will not be punished | 51 | (1.584) | 48 | 54 |
| There is no protection for those who report corruption | 49 | (1.578) | 46 | 52 |
| The officials where they would report to are also corrupt | 30 | (1.438) | 27 | 33 |
| It is not worth the effort of reporting it | 28 | (1.415) | 25 | 30 |
| **Other responses** | | | | |
| Other reason | 2 | (0.476) | 1 | 3 |
| Refused | 3 | (0.586) | 2 | 4 |

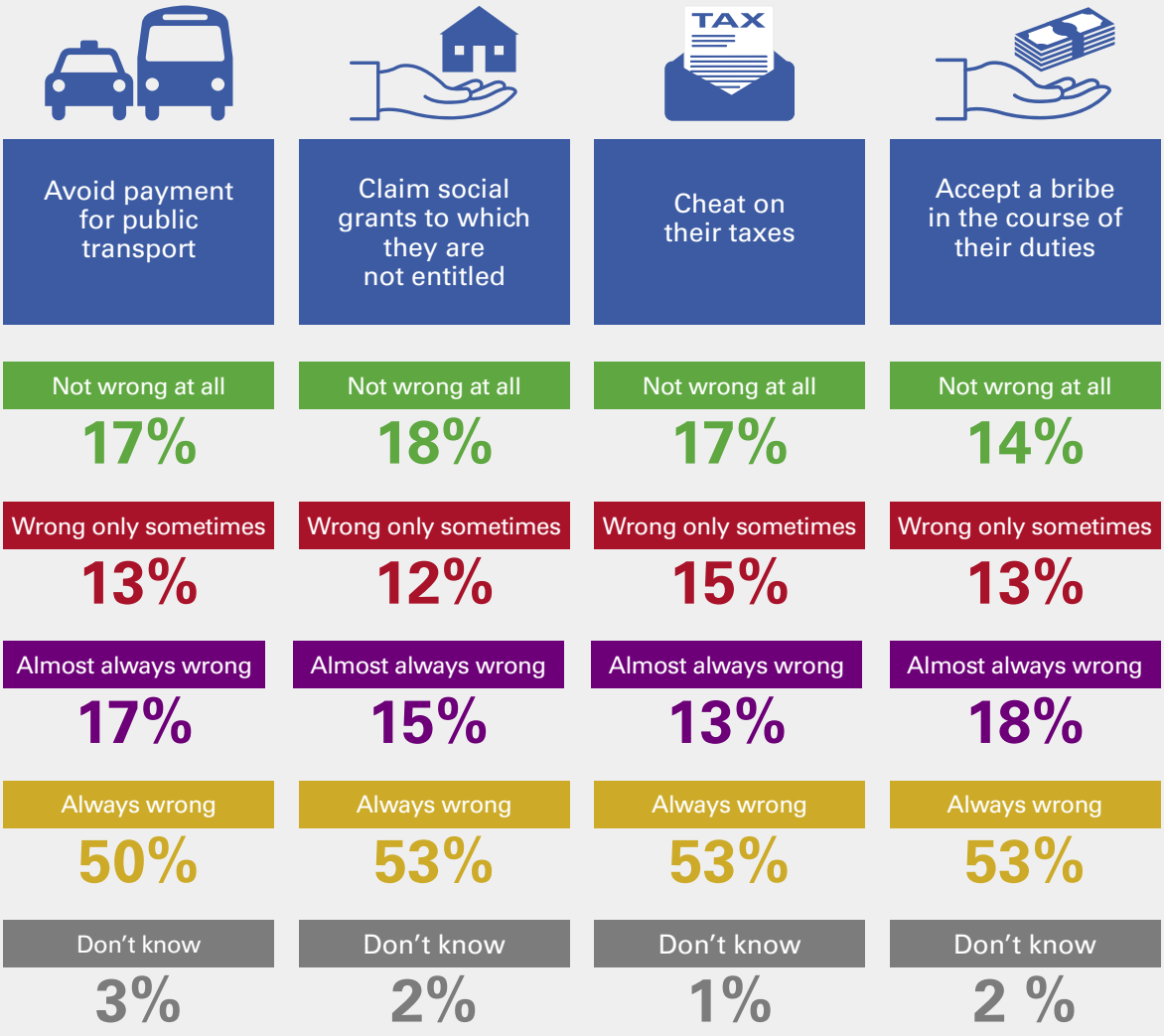
*Note: Linearised standard errors in parenthesis.*

*Source: South African Social Attitudes Survey (SASAS), 2023*

Whistleblowers play a crucial role in promoting transparency, accountability and integrity in South Africa. It is important to encourage whistleblowers and celebrate their brave decision to report corruption. However, our expert sample was divided on whether the general public in South Africa had a positive or negative view of whistleblowers. Professor Natasja Holtzhausen at the University of Pretoria thought that people had a negative view of whistleblowers on the whole, and 30% of the experts agreed with her. Kavisha Pillay, NACAC councillor, disagreed and said that people had a positive view, and 42% of the expert sample supported this position. Our findings here can be contrasted with recent public opinion research on the Zondo Commission. This work found that most (82%) of the general public had heard the term 'whistleblowers' (Roberts & Mchunu, 2023). The research also found some popular support for whistleblower protection, with a clear majority favouring policy interventions that would help those reporting corruption.

People may feel uncomfortable reporting the corrupt behaviour of a member of their ingroup, whether it be defined in terms of family, friendship, workplace or locality. Indeed, ingroup loyalty was cited as a reason that people did not report corruption, as shown in **Table 9**. To look more closely at ingroup loyalty, SASAS respondents were asked about the morality of reporting ingroup members for committing different types of unlawful behaviour. This was included to provide insight into descriptive social norms around reporting behaviour. Responses are shown in **Figure 14**, and we can see that reporting on ingroup members was generally seen as morally wrong. Popular opinion did not seem to make much distinction between the different kinds of unlawful behaviour. Even when asked about quite serious crimes, most people said it was wrong to report on others. Consider, for example, that 53% of adults thought that reporting someone for accepting bribes was always wrong and 18% believed that it was almost always wrong. Only a small proportion of the public claimed that this behaviour was wrong only sometimes (13%) or not at all (14%).

**Figure 14: Perceived morality of reporting the unlawful behaviour of ingroup members, 2023**




*Note: Respondents were asked: 'To what extent do you think it is wrong or not wrong for someone to report someone you know personally (like a friend, co-worker or neighbour) to the authorities if they did the following behaviours?'*

*Source: South African Social Attitudes Survey (SASAS), 2023*

One of the main reasons given for why people do not report corruption is fear of retaliation (see **Table 9**). Indeed, informal codes of silence are often enforced through fear. Consequently, it is prudent to consider how risky people think it is to report corruption. As part of SASAS 2023, respondents were asked whether they agreed or disagreed with the following statement: 'In this community, people risk revenge if they speak out against corruption.' How people answered this question helps us understand injunctive social norms against reporting corruption in South African communities. Almost two-thirds (63%) of the adult population agreed with the statement while only 14% disagreed. The remainder either gave a neutral answer (21%) or were uncertain of how to answer the question (3%). This finding is comparable with data from Afrobarometer 2019/2021. As part of that survey round, participants were invited to indicate whether ordinary people like themselves could safely report corruption or whether they would risk retaliation (Afrobarometer Project, 2022). A clear majority (76%) thought that reporting corruption would result in retaliation, and only a minority (21%) stated that people could report without fear.

This section has covered public attitudes towards reporting corruption but has not asked the question: '*Who* should people be reporting *to*?' As part of our expert survey, respondents were asked to imagine that a person has become aware of a particular instance of corruption and wants justice. Then they were requested to indicate which institutions or agency this person should approach to help them get justice. The most popular choices were non-governmental organisations dealing with corruption issues, as well as the media. Some of the least popular responses included political representatives, trade unions and religious organisations. Most of those interviewed for the expert survey were quite critical of the country's system of law and order. Only about half (52%) of the experts responded that people should report corruption to judicial agencies (i.e. law enforcement or investigative agencies),[13] such as the National Prosecuting Authority (NPA) and the Special Investigating Unit (SIU). A smaller percentage (38%) said that people should report the alleged corruption to the police. This may be due to the fact that many experts interviewed for this study thought that police officers in the country were corrupt.[14]

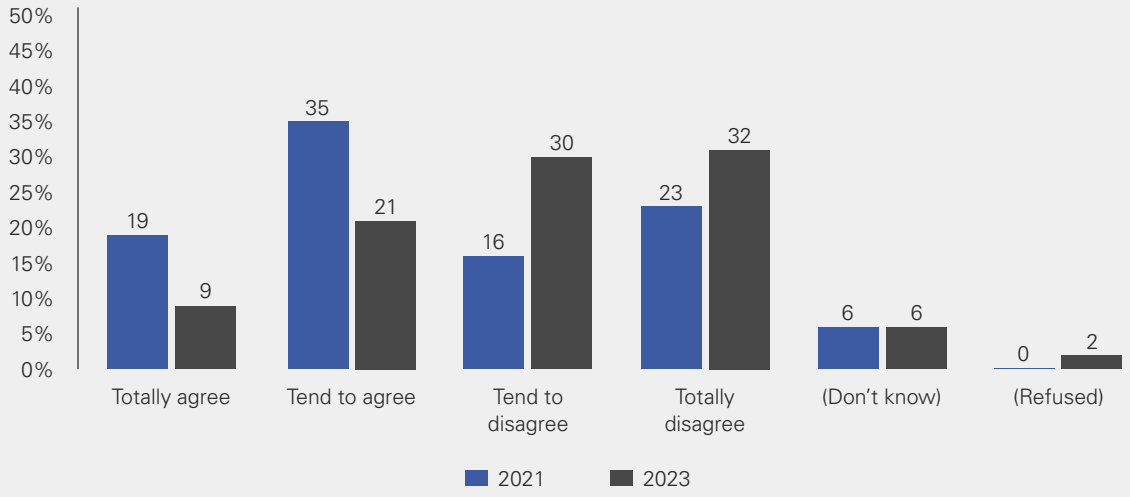
## Government efforts to fight corruption

Accountability is key for the success of the NACS and is repeatedly emphasised in the strategy document. It is believed that citizens will regularly engage in corruption reporting only if they feel that their reports will lead to action. The goal of the NACS is to create or encourage values and social norms in South Africa that stress full accountability for those involved. It aims to promote an active citizenry that is empowered to hold leaders and organisations accountable. This section takes a more in-depth look at public attitudes towards the government's fight against corruption. The emphasis is on accountability and whether the general public thinks that those who commit corrupt acts will be punished. The section examines, in particular, the perceived ability of citizens to get the authorities to act on reports of corrupt behaviour.

The following question was included in the 2011, 2021 and 2023 rounds of SASAS to investigate public evaluations of the efficiency of existing government efforts to address corruption: 'How much do you agree or disagree that South African government efforts to combat corruption are effective?' Reviewing the results presented in **Figure 15**, it appears that the public has become more negative about the ability of the state to successfully fight corruption. Close to a third (30%) of the general public agreed in the 2023 round that the government's anti-corruption efforts are effective. This represents a significant decline relative to the share agreeing with the statement in both 2011 (54%) and 2021 (43%), signifying a 24 percentage point decline between 2011 and 2023. The results depicted in **Figure 15** can be contrasted with the findings of our expert survey. Almost all (91%) of the experts interviewed for this study thought that state efforts to combat corruption were ineffective. Only a small percentage of this group (7%) asserted that current efforts were effective, while 4% were uncertain of how to respond.

**Figure 15: General evaluations of government efforts to combat corruption, 2021 and 2023**

*How much do you agree or disagree that South African government efforts to combat corruption are effective?*




*Source: South African Social Attitudes Survey (SASAS), 2021, 2023*

Many experts interviewed for this study expressed scepticism about the willingness of the authorities to act when corruption was reported. For example, Sadia Khan at Accountability Lab South Africa thought that it was unlikely that action would be taken if a whistleblower came forward and reported corrupt behaviour (like the misuse of funds or requests for bribes) to the relevant authorities. A clear majority (76%) of the experts surveyed agreed with her. As regards combating sextortion in the country (discussed in the section 'Perceived level of sextortion'), our expert participants were also quite negative about the willingness of the authorities to act. Respondents were told to imagine a person who was a victim of sextortion and wanted justice. They were then asked the following question: 'Do you think they would generally receive equal and effective access to justice?' A large majority of this group of experts either said probably not (62%) or definitely not (19%), while only a small minority responded either yes (16%) or that they were uncertain (4%).

The section 'Exposure to corruption' showed that most of the adult public reported being exposed to public sector corruption. We now examine whether the public thought that people like themselves would get into trouble for engaging in this kind of corruption. During the SASAS 2023 round, respondents were asked to answer the following question: 'How likely is it that an ordinary person in South Africa will be punished by the authorities for giving or receiving a bribe, gift or favour in return for public service?' The public was divided about whether ordinary people would be punished if they engaged in public sector corruption. Half of all adults thought that the chances of punishment were unlikely, with 15% stating it was not at all likely and 35% that it was not very likely. A smaller proportion considered it likely that regular people would be punished, with 18% saying that punishment was very likely and 28% that it was somewhat likely.

**A substantial share of the adult population feels that the authorities will not, or cannot, punish ordinary people for engaging in corrupt behaviour**

These data show that a substantial share of the adult population felt that the authorities would not, or could not, punish ordinary people for engaging in corrupt behaviour. Building on this finding, the following question was put to survey participants to explore public evaluations of interventions that target elite corruption in society: 'How likely is it that the rich and powerful in South Africa will be punished for engaging in corruption?' Most people claimed that the elite were safe from punishment. Close to two-thirds of the general public said that punishment was either not at all likely (29%) or not very likely (34%). A minority considered it likely that a member of the elite would be punished for corrupt behaviour. Around a third (34%) of the public thought that the chances of punishment were likely, with 13% stating it was very likely and 21% that it was

somewhat likely. We observed a moderate (and positive) relationship between perceptions of anti-corruption efforts directed against the elite and those directed against ordinary people. In other words, if you thought it likely that an ordinary person would be punished, then you were more likely to believe that a member of the elite would also be held accountable.

This section has discussed the perceived effectiveness of macro-level anti-corruption efforts. We now consider the perceived effectiveness of reporting corruption. SASAS 2023 participants were asked to indicate how likely it is that they could get someone to act if they went to the authorities to report corrupt behaviour. Approximately a third of the adult public thought it was either very likely (13%) or somewhat likely (23%) that they would be able to get someone to act. More than three-fifths stated that it was either not very likely (41%) or not at all likely (20%). The remainder (3%) did not know how to answer the question.

Looking at the perceived effectiveness of anti-corruption actions from another perspective, data from the 2016/2018 Afrobarometer round allow us to examine the perceived efficacy of reporting corruption to local government (Afrobarometer Project, 2019).[15] About half (54%) of adults in South Africa in that survey round thought their reports of corruption to local authorities would probably *not* be successful. The figure was lower than that recorded in Namibia (74%) and Nigeria (68%), but higher than what was observed in Botswana (32%) and Tanzania (17%).

**Respondents in the expert survey thought structural change to the existing system would be the most effective action to help combat corruption**

As part of the expert survey, respondents were asked what they thought the most effective action was that ordinary people in South Africa could take to help combat corruption. Reviewing the answers given by this group, it is apparent that most favoured structural change to the existing system. This finding is consistent with the generally negative evaluations of existing anti-corruption efforts expressed by the experts. The most frequent response was to support legal reform for greater transparency (especially proactive disclosure of public procurement information): 85% of experts selected this option. Other common responses included 'vote for a political party that demonstrates a commitment to fight corruption' (68%) and 'report corrupt behaviour to the appropriate authorities' (65%). The options that were the least popular included contacting a politician or civil servant. This finding is unsurprising given the negativity our experts expressed towards politicians and public sector employees, as noted earlier. Yet it could also reflect an understanding that politicians and civil servants are not the appropriate recipients of anti-corruption reports.

# Conclusions

This headline report has outlined a series of significant findings from both our baseline national survey as well as the online expert survey. We have revealed crucial insights about South Africa, pointing to important social norms and values that characterise society. However, it is our findings on corruption that are the most relevant for the NACAC and the current efforts of the state to successfully implement the NACS. In this section, the main findings of the report are summarised. A clear majority of the experts interviewed believed that corruption in the country was widespread. Politicians, in particular, were seen as corrupt. This finding is consistent with the SASAS 2023 data and corresponds with the elevated levels of political distrust that we observed. It appears that most adults in South Africa are worried about the impact of corruption on the country. This corresponds with recent HSRC public opinion research on 'state capture' for the Zondo Commission (Roberts & Mchunu, 2023).

**Most adults in South Africa are worried about the impact of corruption on the country**

It is evident from the data that a majority of the experts interviewed for this study felt that most of the South African population had been exposed to corruption. This finding corresponds with the results of the public opinion data. SASAS results showed that 69% of the public reported living in communities where people pay bribes to get services they need. An even larger share (80%) of the public reported that at least a few of their neighbours were involved in corruption. In addition, a majority of the general public admitted to being solicited for bribes by public officials in the last five years. The high level of exposure to corruption reported here may help explain the pattern of results observed in the section 'Perceived level of corruption', which showed that many thought that there was a lot of corruption in the public sector. The data available suggest that exposure to corrupt behaviour has increased over time, significantly so from what was observed in the mid-2000s.

A noteworthy share of the experts interviewed thought that South Africa is characterised by sexist and chauvinistic social values and norms. This sentiment is shared by a plurality of the general public. The lion's share of our expert sample also alleged that sextortion occurs frequently in South Africa. This corresponds to what we see in our national survey data. A majority of the public knew someone who had been a victim of sextortion by public officials and believed that

this crime occurred regularly. Although we did find approximate gender parity in the reporting of sextortion, the data tend to suggest that women are slightly less likely to report knowing of such crime than men. It is difficult to determine whether this is due to a greater tendency among women to underreport instances of sextortion relative to men or, alternatively, if this could reflect the possibility that men in South Africa are more likely than women to have a friend or kinsperson who has been a victim of sextortion. Overall, our findings suggest that sextortion is a major problem in the South African public sector.

When we examined how ordinary people understood the drivers of corruption, we found that the general population offered several different ideas. However, the most popular reason provided concerned internal psychological factors (e.g. greed and dishonesty). A distinction was made between corruption among two groups – ordinary people and elites. This distinction brings new insight, helping us understand how the general public viewed different forms of corruption. Internal factors were the most common attribution selected by the general public for both ordinary people and elites. Yet certain internal factors (e.g. greed) were more commonly used to explain corruption among ordinary people than among elites. System justification attributions were somewhat less popular when the question concerned elites than when it concerned ordinary people. The general public was more likely to blame law and order failures for elite corruption.

The survey also provided evidence to show that a sizeable segment of the general public viewed corrupt behaviours (e.g. accepting bribes or nepotism in the public sector) as justifiable and permissible. Unexpectedly, petty crime and violent crime were evaluated as more or less similarly justifiable. Furthermore, statistical testing revealed that perceiving these corrupt behaviours as justifiable was strongly associated with perceiving other unlawful behaviours as permissible. In other words, if a person viewed defrauding the state or contact crime as justifiable, they were more likely to think that corrupt behaviour was acceptable. This finding corresponds with what we observed regarding public concerns about the normalisation of corruption in the country. In addition, there is evidence that the share who felt that accepting bribes was acceptable has also grown during the period for which we have data.

We provided a brief outline of what the general public thinks about the reporting of corruption. Values and social norms related to transparency and integrity on this issue are much weaker than we would have assumed. It appears that only 45% of the adult public said that they would report corrupt behaviour if they witnessed or experienced it. Moreover, most would consider it morally wrong to report the corrupt behaviour of someone they knew personally. When asked why people would not report corruption, external factors related to the integrity or efficacy of the justice system emerged as the most salient. This corresponds with the finding that many people thought that inadequate law enforcement was driving corrupt behaviour. A similar pessimism was expressed by our expert sample: most of this group did not think that the authorities would act when corruption was reported. Another factor was fear: a clear majority of the population felt that reporting corruption could bring retaliation from the community in which they lived.

Most of the experts interviewed were discontent with government's anti-corruption efforts. The general public shared this sentiment and viewed accountability for corrupt behaviour as weak. This finding corresponds with the view, held by a significant proportion of the public, that law enforcement failures are one of the main reasons for corruption. This pessimism could be due to the lack of high-profile prosecutions for those accused of serious corruption in recent years. Yet, we also found that half of the public thought that anti-corruption efforts were similarly ineffective when targeted at *ordinary* people. Indeed, 61% of the adult public thought that the act of anti-corruption reporting itself was ineffective. These findings are consistent with the perceived failure of state authorities to act on reports of corrupt behaviour as a reason for non-reporting. It would seem, in sum, that most South Africans think that there is limited accountability for those who commit acts of corruption.

# References

Afrobarometer. 2023. South Africans call on government to deliver solutions to corruption, poor services. *Afrobarometer Dispatch No. 651*. https://www.afrobarometer.org/wp-content/uploads/2023/06/AD651-South-Africans-call-for-solutions-to-corruption-and-poor-services-Afrobarometer-9june23.pdf

Afrobarometer Project. 2019. Afrobarometer 7 Merged 34 Country Survey 2016–2018. Accra: Afrobarometer.

Afrobarometer Project. 2022. Afrobarometer 8 Merged 34 Country Survey 2019–2021. Accra: Afrobarometer.

Boyon, N. 2022. *Interpersonal trust around the world*. New York: Ipsos.

Corruption Watch. 2024. 2023 CPI: SA continues downward trajectory on corruption. Johannesburg. https://www.corruptionwatch.org.za/2023-cpi-sa-continues-downward-trajectory-on-corruption/

DPME (Department of Planning, Monitoring and Evaluation). 2023. *Towards a 30-year review of South Africa's democracy (1994–2024)*. Pretoria: Department of Planning, Monitoring and Evaluation.

Feigenblatt, H. 2020. *Breaking the silence around sextortion: The links between power, sex and corruption*. Berlin: Transparency International.

Gary, R. 2023. *Sextortion: Gendered corruption in the context of Gauteng, South Africa*. Presented at the Conference on Gender and Corruption: Addressing Invisibility. Pretoria.

Hewstone, M. 1989. *Causal attribution: From cognitive processes to collective beliefs*. Oxford: Basil Blackwell.

Inglehart R., Haerpfer C., Moreno A., Welzel C., Kizilova K., Diez-Medrano J., Lagos M., Norris P., Ponarin E. & Ponarin, B. (eds.)' 2022. World Values Survey: All rounds – country-pooled datafile. Madrid: JD Systems Institute & WVSA Secretariat. doi:10.14281/18241.17

Merkle, O. 2023. *Focus on sextortion: Two studies in South Africa*. Presented at the Conference on Gender and Corruption: Addressing Invisibility. Pretoria.

NPC (National Planning Commission). 2023. *10-year review of the National Development Plan 2012–2022*. Pretoria. https://www.nationalplanningcommission.org.za/assets/Documents/Ten%20Year%20Review%20of%20the%20National%20Development%20Plan_26%20September%202023.pdf

The Presidency, Republic of South Africa. 2016. *National Anti-Corruption Strategy Diagnostic Report*. Pretoria. https://www.gov.za/sites/default/files/gcis_speech/NACS%20Diagonostic%20%20Report%20Final.pdf

The Presidency, Republic of South Africa. 2020a. Medium Term Strategic Framework (MTSF) 2019–2024. Pretoria. https://www.dpme.gov.za/keyfocusareas/outcomesSite/MTSF_2019_2024/2019-2024%20MTSF%20Comprehensive%20Document.pdf

The Presidency, Republic of South Africa. 2020b. *National Anti-Corruption Strategy (NACS) 2020–2030*. Pretoria. https://www.gov.za/sites/default/files/gcis_document/202105/national-anti-corruption-strategy-2020-2030.pdf

Richins, M. L. (2004). The material values scale: Measurement properties and development of a short form. *Journal of Consumer Research*, 31(1), 209–219. https://doi.org/10.1086/383436

Roberts, B. J. & Mchunu, N. 2023. *Capturing hearts? Attitudes towards the Zondo Commission and the fight against state capture in South Africa*. Presented at the Post-Zondo: The Future of Democracy Colloquium. Pretoria.

Roberts, B. J, Struwig, J., Gordon, S., Clarke, L. & Laubscher, C. 2022a. Materialist values in South Africa: The power of belief. *Financial Literacy, Competency and Education Briefing Report No. 3*. Pretoria: FSCA and HSRC.

Roberts, B., Struwig, J., Gordon, S., Mtyingizane, S., Zondi, T. & Mchunu, N. 2022b. *Democracy's dividend: Results from the Electoral Commission of South Africa's Voter Participation Survey (VPS) 2021*. Pretoria: Human Sciences Research Council.

Scharbatke-Church, C. & Chigas, D. 2019. *Understanding social norms: A reference guide for policy and practice*. The Henry J. Leir Institute of Human Security. The Fletcher School of Law and Diplomacy, Tufts University.

Statistics South Africa. 1999. *Victims of Crime Survey 1998*. Pretoria: Statistics South Africa. https://doi.org/10.25828/r9w2-9n50

Struwig, J., Roberts, B., Gordon, S. & Davids, D. 2016. *Local matters: Results from the Electoral Commission of South Africa's Voter Participation Survey (VPS) 2015/16*. Human Sciences Research Council (HSRC).

Transparency International. 2007. *Global Corruption Barometer 2006*. Berlin: Transparency International.

# Glossary of statistical terms

**Confidence intervals** Ranges of values that are calculated from sample data and used to estimate the range within which a population parameter is likely to lie. They provide a measure of uncertainty around a point estimate by specifying a range of values within which the true population parameter is expected to fall with a certain level of confidence, typically expressed as a percentage (e.g. 95% confidence interval). As an example: 50% of the public believe that corruption among ordinary people is attributable to them being greedy and wanting to get rich quickly, with a 95% confidence interval of 46–53%. This means that, based on the survey sample, we can be 95% confident that the share of adults that holds this viewpoint falls between 46% and 53%.

**Mean** A measure of central tendency that represents the sum of all values in a dataset divided by the total number of values. Sometimes referred to as an average, it provides a single numerical value that describes the typical value or centre of data.

**Percentage** A measure that expresses a proportion (or part of a whole) as a fraction of 100.

**Standard errors** Frequently abbreviated to SE, standard errors represent the measure of variability (or uncertainty) associated with a statistic. They quantify the extent to which the sample statistic may differ from the true population parameter in repeated sampling. When data are weighted, standard errors are linearised to estimate the variability associated with the dataset's parameters. As an example, 69% believed it is important to never try to evade taxes, with a linearised standard error of 1.07. This means that while the national average is 69%, the true percentage is probably between 68% and 70%, considering the standard error.

# Glossary of other terms

| | |
|---|---|
| **Descriptive social norm** | A type of societal expectation that reflects what is commonly observed or practised by a person. It identifies behaviours based on perceptions of what a person would typically do in similar situations, influencing individual actions to conform to the observed norms. |
| **General public** | The broad and diverse population within a society who are not part of any specific group or organisation. In this report, the term refers to adults living in South Africa. |
| **Injunctive social norm** | Actions or behaviours deemed acceptable or unacceptable by others, often enforced through explicit rules or cultural expectations. It establishes standards of conduct based on perceived moral or ethical principles by the community, guiding individuals' actions to adhere to societal norms and values. |
| **Institutional trust** | The confidence individuals have in the credibility, effectiveness and integrity of an organisation (such as government bodies, corporations and educational institutions). It plays a crucial role in fostering organisational legitimacy and influences people's willingness to cooperate with organisations. |
| **Patriarchy** | A system of authority in which men hold the power and women are largely excluded from it. |
| **Public opinion** | The collective attitudes, beliefs and sentiments held by the general population on various issues or topics. |
| **Sexism** | Prejudice, stereotyping or discrimination, typically against women, on the basis of sex. Sometimes this term is framed as 'sexual chauvinism'. |
| **Social norm** | Shared understandings of appropriate behaviour, formed through mutual expectations derived from beliefs about anticipated outcomes or preferred conduct. These beliefs, often implicit, evolve from observations of others' actions and perceptions of anticipated societal standards and interpersonal obligations. |
| **Social trust** | The confidence and belief individuals have in others. It forms the foundation of cooperative interactions, fostering cohesion and stability within communities. |
| **Social value** | A collective belief or principle held by a society, shaping attitudes, behaviours and priorities. These values often serve as guiding principles in decision-making processes, influencing individual and group actions within the community. |

# Endnotes

1 For a more comprehensive discussion of social norms as a concept, see Scharbatke-Church and Chigas (2019).
2 These questions were adapted from the Material Values Scale (MVS) developed by Richins (2004).
3 These measures form part of an international module on citizenship and identity that was developed by the International Social Survey Programme (ISSP), and this thematic focus is fielded once every decade. 2014 and 2023 are the most recent occasions when this module was fielded through SASAS as the South African ISSP representative.
4 When this question was asked, no definition of corruption was provided to survey participants. This was done so as not to bias the responses of the participants.
5 The Global Corruption Barometer is a public opinion survey conducted by Transparency International, which also produces the Corruption Perceptions Index based on experts' opinions. (Transparency International, 2007).
6 Social desirability/acceptability response bias will be discussed in more detail in the main report.
7 The exact wording of the 1998 VCS question was: 'Over the past five years, has any government official, for instance a customs official, police officer or inspector asked you or wanted you to pay a bribe for his/her service?' (Statistics South Africa, 1999).
8 There was debate within the research team about asking people to report having been a victim of sextortion, as there was concern that such a direct and personal question would be unduly affected by social desirability response bias. The possibility of this form of bias remains a concern given the coercive and sexual nature of the behaviour under discussion.
9 In attribution theory, internal and external factors refer to perceived causes of an individual's behaviour or the outcomes they experience. Internal factors are those that are seen as originating from within the individual, such as their personality, abilities or effort. In other words, in the context of attribution theory research, an internal factor typically involves examining how individuals attribute the causes of events or behaviours to characteristics or traits inherent to the person in question. On the other hand, external factors are attributed to outside influences, such as luck, the actions of others or situational factors. For a further discussion of this theory, see Hewstone (1989).
10 Female adults were more inclined to view this behaviour as unjustifiable than their male counterparts. But the gender difference here was more marginal than may have been expected.
11 The reader should be aware that there was a moderate difference in how the response scales for the WVS and SASAS were designed. The scales were adjusted to render them comparable.
12 Utilising the 2017/2022 WVS dataset, we compared other countries, ranging from Argentina to Malaysia, with South Africa. Most people around the world tended to display an aversion to bribery. However, justifiability of bribery was lowest in countries like Egypt (M=2; SE=0.213) and Germany (M=4; SE=0.263). South Africa reported relatively high levels of bribery tolerance, and only a few other countries, such as Malaysia (M=23; SE=0.788) and the Philippines (M=34; SE=0.952), had similar scores.
13 A broad collective noun of 'the judicial system' was used.
14 Sean Tait, Director at the African Policing Civilian Oversight Forum (APCOF), felt that quite a lot of police officers participated in corruption. A majority (63%) of experts interviewed agreed, and 17% alleged that almost all officers participated in corruption. Expert respondents were more positive about the judiciary. Only a minority believed that quite a lot (6%) of judges, magistrates or prosecutors were involved in corruption or almost all were (2%).
15 The question used to measure the perceived effectiveness of anti-corruption reporting was a little different from that used in SASAS 2023. The exact wording was: 'How likely is it that you could get someone to take action if you went to your local government office to report corrupt behaviour like misuse of funds or requests for bribes by government officers, police, or school or clinic staff?'

Corruption is a major problem in South Africa and the country has struggled to combat it. The rise and entrenchment of neo-patrimonialism and corruption in the public sector appears to be especially acute. There is growing evidence that corruption has worsened over the last 20 years. This change has had adverse political, social, economic and security-related repercussions for the nation's entire population.

At this critical juncture, the South African government has adopted the National Anti-Corruption Strategy (NACS) 2020–2030. This strategy identifies the need for credible, evidence-informed approaches to reverse the destructive and debilitating effects of corruption.

One of the main anti-corruption tactics prioritised by the NACS is a whole-of-society approach that incorporates changing social norms and values in South Africa. In most contexts, social norms and values play a pivotal role in driving human behaviour. Accordingly, participation in, or opposition to, corrupt behaviour can be influenced by these norms and values.

The overall aim of the study is to identify and track social values, norms and behaviours that encourage and discourage corruption. This research is intended to help support the National Anti-Corruption Advisory Council (NACAC) in their efforts to develop, assess and adapt strategies to combat and prevent corruption in accordance with the NACS.

*For enquiries about this report, please contact:*
sgordon@hsrc.ac.za
gpienaar@hsrc.ac.za

HSRC Human Sciences Research Council
DCES Developmental, Capable & Ethical State

9 781991 248152

# Communication, Prevention & Public Education

*Supporting the Establishment of the Office of Public Integrity and a National Anti-Corruption Movement*

**Table of Contents**

List of Acronyms ..... 3
Introduction ..... 5
1. Context ..... 7
2. Lessons learnt ..... 9
3. Communications Strategy ..... 10
3.1 Strategic Communications Objective ..... 10
3.2 Strategic Framework: Five Pillars ..... 10
4. Social Behaviour Change Communication (SBCC) ..... 13
5. Incorporating a Theory of Change (ToC) ..... 15
6. Stakeholder Mapping and Psychographic Segmentation ..... 16
7. Messaging ..... 17
8. Phased Approach ..... 17
9. Critical Success Factors and Dependencies ..... 27
10. Conclusion ..... 29
11. Annexures ..... 31

## Abbreviations & Acronyms

| | |
|---|---|
| **AIP** | Association for Independent Publishers |
| **BCCSA** | Broadcasting Complaints Commission of South Africa |
| **BLSA** | Business Leadership South Africa |
| **BMA** | Border Management Authority |
| **BMF** | Black Management Forum |
| **BUSA** | Business Unity South Africa |
| **CBO** | Community-Based Organisation |
| **CFSC** | Communication for Social Change |
| **CHE** | Council on Higher Education |
| **COGTA** | Department of Cooperative Governance and Traditional Affairs |
| **CRM** | Customer Relationship Management |
| **CSR** | Corporate Social Responsibility |
| **DBE** | Department of Basic Education |
| **DHE** | Department of Higher Education |
| **DHS** | Department of Human Settlements |
| **DPME** | Department of Planning, Monitoring and Evaluation |
| **DPSA** | Department of Public Service and Administration |
| **DSAC** | Department of Sport, Arts and Culture |
| **DWSA** | Department of Water and Sanitation (South Africa) |
| **GCIS** | Government Communication and Information System |
| **ID** | Industrial Development Corporation (assumed) |

**IEB** Independent Examinations Board

**INGO** International Non-Governmental Organisation

**JCPS** Justice, Crime Prevention and Security Cluster

**M&E** Monitoring and Evaluation

**MDDA** Media Development and Diversity Agency

**MEC** Member of the Executive Council

**NAFCOC** National African Federated Chamber of Commerce and Industry

**NACAC** National Anti-Corruption Advisory Council

**NACS** National Anti-Corruption Strategy

**NCP** National Communications Partnership

**NDP** National Development Plan

**NEDLAC** National Economic Development and Labour Council

**NGO** Non-Governmental Organisation

**NT** National Treasury

**OPI** Office of Public Integrity

**PANSLAP** Pan South African Language Board (assumed)

**PSC** Public Service Commission

**SALGA** South African Local Government Association

**SANEF** South African National Editors' Forum

**SAPS** South African Police Service (assumed)

**SABC** South African Broadcasting Corporation

**SBCC** Social and Behaviour Change Communication

| | |
|---|---|
| **SGB** | School Governing Body |
| **SEM** | Socio-Ecological Model |
| **SETAs** | Sector Education and Training Authorities |
| **SOE** | State-Owned Enterprises |
| **SRC** | Student Representative Council |
| **ToC** | Theory of Change |

## Introduction

In 2022, a comprehensive Communications and Engagement Strategy was developed to support the implementation of the National Anti-Corruption Strategy (NACS)**.** This strategy mapped key stakeholder groups, their information needs and communications preferences. It also proposed umbrella messaging and a whole-of-society approach that aimed to build a culture of integrity and active citizenry. The strategy outlined the need for a National Communications Partnership (NCP) to implement this whole-of-society intervention**.** However, implementation was limited and many of the recommendations remain unrealised.

With the term of the National Anti-Corruption Advisory Council (NACAC) coming to an end, there is now a need for a strategic approach that can be implemented in the next phase of the NACS lifecycle. Both the NACAC and stakeholders working closely with the NACAC have identified a need to build a national movement for integrity and through dialogue and discussion it has become clear that to achieve this, the communication strategy requires adaptation to ground it in Social and Behaviour Change Communication (SBCC) principles, in order to truly begin to shift attitudes, perceptions, social norms and ultimately drive behaviour change to create momentum for a culture of national movement for integrity.

The communications plan outlined in this document was developed through a collaborative process led by the NACAC Communications Workstream together with key stakeholders as well as the support of a specialist communications agency.

This communications plan provides a roadmap to support the creation of a national anti-corruption movement in South Africa, led by the Office of Public Integrity (upon its establishment) and aligned with the National Anti-Corruption Strategy.

This plan is based on public education and prevention, with five pillars that will guide the OPI's communications efforts. The framework takes into account how to operationalise the strategy, it maps key stakeholders and their respective roles, and it identifies immediate priorities and

recommendations for the initial phase of implementation. The resulting plan reflects both the urgency and long-term commitment required to drive meaningful change through a social and behaviour change communication (SBCC) lens. This plan must be read and engaged with in concurrence with the NACS Communication Strategy.

## 1. Context

Building on the 2022 NACS Communications Strategy, this plan introduces a Social and Behaviour Change Communication (SBCC) approach to shift attitudes, behaviours, and values around corruption. It proposes a bold, multi-channel, and society-wide engagement model that aims to build public trust, spark institutional buy-in, and normalise a culture of integrity.

With practical recommendations for operationalising a National Communications Partnership, long-term engagement, and clear phased implementation, the plan provides a solid foundation for collective action and lasting impact.

### What has been achieved to date?

In keeping with the objectives of the NDP and South Africa's regional and international obligations, the NACS strives towards a country based on the values of integrity, transparency and accountability, respect for rule of law and zero tolerance for corruption.

Within this context the NACS Communications and Engagement Strategy set a bold objective:

“There is an overwhelming sense of distrust in the public domain regarding government’s ability to address [corruption] and its capacity to communicate Anti-Corruption messages. This robust, responsive and comprehensive engagement and communication strategy, aligned to and in support of the pillars of the NACS, attempts to turn the tide on the prevailing negative public sentiment on corruption and general apathy. The NACS espouses a whole-of-government and societal approach and the engagement and communication strategy follows the same principle.”

The strategy provided a robust review of the context at the time, it included a comprehensive landscape analysis including a SWOT review and environmental scanning.

Driven by this clear overarching objective the strategy has a dual focus:

(1) building an identity for NACS and anti-corruption work; and

(2) creating a whole-of-society anti-corruption movement.

In order to give practice to this dual focus, an engagement approach for direct and sectoral mobilisation was envisioned and hence the recommendation of the NCP. The strategy suggested that the NCP should be convened through National Economic, Development and Labour Council (NEDLAC) and the Presidential National Anti-Corruption Advisory Council (NACAC), with the Government Communication and Information Services (GCIS) playing a coordinating role.

The robust and comprehensive engagement and communication strategy was aligned to the pillars of the NACS and was conceptualised to turn the tide on the prevailing negative public sentiment on corruption and general apathy. It clearly articulated that this is not a government only framework. The NACS espouses a whole-of-government and societal approach and the engagement and communication strategy subsequently does the same. The Communication Framework below, extracted from the NACS Communication Strategy (page 24), provides a

snapshot of the strategic approach that was envisioned, linking the objectives to communication cornerstones and the associated messaging streams.

**Table 3: Communication Framework**

| **Communication Imperatives** | Effective, focused and consistent communications | Knowledge-empowered citizens | Whole-of-society values reorientation | Supported activities across all six pillars of the NACS |
|---|---|---|---|---|
| **Communication Objectives** | **To ensure effective, focused and consistent communication that ensures inclusivity** | **To empower citizens with the knowledge and resources to help to fight corruption** | **To support and drive values re-orientation at a whole-of-society level** | **To support communication and engagement activities across all six pillars of the NACS** |
| **Communication Cornerstones** | **Awareness** | **Education** | **Prevention** | **Mobilisation** |
| **Messaging steams** | 1. Defines corruption<br>2. Demonstrates the impact and need to fight corruption<br>3. Defines and foregrounds the NACS | 1. Empowers citizens to recognise corruption types<br>2. Educates by providing the resources to report/fight corruption<br>3. Educates on the NACS pillars and priorities | 1. Encourage ethical leadership and conduct<br>2. Drives values education and recognition<br>3. Empower citizens to have zero tolerance for corruption | 1. Educates citizens on implementation progress in relation to NACS and specifically the six pillars<br>2. Supports and spotlights programmes and people doing good work and making advancements in the anti-corruption space<br>3. Supports and expects accountability for anti- corruption activities across all sectors of society |

This framework lends itself to a phased implementation which is summarised below:

**Build an identity**: creating awareness, identiity and brand using mass communication tools to drive education and bahviour change

**Build a community:** building a community of stakeholders, business, labour, government and CSO's underpinned by collaborative committment to defeating corruption.

**Mobilisation:** launch a values-based mobilisation with a whole-of-society and whole-of-government approach to implementation and action. This requires direct and sectoral mobilisation.

### Moving forward

Currently, the National Anti-Corruption Strategy exists as a document, one that is recognised and endorsed largely by those stakeholders and partners operating in the anti-corruption space . But beyond direct stakeholders, little is known about it due to limited implementation of the communications strategy.

This Communications Plan aims to bridge the gap between the existing strategy and a full behaviour change communication strategy by incorporating key behaviour change tenets in order to establish an anti-corruption movement, under the leadership of the envisioned OPI.

It is only with collective ownership and a whole-of-society participation that the embedded ethical behaviour espoused in this NACS Communication and Engagement Strategy will be realised.

---

## 2. Lessons learnt

Through the review and landscape mapping process a series of common themes emerged.

- There is an understanding that high levels of historic corruption have an impact on current circumstances.
- Corruption can be linked to issues around personal safety and crime, and problems with service delivery. Ultimately, corruption is viewed as a key factor (negatively) impacting daily life in South Africa.
- Without serious change from government, South Africans do not believe that a corruption free, efficient state is likely or possible.
- People will not be placated with promises or propaganda. They want real change that drives real impact that makes their lives better.
- While corruption has become 'normalised' – most South Africans are NOT corrupt nor do they have any intention of acting without integrity. Despite its perceived far-reaching tentacles, South Africans do not wish to choose lawlessness themselves.
- Furthermore, South Africans still hold out hope for a better future where people are held to account and corruption becomes a thing of the past.

From these insights we have distilled some guiding principles that the Communications Plan must incorporate:

- **Innovation:** public distrust in government's ability to tackle corruption is high, and traditional messaging will not be enough to shift attitudes or behaviour.

- **Increase knowledge:** Corruption is perceived as systemic, affecting safety, service delivery and personal opportunities — it is deeply felt but not well understood. We need to improve knowledge and understanding of corruption.

- **Amplify people's intentions:** South Africans are not inherently corrupt — despite normalisation, most people want to live with integrity and accountability. This is something that the Communications Plan must use to high impact.
- **Showcase success:** Messaging alone is insufficient — people want to see real action, transparency and accountability. As a result, the emphasis should be on communicating real successes and efforts that are producing results. We must communicate success to start to build trust.
- **Communicate at every step of the journey:** Hope still exists — many South Africans continue to believe in the possibility of a better, corruption-free future. Again, we can begin to build trust by showcasing successes, no matter how small, along the journey.
- **Tailored approach:** different audiences require different channels, messengers, and messages — a one-size-fits-all approach will not work.
- **Whole-of-society participation:** this is essential for success, as no single actor can build an ethical culture alone. Building an NCP is a complex task – especially in the absence of a burning crisis that can help to mobilise people.

---

# 3. Communications Strategy

## 3.1 Strategic Communications Objective

The overarching objective is to catalyse a national movement for integrity and support the work of the proposed **Office of Public Integrity (OPI)** through a **Social and Behaviour Change Communication (SBCC)** approach, with the aim of achieving the following:

- **Communications Goal 1:** Create awareness of the OPI and buy-in for a national movement against corruption.
- **Communications Goal 2:** Mobilising sectoral and community-based stakeholders to implement campaigns to prevent corruption and in turn build a culture of integrity.
- **Communications Goal 3:** Rebuilding trust in public institutions and democratic values.

## 3.2 Strategic Framework: Five Pillars

To achieve the objectives of the NACS and support the establishment of a national anti-corruption movement, this framework proposes a five-pillar strategic approach. These pillars reflect the shift from conventional, one-directional messaging to a dynamic, inclusive, and sustained Social and Behaviour Change Communication (SBCC) model.

Each pillar addresses a critical enabler of long-term impact — from the way we communicate, to who is involved, to how the work is resourced and embedded in society. Together, they provide

a roadmap for building public trust, strengthening civic engagement, and nurturing a culture of integrity across South Africa.

1. **Pillar 1: A Bold Communications Approach**

**Why**: Corruption is often normalised and accepted as inevitable. A traditional, dry, or bureaucratic communication approach will fail to disrupt this mindset. We need to break through apathy and cynicism with emotionally resonant, human-centred storytelling and creative campaign design.

**Recommendations:**

1. Use bold, emotionally resonant storytelling to bring the impact of corruption to life – real people, real losses, real stakes.
2. Employ creative tactics and visual language that stand out in cluttered media spaces and appeal to audiences no matter their literacy level.
3. Challenge existing norms and provoke dialogue – develop campaigns that are memorable, provocative and urgent.

**Tackles**: this pillar tackles apathy, normalisation of corruption and emotional disengagement and can prime people to take action and become active citizens.

2. **Pillar 2: Multi-Channel Communications Strategy & Audience Segmentation**

**Why**: South Africa's media consumption is fragmented, and trust in formal institutions is low. The country's media consumption is further diversified based on age, language and geography. Different audiences need different messages, delivered via trusted platforms based on their consumption patterns. By using a multichannel approach, we can reach audiences through platforms that they trust and use — from community radio and WhatsApp to TV dramas, TikTok or face-to-face engagements/activations at schools, clinics and even churches.

**Recommendations**

1. Use layered messaging across mass media (TV, radio), digital platforms (social media, YouTube and websites), community media, in-person dialogues and activations in schools and workplaces.
2. Tailor content to specific audiences – e.g. youth, business, community leaders – using trusted messengers or influencers and leaders in communities. This must be premised on a robust advocacy and stakeholder engagement approach that will secure buy-in and support from gatekeepers in key sectors.
3. Embed communication into public spaces to face the problem head on, where it often takes place, for example in municipalities, public transport, clinics, SASSA queues, Home Affairs, SAPS and sports grounds.

**Tackles**: This pillar tackles issues of relevance, reach, low awareness, trust gaps, and knowledge deficits by using mediums and messengers that audiences trust and are comfortable using.

3. **Pillar 3: Operationalising the National Communications Partnership (NCP)**

**Why**: No single institution can shift the needle alone. We need society-wide ownership and participation. By enabling shared ownership, content development and amplification through an inclusive, values-driven partnership model led by the OPI, we can have a whole-of-society impact.

- **Recommendations**:
    - Design a National Communications Partnership led by the OPI with participation of key government partners, civil society, media, private sector, labour, artists, faith-based organisations, educators, public sector bodies, unions and business. As such, the NCP would take the form of a multi-stakeholder partnership, but the role of a leader, convener and driver is essential to ensure implementation. Thus, ownership of communications, prevention and public education should be held by the OPI as the leader of the NACS and convener plus driver of the NCP.
    - The NCP should be made up of:
        - Decision-makers (policy shapers, senior leaders)
        - Funders (government, private sector, philanthropy and multilateral agencies)
        - Content partners (media, creatives, private sector)
        - Multipliers (youth leaders, influencers, community champions)
    - Offer branding/toolkits to enable wide adoption and alignment under one national campaign identity.

**Tackles**: placing the OPI at the centre of the partnership model (coupled with wide convening powers) tackles resourcing, coordination, legitimacy and fragmentation challenges that often plague similar structures.

4. **Pillar 4: Lifelong Engagement Approach**

**Why**: Corruption is not a short-term problem – it is systemic, generational, and ingrained. In order to break the structural enablers, we need to shift from a once-off campaign mindset to a continuous engagement model, embedding integrity into schools and the curriculum, public sector training, leadership development, the private sector and the national culture.

- **Recommendations**:
    - Shift from campaign-thinking to movement-building: this must be an evolving, continuous programme embedded in education, institutions, sporting codes and national discourse.
    - Create content and engagement that builds over time, with clear phases (awareness → engagement → action → normalisation).
    - Include long-term interventions in schools, public sector induction programmes, values-based leadership training and curriculum development.

**Tackles**: this pillar tackles, shallow impact, campaign fatigue, lack of sustained change and moral and ethical erosion.

5. **Pillar 5: Well-Resourced and Professionally Led**

**Why:** Ambition requires investment. National reach and professional delivery are not possible without sustained resources and dedicated teams. Ensure the communication programme is backed by a skilled, well-funded team with strong monitoring, research, and delivery capacity.

- **Recommendations**:
    - Secure multiyear funding commitments from government and other sectors.
    - Build a dedicated, skilled team of communicators, SBCC experts, creatives and researchers.
    - Invest in audience research, message testing, monitoring & evaluation to guide content and prove impact.
    - Establish a communications hub in the OPI that coordinates with the NCP efforts, develops and distributes content, trains partners, and tracks momentum.

**Tackles**: this pillar tackles operational capacity, coordination failure, lack of data and funding instability to ensure that the approach is implemented as intended.

---

## 4. Social Behaviour Change Communication (SBCC)

SBCC is the process of building an idea into a norm using a circle of communication. The circle of communication frequently includes peer opinion; information; education and dialogue. By encircling audiences with layered messaging across various touchpoints, we are helping to build an idea into a norm, shift perceptions and attitudes and ultimately drive behaviour change.

There are many models or approaches to behaviour change. Here we outline the key tenets of each model.

- **Knowledge–Attitude–Behaviour (KAB) Model**

  The KAB model is one of the earliest and most straightforward behaviour change models. It assumes that behaviour change follows a logical progression: first, people are provided with information (knowledge), which influences how they think or feel about an issue (attitude), and this, in turn, leads to a change in behaviour. While this model remains a useful foundation for communication efforts, especially those that involve raising awareness or providing essential information, it has limitations. It often overlooks emotional drivers, social norms, and environmental constraints (for example structural drivers of corruption) that prevent people from acting on what they know or believe.

- **Behavioural Determinants Model**

This model builds on the understanding that behaviour is influenced by a complex web of factors beyond just knowledge or beliefs. It considers the individual's capabilities, motivation, access to resources, social support, and structural or systemic barriers. In SBCC, this model is used to diagnose what factors are helping or hindering a particular behaviour — whether it's self-efficacy, peer pressure, legal frameworks, or service availability. It's particularly helpful for designing interventions that go beyond messaging, such as training, system reform, or environmental changes that support the desired behaviour.

- **Socio-Ecological Model (SEM)**

The socio-ecological model is central to SBCC because it recognises that behaviour does not occur in a vacuum. Instead, it's shaped by influences at multiple levels: individual (knowledge, attitudes), interpersonal (family, peers), community (norms, institutions), organisational (schools, workplaces), and policy/structural (laws, governance systems). SBCC strategies that use this model aim to create change at several of these levels simultaneously — for example, educating individuals, supporting peer groups, mobilising community leaders, and influencing policy. This layered approach ensures that change is both sustainable and embedded in social systems.

- **Social Norms Theory**

This theory focuses on how people's perceptions of what others do (descriptive norms) and what others expect them to do (injunctive norms) influence their own behaviour. In many contexts, especially where corruption or risky behaviour is normalised, individuals may act contrary to their own values because they believe "everyone does it" or "I have no choice." SBCC interventions using this theory aim to correct these misperceptions, highlight positive behaviour, and create visible momentum around new norms. It's a particularly powerful approach for addressing peer influence and shifting collective expectations.

- **Communication for Social Change (CFSC)**

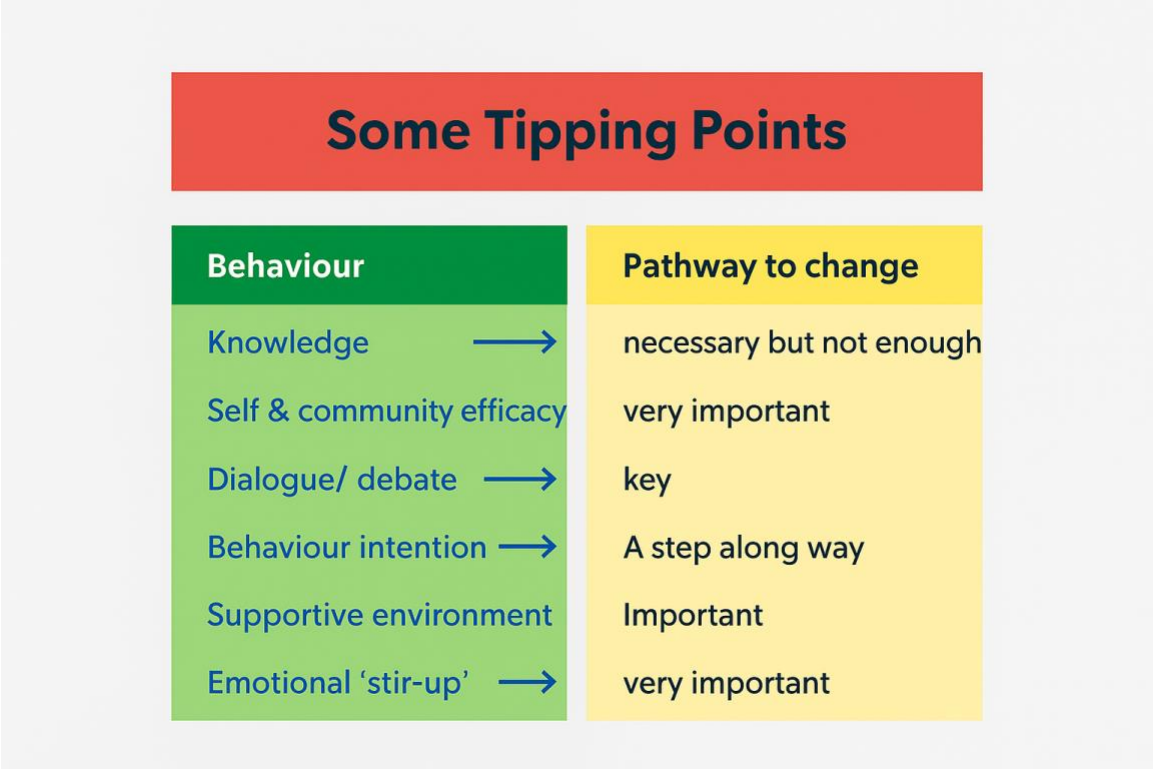
The CFSC model positions communication not as the transfer of information, but as a process of dialogue, participation, and empowerment. It is rooted in the idea that sustainable social change comes from communities themselves, when they are supported to identify issues, explore solutions, and take collective action. CFSC approaches prioritise listening, inclusion, and the strengthening of community voice — often through formats like community radio, peer dialogue, participatory theatre, or storytelling. This model is especially effective when working with marginalised groups or aiming to build local ownership of social issues.

Each of these behaviour change models offers a unique lens for understanding how and why people shift their beliefs, attitudes, and actions. While they differ in focus—some emphasising internal motivation, others social norms or systemic influences—they are not mutually exclusive. In practice, some of the most effective behaviour change campaigns draw on

elements from multiple models, using the strengths of each to address the complexity of human behaviour. We propose an approach that intentionally selects and combines the most relevant components from these models—grounded in evidence and adapted to the South African context—to maximise reach, resonance, and lasting impact. This blended methodology allows us to tailor interventions more precisely to diverse intersectional audiences and settings, ultimately building a stronger foundation for ethical, values-driven change.

Below are some of the tipping points that the communications plans should seek to include. We have incorporated some of these tipping points into the phased implementation and recommendations in section 7.

Please note that the creation of a supportive environment is beyond the scope of communications, but this is being dealt with through the reforms envisioned in the NACS strategy.




## 5. Incorporating a Theory of Change (ToC)

A Theory of Change is a planning and evaluation framework that maps out how and why a desired change is expected to happen in a given context. It outlines the long-term goals, the intermediate steps or outcomes needed to get there, and the specific inputs and activities required. It also surfaces assumptions that underpin the pathway to change.

In SBCC, a ToC is essential for designing coherent strategies, guiding implementation, and evaluating impact. It helps teams stay focused on the bigger picture while making evidence-informed decisions along the way.

We recommend that at the outset of the communications planning, a Theory of Change (ToC) is developed in collaboration with monitoring and evaluation specialists. This can act as a roadmap that links communications activities to long-term outcomes. For this strategy, the ToC will:

- Identify how communication can shift social norms and behaviours related to corruption.
- Link inputs (e.g., messaging, platforms, partnerships) to outcomes (e.g., increased reporting or whistleblowing, improved perceptions of whistleblowers, deeper understanding of active citizenry, civic engagement and public accountability).
- Highlight assumptions, such as the belief that public education, when matched with visible accountability, builds legitimacy and change.
- Identify structural challenges that are beyond the scope of communications.
- Serve as a guide for SBCC programme design, implementation and evaluation.

A Theory of Change (ToC) is a critical foundation for designing a meaningful monitoring and evaluation (M&E) framework—especially when tracking behaviour change. It clearly maps out how and why change is expected to happen, linking activities to short-, medium-, and long-term outcomes. This clarity enables the development of indicators that are aligned to each stage of change, making it possible to measure progress, assess effectiveness, and adapt strategies as needed. Without a strong ToC, M&E efforts risk missing the nuances of behaviour change or focusing on the wrong metrics.

---

## 6. Stakeholder Mapping and Psychographic Segmentation

Typically a communication strategy contains a detailed stakeholder mapping component. This exercise has already been completed and is featured in the NACS Communication and Engagement Strategy. We recommend that before implementation begins, this should be:

- Reviewed and updated to reflect current dynamics and the role of the OPI. It would be more meaningful and impactful once the final structure of the OPI is complete, and the stakeholder ecosystem can be mapped more accurately.
- This updated stakeholder mapping should be matched with audience segmentation (e.g., values-based or psychographic profiles) to tailor messages and messengers more

effectively. Again, this will need to be revised upon implementation to ensure relevancy to the current context.

- Used to identify early adopters, champions, and resistance points based on the current context at the point of implementation.

---

## 7. Messaging

Typically, a communication strategy includes a detailed messaging framework or "message house" that outlines the core narrative, supporting messages, and key proof points for different audiences. In the case of the National Anti-Corruption Strategy (NACS), this exercise has already been completed and is reflected in the NACS Communication and Engagement Strategy.

However, given the evolving context, shifts in public sentiment, and changes in the stakeholder landscape, we recommend that this messaging framework be reviewed and updated before implementation begins. Refreshing the messages will ensure alignment with current realities, emerging trends, and any sector-specific developments that could affect how the campaign is received or understood.

Below we outline a process to follow when implementation is imminent.

- Messages are refined and tested with key audience groups
- Translated into all official languages
- Framed through values, emotions and lived realities, not just facts
- Delivered by credible voices – community champions, whistle-blowers, ethical leaders
- Developed into compelling, empathetic and creative concepts that are bold and engaging to a range of audiences.

---

## 8. Phased Approach

Through consultations with key stakeholders and analysis of the Communications and Engagement Strategy, it is clear that a phased approach to communication would be most impactful.

To ensure that a strong foundation has been laid we recommend the following phases and the objectives for each phase:

### Establishment phase

During the establishment phase it would be critical to set up the OPI Communications Department, the NCP and develop the OPI brand identity and key communications platforms like the website, social media pages etc.

During this phase it is essential to deliver the following:

**Establish the OPI Communications Department**

**1. Define mandate and objectives:** clarify the role of the department within the OPI and its contribution to the overall mission and align objectives with the NACS strategy and the broader anti-corruption and public integrity agenda.
**2. Recruitment and staffing:** identify required roles and prioritise hiring experienced communicators with understanding of behaviour change, public sector context, and multi-channel campaigns.
**3. Develop internal systems and processes:** Establish workflows for content creation, approvals, media engagement, risk management. Set up brand identity, templates, toolkits, and branding guidelines. Create protocols for crisis communication and rapid response.
**4. Capacity building:** Train internal team on SBCC principles, public sector communication, stakeholder engagement, and media handling. Consider partnerships with institutions or consultants to upskill early hires.
**5. Set-up infrastructure and tools:** develop or procure platforms for digital communication (website, social media management tools), media monitoring, design and content production and stakeholder Customer Relationship Manager (CRM) and mailing lists**.**
**6. Establish a digital presence:** including a website, social media profiles, emailers, databases etc.

**Setting up the National Communications Partnership (NCP)**

**1. Clarify purpose and value proposition:** clearly define the NCP's role in supporting NACS implementation through aligned messaging and joint action. Position the NCP as a space for collaboration, driving the public interest and promoting SA's development agenda.
**2. Identify and engage founding partners:** Bring together government departments, civil society, media, business, faith-based organisations and creatives. Secure early champions who can co-lead or act as convenors.
**3. Governance and structure:** define roles (e.g. secretariat, working groups, convenors, funders). Develop a terms of reference that sets for participation and decision-making.

Set up regular coordination mechanisms (e.g. monthly meetings, shared calendar, shared digital workspace).

3. **Shared messaging and content pool:** Co-develop a shared messaging framework or "communications house." Create a content hub and toolkits that partners can draw from, adapt and share. Design templates for partner branding alongside OPI or NACS messaging.
4. **Partnership engagement model:** Develop partnership tiers or levels of involvement (e.g. amplifiers, implementers, co-creators). Offer capacity-building or resource-sharing incentives.

   **6. Launch and visibility:** Plan a formal launch event or campaign to kick off the NCP. Use storytelling and case studies to showcase the power of collective impact.

   **7. Monitoring and feedback loops:** Track shared indicators for communication reach and impact. Facilitate reflection and feedback sessions with NCP members.

**Constituting the NCP**

Below we map the key members of the NCP, as brainstormed and consolidated in the strategy workshop with the NACAC Communications Workstream and other key stakeholders. Here we outline who should be included in the NCP and in some instances we outline the approach to incorporating them into the NCP to achieve maximum impact.

**Government:**

- Decision-makers: Presidency, GCIS, JCPS Cluster, DPME, DPSA, COGTA, NT, Information Regulator, Parliament
- Multipliers: education, PSA, Home Affairs, PSC, COGTA, SALGA, Department of Health, BMA, DPW, DWSA, DHS, Chapter 9 & 10, SOE, DSAC, PANSLAP

**Civil society:**

- Decision-makers: labour, INGOs, NGOs, CBOs, interfaith communities, think tanks/researchers, traditional leadership structures, sports bodies, youth organisations, arts bodies, women's organisations
- Multipliers: individual organisations and grassroots movements

**Private Sector:**

- Decision-makers: Organised business eg: BUSA, BLSA, NAFCOC, BMF, ID, Communications and Ad agencies.
- Multipliers/Content partners: the platforms of private sector entities
- Funders: banks and big businesses to contribute funding as part of their CSR initiatives.

**Approach/how incorporate/operationalise:**

- Decision-makers must all send permanent representatives to encourage consistency and accountability
- Expansive approach proposed where participants determine their mandate, rules of engagement & the values or requirements for participation

- Participants to identify a role for themselves - with an emphasis on practicality, co-operation and cohesion. They must identify their own resourcing contributions and how they will proliferate the message in their organisations effectively.

**Media:**

- **Decision-makers:** GCIS & SANEF, SABC, National Association of Broadcasters, Southern African Freelancers Associations, Press Council of South Africa, Media Development and Diversity Agency, Association for Independent Publishers, Broadcast Complaints Commission of SA etc, community media
- **Multipliers:** MultiChoice, Media24, Primedia, individual media house etc

**Approach:**

- We recommend a strategic approach that ensures the media's inclusion in the NCP in a that aligns with their independent role in society takes advantage of their reach and unique position in society.

**Education sector:**

- **Decision-makers:** DBE and DHE Minister and Office, Officer of the Premier, MECs for Education, CHE, Umalusi, IEB, Research institutions, StatsSA, unions
- **Multipliers:** SETAs, basic and higher education, clusters, heads of communications in departments, SRCs, SGBs, educational civil society, SALGA

### Awareness Phase: Launching the OPI

The Awareness Phase marks the public-facing debut of the OPI and the beginning of a coordinated national effort to bring the NACS to life. This phase is about visibility, credibility, and momentum and creating knowledge and awareness as a precursor to behaviour change.

It sets the foundation for sustained public engagement by building recognition of the strategy and trust in the institution responsible for driving it forward. The goal is to ensure that all South Africans – in every language, in every province – understand what the NACS is, why it matters, and how the OPI will play a central role in delivering its promise. Simultaneously, this phase begins the process of bringing the NCP ecosystem to life with campaigns and activities.

- **Public awareness of NACS and the OPI**

To build public awareness, we will launch a targeted communications campaign that introduces the NACS and the OPI to the nation. This includes:

- A multi-platform campaign that uses television, radio, community media, social media, and government platforms to ensure wide reach and broad awareness and knowledge.
- Summarising the NACS and the role of the OPI in plain language and all official languages to promote inclusivity and understanding.
- Community-level engagement using existing trusted platforms – such as community radio, ward meetings, and schools – to localise the message and connect with people

where they are. These kinds of activities stimulating dialogue and discussion – when paired with awareness begins to build self-efficacy and community-efficacy to take action.

- Educational content that explains how corruption undermines development and how the OPI is structured to combat it, in ways that are relevant to everyday experiences.

This campaign must be accessible, engaging, and repeated across time to reinforce understanding and drive reach.

- **Building credibility and trust**

Credibility is non-negotiable in anti-corruption work. The early communications must:

- Clearly communicate who the OPI is: its mandate, structure, leadership, vision, and approach. This is a crucial awareness and knowledge activity.
- Proactively demonstrate transparency, especially in the appointment of leadership and staffing processes – who is being appointed, how, and why they are suitable for the task.
- Begin to set the tone for the OPI's operating culture: responsive, ethical, independent, and people-centred. This means that even at launch, the OPI must be seen to be walking the talk — e.g., through its own procurement processes, openness to scrutiny, and responsiveness to public concerns.
- Use real stories and leadership voices to put a human face to the institution, reinforcing a narrative of competence, integrity, and service.

- **Operationalising the National Communications Partnership**

With the NCP formally constituted, this phase focuses on bringing the partnership to life through joint action and collaborative campaigns. The emphasis is on activating the networks, platforms, and resources of campaign partners to amplify key messages and drive public engagement with the NACS.

Key activities will include:

- Launching coordinated campaigns across multiple platforms using the voices, brands, and reach of partner organisations. This will help to build awareness and ensures that messaging is not only consistent, but also visible and trusted across different audience segments.
- Mobilising partner-specific strengths – such as access to grassroots communities, media airtime, creative content production, or sectoral influence – to extend the reach and relevance of communications.
- Implementing a shared campaign calendar and messaging toolkit, aligned with national priorities, commemorative dates, and key moments in the OPI's rollout.

- Facilitating regular partner briefings, feedback loops, and learning exchanges to refine the approach, share results, and ensure adaptability.
- Using this momentum to build public confidence and generate demand for participation, oversight, and accountability – creating a sense of shared ownership of the NACS.

Operationalising the NCP marks a critical turning point – moving from coordination to collective impact, where communication partners work as a force multiplier to embed anti-corruption messaging into the national consciousness.

This early groundwork is critical to unlocking a coordinated national movement, where government and society are speaking with one voice in support of the NACS.

### Education Phase: Building consensus and trust in communities

The Education Phase is about increasing and improving knowledge, deepening public understanding and strengthening social norms that support the fight against corruption. While the Awareness Phase introduces the NACS and OPI, this phase begins the work of *internalising* the message – enabling people to recognise corruption, understand its consequences, and see themselves as active participants in the solution.

It is also a trust-building phase: one where we explain, clarify, and engage, laying the foundations for citizen action. By using engaging, accessible formats and trusted messengers, this phase aims to build consensus within communities that corruption must be challenged – and that the OPI can be trusted to lead that effort.

- **Grow understanding of corruption, its types, impacts and consequences**

This phase will feature an ongoing public education campaign that breaks down what corruption looks like in practice – from petty bribery to procurement fraud – and how it affects service delivery, job creation, inequality and trust in public institutions. This is an important element in strengthening anti-corruption attitudes. By reinforcing positive attitudes, people become more motivated to intend to act ethically (behaviour intention is a key tipping point in driving behaviour change).

- Content will be localised and illustrated through relatable, real-world scenarios that help people connect systemic corruption with their lived experiences.
- The campaign will also seek to dispel myths, such as the belief that corruption is inevitable or that reporting it makes no difference. It should highlight that integrity is a strength not a risk.
- Resources such as visuals, comic strips, infographics, community dialogues, radio dramas and short explainer videos will be used to reach diverse audiences. The emphasis will be on improving awareness and knowledge through entertaining and engaging formats.

- **Educate the public on whistleblowing and the new Act**

This phase will also place a strong focus on educating people about their rights and protections under the new whistleblower legislation:

- A dedicated sub-campaign will explain how and when to blow the whistle, what protections exist under the new Act, and how the OPI and other partners will handle reports.

- It will include how-to guides, radio Q&As, and animated explainers that simplify the legal language and emphasise practical steps.
- The aim is to promote safe, informed whistleblowing, while reassuring potential whistleblowers that they will be protected and supported.
- Trusted voices, such as community leaders, legal experts, and whistleblowers themselves, will play a key role in building confidence in the system.

- **Inculcate a culture of integrity and accountability**

To shift behaviour and social norms, this phase will include a national edutainment campaign that uses storytelling and popular culture to promote integrity, fairness, and accountability. High-impact and powerful edutainment must include an emotional stir-up, a key tipping point in behaviour change.

- Anti-corruption story line integration – we recommend that an anti-corruption storyline is integrated into a national soapie or drama. This extends reach and presents the topic in an engaging manner that can stimulate dialogue and debate and reinforce educational messages. Again this would use an emotional stir-up.
- A series of TV, radio, and digital content pieces will be developed, including short dramas, influencer collaborations, community challenges and possibly gamified learning content.
- Messages will be crafted to inspire a sense of pride in ethical leadership, and to position integrity as something to be celebrated – not feared or dismissed. We can also position ethical behaviour as the social norm with messages like “Most South Africans believe corruption must be challenged” or “Public servants across the country are standing up for what’s right.
- Youth and young adults will be a key focus, with messaging designed to challenge cynicism and create a future-oriented anti-corruption identity.

This element of the campaign will also help to establish social norms, for example people are more likely to form an intention if they believe others like them are doing the same. By shaping the perception that anti-corruption behaviour is normal and expected we are more likely to encourage people to act in an anti-corrupt way.

- **Showcase the independence and transparency of the OPI**

Trust in the OPI will be strengthened through ongoing storytelling that shows how the institution is operating in the public interest:

- Case studies, behind-the-scenes interviews, and accessible updates on key decisions and investigations will form part of a "show, don't just tell" approach to transparency.
- Content will highlight the independence of the OPI through proof points, such as how complaints are handled without fear or favour, and how decisions are made free from political interference.
- Success stories, even if small, will be amplified through trusted media and community voices, showing that progress is possible and that the OPI is delivering on its mandate.

### Social Mobilisation Phase: Using public participation to mobilise communities

The Social Mobilisation Phase is where public engagement transforms into public ownership. Having laid the foundation through awareness and education, this phase focuses on activating communities and empowering people to participate meaningfully in the fight against corruption. It is about moving from understanding to action – from passive support to visible, collective mobilisation. The aim is to create a sense of belonging, pride and momentum around a national anti-corruption movement. This will be achieved by building symbols, rituals, language and champions that people can rally behind. The emphasis will be on local relevance, national reach, and emotional connection.

- **Awareness and education: solidifying the groundwork**

Before we mobilise, we must ensure that people understand *what they are joining* and *why it matters*. This phase will:

- Reinforce the core messages from the awareness and education phases through refreshers, new formats and targeted local activations.
- Focus on underserved and hard-to-reach communities, using trusted messengers and community-based media.
- Offer simple, engaging content that connects corruption to real life and clearly spells out what individuals and communities can do.
- Ensure platforms are in place for two-way communication, where people can ask questions, provide feedback and access support or reporting mechanisms.

- **Create a compelling idea or call to action**

Mobilisation needs a strong emotional hook – a unifying idea that people can get behind. This could take the form of:

- A powerful slogan, war cry, or campaign anthem that captures the spirit of the movement.
- A national pledge or commitment statement that people, institutions, and even influencers can publicly adopt. By asking people to commit we are helping them form an intention to act in an ethical way.
- We also suggest that we make the desired behaviour specific, the more concrete it is the easier it is to adopt. Eg: “I refuse to pay a bribe” or “I will say no when pressured to act unethically”.
- A message framework that speaks to values – such as fairness, justice, and ubuntu – and gives people language to express their support.
- The campaign should feel energising, inclusive and easy to personalise – people must be able to say: *“I’m part of this.”*

- **Collective action and visibility**

This is the engine room of mobilisation. We need to make participation *visible, joyful, and contagious*. This will include:

- The development of a simple, bold visual icon – a symbol that represents the anti-corruption movement and can be used across materials, events, digital campaigns and merchandise (e.g., ribbons, badges, stickers) by all NCP members.
- Running national and local action days, digital challenges, community mural projects, marches or dialogue forums – depending on context and appetite.
- Using storytelling and social media to spotlight ordinary people taking a stand against corruption in their schools, clinics, workplaces or communities.
- Partnering with schools, workplaces, civil society organisations and traditional structures to embed the campaign in existing community rituals.

- **Brand ambassadors or campaign champions**

Identifiable faces and trusted voices will help bring the campaign to life and bridge the gap between the public and the OPI. These champions should:

- Be diverse and representative – from Presidential and political ambassadors to sports people, celebrities and influencers to community leaders, youth activists, whistleblowers and faith-based voices.
- Share personal stories or public commitments that model integrity and speak authentically to the audience.

- Be trained and supported to deliver campaign messages, attend events, and engage with media and communities.
- Serve as “relational anchors” – helping people trust the message because they trust the messenger.

## 9. Critical Success Factors and Dependencies

The success of this Communications Plan hinges not only on creative execution, but on a strong enabling environment that supports credibility, coherence, and sustained public engagement. The following considerations highlight the essential conditions, risks, and strategic levers that must be in place for the plan to achieve its intended impact. These are not afterthoughts — they are central pillars of a campaign that aspires to shift behaviour, inspire trust, and catalyse a whole-of-society movement against corruption.

**1. Political and institutional anchoring**

- The communications campaign must be anchored within a credible and capable institutional home — ideally the OPI, with strategic coordination support from GCIS and other key partners including NEDLAC and The Presidency.
- Visible political buy-in from the highest levels of government is essential to signal commitment, build trust, and create political space for bold messaging.
- Communications must align with broader public sector reforms**,** accountability frameworks, and real-time institutional developments to avoid dissonance.

**2. Credibility and visible accountability**

- People believe actions, not just words. Messaging will only resonate if it is backed by visible government and private sector action — including investigations, sanctions, and systemic reforms as well as internal action by companies.
- Transparent updates from the OPI, including progress on cases and institutional integrity, will reinforce public trust.
- Credible messengers are essential: people trust people, not institutions or slogans. Campaigns must elevate the voices of whistleblowers, community leaders, survivors of corruption, and ethical public servants.

**3. Adequate resources and professional staffing**

- A national behaviour change campaign cannot be run on goodwill alone. Dedicated funding is required to support professional staffing, content development, media placement, community activation, monitoring, and crisis response. Funding must come

from government with matched funding secured from the private sector and donor organisations.

- Skilled personnel are needed across communication functions — including strategy, media relations, creative, digital, grassroots mobilisation, and M&E.

**4. Evidence-based and audience-centred design**

- Messaging must be rooted in audience insight — understanding how different groups perceive corruption, where they place blame, what motivates them, and what stops them from speaking out.
- Message testing and audience segmentation should guide the creative approach, ensuring cultural relevance and resonance.
- Commission rapid assessments of public attitudes, media consumption habits, and misinformation trends to inform rollout and adaptation.

**5. Trusted messengers and cultural relevance**

- Campaigns must be delivered by people and platforms that communities already trust: religious leaders, radio hosts, teachers, youth activists, and others embedded in daily life.
- All materials must be translated into all 11 official languages and adapted to different literacy levels and cultural contexts to ensure accessibility.

**6. Whole-of-society participation**

- The campaign must foster co-ownership across society, including civil society, the private sector, labour, youth, faith-based organisations, and the media.
- The National Communications Partnership must be fully operational and mobilised to coordinate across sectors and amplify messaging through multiple, trusted channels.
- Mechanisms should be in place **to facilitate grassroots participation** and enable communities to tailor national messages to local contexts.

**7. Creating urgency and national momentum**

- The campaign must position corruption as a national crisis – one that threatens livelihoods, deepens inequality, and erodes democracy.
- Messaging should be rooted in shared values such as fairness, dignity, justice, and ubuntu to create moral resonance.

- Storytelling should show real-world consequences of corruption, especially in how it affects vulnerable groups and undermines essential services.

**8. Monitoring, evaluation, and continuous learning**

- Monitoring and evaluation must go beyond proving impact — it should be designed to inform rapid adaptation.
- Feedback loops and real-time data collection (including digital analytics, media sentiment, and community feedback) must be built in from the start.
- Regular reflection and learning sessions with the OPI and campaign partners will ensure the strategy evolves with the context.

**9. Risk mitigation and crisis preparedness**

- The anti-corruption space is inherently political and volatile. The campaign must be equipped to respond to misinformation, backlash, reputational risks, or political interference.
- A crisis communication protocol should be developed early, along with a plan for coordinated rapid response messaging.

**10. Digital readiness and innovation**

- Digital platforms are essential for reaching young people and scaling impact — but they require dedicated strategies, staffing, and moderation systems.
- Innovative approaches such as gamification, mobile challenges, citizen storytelling, or WhatsApp-based engagement can help drive interest and participation, especially among youth.

## 10.Conclusion

This Communications Plan sets out a bold and practical roadmap to mobilise the nation around the National Anti-Corruption Strategy (NACS) and the newly established Office of Public Integrity (OPI). Rooted in behaviour change principles and supported by a whole-of-society approach, the plan recognises that defeating corruption is not only a matter of enforcement — it is a matter of prevention that involves shifting public mindsets, restoring trust in institutions, and inspiring collective action for sustained change to be realised.

Each phase of the plan — from awareness to education to mobilisation — is designed to meet people where they are, speak to their lived experiences, and invite them to become active participants in building a more just and accountable South Africa. Success will depend on strong leadership, credible messengers, consistent messaging, and meaningful partnerships across all sectors of society.

Ultimately, this is more than a communications effort — it is a movement to reclaim integrity as a national value. With the right resourcing, political will, and public engagement, this strategy can help turn the tide against corruption and build the foundation for a future where public power is exercised in the public interest.

## 11.Annexures

Annexure 1: Workshop Agenda - Developing a Communications Plan (based on the NACS communication strategy) for the proposed OPI

**Workshop Agenda**

**Developing a Communications Plan (based on the NACS communication strategy) for the proposed OPI**

**Date: 20 May 2025 I Venue: Garden Court OR Tambo I Time: 09:00 – 16:30**

---

**08:30–09:00 | Arrival and Registration**

---

**Session 1: 09:00–09:30 | Welcome and Context Setting**

**Objective:** A recap of the journey to provide context for the workshop

**Speaker:** Councillor Nkosikazi Mhlauli & Moira Campbell

- **Presentation: Journey so far**
    - Setting the scene (a brief overview of the work of the NACAC Comms Workstream)
    - Summary of the existing NACS Communications Strategy (Moira Campbell)
    - Task for the day: How can the OPI operationalise the NACS Comms Strategy?

---

**Session 2a: 9:30 – 10:30 | Using a Social Behaviour Change Communication (SBCC) Approach**

**Objective:** Using a SBCC multi-channel approach

**Speaker:** Coco Cachalia (Grounded Media CEO)

- Presentation: What is SBCC and what are the key stages in behaviour change
- Discussion: What are the top communication challenges to be addressed by SBCC in the context of corruption prevention and public education?

---

**Session 2b: 10: 30 – 11:00 | Case studies from around the world**

**Objective:** Drawing on lessons learned

- Strategic insights from communications best practice from around the world

---

**11:00 – 11:15 | Tea Break**

---

**Session 3: 11:15 – 12:30 | Operationalising the National Communication Partnership (NCP) as an implementation modality to mobilize all-of-society and all-of-government**

**Objective:** Who forms the NCP and how do we operationalise it?

- Sectoral mobilisation through institutions/ industries/ sectors
- Breakaway sessions: What will it take to build an NCP? Each group to map key decision makers and multipliers in the following sectors: government, civil society, private sector, education sector & media (if more sectors surface from participants, these can be added).
- Plenary discussion

---

**12:30–13:30 | Lunch**

---

**Session 4: 13:30 – 16:00 | What does the OPI need to communicate effectively, based on the presented strategy and approach?**

**Objective:** Sensitise stakeholders to the full communications ecosystem and the resource requirements for high-impact communications

**Session 4a: 13:30 – 15:00 What are the communication phases?**

- Presentation on phases as outlined in NACS Comms Strategy
- Breakaway session

        - Awareness: Launching the OPI
        - Education: Building consensus and trust in communities
        - Social mobilisation: Using public participation to mobilise communities
    - Plenary discussion

---

**15:00–15:15 | Tea break**

---

**Session 4b: 15:15 – 16:15 | What is required for effective implementation?**

**Activity:**

- Presentation key resourcing questions (15 mins):
    - What minimum staffing is required for effective communications? Eg: technical skills
    - What tools/platforms are essential?
    - What budget level is realistic?
    - Are consultants or a communications agencies required?
    - Research requirements – perceptions/attitudes surveys, landscape mapping etc
    - M&E requirements – baseline, mid-line and endline studies are required.
- **Discussion (45 mins):** What can different stakeholders (as identified in Session 3) bring to the table in terms of the key resourcing questions (above)?

---

**16:15-16:30 | Wrap-Up and Next Steps**

- Recap of outcomes and agreements
- Next steps

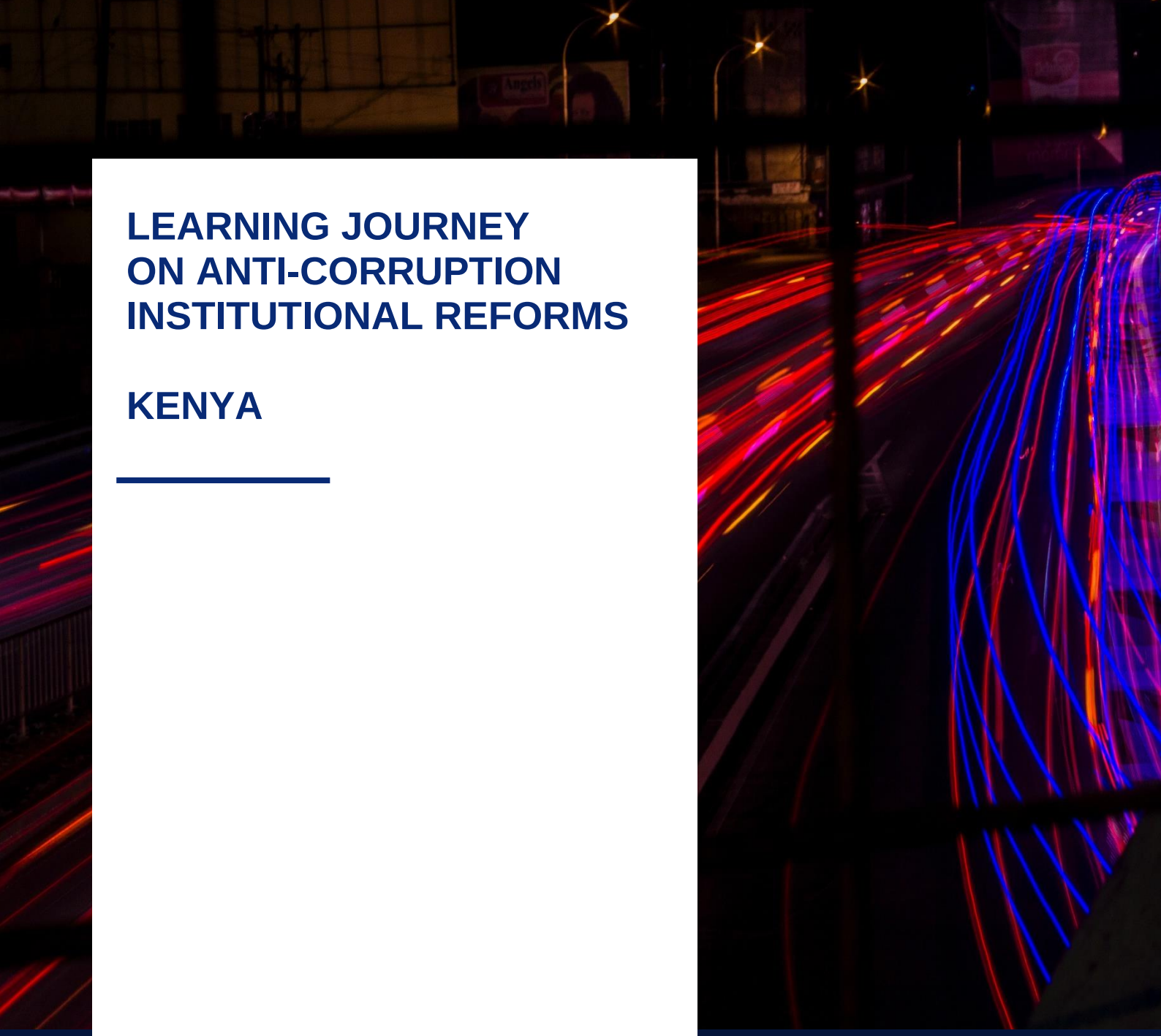
---

**Annexure 2: Workshop Attendance Register**

**20 MAY 2025**

**CONFIRMATIONS FOR WORKSHOP ATTENDANCE**

| ORG | QUANTITY | NAMES |
|---|---|---|
| NACAC | 6 | Dr Naidu, Sefura, Cllr Dolopi, Cllr Mbeki, Cllr Mhlauli & Cllr Lewis |
| OPSC | 2 | DDG Malatsi & Ms Moroko Mabowa |
| DPME | 2 | Xoliswa Salman and Lawrence Ngobeni |
| SIU | 5 | K Subramoney, Mr Mkhungo, Keizer Kganyago, P Maharaj & Mdu Nxumalo, Tirelo Phulwane |
| DPSA | 1 | Pleasure Matshego |
| CW | 1 | Moira Campbell |
| Mobilize | 2 | Bomi Bukali and Kgaladi Makhafola |
| GEAC | 1 | Zanele Sabela |
| World Bank | 1 | Albertus Schoeman |
| Behavior Change Agency (BCA) | 2 | Lebo and Elmien |
| GM | 3 | Coco, Thoko, Jade |
| GIZ | 3 | Joanna, Mokgapi, Esihle |



# LEARNING JOURNEY ON ANTI-CORRUPTION INSTITUTIONAL REFORMS

## KENYA

**9-14 JULY 2023**

2030 NDP
german cooperation
DEUTSCHE ZUSAMMENARBEIT
implemented by: giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra
State Secretariat for Economic Affairs SECO

**Published by the**
Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
Bonn and Eschborn, Germany

Transparency, Integrity, Accountability Programme (TIP) in South Africa
GIZ South Africa, Lesotho and eSwatini
P.O. Box 28102, Sunnyside, 0002, Pretoria, South Africa
Phone +27 12 423 5900
giz-suedafrika@giz.de
www.giz.de/southafrica

As at
August, 2023

Design
Transparency, Integrity, Accountability Programme (TIP) in South Africa

Text
Learning Journey participants

On behalf of the
German Federal Ministry for Economic Cooperation and Development (BMZ)

# Contents

Background……1

Context……1

Itinerary……5

The Learning Journey……9

Day 1……9

Day 2……14

Day 3……27

Day 4……32

Participants' Bios……41

# Background

This learning journey was undertaken to understand Kenya and Uganda's complex political and legal challenges in executing anti-corruption institutional reforms, and the practical solutions that were deployed to bring about these reforms. It was also an opportunity to establish trustful and mutually supportive relationships between the participating state and non-state institutions. The learning journey for partners from government, civil society and anti-corruption advisory bodies was organised by the Transparency, Integrity and Accountability Programme (TIP) in South Africa, in collaboration with GIZ programmes in Kenya and Uganda.

TIP supports state and non-state actors to collaborate on implementing the National Anti-corruption Strategy (NACS), with a whole-of-government and societal approach. The TIP is co-financed by the German Federal Ministry for Economic Cooperation and Development (BMZ) and the Swiss State Secretariat for Economic Affairs (SECO) and is implemented by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH in partnership with the Department of Planning, Monitoring and Evaluation (DPME).

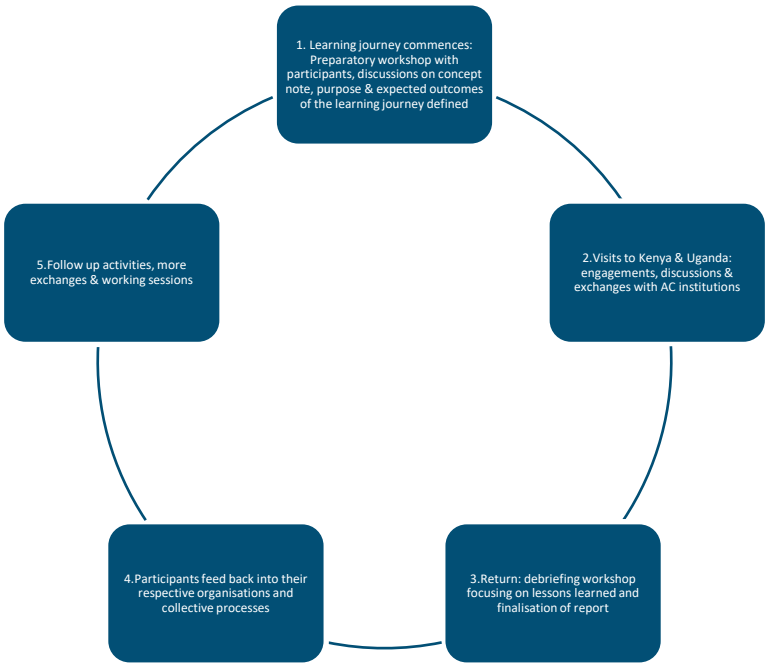
# Context

As a direct consequence of the adoption of the National Anti-corruption Strategy (NACS)[1] and the recommendations of the Commission of Inquiry into Allegations of State Capture (Zondo Report), organs of state, civil society organisations, academia and the National Anti-corruption Advisory Council (NACAC) are considering policy reforms and the institutional arrangements for fighting corruption. This process is underpinned by research, analysis, consultation and benchmarking.

The NACS proposes the establishment of a National Anti-corruption Agency and the Zondo Report recommends specific institutional arrangements for the protection of whistleblowers and public procurement to fight corruption. There are also existing organs of state whose mandates and functions relate to fighting corruption and Constitutional Court judgements on the matter. Reforming the anti-corruption institutional architecture is thus fraught with political and policy challenges and implementation of policy choices on architecture will be complex.

Flowing from the ratification of the United Nations Convention against Corruption, international guidance and benchmarks for the establishment of anti-corruption agencies have been developed in the form of the Jakarta Statement and subsequent Colombo Commentary on principles for anti-corruption agencies. The guidance and benchmarks cover aspects of institutionalization, leadership, human and financial resources and oversight and accountability.

Rather than being a once-off event, peer learning is a process designed to create space and opportunities for anti-corruption policymakers, anti-corruption practitioners and relevant stakeholders to participate in learning and meaningful on-going discussion around sustainable measures to fight corruption in SA. The learning journey was constructed based on the needs and research questions of participating organisations (which was determined through individual consultations and a joint workshop) and offered a platform for ongoing reflection and cooperation beyond the actual exchanges with or visits to another country. By its very nature, peer learning involves the exchange of learning and so Kenyan and Ugandan parties engaged were also interested in South African developments.




Flow diagram of the learning journey

## High-level programme for Kenya and Uganda

Both Kenya and Uganda have successfully undergone reforms to their anti-corruption architecture and both countries are continuing with implementation. This learning journey will provide direct exchanges with state and non-state actors in these two countries. Areas explored for learning included the following.

[1] National Anti-Corruption Strategy 2020-2030

- Institutional and governance arrangements: Mandate, leadership, human and financial resources and oversight and accountability. Key aspects: inter-agency collaboration/ independence/ inter-dependence, leadership appointments, protection from political environment, responsibility for whistleblower protection and ensuring transparent and accountable procurement.
- Approach to executing mandate: Concentration on removing/prosecuting corrupt individuals/structural changes, centralisation of authority, grand/petty (front line) corruption.
- Societal mobilisation: Communication, education, awareness raising and relationship between state and non-state actors.
- Impact: Monitoring, evaluation and reporting, including social accountability and data management.

The following institutions were identified with the support of the GIZ offices in Kenya and Uganda as engagement partners during the learning journey.

In Kenya:

- The Ethics and Anti-corruption Agency, which has the mandate of combating and preventing corruption in Kenya
- Commision of Administrative Justice
- The Auditor-General
- The Public Procurement Reform Authority
- Civil society bodies, including the Transparency International chapter.

Discussion on Uganda (in Kenya):

- Inspectorate of Government (an Ombudsman and key anti-corruption agency with powers to investigate, arrest and prosecute anti-corruption cases).
- Ministry of Justice and Constitutional Affairs

**Composition of the delegation**

The delegation be made up of persons drawn from the following institutions:

- Government: Department of Planning, Monitoring and Evaluation (DPME), Department of Public Service and Administration (DPSA), National Prosecuting Authority (NPA), Special Investigating Unit (SIU), National Treasury: Office of the Chief Procurement Officer (OCPO), Office of the Premier: Gauteng and the Department of Justice and Constitutional Development (DoJ & CD)
- Civil society/academia: Corruption Watch (Transparency International chapter), Public Procurement Reform Working Group/Public Affairs Research Institute and The Whistleblower House
- Anti-corruption advisory bodies: The National Anti-Corruption Advisory Council (NACAC) and the Gauteng Ethics Advisory Council (GEAC)
- GIZ-TIP

# ITINERARY

| Time | Activity/Host/Venue | Topics/Tasks/Deliverables | Responsibility |
|---|---|---|---|
| **Day Zero: Sunday 9.07.2023** | | | |
| **16:00** | Arrival of the delegation in Nairobi,<br><br>Check-in;<br>GemSuites Riverside Apartments and Hotel<br>Off Riverside Lane<br>Nairobi. | Briefing on the study visit programme | GIZ Kenya/SA Shuttle Services, Kenneth Matiba<br>Maleka Mokgapi |
| **Day One: Monday 10.07.2023** | | | |
| **09:30 – 10:30** | Visit to the South Africa High Commission in Nairobi<br><br>Roshanmaer<br>Place 3rd Floor<br>Lenana Road<br>Nairobi. | Courtesy Call/Exchange | GIZ South Africa/ Delegation<br><br>HE MJ Mahlangu<br>Prof Firoz Cachalia |
| **11:30 – 13:00** | GIZ Kenya, Good Governance Programme<br><br>4th Floor<br>Segen Plaza | Understanding GIZ Governance Cluster in Kenya: Objectives, Structure and Focus areas, Partners, Successes, Challenges and Opportunities. | GIZ Kenya, Good Governance Cluster, Thomas Ansorg |

| Time | Activity/Host/Venue | Topics/Tasks/Deliverables | Responsibility |
|---|---|---|---|
| | 96 Riverside Drive<br>Nairobi. | | SA Counterpart :<br>Valeska Onken TIP Programme Manager |
| **14:30 – 16:30** | Commission of Administrative Justice (CAJ) *(Ombudsman)*<br><br>2nd Floor,<br>West End Towers<br>Opposite Aga Khan High School, Off Waiyaki Way<br>Westlands, Nairobi. | Centrality of Access to information and complaints management: Mandate of CAJ, Experiences, Challenges and Opportunities. | GIZ Kenya, Titus Ogalo<br>SA Counterparts:<br>Selby Makgotho<br>Nicki Van't Riet |
| **Day Two:<br>Tuesday 11.07.2023 - Study Visit Exchanges** | | | |
| **09:30 – 12:30** | Africa Anti-Corruption Day<br><br>University of Nairobi ( Chandaria Hall, Main Campus and Ufungamano House) | Concurrent sessions:<br>1 The People's Anti-corruption Summit 2023<br>2 Africa Day Commemoration: Public lecture | GIZ Kenya, Elijah Ambasa and Titus Gitonga<br>SA Counterpart: All |
| **15:30 – 16:30** | Visit to the National Archives/Uhuru Gardens/Museum | Learning about Kenya | GIZ Kenya, Joan Kadamu |

| | | | |
|---|---|---|---|
| **Day Three:<br>Wednesday 12.07.2023 - Study Visit Exchanges** | | | |
| **09:30 – 12:05** | Office of the Auditor-General (OAG)<br><br>3rd Floor,<br>Anniversary Towers,<br>University Way,<br>Nairobi. | Relevance of fiscal oversight and accountability: Mandate, Experiences, Challenges and Opportunities. | GIZ Kenya, Kenneth Matiba<br>SA Counterpart:<br>Terence Nombembe |
| **14:30 – 16:30** | Public Procurement Regulatory Authority (PPRA)<br><br>6th Floor KISM Towers,<br>Ngong Road<br>Nairobi. | Open and accountable public procurement system in promotion of transperancy and integrity: Mandate of PPRA, Experiences, Challenges and Opportunities. | GIZ Kenya, Kenneth Matiba<br>SA Counterparts:<br>Mpho Nxumalo &<br>Devi Pillay |
| **Day Four:<br>Thursday 13.07.2023 - Study Visit Exchanges** | | | |
| **09:30 – 12:30** | Ethics and Anti-Corruption Commission (EACC)<br><br>Integrity Centre,<br>Jakaya Kikwete/Valley Road Junction, Nairobi. | Exchange on the Ethics and Anti-Corruption Landscape in Kenya: Legal Policy and Institutional Framework, Experiences, Challenges and Opportunities. | GIZ Kenya, Elijah Ambasa<br>SA Counterparts:<br>Firoz Cachalia |
| **14:30 – 16:30** | Transparency International (TI), Kenya<br><br>4th Floor | Role of the Civil Societies in the promotion of transparency, integrity and social accountability in Kenya: Experiences, Challenges and Opportunities. | GIZ Kenya, Silas Kamanza |

| | | | |
|---|---|---|---|
| | Segen Plaza<br>96 Riverside Drive<br>Nairobi. | | SA Counterpart:<br>Andy Mothibi & Ben Theron |
| **17:00 – 18:30** | GIZ Kenya,<br>Good Governance Programme<br><br>4th Floor<br>Segen Plaza<br>96 Riverside Drive<br>Nairobi. | Discussion: Uganda | Musa Modoi, Enyuk Charles |
| **Day Five:**<br>**Friday 14.07.2023 - Study Visit Exchanges** | | | |
| **08:30 – 09:30** | GIZ Uganda | Exchange: Experiences, Challenges and Opportunities.<br><br>Debriefing. | GIZ Uganda/South Africa<br>Enyuk Charles & Musa Modoi |
| **End/Departure** | | | |

# The Learning Journey

## DAY 1

Visit to the South Africa High Commission in Nairobi

The visit to the South African High Commissioner to Kenya, His Excellency, MJ Mahlangu was primarily a courtesy visit but was useful in receiving a country briefing and a status report from the ambassador. He provided an overview of the Kenyan situation and commented on the excellent cordial relationship between South Africa and Kenya.

Points covered include:

- In 2021, a memorandum of understanding was signed cementing cooperation.
- In 2023, a mid-term review was undertaken between the two countries. Kenya has a constitution that is similar to South Africa.

*Kenya Overview*

A new government was elected in August 2022 with a peaceful transition; however, the opposition Jubilee party opposition leader Raila Odinga had arranged a demonstration against the high cost of living. The ruling party had reached out to the opposition for reconciliation and nation building; however, this was not successful as there are deep-seated divisions between the current and previous presidents. This is partially due to the ex-president supporting the opposition causing tensions. Corruption in Kenya is rife and can be regarded as a pandemic with especially the prominent individuals being mentioned frequently in the press. The fight continues and will be intensified. It is an accepted fact that whistleblowers need to be protected and taken care of. Kenya should have a rallying cry that includes: “we have a clean government!” and “we need to fight corruption!” The high debt to the IMF has necessitated a higher tax rate which led to demonstrations on 7 July 2023. This resulted in injuries and a few fatalities. There is another demonstration planned for 12 July 2023.

*Highlights and learning points from input*

It is clear that the South African delegation is diverse and inclusive as it includes Government officials and civil society. This allows for divergent views and inputs enriching the end product. It also creates the space for individuals to provide honest and open opinions.

*South African inputs*

The detailed response by the President on the Zondo Commission findings, as Head of the Executive, has been submitted to Parliament of South Africa during October 2022. One of the recommendations contained in the Zondo Commission is the establishment of a single and permanent Anti-State Capture and Corruption Commission. This learning journey seeks to study the responses from other jurisdictions in the fight against corruption in the public and private sectors. South Africa follows a multi-agency law enforcement approach. The government recently completed the review of the law enforcement agencies as it prepares to finalize a model for an Anti-State Capture and Corruption Commission.

The NACAC, established in August 2022, is consulting widely to ensure maximum inputs and diverse views. Transparency, integrity and accountability are critical features. South Africa recognizes that corruption is found at all levels and should be addressed accordingly. Gauteng Province has established an Ethics Unit to address the provincial issues.

Questions raised:

- How do Kenyan politicians position themselves to the liberation movement?
- Are there structures similar to the Ethics Unit in other provinces? If so, what is their status?
- How does one get the executive to take responsibility for public assets?
- How do we ensure transparency and meaningful consultations to maximize inputs? The previous Gauteng Premier involved civil society to ensure a complete picture and maximum inputs.

<u>GIZ Kenya: Governance Cluster, in particular, Regional Programme on Illicit Financial Flows and the Good Governance Programme</u>

The GIZ has been working in Kenya since 1975. The priority areas for the German – Kenyan development cooperations are:

- Sustainable economic development and employment promotion
- Agriculture and food security
- Renewable energy and climate change
- Governance and Democracy
- Migration and Displacement

The Governance and Democracy Cluster comprises the projects Good Governance, Civil Peace Service, Illicit Financial Flows and Police Programme working with a wide variety of state and non-state partners in Kenya.

*Understanding the GIZ Governance Cluster in Kenya: Objectives, Structure and Focus areas, Partners, Successes, Challenges and Opportunities.*

Valeska Onken, programme manager of the TIP in South Africa deliberated on the purpose of the learning journey in the framework of the TIP, emphasizing the importance of peer learning in an honest and trustful exchange invoking Chatham House rules for the discussion and recording of what was being said.

The first input presentation by GIZ colleagues from Kenya summarized the work of the global development cooperation programme "Combating Illicit Financial Flows" (GP IFF) that supports the Kenyan and regional partners in their compliance with relevant international standards (e.g., of FATF, UNCAC, UNTOC). The main points of discussion included the following.

- Despite the fact that Kenya has excellent legal frameworks, it struggles with the enforcement and implementation of these. Especially in the space of prevention, achievements are hard to capture.
- The Beneficial Ownership Register is of great interest to South Africa. While the existence of the register in Kenya has transformed criminal investigation in the space of IFF at the moment, it is only accessible for law enforcement entities.
- The Ethics and Anti-Corruption Act allows the Commission to investigate unexplainable assets.
- Work with the central bank (incl. with MPESA) was of interest. The programme has supported the capacity development of money laundering reporting officers as well as the reporting centre. This was within the context of hefty fines imposed in banks in terms of non-compliance with reporting of IFF.

The second input was from the Good Governance Programme Kenya, which works across the entire anti-corruption chain of prevention, investigation, prosecution, adjudication and asset recovery as well as at national and sub-national government (county) level. Digitalization is the major focus of this phase of project implementation. Please refer to the comprehensive presentation.

*Highlights and learning points from inputs*

- In terms of achievements of the GP IFF, the presenter highlighted the beneficial ownership register that was developed with the assistance of the programme. It was also highlighted that beneficial ownership disclosures are obligatory under Kenyan law in the public tendering process. In addition, the development of effective capacity building tools and assistance to law enforcement agencies for financial investigation, cross-border-investigations and inter-agency cooperation (also see factsheet in the annex) was mentioned.

- The Good Governance Programme works with a multi-stakeholder approach with a strong emphasize on civic engagement and inter-agency collaboration. In 2021, the programme supported the Office of the Auditor General to conduct the first ever Citizen Accountability Audit.
- The programme has supported the establishment of the Integrated Financial Management System and has already seen improvements in performance in supported counties.

*Ideas that SA should consider for adaptation and application*

- The presentation was received with great interest in light of the recent grey-listing of South Africa by the FATF, and the delegation voiced the wish to continue the discussion, learning more about specific developed methodologies and seeking further advice in the upcoming reporting, in particular with regards to experiences with mutual legal assistance, money laundering and asset recovery of the GP IFF.

Website/additional information links: https://www.giz.de/en/worldwide/101392.html Kenya - giz.de ; Strengthening Good Governance in Kenya - giz.de ; Combating Illicit Financial Flows - giz.de**Combating Illicit Financial Flows - giz.de**

Commission of Administrative Justice (Ombudsman)

Commonly known as (Office of the Ombudsman), is a constitutional commission established under Article 59(4) of the Constitution, and the Commission on Administrative Justice Act, 2011. The mandate of Office of the Ombudsman is two-fold and extends to both national and county governments, thus - tackling maladministration (improper administration) in the public sector and overseeing and enforcing the implementation of the Access to Information Act, 2016. It is also referred to as the "Watchman of Kenya".

*Centrality of Access to information and complaints management: Mandate of CAJ, Experiences, Challenges and Opportunities*

The key functions of the Commission are:

a) Quasi-judicial mandate to deal with maladministration
b) Ensuring compliance with leadership, integrity and these requirements
c) Litigation and quasi-judicial functions
d) Reporting obligations
e) Training of government Ministers, Departments and Agencies
f) Provision of advisory opinions and recommendations
g) Promotion on Constitutionalism and Human Rights Advocacy
h) Enforcement

Mandate covers entities and certain private bodies. Action upon receipt of a complaint of motion (Suu motu). Appeal - 21 days - same effect as the order of the High Court. Non-compliance is disclosed to Parliament and also disclosed in the annual statements. Legislative oversight – Parliamentary Committee on Justice and Legal Affairs.

Professor Firoz Cachalia led the introduction of members. He encouraged all to learn with enthusiasm as South Africa needs to put in an Anti-Corruption Agency which will put the centrality of information as key to recover whatever is wrongfully taken from the taxpayers of South Africa. Professor Cachalia thanked the hosts for opening their doors to South Africa and availing their executives to the meeting.

The Commission on Administrative Justice is a constitutional body founded on the provisions of Article 59 (4) of the Constitution of the republic of Kenya. The Commission is a constitutional body, which is fully accountable to Parliament. Parliament fully supports the work of the Commission. The Commission tables annual reports to the Parliament (which plays an oversight role). Public and private entities are encouraged to co-operate with the Commission and if they act to the contrary, the names of the non-cooperative entities are referred to Parliament for action.

*Highlights and learning points from input*

South Africa's access to information is governed by the Constitution (Section 32). The enabling legislation is the Promotion of Access to Information. The key learning point is the alignment of the enforcement of administrative justice provisions and the right to access information.

*Ideas that SA should consider for adaptation and application*

- 
- Enforcement of the Commission recommendations. The Commission does not have adequate legal mechanisms in place to prosecute or take any stringent measures for the defaulters. It can only rely on the Parliament to take tougher actions. It would be prudent to create a legal system to enforce the rules and regulations of the Commission for it to be more effective. In its current structure, the Commission is a necessary vehicle serving as a deterrent.
- Budget and Human Resources – The Commission is concerned that there is inadequate budget for human resources.
- Political Will – The political climate of the country is quite critical to the functioning of the Commission as well as the work of the other law enforcement agencies.

Refer: https://www.ombudsman.go.ke/

## Day 2

The People's Anti-Corruption Summit 2023 hosted by Transparency International Kenya at Ufungamano House, Nairobi

This was a civil society event hosted to commemorate African Anti-Corruption Day. The theme is AUCPCC, 20 years after: Achievements and Prospects. The event was hosted by Transparency International (TI), Kenya. In attendance included:

- TI-Kenya
- GIZ multidisciplinary delegation
- Ambassador of Finland to Kenya – donor to TI
- Delegation of the European Union (EU) to Kenya
- Kenyan Human Rights Commission
- Mzalendo Trust – promoting open, inclusive, and accountable Parliaments across Kenya and Africa
- The institute for social accountability
- HE Henriette Geiger – EU Ambassador to Kenya
- Inter-Religious Council of Kenya (IRC-K)
- Hon. Bernard Kibor - MP Nandi Hills Constituency and Secretary, African Parliamentarians Network Against Corruption (APNAC) Kenya
- Hon. Shimbwa, Omar Mwinyi – MP Changamwe Changamwe Constituency, Member of APNAC

Introduction by TI – Kenya Programme Coordinator, Titus Gitonga

- Public participation (PP) and civic engagement (CE) became a key factor across the running of the entire Constitution. In the previous regime, there was a lack of CE. Prior to this, it was about a centralized government. The focus on PP and CE is in the running of government and public finance management. With this comes the mandate of how citizens should be included in governance matters. In some activities we support several CS and private sector partners to promote and advance civic engagement and public participation. TI, National Taxpayers association; National Anti-Corruption Steering Committee – government institution within AG. Civic engagement and anticorruption measures.

- Things done by TI Kenya: Support to do social audits – provide power to the people to push for accountability. With this we have supported the National Taxpayers Association and support for Citizen Audit processes with office of the AG.

- TI Kenya has presence in most of Kenya. It engages citizens in governance process: public participation is mandatory in budget making process. Leadership / politicians must engage people in counties and nationally in budgeting. TI has engaged people on the ground for this and brought them in one room to discuss budget at ward level. TI has leveraged technology to enhance citizen participation – takes in complaints relating to governance issues. TI can collect complaints and engage citizen and give feedback on different processes. Enhancing of system by having an SMS model which will enable to citizens without smart phones to engage. We also work with Kenya Manufacturers Association – challenges in terms of procedure on how to handle corruption issues, develop a judicial guidebook to highlight jurisprudence that needs to be addressed in the sector. The National AC Steering committee (NACSC) has CACCOCS – civilian anti-corruption oversight committees. Supported to establish these where there are nominations done; received citizens which would take place in these conversations. Social audits – civilian oversight tool to give citizens the ability to contribute to push for accountability of government projects. We can choose a sector (e.g., education TVET school – what has been allocated, what has been achieved – this is all citizen led).

- The laws are there for PP, but the challenge comes to the quality of the PP and the access to information. The meaningfulness of the PP is questionable – e.g., bills timelines are not enough – PP have formed a lot of J/P where judges have pronounced – they are still working on the PP guidelines. Conducting radio shows on AC; developing material – manual for training for CACCCOCS.

- Ambassador to Kenya from Finland – what was behind improvement of corruption; moral tendencies; geography and national identity; having a potential enemy next to you – treason to take from the state (Russians next to them). Independence had costs so much; selling out on the state was something dangerous. There was difficult moment in the 50s and 70s where there were corruption problems relating to trade deals with USSR.

Sheila Masinde – Executive Director of TI Kenya

- Proposed amendments which address offences relating to non-compliance procurement guidelines – what they seek to do is de-criminalize procurement offences.95% of cases are procurement related. Attempts to decriminalize procurement corruption will strike a raw deal for Kenya.
  Attempts two weeks ago to delete 64 of Act disqualification of acts being elected as public officers. Offends national values of good principle. Chapter 6 on good leadership. Soldiers in Parliament to fight two sections. Get them to back down from efforts to amend the ASECA model. Counting on Parliament and partners to help with attempts to weaken ani corruption laws.

- Court rules in favor to stop implementation of finance act – as civil society working presented proposal re how the government shifts overtaking citizens and businesses and to shield people from the high cost of living. What is the plan to strengthen fight against corruption and asset recovery. A lot of public resources have been siphoned and taken to havens. What are the plans to bring back resources that were meant for Kenyans. 30% of national budget is lost to corruption and abuse. What would happen if we sealed those loopholes. Could we put this back into pockets needs to focus on fighting strengthening recovery, fighting IFFs before. We hope the court will stand in the public interest and pit in place measures to address economic situation. Another concern – Kenyan's exercised right to assembly and expression – witnessed alarming incidences. Unnecessary force.

- If corruption carries on, we can forget about our future, conventions, and SD goals. What is my personal contribution in the fight against corruption? Ultimately you today are a civilian – what happens when you become a public servant tomorrow? Will you uphold the value we speak of today? #kenyaagainstcorruption #africaagainstcorruption

Hon Bernard Kibor - MP Nandi Hills Constituency and Secretary, African Parliamentarians Network Against Corruption (APNAC) Kenya

- Brief about who APNAC is and what do they play; support can be offered so that you know you have friends. Reference was made to the Whistleblowers Bill, the Protected disclosures bill and the Lifestyle audit bill. Bills are not easy; they require several actors – the bills inhibit prohibits corrupt practices – there is a law that will catch up with me. We need a ringfencing of laws or acts to continue protecting the public resources. Anti-corruption bills – you have friends in Parliament who are always ready to walk with fighting corruption.

- APNAC continues to leverage off peer learning – APNAC chapters to benchmark on strides made. There are exchanges and shares on peer review with China. Appreciate TI support which supports Parliamentarians. Speak out; we will be listening.

Mr. James Muraguri CEO the Institute of Public Finance – Kenya – Founder and CEO, Institute of Private Finance open public finance

- Cost of living in Kenya; cost of food protection. Look at government document some 1000 people were supposed to benefit but didn't. This increases inequalities. Corruption has contributed to socio-economic inequality. Action is commendable but more needs to be done in criminal proceedings, strengthening oversight institutions. Call includes strengthening institutions; Parliament needs strengthening. Parliament is our weakest link – empirical evidence. County government needs to publish documents to provide platforms to engage. What comes to reports implementation there is a big gap.

- In a life survey done on how many people had engaged in corrupt activity in the room, over 50% said yes.

- How is the corruption affecting your life and livelihood?
  - Cost of living weakens the economy
  - High cost of living
  - Not able to get jobs or received services unless you know someone or have something to offer
  - Commodities are becoming expensive
  - The cost of living has become unbearable

- "It is not just taking a shilling, a thousand, a million, it is destroying a whole system that maintains humanity." MC

Silas Kamanza, GIZ Kenya

- Convention was a turning point to unite to dismantle – significant milestone and unwavering commitment. Served as a powerful instrument in twenty years there have been notable strides however, we must acknowledge that the work is not complete. Challenges remain and new forms of corruption emerge.

Nicki van 't Riet Corruption Watch South Africa

Presentation made by Nicki van 't Riet from Corruption Watch. The address focused centered around learning from the past to profit by the present and from the present to live better in the future. It reflected on 20-year journey of the AU Anti-Corruption Convention, which anniversary provides an opportunity to reflect on progress made so we can determine what needs to be done to have a future free from corruption. It examined certain successes' following the implementation of the convention, one being regional cooperation and a second being the development of legislative reform and enhancing capacity to address corruption effectively. We still have a way to go in achieving our goal. Two focus areas would be the development of whistleblower protection in legal frameworks and pulling together as civil society and supporting our human rights defenders and investigative journalists.

Pirkka Tapiola – Ambassador Embassy of Finland

- Are we celebrating, commemorating, or marking? For celebration we have ways to go. For commemoration we are not eulogizing past, so we are marking it. It holds great significance as we note the importance on the convention. Corruption has become something akin to treason. If you want to work with your neighbors and build security and break the glass ceiling from a middle income to a high-income anti-corruption needs to be at the heart of efforts.

- Kenya's low scores are improving – the commitment is there, and it needs to be followed through. Kenya has robust laws and policies however implementation of the frameworks needs to be operationalized. Finland works on corruption around the world – women's democratic participation, GBV, technical and vocational opportunities, peace and security for women and youth. Corruption can disproportionality affect women.

- External and internal threats – poverty isa result of corruption as in unemployment. Where are the origins of people feeling desperate. Peace – if society does not work it becomes volatile. Fight against corruption – need frameworks, institutional capacity and protect whistleblowers. These are heroes not villains. Even in settings of government. Citizen participation and CSO engagement is NB. Kenya has done a lot since its 2020 constitution. Governance systems which recognize the rights. Implementation is still not quite there. There is a way to go.

- "The least corrupt country becomes one of the wealthiest countries in the world." MC

Henriette Geiger –EU Ambassador to Kenya

- We need to assess where we have stand. It is endemic around the world; it robs Kenya and all countries of important benefits. It forces people to engage to survive. The statistics are survival. We are forced to engage in things we are not wanting to engage in because systems are set up on a way, we cannot avoid it. It is not only a bribe but can also be a threat – there it becomes dangerous and life challenge. If we slay the corruption dragon, every country would be able to provide for its citizens. This is what we must keep in mind when looking at the fight – this is the big prize hanging there. This is what we are aspiring to do. Covid 19 has exacerbated corruption – big sums were dispersed quickly, medical supplies, a lot has happened that was not accounted for globally. The EU and its institutions have recently adopted on 4 May 2023 new conclusions reconfirming commitment to incorporate strong anti-corruption efforts in all programs it is doing worldwide. The key to the global approach is our human rights and democracy action plan. C cannot be seen outside HR. Two examples – strengthening accountability networks amongst civil society – empower civil society across boundaries. Empowers civil society in 26 countries including Kenya.

We must make sure we use and leverage power by naming and shaming across border. OGP implementing action plans in pilot countries of which Kenya is one. 34 of the delegations have anti-corruption activities prioritized. This includes support to democracy rule of law and public financial management. C is one of the costliest barriers to global trade. We need to join forces and all be aware of the issues. The government made NB commitments, but we all know in a society where corruption affects all level action must be taken at all levels. If the leaders are engaging in it, everyone else thinks it is ok. Old habits must die hard for new habits to be born. Laws are there but serve nothing if they are not properly implemented. We need parliament enforcement, but we need implementation throughout society. Strengthening good governance framework in Kenya. Access to justice without having to bribe is a major achievement.

- "If we tackle corruption, Kenya will skyrocket" MC.

Inter-religious Council of Kenya (IRC-K)

- There is hope. Hope is preached – practice the tenants of our religion. No religion teaches you to be corrupt. Practice the tenants of our religion. Persuade them to be the agents of positive change. We must practice it from within. We must. Be contented – Kenyans who stand and say we want to be patriotic and be counted as someone who stood for our country. And as a result, things are changing.

Imam

- We should fear God and corruption should come to an end. Appreciated that for the religious formations, religious organisations were available and organized.

Dr David Malombe – Executive Director of Kenya Human Rights Commission

- He spoke about political accountability, safeguarding and enforcing Chapter Six of the Kenyan Constitution. Public participation is a fundamental. The right to self-determination means people have the power to control unfettered power –this is about the right to public participation. Political problems making corruption so hard to fight. Deep seated culture of shameless leaders not accountable to people. Money is lost. Political DNA – Kenya was established as a corporate entity – British East Africa. System was to advance interests. From the beginning the structure as not made for the people. Rights have never been protected. The role of elections – what does elections do? Delivers criminals unaccountable; people who have spent money to get their way into public office. You land up with people who are not loyal to the people. You cannot entrust your resources to criminals. People do not understand the link between corruption and money.

- The main point was the issue of public accountability, especially the youth. The youth must not only be used for elections; the politicians they vote for must be held to account by them for the delivery of basic goods and services.

Quote:

- You have got to live your life as though there is a camera on you. Catherine Kasavukli – what do you feed yourself, what do you allow yourself to watch, these things determine what you will be tomorrow. What you ingest is what comes out tomorrow. Whatever we do today will reflect tomorrow. – Catherine Kasavukli

TI Kenya's awards

- Living up to the standards of integrity – set for action. Categories of the awards are:
  - Patriotism to ordinary citizens
  - Whistleblowers integrate award to those who play a certain role in exposing corruption
  - Leadership integrity award
  - TI award to those who promote integrity within society and create a good climate for governance within society.
  - Judiciary integrity award.

Hon Okiya Omtatah – MP & Senator for Busia County

- He gave context that Kenya's history was shaped by faith. He linked faith to the rule of law. Hence, they need to ensure that they obey the rule of laws. If they obey faith and the rule of law; they will know when to say no. Characterizing corrupt individuals as attractive – we must be brave. If you look at our communities, they are highly religious, but we are selective on when we practice our beliefs. Do not consume beyond your means. Vacate the office for those who can govern. Let us stand up for Kenya. IMF Bill is neocolonialism. $2.4 billion is the public debt. It keeps going up and they say they are not borrowing. Where is the money going? The debt – 70% of the current budget is to pay debt. It is a state of war that requires going to war. What did the money do? Get a register of the loans and how it was used. The real debt is half what treasury has published. Who authorized the debt? It was not authorized by Parliament. The debt is violating the law and if we don't tackle the debt, it is going to kill the country. Only pay the debt that benefitted us. That which did not benefit us must be paid for by those who utilized it for personal gain. Audit the loan accounts – the records will show no money was owed to the Chinese. People need to come and account. If the law is supreme, we will be able to develop the country.

*Highlights and learning points from input*

- TI has engaged people on the ground for this and brought them in one room to discuss budget at ward level. TI has leveraged technology to enhance citizen participation – takes in complaints relating to governance issues. TI can collect complaints and engage citizen and give feedback on different processes. Enhancing of system by having an SMS model which will enable to citizens without smart phones to engage.
- Public participation cannot just exist on paper – it has to be meaningful.
- It was a learning point that over 50% of people in the room admitted via survey to having engaged in corrupt activity – whilst the statistic was high, it is likely that this is out of necessity.
- Ambassador – if you have funds that are redirected to corrupt activity, then you are redirecting them from what they were intended for (such as fighting GBV). This becomes an internal threat.
- Ambassador from Finland extended a willingness to work with the region in their fight against corruption.
- Ambassador from EU used the example of corrupt activity in EU around covid-19 and PPE. It was interesting to hear that the EU faced those same challenges as South Africa in this regard. They have therefore incorporated anti-corruption programs in all their developmental programs.
- The engagement was structure well – use of local languages (connecting with the audience). They also made it accessible with sign language.
- Leveraging of technology to encourage public participation.
- The quality of public participation is critical – people need to be informed about the topic so that they can ask the right questions.
- The set up was done well – use of AV, the MC was engaging and experienced, and the use of Menti.com allowed for crowd participation.
- The background music in between speakers kept people alert and engaged.
- The creation of a platform for civil society – high profile people mixed with people on the ground to voice their issues. It is important to create sessions for civil society so everyone, as opposed to just the dignitaries, have a chance to speak. This will allow us to access the real issues facing our grassroots communities.
- They queried the capacity of the current Parliament to represent them in the fight against corruption.
- Admire the realism that corruption is still a real challenge and that there is a big fight ahead of them. You must know what you must deal with so that you can deal with. Be alert for corruption as this process unfolds and make sure that the counties are capacitated to handle corruption.
- Corruption makes life very difficult from a socio-economic perspective for people. This was demonstrated through the menti.com surveys.
- As counties go through devolution process of decentralizing power from national to county – must make sure that there are enough resources.
- Religious organisations have a huge role to play because the religious organisations are being utilized to launder money.
- If they can withdraw an award if you are, in future, found to have committed corrupt activities.

- The fight against corruption requires people to be informed – they must know the law and they must know how to apply it. The advantage of the facility – he is well informed of the issues; speaks from an informed position.
- The three approaches by religious leaders that were being approached in assisting in the fight against corruption:
    - The use of social media
    - Forming partnerships with various sectors of society
    - Scripture material they develop from different faiths

*Ideas that SA should consider for adaptation and application*

- What does meaningful public participation look like – we need practical minimum norms and standards to see PP taken from the law books and properly manifested in practice.
- It would be ideal to be able to study Finland and other Scandinavian countries (but particularly Finland which went from a country with corruption to the least corrupt country in the world). To study how this transition happened.
- Creation of CACCOCS and conducting of social audits.
- Examine the public debt of South Africa – request a schedule of what the loans were taken for and how they were spent.
- Ambassador from Finland extended a willingness to assist – to work with the region in their fight against corruption.
- Ambassador from EU used the example of corrupt activity in EU around covid-19 and PPE. It was interesting to hear that the EU faced those same challenges as South Africa in this regard. They have therefore incorporated anti-corruption programs in all their developmental programs.
- Make sure that provinces and municipalities are capacitated and equipped to deal with corruption.
- They included religious organisations – RSA should consider including communities, cultural and religious organisations in the fight against corruption.
- To consider implementation of Integrity Awards.

https://www.facebook.com/TransparencyKenya/

Africa International Day Commemoration, University of Nairobi

Public Lecture, attended by a broad range of stakeholders and partners working in the Kenyan Anti-Corruption space, in commemoration of the 7th African Anti-corruption Day.

Theme: African Union Convention on Preventing and Combatting Corruption at 20: Achievements and Prospects

The lecture was attended by all relevant Anti-Corruption stakeholders and reminded of the old Anti-Corruption Forum SA had. It is clearly an initiative banking on the support of the Kenyan citizens.

A variety of speakers from key stakeholder groupings, including a brief panel discussion formed part of the session, notably the Transparency International, UNODC, and University of Nairobi. Given the fact that the majority of the audience were students and the fact that the youth constitute the majority of the Kenyan population, all speakers focused their inputs on the role of youth in fighting corruption. Even the questions from the youth were provocative, asking the panellists for instance to be clear and decisive about what constitutes acts of corruption and what it should be called. Most importantly the question of sextortion was also raised especially in the university sector and action was demanded from policy makers.

Mr Twalib Mbarak, the CEO of Ethics and Anti-Corruption Commission the co-convenors of the event with the University of Nairobi and the Kenya Leadership Integrity Forum (KLIF), highlighted the following in his input.

- By means of using the Corruption Triangle Strategy, he analysed the enablers of corruption. The Corruption Triangle Strategy has three components:

1. Public/Society
2. Political culture/Politics
3. Enforcement

- These three elements are interlinked: Crooks are being voted into power and then set the tone at the top (usually lacking ethics), taxi drivers experience no consequences for their bad road use, but when they are for example employed in Doha, they tread carefully as they know they will be deported. This lack of consequences breeds a society that is not pushing against corruption, but actually supports it. His message was that we should respect laws and follow them, as it strengthens the culture of enforcement.

The keynote address by Justice Aaron Ringera, was titled, “The Quest for an Ethical Kenya: Essentials and Prospects”.

- He outlined what ethics is, and presented an analysis explaining the failure of Kenyans in addressing ethical lapses: moral degeneration, institutionalisation of bad ethics, failure of governance. He furthermore outlined the improvement in the ethics situation, by adopting appropriate legislation to address gaps. One success he highlighted , was a “peoples driven Constitution”, that provides for a section (Section 6) to bolster ethics.
- His address provided a reflection on what happened, as well as ideas to improve going forward. His address identified all the aspects covered in South Africa’s National Anti-Corruption Strategy (NACS). His advice was for Kenya to always reflect on where they are in terms of the fight against corruption. The fight against corruption is according to him in the hands of the people and as such it must be their project, and not that of political parties. It must be used to strengthen democracy.

Buzzwords: whole of society approach; citizen participation; constant reassessing of situation; independent Anti-Corruption agencies.

*Highlights and learning points from input*

- The use of the outcomes of a study by a Master's student's dissertation on lifestyle audits to inform policy which was later adopted and approved by Parliament for implementation. An example of evidence-based policy making.

- Mr Mbarak reiterated that all stakeholders must take hands to fight corruption and that there must be a central message. This was very clear from the presentations and the communication behind the Lecture.

- Justice Ringera identified the following essential building blocks for an ethical society:

- Adherence to the rule of law. Do not allow courts to water down legislation.
- Leadership must have integrity with a commitment to good governance.
- There must be collective action against corruption.
- Independent law enforcement agencies.
- Civic responsibilities.
- Proactive public participation in Government processes.
- Proper secured whistle-blowing legislation/systems.
- A vibrant civil society.
- Accountability.

- The Justice deemed it pertinent for all systems and processes to insulate the public trust from abuse. As such, public servants and public officials must meet ethics and moral requirements for being able to carry on with their work. If not, they must be removed, as per Chapter 6 of the Kenyan Constitution. In this, civil society must play a leading role to protect the Constitution. He found that they were vigorous in pushing for the adoption of the new Kenyan Constitution, but he does not see the same vigour to demand implementation of the Constitution.

- Justice Ringera made a strong argument that professionalization must not be confused for ethical employees. The main corruption cases in Kenya involves professionals like accountants, doctors, lawyers, engineers.

- The Justice identified the following as the missing links in creating an ethical society:

- A concerted effort by all to walk the talk and not to only talk the walk.
- An ethical commitment starting from the individual, the family, and society – "Monkey see, monkey do".
- To influence of appointing unethical leaders permeates the culture of business, of society and the public service. If the political leader is corrupt, his or her officials is corrupt, and it spreads to the lowest level.

- He identified the following challenges and opportunities for Kenya:

- The necessary frameworks are in place to address ethics.
- The education sector failed society. It must concentrate on instilling values and ethics in the youth and students.
- There is a glorification of unethical conduct, where criminals are praised as heroes.
- That corruption has become internalised.

- To rectify this, the Justice suggested:

- Compulsory ethical training via the education system, with courses that addresses values and ethics.
- Wealth declaration by all Public Servants and improvement of Conflict of Interest via the proposed Bill.
- A strengthening of ethical standards for ethical leadership so that leaders will lead by example.
- To follow chapter 6 in the Kenyan Constitution, which lays the foundation for ethical conduct for acceptable, trustworthy and ethical leadership.
- Periodic integrity testing for Public Servants and a total ban on business to be performed with the State.
- To hold the corrupt accountable.
- To focus on procurement as 80% of serious corruption stems from this.
- Improve laws to strengthen the fight against corruption, and not water it down.
- To build capacity in key agencies to fight corruption.
- To recover assets stolen from the public and to retain a portion to fight corruption.
- To create strong messages that corruption is under siege and stigmatise it. This needs to involve the naming and shaming of culprits.
- Rewards must be provided to Anti-Corruption champions. This will create a culture of good ethics.

*Ideas that SA should consider for adaptation and application*

- There must be a general vision around where SA is going with fighting corruption, with better cooperation between all role-players. This would entail the popularisation of the NACS to create a sense of ownership amongst the public.
- South Africa must therefore have a national campaign against corruption, including the youth, students, public servants and citizens.
- Proper monitoring of the implementation of the NACS's Implementation Plan with regular sessions to gauge implementation progress. The feedback must be shared with the public. Justice Ringera made the remark that all stakeholders in the ethics space must be prepared to do an objective evaluation of the ethics space and must reflect regularly on implementation progress.
- The Professionalisation drive of the SA public administration must not be seen as an attempt to address ethics. This is merely one part of the problem that must be addressed.
- Adoption of an Ethics Strategy for society (including education on ethics from school level to university).

- South Africa should have regular ethics and integrity testing and remove those Public Administration employees who do not meet the requirement of Section 195 in the SA Constitution. This may be in the form of declaring them delinquents, resulting in the being placed on a register.
- Improvement of lifestyle audits on implementation level, with consequences to those who ignore it. Resources to TAU to provide technical assistance in this regard. Also support to TAU to continue monitoring of employees conducting business with the State. To reassess the current placement of this unit as an important role player to address ethics and corruption by means of prevention, detection and resolution.
- Improved recruitment of Public Administration officials, who must be measured against ethical standards as contained in section 195 of the Constitution. Continuation of ethics training for these officials, but also for Public Office bearers.
- Focus on vulnerable sectors, health and procurement, to address all procurement corruption.
- To build capacity in key agencies to fight corruption.
- To overhaul the CARA funding model to make more money available for preventing corruption and not only fighting corruption.
- To openly reward Anti-Corruption champions.

## Day 3

The Office of the Auditor-General (virtual meeting)

Much like the South African Auditor General, our Kenyan counterpart is an independent, constitutional body responsible for auditing and reporting on the use and management of public resources by public entities. They work to ensure that public money is spent accountably, effectively, and efficiently for the public benefit, and promote principles of sound financial management. The Office of the Auditor General (OAG) reports to Parliament and subnational assemblies.

*Relevance of fiscal oversight and accountability: Mandate, Experiences, Challenges and Opportunities*

- Terence Nombembe represented the delegation and chaired the engagement. He introduced the members of the delegation and provided a brief overview of the issues we are interested in – i.e., corruption, fraud and maladministration.

- The OAG made five presentations. First, they gave an overview of the organization and its mandate. Second, a presentation was made on the institutional and legal framework governing the OAG. Third, a presentation was made on the OAG ethics and integrity committee. Fourth, a presentation was made on fiscal oversight. Fifth, a presentation was made on the OAG's reporting to and support of Parliament and subnational assemblies.

- The OAG gave a detailed overview of its structure, institutional framework, legal powers, and constitutional mandate. The Attorney General is appointed by the President on the recommendation of Parliament. A special recruitment committee is convened and makes recommendation to President, after a competitive process. Once the President selects the preferred candidate, Parliament then vets the choice before the appointment is made. The OAG is funded by the budget appropriations committee in Parliament.
- The OAG explained the different activities they conduct. Their work primarily concerns financial, compliance and performance audits, as well as audits concerning procurement and public debt. In addition, the OAG can conduct special audits requested by Parliament or subnational assemblies. They can provide services for supranational bodies like CODESA. The OAG charges fees for auditing public corporations but not agencies, government departments etc., which supplements their revenue and cash flow.
- The OAG has a special relationship with the EACC, particularly with regards to sharing information. It also collaborates with various national, subnational and supranational entities. Where the OAG detects corruption, it reports this to the policy Directorate of Criminal Investigation (which often relies on AG reports for prosecution), the EACC, and the public procurement oversight authority. The procurement authority has relied on AG reports to disbar persons and companies from participation in procurement processes.
- The OAG has an ethics and integrity committee which is responsible for setting ethics policies, oversight, managing complaints, developing ethics training, monitoring and evaluating corruption prevention activities etc. They have developed corruption reporting mechanisms such as an automated platform and whistleblowing hotline. The OAG also has a unit responsible for managing inputs to Parliament, representing the OAG in oversight committees etc.
- It was a lively and involved discussion. The SA delegation engaged on issues including whistleblower protection, public participation, enforcement of recommendations, collaboration with law enforcement entities, and post-audit support. We also discussed technical issues including risk profiling, integrity testing, and methodologies for evaluating value for money.

*Highlights and learning points from input*

- Explored mechanisms of public participation and citizen accountability. The OAG received complaints from citizens concerning the implementation of policies and projects etc. These complaints can be earmarked for the next audit process/report on the entity concerned, or in cases concerning corruption are referred either to the police (Directorate for Criminal Investigations) or to the EACC.

- The OAG also engages in public participation through stakeholder engagements such as public forums, as well as through partnerships with civil society organisations, professional bodies, and community-based organisations.
- The OAG shared the challenges they face in conducting their duties. In particular, the expansion of the audit universe and increase in the number of clients poses a challenge as resources are strained and timelines for audits are insufficient. (This is important considering calls in South Africa for the AG to audit more, or even all, public entities).

- Discussed issues of enforcement and post-audit support. The OAG's recommendations are not always implemented, which is a recurring challenge. They are working on developing a framework for tracking, recording and reporting back to Parliament/county assemblies on implementation issues. They are also working to capacitate oversight committees in the legislatures, so that those committees can be able to make actionable recommendations. They are also capacity building within the OAG so that they are able to support implementation, working with the entities post-audit.

- Discussed witness protection and whistleblower support. There is a new whistleblower protection bill currently being debated in Kenya. The OAG itself does receive anonymous or protected disclosures and protects the identities of anonymous complaints unless required otherwise by law.

- Observed that we face many of the same challenges in South Africa, particular the high burden placed on constitutional oversight institutions when state entities are weak and poorly capacitated.

*Ideas that SA should consider for adaptation and application*

Members of the delegation were keen to learn from the OAG in several areas. Specific requests were made for the OAG to share its methodologies for evaluating value for money, its terms of reference for the ethics and integrity committee, its plans for integrity testing, and its MOUs with CSOs, so that we can learn from these mechanisms. South Africa does not have a methodology for testing value for money and could learn from the Kenyan mechanism.
Website/additional information links: https://www.oagkenya.go.ke/

<u>Visit to the Public Procurement Regulatory Authority (PPRA)</u>

*Open and accountable public procurement system in promotion of transparency and integrity: Mandate of PPRA, Experiences, Challenges and Opportunities*

The facilitator of the session, Devi Pillay introduced the SA delegation and made reference to the Public Procurement Bill, the Commission of Enquiry recommendations, and the National Treasury's role in coordinating the procurement policy, norms & standards.

There is no independent regulatory authority in SA, hence the expectation of the delegation to learn from the journey of Kenya in this regard. The PPRA presented on the mandate, legal framework and institutional structure of the authority. They gave an overview of the legislation and regulatory environment. They discussed professionalization, digitalization, open contracting, beneficial ownership transparency, and the challenges faced by the institution.

*Highlights and learning points from input*

- The PPRA was established by an act of Parliament.
- Its primary purpose is to address issues of corruption over and above standard guiding principles of transparency, fairness etc.
- The greatest challenge is corruption.
- Overall focus on MOU with Anti-corruption Commission, MOU with competition commission, Code of Ethics.
- Slide presentation on: the legal framework that is informed by the constitutional order and supported by constitutional enabling provision, the appeal mechanism, segregation of key responsibilities, professionalization of procurement function, digitization of the procurement function, transparency & open contracting, controlled disposal to state employees (with limited exceptions), and enforceable sanctions. The presentation discussed the procurement cycle in detail. Challenges have been identified and being acted upon with the support of GIZ.
- The PPRA works in conjunction with professional bodies which are responsible for codes of conduct, ethical responsibilities, licensing etc.
- Discussed procurement plans and how procurement links to the objectives of the state entity, as well as open access to these plans.
- Discussed the appeals structure and regulatory framework – the appeals mechanism makes the process transparent and expedient, and allows for automatic judicial review within 14 days of judgement of the appeal board.
- Discussed public participation and stakeholder engagement in the procurement cycle, including the lodging of complaints from the public at any point in the cycle.
- Discussed the role of professional bodies and licensing of procurement officials.
- Collaboration with law enforcement agencies, especially the EACC. 90% of EACC cases involve procurement corruption. There is an MOU in place governing this relationship.
- The PPRA does conduct investigations and refers corruption cases to the DCI and EACC.
- Transparency and open contracting as well as digitalization.
- The role of procurement agents as licensed and registered professionals.
- Flexible/strategic procurement for complex infrastructure etc.
- Debarment mechanisms and publication of debarred suppliers.

*Ideas that SA should consider for adaptation and application*

- Constitutional/legal framework for the establishment of the independent regulatory authority.
- Gauteng Provincial Treasury to specifically benchmark the Open Tender System with PPRA Kenya and act on the required enhancements/alignment in collaboration with National Treasury.

- Ringfence and prioritize the Professionalization Framework of Procurement Function.
- Look closely at the Kenyan process of debarment and appeals mechanism, especially the judicial review process. This will require legislative reform.
- Focus must shift from reactive, law enforcement centric approach to a preventative, systems-building approach.
- Great deal of interest in the PPRA given the recommendations of the Zondo Commission.
- Innovative and creative response by Kenya to the Procurement Fraud/Corruption and challenges.
- Lessons to be taken back and utilized to improve the situation in SA.

Website/additional information links: https://ppra.go.ke/

## Day 4

Visit to the Ethics and Anti-Corruption Commission (EACC)

The Ethics and Anti-Corruption Commission (EACC) is a public body established under Section 3 (1) of the Ethics and Anti-Corruption Commission Act, 2011. The Commission consists of a Chairperson and four other members appointed according to the provisions of the Constitution and Section 4 of the EACC Act. The Commission has a Secretariat, headed by the Secretary/Chief Executive Officer (CEO) to the Commission. The EACC gathers information on corruption occurring in Government and the Public sector from a variety of sources. These sources include members of the public, heads of government departments and agencies, and officials working in both the public and private sectors and the media.

Mandate: To combat and prevent corruption, economic crime and unethical conduct in Kenya through law enforcement, prevention, public education, promotion of standards and practices of integrity, ethics and anti-corruption.

Vision: An integrity driven Kenyan society

Core Values: Integrity, Professionalism, Fidelity to the Law, Courage, Teamwork and Innovation

- The current CEO/Secretary was appointed by Parliament on a 6-year single term.
- The institution started in 1999 as Kenya Anti-Corruption Committee but declared unconstitutional until 2003 when Kenya signed and ratified the UN Convention against Corruption.
    - Established a specialized agency to prevent and combat corruption.
    - Strengthen the legal framework.
- Accountability and Good Governance.
- 2010 Promulgation of Constitution of Kenya.
- Headquarter in Nairobi, with 11 reginal offices across the Country.
- Proposed organizational structure with 1,508 head count, with currently 767 posts filled.
- The total budget allocated of R461 million (Kshs. 3.4 billion) within donor support received occasionally.
- The commission report to Parliament through tabling of annual, quarterly and ad-hoc reports.
- Established partnership with other agencies to streamline the justice system and enhance effectiveness.
- Kenya leadership integrity forum which includes both public and private entities.
- Member of the Law Society of Kenya and other international Authorities.
- Signatory UN on Anti-Corruption.
- Four Strategies:

1. High impact investigations – high value cases, individual involved and the public interest on a particular case aimed at causing maximum deterrence.
2. Asset tracking and recovery – targeting both unexplained wealth and corruptly acquired assets.
3. Prevention – Promotion of institutional and personal integrity (Risk Assessment).
4. Partnership Approach – enlist and maintain strategic linkages in the fight against corruption (LEA and GIZ).

- For Legal Framework and Common Corruption offences, refer to detailed presentation.
- Achievements in the past 4 years that have been recorded:

- Assets of R3.1 billion (Kshs. 23.74 billion) has been recovered.
- Forfeiture of corruptly acquired assets worth of R5.38 billion (Kshs.40.78 billion) in various courts across Kenya.
- Averted a loss of R4.8 billion (Kshs. 36.5 billion) through proactive investigation and disruption of corruption networks.
- 655 cases concluded, of which 251 cases were finalized in court or through dispute resolution.
- Corruption Prevention –
    1. Continuous system reviews which target Ministers, Departments and Agencies and County Governments (26 National Government, 27 counties reviewed).
    2. Leadership and Integrity Codes for 136 public entities with state officers.
    3. Continuous Training under the National Integrity Academy.
    4. Vetting for 48,383 candidates for public appointments.
    5. Application approved for 1,342 public officers who opened bank accounts outside Kenya.

- Partnerships –
    1. Member of regional and international associations.
    2. MOUs signed with peer agencies and strategic partners.
    3. Working closely with various development partners.
    4. National networks for effective administration of justice.

➢ Current Challenges:

- Budgetary constraints remain a challenge.
- Politicization of fight against corruption and unethical conduct.
- Slow judicial processes.
- Weak legal framework to implement Chapter 6 of the Constitution.
- Delays in processing of MLA (Mutual Legal Agreements).

*Key discussion points*

- ➢ To what extent does the entity incorporate law enforcement agencies?
- ➢ Ethics mandate: system reviews.
- ➢ How independent is the EACC from politics or influence of politicians or those in power?
- ➢ The success shouldn't just be picked from Europe, when we have Africa to benchmark against and learn from their best practices.
- ➢ Corruption is chronic – we need enforcement. Winning the war against corruption can only be achieved when all pillars are effective, ineffectiveness of one pillar affects the outcome towards winning the fight against corruption.
- ➢ Political culture of the country is also crucial, the type of people or individuals the public elect into power is critical.
- ➢ Grant corruption – done in boardroom, at highest level. The independency of LEA and the political leadership is key.
- ➢ Fight against corruption requires balance between enforcement and prevention.
- ➢ Public sees them as doing work when they prosecute than when focus is on the prevention part which doesn't influence public confidence. Reference was made to Japan which currently has 1000 to 1500 investigators. Hong-Kong due to its infrastructure projects in the pipeline see them using the investigation over prevention as disruption for possible corruption hence the massive number.
- ➢ Context is key and not all countries are the same in making that determination, choose a mechanism that works and contributes positively to the desired goal.
- ➢ In sub-Saharan countries or instances where corruption is high enforcement is crucial and where corruption is low prevention takes precedence. (Adam Greyer)
- ➢ Constitutional: what works for you.
- ➢ Independent doesn't mean disconnection from government.
- ➢ Ethics/Criminal corruption – Ethics Mandate - Derived from chapter 6 – 2010, conduct of all public and state officers. State officers are Senior and have more responsibility compared to public officers (Leadership and Integrity).
- ➢ Suitability Vetting: Weaknesses are there, recommendation is given but the parliament still processes the appointment.

- Ethics enforcement: ethical bridges:  investigate and make recommendation.
- Moral vs Legal aspect.
- Single vs multi agency models.
- Kenya has a Single agency model – effective deterrence model. Depends on the context of a country. Investigation is with prevention; Parliament has a way of controlling conduct of business. Balance between enforcement and prevention, improve accountability, bring together civil society.
- Relationship with Police and Prosecution. The EACC doesn't prosecute but finalizes the investigation and submits it for the National Director of Public Prosecution – element of independence.
- Extradition of people involved in corrupt activities depends on government relations.
- Alternative Dispute Resolution mechanism is a constitutional requirement.
- Effective complaint handling procedures are necessary as they inform the protection of whistleblowers.
- Whistleblower protector bill hasn't yet been passed – being going on for 9 years and is yet to be passed by parliament.
- Main source of complaints - major corruption: through referrals; anonymous complaints
- Turnaround:
- Allocation committee review progress from time to time.
- Complaint vs whistleblowing: Decide to remain anonymous and are whistleblower. Agree or decide to be a complainant and be a witness in the case.
- Protection of the sources is key; intelligence officers don't go to court.
- Anonymous reporters or complainant as opposed to Whistleblowers (CEO believes that is the NGO concept, "tomato sauce vs ketchup").

*Best Practices/takeaways to use in South Africa*

- Ethics in schools at both primary and high school, by having clubs in the schooling environment. Infusion of compulsory ethical training in the education system.
- Declaration of interest by all public official across all levels within government institutions.
- Citizens play a critical role in vetting those who want to ascend to the political office.
- Capacity building.
- Annual Publication of a list of shame, the publication will effectively stigmatize corruption and contribute to much needed cultural re-engineering.
- Consider rewarding anti-Corruption champions, by proactively identifying, recognizing and rewarding those who have blown the whistle on corruption.
- Partnerships.

Visit to Transparency International – Kenya chapter

Transparency International – Kenya (TI-K) has embarked on a six-year journey towards its vision of a corruption-free society. TI is part of the Civil Society Movement and focusses amongst others on the following:

1. Citizen demand and oversight,
2. Beneficial ownership transparency,
3. How to involve citizens in the public budgeting process and monitoring thereof,
4. Planning, monitoring and evaluation

TI has adopted a new strategic plan, outlining the following intervention areas:

1. Citizens demand and oversight,
2. Natural Resource and Climate Governance,
3. Public financial management, and
4. Institutional Development.

TI experience includes the following:

1. Red card campaign during the elections,
2. Social vetting of candidates,
3. Campaign Financing and monitoring using Campaign Watch monitoring,
4. Use of media and investigative journalists,
5. Coalition Building,
6. Public expenditure tracking
7. Public interest Litigation
8. Health and education
9. Enforcement of suitable and transparent public resource management systems,
10. Transparency and accountability in the management of public debt Citizen Manifesto
11. Study on Tax Incentives and economic inequality.

Under the Policy and Institutional Frameworks, TI focuses on the following initiatives:

1. Beneficial Ownership Regulations case studies,
2. Working with Counties,
3. Facilitating Institutional strengthening of public institutions

TI also focuses on the use of Information and Communication Technology (ICT). Amongst others in this regard, TI has introduced Rada Corruption database, Public Audit Database, Dashboard on detailed analysis of the county governance status.

TI has also focused on Political Party funding.

TI works and collaborates with the government and sits on government oversight bodies.

TI has developed Parliamentary Oversight tool which assists with the assessment of parliament on its oversight.

Article 10 of the Kenya Constitution upholds values that include public participation. While there are limitations in the procurement process with regard to confidentiality of procurement information, TI does facilitate monitoring of project implementation including the monitoring of Public Debt.

TI has also facilitated the creation of county anti-corruption forums.

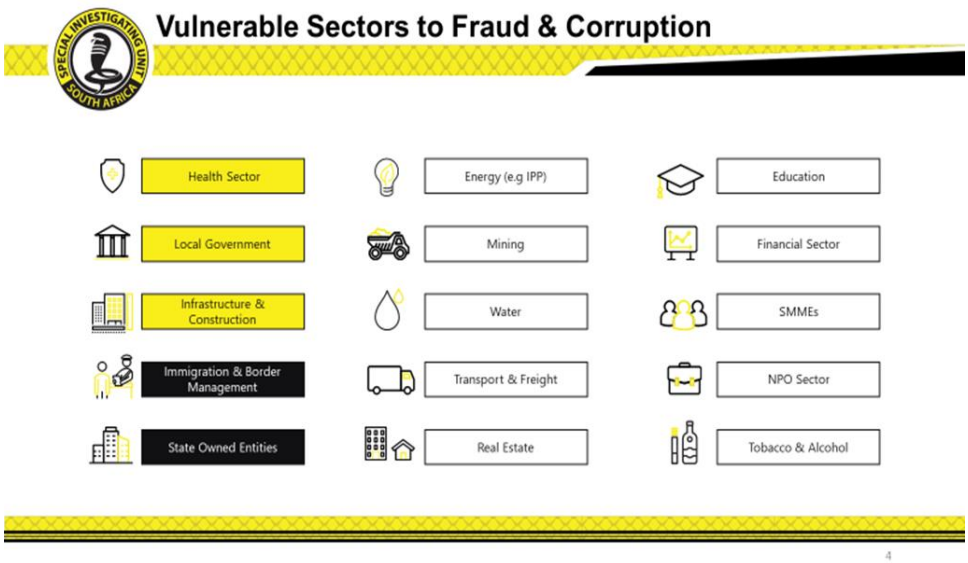
*Best practices/takeaways to use in South Africa*

From the meeting with TI, is clear that involvement of Civil Society is entrenched in Kenya.

In comparison, the South African National Anti-Corruption Strategy encourages a whole of society approach which includes the involvement of Civil Society in the fight against and prevention of corruption, maladministration and malpractices.

South Africa has established Anti-Corruption Task Team (ACTT) constituted by Law Enforcement Agencies and other departments and agencies. ACTT action plan consists of four programs. The fourth program focuses amongst others on the inclusion of all stakeholders including Civil Society. This fourth program is led and coordinated by the SIU. This program has enabled a Risk-based Approach to identification of Corruption Vulnerable Sectors.

Below are the vulnerable sectors identified:



To date, there are three Anti-Corruption Forums created as follows:

1. Heath Sector Anti-Corruption Forum, launched by the President in 2019,
2. Infrastructure Build Anti-Corruption Forum, launched by Minister of Public Works and Infrastructure in 2021.
3. Local Government Anti-Corruption Forum , launched by Minister of Cooperative Governance and Traditional Affairs in 2022.

These forums include participation of civil society amongst other stakeholders and have demonstrated that a sector approach to the fight and prevention of corruption, maladministration and malpractice is an effective approach. Parties to the forums have adopted terms of reference according to which the forums are governed. The Forums are chaired by the SIU and Co-Chaired by the relevant Departments. An initiative is currently underway to compile a report on the effectiveness of the forums.

Meeting with the Uganda delegation

The Uganda delegation attended the meeting at Gem Suites Riverside Apartments and Hotel in Nairobi. The original plan was that South Africa Delegation would visit Uganda, but due to the current situation it was agreed that it would be prudent to cancel that leg and rather request the Ugandan presenters to travel to Nairobi.

*Governance and security programme*

The discussion centered around the Governance and security programme/ Hub.

*Key takeaways:*

- We should not lose the bigger picture of illicit financial flows: Corruption, money laundering and asset recovery.
- Effectiveness of institutions positively correlate with external environment: Political and social dictates.
- Transparency and public call for action without consistent enforcement action will lead to cynicism.
- Covert ant-corruption action and nudging systems and society is required to build a nation-state.
- Elusive best practices and plotting reforms on the governance trajectory.

**Inspectorate of Government (IG):**

The presentation covered the experiences and lessons of the IG in the fight against corruption and promoting accountability and transparency. There was a ten-point program of the National Resistance Movement: program item 7 was to; “eliminate all forms of corruption and misuse of power” once and for all. First established by the Inspector General of Government statute in 1988 as a department in the President’s Office with both the Ant-corruption and Human Rights Mandate. The Constitution of the Republic of Uganda 1995 as amended entrenched it therein under chapter 13, which prescribes its mandate, functions and powers. The IG unit comprises of technical staff who are of various competences including Lawyers, Accountants, Social Scientists and forensic Analysts. The IG appointment board appoints all IG staff on 4 year renewable contracts. The IG is funded through annual appropriation by Parliament (Consolidated Fund). It also receives funding support from development partners such as the World bank, Danish Development Aid, European Union and GIZ.

Creatures of Statutory Action (acts of parliament)
Public Procurement & Disposal of Public Assets
Financial Intelligence Authority
Creatures of Executive Action
Directorate of Ethics and Integrity
State House Anti-Corruption unit
The Department of Ethics and Integrity coordinates the Inter-Agency Forum
Protection from Political environment

- The Ugandan Constitution affirms the independence of the Inspectorate of Government. It is only responsible to Parliament and reports to parliament by way of Bi-annual reports with copies to the President.

- Whistleblower Protection – Whistleblower Protection Act of 2002 provides responsibility mechanisms and remedies for whistleblowers. Provides for incentives of 5% of recovered funds
  NB: there is a spillover or knock-on effect on relatives of whistleblower/s. This needs to be factored in for costs and duration of protection.

- Societal Mobilization – the IG uses the Framework of Transparency, Accountability and Anti-Corruption (TAAC). TAAC is a framework comprising a bundle of safeguard interventions implemented to identify, profile, monitor and control risks associated with project implementation. The interventions are:
  - Citizen and stakeholder engagement using various tools and platforms to promote citizen participation in providing oversight in service delivery.
  - Sensitisation and awareness to empower citizens with information and knowledge about government programs and their role to demand for accountability and improved service delivery.
  - Monitoring and inspection of implementation of government projects and provision of service delivery.
  - Enforcement where the above three interventions have not been successful.

*Ideas that SA should consider for adaptation and application*

- Corporate status and the need to sustain independence.
- Use of research to generate and target interventions (a few are Cost of Corruption sponsored by GIZ Uganda, Impact evaluation on TAC, NIS, IV and Public Service Delivery studies).
- Establishment of Leadership Code Tribunal (LCT) for quick adjudication of leadership code breaches.
- Citizen apathy towards corruption and the corrupt: opportunity for citizen engagement (why lynch a chicken thief in their poor neighbourhood but do not rise up when service delivery in their localities is extremely poor?)
- Mainstream TAAC in budgets, plans and projects of government (the design options).
- Leveraging abilities of civil society organs for oversight.
- Leveraging donor financing to the institution as in DRDIP, NUSAF projects.
- The IG ODS, CMS+, website (registration, supervision, declarations, and identification of defaulter and intelligent verification tool, integrating with other government agencies).
- Low digitization of government systems, especially local governments.
- Cash economy.
- Dominance of informal sector.
- Whistleblowers motivation and subsequent protection. Information for benefit from a portion of the recovered assets.
- Legal procedures e.g., appeals delay conclusion of cases/results (need to use Alternative Dispute).
- Involvement of media and in particular investigative journalism in exposing corruption.
- Effective use of information, communication and technology (ICT) can aid in the detection, investigation and reporting of corruption.
- Stakeholder engagements with duty bearers to improve transparency, accountability and anti- corruption (TAAC).
- Constantly engage policymakers for adequate budgetary funding to cover both physical and human resources.
- Lifestyle audit campaign launched by the President.
- Giving corruption a face (redefining corruption in the local context).
- Numerous anti-corruption institutions. What is the ideal according to literature? This can be interrogated further through research.
- Assessments of the “cost of corruption” in monetary terms. How much should be invested and for what returns?
- Application of risk management approaches to anticorruption.

NACAC
National
Anti-Corruption
Advisory Council

2030 NDP

german cooperation
DEUTSCHE ZUSAMMENARBEIT

Implemented by:
giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

State Secretariat for Economic Affairs SECO

# REPORT

## GIZ-TIP NACAC EAST ASIA LEARNING JOURNEY, HONG KONG

08 -16 MARCH

2024

# TABLE OF CONTENTS

1. GLOSSARY OF TERMS ..... 3
2. BACKGROUND ..... 4
3. LEARNING JOURNEY DAY1: 11 MARCH 2024 ..... 5
4. LEARNING JOURNEY DAY 2: 12 MARCH 2024 ..... 10
5. LEARNING JOURNEY DAY 3: 13 MARCH 2024 ..... 21
6. LEARNING JOURNEY DAY 4: 14 MARCH 2024 ..... 28
7. LEARNING JOURNEY Day 5: 15 MARCH 2024 ..... 34
8. OVERALL LEARNING ..... 36
9. ANNEXURES ..... 38
9.1. Attendance Registers/List of delegation ..... 38
9.2. Presentations ..... 38
9.3. Website Links ..... 38

# 1. GLOSSARY OF TERMS

| | |
|---|---|
| **ACA** | Anti-Corruption Agency |
| **ACRC** | Anti-Corruption and Civil Rights Commission |
| **CPAS** | Corruption Prevention Advisory Services |
| **CPD** | Corruption Prevention Department |
| **CRD** | Community Relations Department |
| **CSB** | Civil Service Bureau |
| **DPCI** | Directorate for Priority Crime Investigation |
| **GIZ** | Deutsche Gesellschaft für Internationale Zusammenarbeit |
| **HK** | Hong Kong |
| **HKIAAC** | Hong Kong International Academy Against Corruption |
| **HKSAR** | Hong Kong Special Administrative Region |
| **IAACA** | International Association of Anti-corruption Authorities |
| **ICAC** | Independent Commission Against Corruption |
| **MACC** | Malaysian Anti-Corruption Commission |
| **NACAC** | National Anti-Corruption Advisory Council |
| **NACS** | National Anti-Corruption Strategy |
| **NDP** | National Development Plan |
| **NPA** | National Prosecuting Authority |
| **PB** | Public Body |
| **SA** | South Africa |
| **SIU** | Special Investigating Unit |
| **TIP** | Transparency, Integrity, and Accountability Programme |
| **UNCAC** | United Nations Convention Against Corruption |
| **UNODC** | United Nations Office on Drugs and Crime |

# 2. BACKGROUND

The Transparency, Integrity and Accountability Programme of GIZ in South Africa (TIP), in partnership with the International Association of Anti-corruption Authorities (IAACA) and the Hong Kong International Academy Against Corruption (HKIAAC) of the Independent Commission Against Corruption, Hong Kong, China, invited the National Anti-Corruption Advisory Council (NACAC) and representatives of the Law Enforcement Agencies to the East Asia Learning Journey on the implementation experiences of the ICAC and other anti-corruption authorities. The Learning Journey took place on 08 to 16 March 2024 .

The host organizations were the Independent Commission Against Corruption (ICAC), HKIAAC, and IAACA. The learning journey included a two-day workshop, designed to draw on the experiences of the anti-corruption authorities of Hong Kong, Malaysia, and the Republic of Korea in the establishment and ongoing functioning of these authorities. The Learning Journey had focused themes which were delivered over a four-day programme divided according to six sessions as follows:

**DAY 1: Monday - 11 March 2024**

- ✓ Introduction to ICAC HK
- ✓ Operational Module
- ✓ ICAC's work strategy, mandates & legal powers
- ✓ Work of the reporting Centre (How are the corruption complaints received/handled)
- ✓ Visit to Regional office, Community Relations Department

**DAY 2: Tuesday- 12 March 2024**

- ✓ Corruption prevention Module
  - Introduction to the corruption prevention department
  - Corruption Prevention Strategies and Methodologies
- ✓ Education module
  - Introduction to the Community Relations Department and Community Education Strategies
  - Creative use of new technology and social media in promotion of probity culture

**DAY 3: Wednesday - 13 March 2024**

- ✓ Introduction of the delegation
- ✓ Session 1-3

DAY 4: Thursday - 14 March 2024

Session 4-6

DAY 5: Friday - March 2024

- ✓ Visit to the Civil Service Bureau

The broad themes outlined for learning included the powers and functions of the anti-corruption agency, governance issues, whistle-blower protection, monitoring and evaluating impact made and implementation of vulnerable sector approach to fighting corruption. This report gives an overview of discussions over the five day programmes.

# 3. LEARNING JOURNEY DAY1: 11 MARCH 2024

## 3.1. Institution & person visited: Independent Commission Against Corruption (ICAC)

On 11 March 2024, the SA delegation visited the Independent Commission Against Corruption Facilities in Hong Kong, China. The delegation was received by the Commissioner, Deputy Commissioner and various staff members from ICAC. On behalf of the ICAC, introductory remarks were delivered by the Commissioner, Deputy Commissioner and from South African delegation Professor Firoz Cachalia introduced the team. The delegation proceeded to a training room whereby introductory presentations to ICAC and their facilities was made. The commissioner hosted the delegation for lunch.

## 3.2. Short overview of partner/institution visited

The ICAC is the statutory independent anti-corruption body of Hong Kong with the primary objective of combating corruption in both the public and the private sectors. It was established in 1974 and has been operating independently from the Hong Kong government and law enforcement agencies. ICAC is headed by the Commissioner who reports directly to the Chief Executive of Hong Kong. The aim of the ICAC is to prevent corruption in the public and in the private sector.

The Deputy Commissioner reported that the establishment of ICAC was due to corruption being rampant during the 1950's and 1960's. Corruption was seen as the way of life where anything you wanted/needed (even a basic need) had to be paid for, for example, firefighters, hospitals etc. In 1973, Peter Fitzroy Godber, the Police Chief Superintendent was accused of corruption and snuck out of Hong Kong whilst he was under investigation. The public outcry from his escape, the lack of trust in the police (being the most corrupt) and the lack of public confidence in the government's efforts to fight corruption led to the establishment of the ICAC.

The ICAC'S independent status is derived from the ICAC Ordinance (Cap.204) which stipulates the statutory mandate of the ICAC in combatting corruption through investigation, prevention and education. The Basic Law of Hong Kong Special Administrative Region (HKSAR) provides constitutional guarantee against interference of their work. The ICAC impartially and rigorously

enforces the law at all times, making corruption a high-risk crime in Hong Kong and the corrupt will be pursued relentlessly irrespective of their background, status and position.

### 3.3. Title/subject of session

- Meeting with the Commissioner of the ICAC
- Overviews of the Hong Kong ICAC: (Work, Strategy, Mandates & Legal Powers)
- Operations Module: Introduction to Operations Department and Tour to Investigate Facilities (ICAC Building)

### 3.4. Introductory presentation by SA delegation:

*2.4.1 Professor Firoz Cachalia introduced his NACAC delegation as follows:*

- Prof Cachalia – NACAC Chairperson
- Adv Khumalo – NACAC Councilor (Responsible for procurement workstream)
- David Lewis – NACAC Councilor (Responsible for anti-corruption architecture)
- Sekoetlane Phamodi NACAC Councilor (Responsible for MERL)
- Sefura Matlala (NACAC Secretariat)
- Olwethu Tau (NACAC Secretariat)

*2.4.2 South African Law Enforcement Agencies as represented by:*

- Adv Rodney De Kok – National Prosecuting Authority (NPA)
- General Seswantsho Lebeya – (DPCI)
- Adv. Andy Mothibi – Special Investigating Unit (SIU)

2.4.2 TIP GIZ Representatives
Mr Ruan Kitshoff
Mr Mokgapi Maleka
Ms Sabeehah Motala

### 3.5. Summary of input/description of site visit/meeting:

The ICAC provided an opportunity for a tour of their building, where they showcased their facilities and how they are able to do their jobs. Below were the facilities showcased and how they work:

- Shooting Range: this is where they train their agents in firearms handling and other methods of protection of the whistleblowers. In order to qualify, there are exams that are taken to qualify. There is a Whistleblower Protection Programme which runs 24 hours. It has been noted that the agents hardly use their firearms.
- Reporting Centre: this is where they process reports of corruption, whether it be through email, telephone, or walk-ins. They analyze the reports they receive to determine whether the case can be pursued.
- Detention Centre: this is where they hold their suspects, however, they cannot hold them for more than 48 hours. The suspects receive fair treatment, can contact and

meet with their lawyersand are given a room with a bed and bathroom where they are provided food and drink.

- Video Interview Room: this was introduced in 1990. They have a recording system for transparency and the video recordings are handled with care and confidentiality.
- Witness ID Room: this is where witnesses can identify the suspects through a one-way mirror in order to protect the suspect. The suspects are lined up on the other side of the mirror amongactors of similar age and features to make sure that the verification process is legit. The witness and the suspect cannot see each other, everyone is held in a separate area in order to avoid any witness intimidation.
- Forensic Accountants: this section presented their work overtime and the cases of prominent people they investigated.

### 3.6. Highlights and learning points from input:

- Their Strategy enables them to fight corruption in partnership with law enforcement
- Prevention has statutory responsibility and power
- Inspect procedure to make it difficult for people to be corrupt
- Education is important in the long term because society needs to hate corruption in order to make it difficult for people to be corrupt – society will not tolerate, societal values make it easier to control
- Three-pronged Approach: ICAC Commissioner – Law Enforcement: Operations Department – Prevention: Corruption Prevention Department – Education: Community Relations Department – International Cooperation & Administrative Support (International Cooperation and Corporate Services Department
- Duties of the Commissioner: to receive and consider complaints alleging corrupt practices; to investigate any alleged or suspected offences/any alleged of blackmail committed by a prescribed officer through missuses of office; and to investigate any conduct of prescribed officer which is connected with or conductive to corrupt practices
- Law Enforcement: arrest; detention; require any person to produce suspect's books and records for inspection; seizure; enter and search premises/place; detain a suspect's travel documents; restrain a suspect's property; and obtain information from a suspect and related third parties (authorization from courts is required)
- The Chief Executive can also be investigated
- They have service contracts that are for 30 months (to ensure staff performance)
- All staff need to declare investments once every year
- Commission is empowered to investigate any form of corruption including murder cases
- Complainants identity and confidentiality is of utmost importance
- 2000 corruption complaints are in the private sector, the public sector complaints remain quite low
- Subject to findings, report will be compiled; report with evidence is then forwarded to Department of Justice to determine whether prosecution should be implemented, if yes, case is heard by Judge to determine guilt, if not guilty/insufficient evidence, report

needs to compiled and submitted to Operations Review Committee (professional citizens who scrutinize work to see if investigation was conducted morally and whether case can be completed or not)

- There is an oversight Committee which consists of citizens who meet in person every 6-7 weeks; Investigators need to attend to personally answer questions arising, investigators can also make referrals to them

### 3.7. Ideas that SA should consider for adaptation and application:

There are various ideas that South Africa should consider:

- Do not accept corruption – zero tolarance, educate from kindergarten to university and within different sectors of government

**Time-tested-3-pronged Approached**

- **Enforcement: Operations Department**
- **Prevention: Corruption Prevention Department**
- **Education: Community Relations Department**

- Prevent corruption at its source
- Be impartial when dealing with corruption and uphold justice
- Rule of Law, governments commitment and general public help the fight against corruption
- Incorporate digitalization in your processes
- Government Department CANNOT say no to monitoring by the agency, they have to cooperate
- Hold standard of integrity and morality in government and private sector, do not give it any excuse (from amount of bribe, the amount does not matter – from driving school to the top)
- Whistleblowers: it is important to protect whistleblowers and have better structures/laws to assist them

### 3.8. Website/additional information links:

- www.icac.org.hk
- www.siu.org.za
- www.npa.gov.za
- www.saps.gov.za
- http://anticorruption.gov.za

## 3.9. Photographs

*ICAC DELEGATION*

*SOUTH AFRICAN DELEGATION*

*GIZ TEAM*

# 4. LEARNING JOURNEY DAY 2: 12 MARCH 2024

### 4.1. Institution & person visited:

Independent Commission Against Corruption (**ICAC) was** visited and the day introduced the delegation to the Corruption Prevention Department. The officials that represented the visited institutions are: Ms Anita Choy: Principal Corruption Prevention Officer, and Mr Cyrus Tsui, Senior Staff Officer

### 4.2. Short overview of partner/institution visited:

The ICAC is the Anti-Corruption Agency of Hong Kong established in 1974. It is currently celebrating 50 years of its existence, and has been successful in reducing levels of corruption significantly.

### 4.3. Title/subject of session: Corruption Prevention and Education

The discussion consisted of four titles.

- Introduction to the Corruption Prevention Department by Ms Anita Choy: Principal Corruption Prevention Officer, ICAC.
- Corruption Prevention Strategies and Methodologies by Mr Cyprus Tsiu, Senior Staff Officer, ICAC.
- Introduction to the Community Relations Department and Community Education Strategies by Mr Franklin Chiu, Principal Youth and Education Officer, ICAC.
- Creative Use of New Technology and Social Media and Promotion of Probity Culture by Mr Bryron Kwan, Chief New Media Officer, ICAC.

The introductory briefing was done by Ms Choy. The power point was provisionally promised based on the consent from the role-players who made presentations. The

presentation covered the outline, three-pronged approach that focuses on Prevention, Education and Enforcement. An organisational structure of ICAC, which reflects on the various Departments that attend to the three critical elements of the strategy was shared. Within the Departments, there are Assignment groups that focus on specific activities. The Presentation was supplemented by three videos.

Franklin Chiu who is the Principal Youth and Education Officer, shared the ICAC's Community Education Strategy. This is a good step to ensure that the public is educated about the evils of corruption. The Structure of Community Relations Department was shared. There are representatives in the three regions. Ethics officers goes through Ethical Leadership programme. Corruption Prevention networks are entrenched. Drama and worksheets crafted by experts.

Mr Byron Kwan who is the Chief Mass Communication Officer shared the approaches on communicating the message of anti-corruption practices. He emphasised on adaptation to the new developments in communication space. Social media platforms seems to be more effective.

### 4.4. Summary of input/description of site visit/meeting: Corruption Prevention Department

The Corruption Prevention Department (CPD) focuses on plugging the loopholes that may allow for corruption. It is made up of approximately 60 staff, grouped together in groups that specialize in different sectors. The CPD also provides advisory services to both the public and private sectors. Staff are professionals from varying backgrounds including architect, engineers etc.
Section 5 of the ICAC Ordinance lays out the appointment and power of the Commissioner.
**Philosophy: prevention is better than cure – through good governance, preventive and detective controls**.
The Statutory Duties of CPD are laid out in section 12 of the ICAC Ordinance and are as follows:

- Examine government and public bodies procedures and secure them from corruption-prone practices
- Advise on how to eliminate corrupt practices
- Advise government departments of changes in practices and procedures to reduce the likelihood.

This is mandatory for government, but for private sector it is on request. The CPD will provide recommendations. If these recommendations are made to government, they must respond within three months, which can include either implementation or negotiation. The CPD will also support government bodies through implementation. Non-compliance has occurred, but fear of public image is a powerful persuasive factor.
ICAC Ordinance Section 13 gives the ICAC the powers to:

- Enter government offices and require prescribed officers to answer questions
- Request government bodies to produce standing orders, directives, office manuals, instructions for examination
- Access to photograph, copy all records

Civil-service-wide regulations exist on certain topics e.g. conflict of interest, procurement etc. ICAC reviews any department-specific manuals or regulations, and examine them for compliance. ICAC has created sector-specific corruption prevention guides to vulnerable sectors including recommendations. It encourages them to refer to these guides if they create their own, but also proactively examine their procedures and systems to detect risks.

The Corruption Prevention Advisory Committee advises on priorities of CPD and examine reports of ICAC for effectiveness. It is comprised of external professionals from society, in good standing, and is voluntary. They are not ICAC officials and are appointed by chief executive, so they are independent. They are organized into sub-committee which meet twice per year. Senior management of the ICAC and other government bodies also participate in these meetings.

## Corruption Prevention Work

All services offered by the CPD are free and tailor-made. There are several tools/methodologies used by the CPD:

*Assignment studies* are detailed examinations of systems and procedures, 71 assignment studies were completed in 2023. They look at corruption risks related to livelihood and public safety, and risk of public concern on subjects such as procurement, law enforcement, regulations, funding schemes and sector-specific.

*Consultations* are quick advisory services to government and public bodies such as examination of instructions or manuals before they are launched. 606 consultations were conducted in 2023 including with the Airport Authority and Insurance Authority.

*Tools/resources* developed by CPD are made available to be used by government, public bodies and all organisations, such as corruption prevention guides, best practice, training etc. *Capacity Building* is on offer for corruption prevention.

*Corruption Prevention Advisory Services (CPAS)* are available on request to the private sector.
Intelligence from other departments is essential to CPD work. After investigations are completed, for instance, this report will pass to the CPD so that they can initiate assignment studies. In ongoing investigations if there is relevant information, top management between departments will be in communication.
ICAC has a working relationship with Audit Department which works more on efficiency and compliance. Once reviews are completed, they upload and ICAC is informed. The CPD also relies on information from civil society and the public.

## CPD Support to the Public Sector

The regulatory framework for the services of the CPD is found in General Circular No. 2/2019. In addition, General Regulation 451 Proposal for Legislation requires Bureaus or Departments (B/Ds) to consult the ICAC when amending or formulating legislation, or to consult on whether a new organization should be a Public Body (PB), because there is more oversight and control over a PB. The Executive Council Procedures Manual states that B/Ds need to consult ICAC in policy formulation.
The Corruption Prevention Group/Liaison Meetings are regular meetings of senior management where they identify areas of concern and map out their workplan.

*An example of the procurement process and interventions by CPD*

| The process | Preventative measures |
|---|---|
| •Established on guiding principles including transparency, innovation and value for money<br>•Personnel involved must declare conflicts of interest and duties must be segregated<br>•For effective internal controls, there are clear policies and instructions such as international standards and regulations<br>•Transparency of information throughout process<br>•Information Security<br>•Effective supervision<br>•Internal audit<br>•Feedback and reporting channel | •Key risks are undue influence, favouritism, manipulation etc.<br>•Basic specifications that avoid brand names<br>•Written justifications<br>•Pre-determine marking schemes and guidelines for marking<br>•Declarations of interest<br>•Segregation of duties and responsibilities<br>•Proper record-keeping<br>•Performance management of suppliers<br>•Mechanism for public to monitor and submit complaints |

## CPD Support to the Private Sector: CPAS

The CPD had a dedicated private sector team since 1985. There is increasing demand from private sector for CPAS. In 2022 there were 711 enquiries and 1022 services provided. The most popular services requested and provided include support on codes of conduct, seminars and advice on potential for breach of Hong Kong anti-corruption law. The CPAS pledges to respond within 2 days after receiving a request. They are tailor-made, confidential and free.

The client profile that CPAS works with range from small to medium enterprises to multinational companies including from Hong Kong as well as mainland Chinese and international companies. Clients come from a range of sectors including insurance, property management, construction, retail, catering and education etc. Requests come from management staff up to Chie Executives.

Services available include: advising on legal compliance within Hong Kong, drafting of codes of conduct, advising on procurement, advising on other functions where there may be a risk of corruption such as sales or staff discount schemes. In addition, CPAS can provide resources such as toolkits, guides and sector-specific information available on a dedicated website (cpas.icac.hk). It also does seminars or talks for companies and offers training.

CPAS also takes a proactive approach to prevention within the private sector. They partner with trade associations or regulators in order to enhance CP awareness and provide training. They take a consultative approach to developing guides and partners assist ICAC in distributing materials. They also partner with professional associations to target practitioners for capacity building.

## Notes from the Discussion

- Public bodies support the private sector based on principle. Also, sometimes the staff members engaging in corruption are not top management but intermediary staff, which negatively impact the business, and therefore top management requests support.
- In relation to data analytics – information is readily shared across departments. Data is analysed to see trends and where corruption is prone, using this information to distribute work resources.
- The ICAC works closely with non-governmental organizations by advocating for them to incorporate principles of transparency and fairness.
- Regarding employment corruption, it is a risk but not as much as procurement. They advocate for companies to have strict HR rules for employment and promotions.
- With regards to beneficial ownership transparency, in tendering, companies have to declare who their directors, beneficiaries, parent companies and subsidiaries are. They will be held liable for any omissions. This also applies to organisations applying for funding schemes.

## Corruption Prevention Strategies and Methodologies

1. Giving concurrent and early inputs

Covid-19: Anti-epidemic fund

- Assignment studies and consultations
- Corruption prevention publications
    - Guides for grant-giving and grantees
- Post-implementation review (fine-tuning)
- Corruption-prevention tips for NGOs
    - E.g. urgent purchase, stock control, use of IT, handling donations etc.

2. Create /partnership synergy with regulators

- Impose integrity/CP safeguards in their regulatory regimes/procedures
- Provide resources/training/other services

## EDUCATION

Education and enlisting community support is a statutory duty of the ICAC. The aim is to develop everlasting values and build a culture that supports a strong anti-corruption system. In the 2022 annual survey (face-to-face interview with 1761 randomly sampled people), 98.9% of people had not personally come across corruption and 78.2% were willing to report. The survey showed that older people are slightly more tolerant of corruption. Gender is not considered.

The approach taken by ICAC is an Ethics for all approach. Groups of people are identified and different messaging and comms tools are developed for these groups (e.g. youth, migrants, business community etc.).

The Community Relations Department (CRD) has two divisions, the first is responsible for central or mass communication and the second is regional, which does more group/community-based comms.

The formula for communications is:

The approach to community education and publicity strategy is:

- Partnership
- Ownership – co-creation of messaging so communities take ownership
- Leadership – promote ethical leadership in different sectors

*Integrity for the public sector*: A network of Ethics Officers from all departments/bureaux, which are high ranking officials to promote ethical culture, take ownership of their integrity management programme. Each bureau has to report regularly to the ICAC on what activities they have executed (e.g. thematic seminars, networking, articles in the newsletter/intranet, reviewing policies etc.). The ICAC does talks and refresher courses for all govt departments. They also provide E-learning and integrity training. In the Hong Kong police (which is the largest government department), all new recruits are required to attend an ICAC talk on scenario-based ethics. They are required to attend a fresher talk every 5 years. At every promotion, there is a course which will include an ICAC session. This programme has been proven to maintain good ethics in govt. Reports related to public sector has dropped significantly since 1970s. For integrity for public bodies (about 100 organisations) campaigns and training are available.

*Integrity for the private sector*: Similarly for the business sector, there are consultancy services on business ethics, practical guides and online resources available and provides seminars and talks for specific trades or industries. ICAC partners with major chambers of commerce in Hong

Kong and has a long-term partnership with HK business centre. The business sector has consistently ranked as one of the least corrupt places in the world. ICAC makes effort to attain a level playing field for international investors.

*Integrity for young people*: Youth are the future and need positive values. Values-building should begin at early stages of growth and tie-in with key developmental stages of youth. The ICAC produces curricula-based materials and arrange extra-curricular programmes as well. They also partner with the Education Bureau, schools and parents to provide education on values. These programmes encourage youth to take ownership.

At Kindergarten age, simple values such as honesty, fairness and responsibility are instilled. The Reading for Integrity Project provides picture books and accompanying worksheets which are designed to teach through stories. 30,000+ children and parents are reached with this programme every year.
The iJunior programme involves the selection of student leaders in primary school to assist in promoting integrity and good values. The ICAC provides training on positive values and skills training. 1500 children recruited every year. This programme reaches 90,000 students through the activities they organize.

The iTeen programme involves the selection of student leaders in secondary school.
In tertiary education there is the ICAC Ambassador Programme which trains students as ethical leaders. These Ambassadors go through a training camp and workshops to capacitate and empower students. They then design and implement their own activities making use of a subsidy.
The signature programme for youth is the ICAC iELITE Youth Leadership Programme. Seventy youth from iElite, iTeen and iJunior are nominated for this programme which emphasises exposure and an international perspective.

One example of an activity that they participated in was the in the promotion of clean elections, where they developed promotional leaflet and distributed. The iJunior to iElite approach is to increase their independence and engagement in these programmes.
Aside from that, the ICAC has developed a policy guide for national anti-corruption agencies for meaningful youth engagement in partnership with UNODC, IAACA and ICAC. This guide was launched in 2023.

*Community outreach:* There are seven regional offices in different district which receive corruption complaints and run the 'All for Integrity' programme on a continuous basis. This is a public engagement programme for the past nine years. More than 3 million people are reached through activities including experiential exhibitions, shows, film, walking and running events and the ICAC club (volunteers for anti-corruption).

The interventions are evaluated through the use of an annual survey and sometimes focus groups. The interventions are informed by looking at normalised social attitudes, not actions.

**Creative use of media and new technology of probity culture – Byron Kwan – Chief New Media Officer**

The goals of the use of media and new technology are:

| Goals |
| --- |
| Effective use of various media |
| Heighten public awareness against corruption |
| Foster culture of probity |
| Garner public support for anti-corruption work |
| Promote positive corporate image of the commission |

| Mass Media Unit | New Media Unit | Art and Design Unit |
| --- | --- | --- |
| TV and radio programmes | Copywriters, new media experts, videographers | Experts in Design incl. 2D and 3D design |
| Producers, videographers | Manage online platforms | Produce communications tools and materials |

Production of tools and materials rely on trends. Current trends speak to the importance of video content, which is produced for third party platforms such as Facebook and WeChat. With Instagram, ICAC has created filters and short videos. ICAC produces engaging online content for those and their own platforms. Other approaches include the building of a positive corporate image of ICAC on social media, the use of recognisable virtual icons (such as the coffee cup or cartoon characters) and collaboration with youth for design, and Key Opinion Leaders. To create the virtual icons, ICAC did interviews and psychological testing with users to make sure characters resonate with the target audiences.

In the use of mass media, TV advertisements, TV episodes etc. are used for prime time TV. In addition, radio is used and traditional advertising such as bus wraps and billboards. An example of innovative advertising was the use of coffee spray to associate with the coffee cup icon of the ICAC. Ads and programmes are adjusted to identify with the popular concepts of the day.

The ICAC also hosts online content on its own websites (e.g. main website with ICAC content; youth websites with games, anime etc.; dedicated CPAS website). In addition, ICAC manages its own FB page and WeChat channel, more for the purpose of creating a positive institutional image. Using the innovation of AI ICAC has developed Large Language Models to answer common Q&As but this is currently only in use on the youth website to answer questions from youth, who

might not have complex questions. The ICAC's latest TV production has been developed using generative AI roles (which made the background and other characters) plus a celebrity.

### 4.5. Highlights and learning points from input:

The three prong-approach is institutionalised. The Departments created to focus on their areas of responsibility are coordinated at the top. Prevention is emphasised even when corruption levels are very low. The levels are measured by annual surveys that are being conducted. Educating the community at all levels, including primary and secondary education is emphasised. This is over and above curricula offered at schools. There are guidelines for government institutions and private institutions relating to corruption. Communication in various platforms including social media, television, printed material and press releases are utilised to convey messages. These communications include games for children that helps to inculcate the good social behaviour. Governments Departments have Ethics officers, which ensures that good ethics is embraced in all work environment. Recommendations that are done by officers to strengthen weaknesses are followed up to ensure implementation. Various Committees have been established to ensures proper oversight. These include Corruption Prevention Advisory Service. Corruption Prevention Guide on Governance and Internal Control for Non-Governmental Organisations is one of the good initiatives that reaches the general populace.

### 4.6. Ideas that SA should consider for adaptation and application:

The ICAC subscribe to the notion of segregation of powers to maintain impartiality in its work. While adopting the three-prong approach, it has not usurped the powers of the prosecuting authority to prosecute matters that it investigates. ICAC has adopted a Zero Tolerance approach, which ensures that no corruption is ignored until it is out of control to receive attention. Perseverance is an element that ensured that the country does not relapse into corruption prone environment experienced before 1974 where corruption was so infested in the community that was seen as a way of life.

South Africa Can Consider the following:

- Include Corruption Prevention as an essential mandate of the anti-corruption agency.
    - This must include advisory capacity, production of training manuals and guidance, offerings to the private sector etc.
    - The ACA should have powers of oversight over the risk of corruption in public institutions, possibly including the power to make mandatory recommendations for reducing risk.
- Build functional relationships with professional bodies, civil society, trade unions, forums etc. to facilitate the sharing of information and development of prevention strategies/content.
- Public education must incorporate communication *and* engagement. The public must be involved in and be encouraged to take ownership of building positive values in.
    - Messaging must be tailored to different categories of people in society e.g. youth, business, etc.

- Innovative tools and strategies must be considered, such as the use of TV programmes and social media
- Corruption prevention must be informed by, among other things, data sourced from trends in investigations.

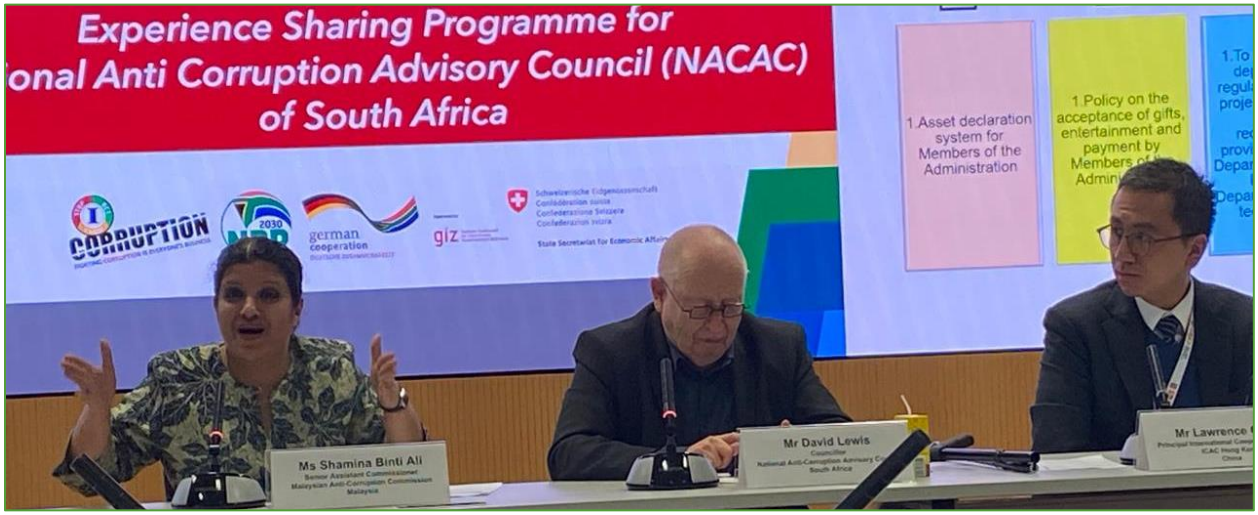
### 4.7. Closing remarks and thank you

Each official that commented appreciated the presentation made.

### 4.8. Website/additional information links:

https://www.icac.org.hk
Korea WB

### 4.9. Photographs




*Anti-corruption Architecture –NACAC & Malaysia*

*WHISTLE BLOWER PROTECTION SESSION: KOREA & NACAC*

*NACAC Chairperson*

# 5. LEARNING JOURNEY DAY 3: 13 MARCH 2024

5.1. **Institution & person visited**: In-person workshop with participants from: ICAC, MACC & ACRC and NACAC

**5.2. Short overview of partner/institution visited: (1 paragraph)**

*He warmly welcomed NACAC and the SA delegation, the participants from the Malaysian Anti-Corruption Commission (MACC) and the South Korea's Anti-Corruption and Civil Rights Commission (ACRC). He explained the purpose of the workshop and explained the need to share experiences in the fight against corruption, globally.*
*He emphasised the need for cooperation and to learn from each other, highlighting that it's for the first time that ICAC, HKIACA and IAAACA have collaborated at an international level with this learning journey. He also acknowledged that the previous two days provided an overview of the ICAC and how it works*

**Input by Ms Inhye Jeon ACRC**

Ms Jeom made a brief input on ACRC and their fight against corruption, civil complaints making recommendations. She later made a detailed presentation on whistleblowing and how S Korea provides incentives to whistleblowers.

**Input by Shamina Binti Ali MACC**

Ms Binti Ali provided some background regarding Malaysia's fight against corruption and referred to the government takeover by the opposition. In 2018 as the turning point

They developed a 5 year a plan, and subsequently spent 4 months setting up National Centre for Governance Ethics and Anti-Corruption (NCGEAC). They are now implementing a second 5-year plan, which is supported by government and its 10 prime ministers. They have a planning division with anti-corruption officers with a mandate to oversee the civil service departments focusing on anti-corruption and integrity plans.

**Input by Wendy Yip: Introduction to ICAC**

Ms Yip provided the history of ICAC which came about largely because of corruption in the civil service, mainly the police, leading to the then Governor forming a commission of inquiry which led to birth of ICAC.

The operational model of ICAC informed by Enforcement, Prevention, and Education methodological approach. They also have an international cooperation dept with two investigation branches, Intelligence gathering and witness protection.

The ICAC model also incorporates numerous checks and balances with mainly the civilian advisory body which meets regularly for briefings and updates on its work, especially on pending cases. The Commissioner is appointed by the Chief Executive, they cooperate with the police, as well as the prosecutions and the department of justice.

5.3. **Title/subject of session:** Workshop day with 3 Sessions

**5.4. Introductory presentation by SA delegation (if done): Presentation by Prof Firoz Cachalia NACAC**

Started by introducing the SA delegation. Talked about coherence was achieves in the fight against corruption. Hoping to draw lessons from the Hong Kong experience as they think about the future Anticorruption architecture for SA.

He referred to the MACCs 5-year plans as an example to be considered since SA has a 10-year strategy, the NACS. He emphasized a move from policy commitment to embedding implementation. Provided context on where SA is in its fight against corruption in relation to work of the Council and identified key questions in the subsequent presentation.

The presentation highlighted brief history of SA society which was divided by race class and patterns of racism, Large informal sector, Economy based on mining. Integrate into global financial system. Politics become an avenue for social mobility.

1996 supreme constitution, multi-party democracy Constitutional court Complex system of guard rails for probity. Accountability and probity. Has the constitution been successful in protecting against corruption risk? Extremely vulnerable to growth of corruption. Early warning was the Arms deal scandal, systemic corruption in the form of state capture and its devastating effects on services.

State Capture: state owned enterprises; law enforcement agencies; ability to fight corruption degraded over last 5 years; and SA is beginning to make progress; with the SIU as an example of excellence. The NPA was also previously captured; and currently there are real efforts to strengthen prosecuting authorities. Former President did loose office. Deposed in his party's conference. Facing criminal charges. Judicial commission of inquiry in response to a growing problem of corruption. Recommendations: finding so prima facie malfeasance and referred evidence to NPA for prosecutions Made recommendations for constitutional reforms. Started appreciating the importance of prevention.

Presentation on NACS. All society approach NACAC appointed in 2022. Education alongside law enforcement. NACAC has 9 councillors and 6 workstreams. Mandate Voluminous evidence heard and recoded by ZONDO. Dealing with corruption head on using 6 strategic pillars listed in the NACS. Critical question how to establish the anti-corruption infrastructure and as recommended by state capture report. Anti-corruption agency; public procurement agencies; creation of formal procurement process; protection of whistle-blowers. Complex set of institutional arrangements

Powers functions and legal status of anti-corruption agencies, protection of anti-corruption agencies from political interference. Strengthen SIU to investigate government depts. How do you insulate political bodies. Entrench body in constitution.
Questions to aske are as follows : How do agencies work, how do single agency approach work, How do they collaborate, what are ethical standards for budgeting, how is public procurement investigated?

### 5.5. Summary of input/description of site visit/meeting

Explained structure of the prosecution, Role of the prosecution in the fight against corruption, Establishment of the Investigating Directorate on the NPA. There are dedicated prosecutors to support police investigations. Specialized Commercial Crime Unit guides DPCI investigations.
Phasing out of different entities, DPCI created. Mandate: 17d of SAPS act,199 of Constitution. Single policing agency, Mandate of hawks: 3 main categories: serious organised crime, commercial, serious corruption. Different components headed by major generals. Elements of different types of crimes Provisions in police act. 17J Operational committees; Operational departments participate. Siu, NPA, FIC, SARS sit together.

Section 17I of Police Act ministerial committee. 5 Ministers, police justice home affairs; Govt dept to assist to ensure work of hawks fulfilled. Oversight over parliament, Operational committee; Can be called to parliament. Sec 17L, retired judge appointed to look at DPCI complaints. Political interference can also be looked at. Mechanism to protect Hawks. Security clearance Although it is in the police service. Head of hawks and deputies, Appointed in terms of contracts. Auditor, PP, secretariat of police and IPID oversee the work.

SIU charged with the responsibility to investigate corruption. Established in terms of act of parliament, preceded by a commission headed by a judge. Evolved into a statutory body, and is an agency that conducts investigation based on allegations received from public and whistle blowers, can only investigate once a proclamation is published by the president. It has national footprint with provincial offices led by provincial heads. The SIU reports to parliament twice a year.

SIU Vision: preferred states anti-corruption capability, Powers to institute civil proceedings, need to recover monies or assets lost by the State, Collaborate with other state agencies particular. The SIU has special tribunal to recover monies lost by the state and collaborate with other agencies internationally. Further responsibilities of the SIU includes: systemic investigations, maladministration, and malpractice, propose recommendations. Assist with the roll out of anti-corruption strategy using all pillars, to ensure whole of Society approach in action.

### 5.6. Highlights and learning points from input

Third Session focused on Functions and powers of anti-corruption agencies
Panel discussion with David Lewis NACAC, Wendy Yip head internal investigations of ICAC Prosecution, NPA- ID -AFU -SCCU; Detection SAPS, DPCI Serious corruption, serious commercial crimes organised crime. Systemic corruption-problems in its governance and management systems. SIU, special tribunal, public protector, Information, and Intelligence gathering, SARB. FIC SARS AG, CRIME INTELLIGENCE

How do we turn around the SAPS, Public Sector Workplace Discipline, and ethics; Public Service commission; Department of public service and administration. Want to retain existing multi-party functions.

Will recommend a new anti-corruption agency: Following functions, investigation of systemic corruption; make power that recommendations is binding, criminal conduct: ID should be encouraged to use investigative resources to build up its case. Responsible for public education. Data analysis. Reports/ complaints from civil society. Should SIU be incorporated into agency, or should SIU take over the new functions? Relationship with SIU important. Powers to launch systemic investigations. President should have the power, but agency could still do. Civil asset forfeiture powers and tribunal. Subpoena. Search and seizure powers. Should be able to hold public hearings. Independent agency. What does independence mean. We shall examine this.
NPA should be the sole prosecutor, important to recognise new and ID investigates and prosecutes serios corruption, overlaps with the Hawks.

Must look at mandate of the hawks. Establishing the independence of the Hawks. Will recommend the establishment of a procurement regulatory authority, won't be responsible for policing corruption.
Coordination function: divided responsibility into two parts, First are law enforcement agencies. NPA, Hawks, New agency, or SIU; Coordinate, Civil society; Finally, proposals for appointment of senior government officials.

WENDY YIP of ICAC
Presentation on functions and powers of ICAC; Judicial review, Integrity of officers- important to achieve public trust. Sufficient powers to achieve anti-corruption objectives.

**DISCUSSION**

- ✓ what are the main factors that supported institutional change
    - **ICAC RESPONSE:** question is whether new institutions can gain the trust of the public?Success factors; relatively successful in Hong Kong. Development of the Laws. Checks and balances. ICAC officers on contract. Colleagues upset but have strong determination. Management to emphasized integrity of the organisation.

- ✓ NPA ethics and integrity units; SIU has Internal investigation Unit. Political determination; Independence of institution, Trust; Public lost confidence, public wants to see action, cases

must be investigated, they are testing the system, we must demonstrate that it works. How do we build trust?

- ✓ *General Lebeya:* indicates that DPCI ethics support function as well. Some complaints to the judge, others dealt with internally. Integrity testing. Also have disciplinary processes. Financial disclosure.
    - *ICAC RESPONSE* : If ICAC would not have law enforcement powers how effective would it be? In HK need Investigative powersCorruption complicated crime, it requires comprehensive approach to keep it down. Case after conviction leads to education and then to prevention. So, you need enforcement, law enforcement cannot catch all the criminals. 3 components work together hand in hand.
- ✓ What powers should new institution have? None of agencies has powers to focus on complete value change. Must look at innovation. 3 prongs of effective anti-corruption strategy. Solve coordination problem by putting them in one agency.Narrow questions, can you have an effective corruption agency that doesn't have law enforcement powers? All powers of criminal investigation short of arrest. New agency financial and other resources for agency must be considered. How do we achieve coordination. Multi agency forum we must bite the bullet on coordination.
- ✓ How do we measure integrity? How can we ensure there is political will to promote integrity?

5.7. Highlights and learning points from input: (1/2 page)

**Topic 2 Architecture- interdependence -cooperation**

- ✓ Can we afford a new body without political will.
- ✓ <u>Malaysian experience Presentation by Shamina Binti Ali</u>

  Senior assistant Commissioner Malaysian Anti-Corruption Commission Formed in 1967, Have national integrity plan GICC, NACP

  What has been accomplished? Completed 85 out of 111 initiatives. Cooperation, Article 56

  Good practices of Malaysia presented most; big cases are done on a task force basis.

  No MOU with domestic LEAs. Team based investigation and intelligence-based investigation. Each agency Attorney general seconds officer to all agencies. Person as public prosecutor will tell police this should go to another agency. Integrity officers in all agencies. Are the prosecutors in the agency but reporting to Attorney General? Yes

  Who takes the case to Court? Work as a seconded prosecutor to guide investigations. Prosecutors in AG's office takes the case to court. NACC reports to parliament. Goes under annual budget of the Government.

<u>Reporting and Protection of Whistle Blowers</u> Presenter: Adv. Gloria Khumalo NACAC

- ✓ Do whistle blowers get enough protection? Important people must encourage whistle blowing (WB). Procurement primary source of corruption. Legislation being drafted, failed to include protection of disclosures. Must empower public to prevent corruption. Must recommend improving legislation to protect WB State capture recommendation also on WB legislation.

Ms Inhye Jeon of S Korea Anti-corruption and Civil Rights commission

- ✓ How corruption reported and investigated and Explained Whistle blower protection legislation in Korea. This is set out in the presentation. WB may receive a reduction in criminal liability if the cooperate. Whistle blowers' rewards and awards system described.
- ✓ Questions raised about how witnesses give evidence in Court, how we must protect witnesses,
- ✓ What about whistle blowers in respect of crimes other than corruption cases? Can you treat all whistle blowers in the same way? What about those involved in offences? Do we treat them in the same way as others not involved in crime? There should be a distinction when comes to rewards or awards? People who do it because of public duty should be rewarded differently.

### 5.8. Ideas that SA should consider for adaptation and application: (1/2 page)

- Establishment of a single anti-corruption body with far reaching powers, like search and seizure, detention and arrest of suspects, investigative powers, etc.
- Consider the amnesty approach to encourage speedy reporting and conclusion of investigations.
- Consider providing incentives for whistleblowers.

### 5.9. Closing remarks and thank you:

- The chair of workshop made closing remarks and thanked all the participants for fruitful and engaging sessions

### 5.10. Website/additional information links:

- https://www.sprm.gov.my/#a (MACC); https://www.acrc.go.kr/ ; https://www.icac.org.hk/

## 5.11. Photographs:

*SA Delegation*

# 6. LEARNING JOURNEY DAY 4: 14 MARCH 2024

6.1. **Institution & person visited:** ICAC and the Regional Office

**6.2. Short overview of partner/institution visited:**

*This day was composed of two sessions. The first session focused on monitoring and evaluation, while the last session was on a discussion about vulnerable sectors. This day coincided with a meeting by the ICAC's oversight committee, and the delegation benefited from their impromptu visit for a quick informal meet and greet.*

6.3. **Title/subject of session:** session 5 on Monitoring and Session 6Vulnerable Sectors

**6.4. Summary of input/description of site visit/meeting:**

This last day of the workshop was started by the NACAC- MERL workstream as presented by MX Phamodi. His presentation reflected on how NACAC came about as a recommendation from the NACS for the Presidency to constitutionally establish the council to advise on its implementation plan. He explained the process of developing the NACS from nine pillars to eventually 6 pillars. The slides indicated that SA uses multi-agency approach and that what is required are strategies on how to establish collaboration with interdependency. The NACS also on pillar 6 addresses risks mitigation response in SA using Vulnerable sectors approach (focusing on projects with high scale of budget) e.g. infrastructure

His workstream advises on the implementation plan, M&E reporting overarched by National Development Plan (NDP). In SA there is a need for coordination between sectors (public, private, business, civil society) all of government should respond to the implementation of the strategy with all role players active. What is most important is that society feels that corruption is under control". Questions he referred to includes: What do we measure? There are no specific measures to look into to make a statement that corruption is changing significantly- perception survey, number of convictions? SA need to be forward looking on coordination – how to measure vision based success? Mutual accountability on failures. Challenges reflected includes- Where are the shifts, how do we know the measures are working, Where does this leave NACAC? Process - fragmentation to coordination by developing implementation plan

By surprise, the review committee visited the workshop room and was led by the Commissioner and the chairperson. The committee is appointed for 6 years on voluntary basis to oversee investigations under ICAC. The members are part of the society, and meets eight times a year.

**SESSION 5: GOVERNANCE – Prof Cachalia and Tracy Lin**

This session was led by Prof Cachalia's presentation on governance issues that the council wishes to discuss and draw lessons from other countries. This was facilitated through a series of questions as stated below:

- Should the new anti-corruption be constitutionalized? History proved that constitution entrenchment is not a guarantee and this is evident with the challenges faced by the Public Protector (PP), leading to its renewal processes underway.
- Think of anti-corruption as opportunity for new institutional reform/transformation
- There is a need for international agreement to establishing the anti-corruption agency
- International best practice principles to be complied with such as the Jakarta Principles
- SA went through a series of challenges, such as appointing friends in positions of power e.g. the Department of Finance - Mr Des Van Rooyen
- SA should create an agency that is independent of the executive – more like ICAC (with criminal investigating powers.
- Financial autonomy
    - Should have access to required financial resources
- Reporting
    - who does then new body report to?
    - Will it report to parliament?
- Internal functioning of this body
    - Ensuring sustainability of the body
    - Institutionalized system of integrity
    - Employ the right people
    - Institutional culture
    - Policy development and management
    - Building institutional knowledge
    - Will it follow a five-year planning cycle?
    - Does it need to have board of directors?

**SESSION 5: GOVERNANCE –by Tracy Lin**

Tracy Lin provided information on the governance structure of the ICAC as follows:

- ICAC is a law enforcement that reports directly to the chief executive, who appoints the commissioner. Since its inception in 1974, the ICAC has the 8$^{th}$ and these are from retired civil servants
- All ICAC officers except for Deputy Commissioner are appointed by the commissioner
- Staff complement started in 1974 from 300 to over 1300 officers within civil service.
- Remuneration – salary with benefits such as housing allowance – agreement for 2 years no post pension benefits.

- ICAC is funded by the Hong Kong Government. R1.4 billion budget is expected by 2024 for salaries and benefits
- They account externally
- ICACs' budget is published in the public domain
  - KPIs developed
  - They ensure check and balances through their oversight committees
- ICAC is the sole agency fighting corruption with watchdogs, partners (regulatory bodies/), and public Support.
- Establishing reputation and independence is key to the members of the public
- They provide feedback on successful cases to the members of the public
- How to protect the agencies from interference? The chair is appointed by the President
- After 1997 tenure of the Chief executive is tied with the commissioner – chief executive can choose to retain or change the officials
- They follow the basic law with the appointment of the chief executive

**DISCUSSION AND COMMENTS**

1) What is the process to develop and evaluate targets the end of the cycle.
   - ✓ **Response:** Targets are developed based on data available
2) Are there common targets where you interface with other state governments –
   **Response:** All government department compile their reports based on the public and put on public domain
   - ✓ Corruption prevention division hold meetings with government departments to identify corruption risks
   - ✓ Senior officers hold meetings with departments on the education programme

**SESSION 6 VULNERABLE SECTORS**

Adv. Andy Mothibi (Head of the Unit – SIU) and Lawrence Chung – Assistant Directo/International Cooperation ICAC Hong Kong

**Vulnerable sectors risk Approach**

A presentation by Adv. Mothibi shared the following insights pertaining to how SA implement Pillar six of the NACS in relation to vulnerable sectors:

- ✓ Systemic recommendation – play a part in identifying mitigation for vulnerable sectors
- ✓ The approach was informed by the sixth pillar of the NACS to Identified Vulnerable sectors in all sectors of the economy- to take into account prevention measures.
- ✓ The vulnerable sector approach follows the "Whole of society approach" encouraging the involvement of the society
- ✓ Strategic intervention from the NACS –also considered the article 13 and the UNCAC
- ✓ Youth is another sector to be prioritized in the near future
- ✓ Sector based anti-corruption forums were established with objectives and terms of reference (ToR) with governance structure. Effectiveness of the forums is being assessed.
- ✓ Health sector forum to be key in the implementation of the health insurance
- ✓ Outcomes of the investigations are monitored by the forums

- ✓ Members of civil society are part of the forum and holds the forum accountable
- ✓ Risks assessments conducted per sector leading to less corruption noted in vaccine rollout
- ✓ Expert regulators are included in each forums
- ✓ Over and above reactive – the forums recommends preventative approaches
- ✓ All key project are assessed
- ✓ Data Analytics is built into the approaches to ensure data led investigations.

**VULNERABILITY & PRIOTITY AREAS IN HK**

- ✓ Targeting major groups in HK
- ✓ How do you identify vulnerable groups in HK?
    - Corruption statistics (corruption trends), policy initiatives and important or priority target groups e.g. youth policy guide, people of diverse race,

**DISCUSSION AND COMMENTS**

- Research conducted by GIZ indicates women as being vulnerable, is it the same with HK?
- **RESPONSE:**
- ✓ Women enjoy social status in HK, with regards to gender mainstreaming, they are appointed on merit
- SIU response –
    - There is a need to continue with assessing the impact of the vulnerable sector strategy, to determine if women or youth are well represented

### 6.5. Highlights and learning points from input:

### 6.6. Ideas that SA should consider for adaptation and application

- SA could consider
    - attaching review committees for oversight of the new agency.
    - Introduction of a secure and well equipped reporting space such as the one at the regional office.

### 6.7. Closing remarks and thank you:

The closing remarks were done by three representatives from the GIZ, NACAC and the ICAC. Mr Ruan Kitsoff (GIZ ZA) reflected on the learning journey by appreciating contribution of all the stakeholders in the workshop as they provided rich content, and sparked curiosity on various aspects. He made special mention of his GIZ team, Mr Mokgapi Maleka and Ms Sabeeah Motala who were appreciated for organizing the learning trip.

From the NACAC, Prof Cachalia appreciated ICAC and reflecting that the council is at a point where it is finalizing ad refining ideas for implementation of a new model. The NACAC learned a lot and from the ICAC accomplishments give SA something to imitate. He notes that previously

Hong Kong was a place on the map – this has been an emotionally rewarding visit with enduring friendships- learns something about your country and your people. To the South Korea colleagues he appreciated the knowledge shared on their whistle blowing presentation as it forms part of the NACAC focus. He further praised the GIZ for endless support they provide for the NACAC and equipping it to strategise on effective means to the fighting against. corruption. The NACAC will not be able to carry out its mandate without your support.

Mr Keneth Wong (ICAC– Director International Relations) closed the session by reflecting the important Collective learning to explore different effective anti-corruption model and that ICAC in spired by the knowledge shared and relationships built. He further invited the delegation to the regional office visit.
The day closed with a visit to the regional office located at the ?????. the office provides a safe place for face to face corruption reporting. They regard it as a bridge between ICAC and the community and the office is in a private space to ensure that the informers feel safe.

## 6.8. Photographs:

*Sekoetlane Phamodi (NACAC) – MERL*

# 7. LEARNING JOURNEY Day 5: 15 MARCH 2024

7.1. **Institution & person visited**: Civil Service Bureau (CSB)

**7.2.** Short overview of partner/institution visited:

The SA and Korea delegation visited the Civil Service Bureau of Hong Kong.

**7.3. Title/subject of session:** Tour to the CSB

**7.4. Summary of input/description of site visit/meeting:**

The SA and Korea delegation was received by Miss Shirely Lau (title?? ) who opened the meeting by delivered remarks on the mandate of the CSB. The bereau operates as follows:

- Focuses on upholding the integrity of the society ,and works in collaboration with the law enforcement including the ICAC – which has a three pronged strategy (Prevention, Education and Investigation) to fighting corruption.

**7.5. Highlights and learning points from input:**

A presentation was made by the officials of the CSB, and it focused in their implementation of their three pronged strategy

a) Prevention
b) Education and training
c) Sanctions

**7.6. Ideas that SA should consider for adaptation and application:**
Their three pronged strategy that SA could adapt include:

a) Prevention
   - focuses on development and implementation of policies and guidelines, emphasizing declaration of interest within seven days to curb conflict of interest
   - they provide monitoring services (checks and balances) to departments dealing with procurement and infrastructure projects

b) Education and training
   - Focus is on instilling integrity in all levels of the society. This has been supported by appointment of about 160 ethics officers to educate the society

c) Sanctions
   - SA can adopt zero tolerance approach to fighting corruption by ensuring effective disciplinary processes and their inquiry proceedings are conducted in mini courts
   - For offences, they focus of implementing various range of punishment such as – non-removal (reduction of rank), removal punishment (dismissal/compulsory retirement) or financial penalty.

**7.7. Closing remarks and thank you: done by (name, institution)**

Miss Agness Ho, closed the meeting by thanking the delegation for their visit.

**7.8. Website/additional information links:**

www.csb.gov.hk/english/index.html#

**7.9. Photographs:**

*SA & HONG KONG DELEGATION*

*ICAC and CSB HONG KONG DELEGATION*

# 8. OVERALL LEARNING

**What makes the ICAC successful and credible?**

- After 50 years corruption is well under control, and yet the Hong Kong government continues to assure the permanence of the organisation, it is well resourced with professional and committed leaders and other staff members, it has adequate budget to perform all three its primary functions, it is protected from interference. There is political will and leadership to continue fighting corruption.
- Checks and balances make sure the ICAC is trusted and supported: The law is discharged responsibly, thresholds do not apply (corruption is corruption) and oversight is rigorous and credible. An Advisory Committee and sub-committees, stocked with credible and even high-ranking civil society members assure the performance of all functions and correct application of the applicable laws. ICAC members are proud of their system of rigorous civilian oversight and their willingness to be scrutinized.
- Its partnership with the rest of the public sector, especially the Civil Service Bureau ensures integrity and professionalism of public sector employees, and that effective consequences are applied for transgressions, including disciplinary measures. Only about 25% of ICAC cases relate to the public service, and these cases include misuse of vehicles and what in other jurisdictions would be regarded as minor misdemeanors.
- Moving from rampant corruption to the current situation of low levels of corruption, Hong Kong went through a “healing process”, starting with a commission of inquiry that led to the establishment of the ICAC, partial amnesty for past crimes of corruption and over time building a trusted and capable organisation to fight corruption.
- ICAC is accessible to communities and potential whistleblowers. Even though geographically contained, ICAC operates seven regional offices that offer safe spaces to lay complaints or report corruption, to obtain advice and from which community-directed education and engagement programmes are launched.

**The tripartite structure leads to coherence, continuous learning and improvement**

- Although ICAC ensures absolute confidentiality of the identity of corruption whistleblowers and witnesses, the three functions on investigation, prevention through systemic analysis and community education act on cohort. Risk identified through investigations informs systemic analysis, systemic improvements informs community education programmes, community involvement reports individual cases for investigation as well as for systemic improvements.
- As the ICAC evolved and currently functions, continuous learning takes place in the organisation. This learning is further enriched by the participation of external experts and community members in the internal oversight processes of the ICAC.

**Societal values and behaviour change at the heart of fighting corruption**

- Hong Kong has the advantage of a homogenous society, a contained geographical space and relative prosperity. But nevertheless, the Hong Kong government and ICAC invests heavily in fighting corruption and maintaining the low levels of corruption. This includes a societal approach.

- The “educate and enlist” approach is well funded, it is well segmented to the different configurations of society and media and new technologies are used creatively, all aimed at attitudes towards corruption and low tolerance of corruption. Partnerships with the business sector, education sector and civil service are strong. Programmes exist to educate the “new arrivals”, people coming from mainland China and other parts of the world are inducted into the (anti-corruption) values of Hong Kong society.
- For example, the educate and enlist programmes for the youth sector are segmented to kindergarten, primary schools, teens and universities.

**Successful reporting requires an eco-system**

- In Hong Kong and Korea, corruption reporting is managed in a single eco-system. From the initial report to conclusion of the case, the anti-corruption authority manages the case. This has significant advantages for assuring confidentiality, protection and closing the case.
- Absolute confidentiality (of identity) is the main hallmark of both systems. The pillars of the Korean system are the guarantee of confidentiality, the guarantee of employment, physical protection and mitigation of culpability. This system is bolstered by a rewards awards and relief money (physical and mental treatment, relocation, legal expenses) system. Other interesting aspects of the system include the use of a panel of proxy lawyers for confidentiality and easy-to-obtain physical protection.

**Inter-dependence makes the system stronger**

- Partnerships, cooperation and coordination are strong elements of the Hong Kong and Korean systems. This is achieved not through formal agreements but through adherence to mandates, professionalism of actors in the “value chain” and political leadership and will that set clear priorities. This is not only found in the law enforcement community, but also with the private sector and civil service.
- The inter-connectedness and inter-dependence of functions, of institutions, of ongoing learning and improvement is recognized and appreciated.
- Communities are actively enlisted to be part of the anti-corruption system and the communication and education programmes to support this enlistment are well resourced.

.

# 9. ANNEXURES

## 9.1. Attendance Registers/List of delegation

## 9.2. Presentations

## 9.3. Website Links

- Independent www.icac.org.hk
- National Anti-Corruption Advisory Council http://anticorruption.gov.za
- GIZ www.giz.de/en/worldwide/107103.htnl
- Special Investigating Unit (SA) www.siu.org.za
- National Prosecuting Authority (SA) www.npa.gov.za
- South African Police Service (SA) www.saps.gov.za
- Civil Service Bureau www.csb.gov.hk/english/index.html#
- Laws (ICAC Ordinance):
    - ICAC, HKSAR - Anti-corruption Laws
    - ICAC, HKIAAC and IAACA first-ever experience sharing programme for South Africa graft fighters showcases tripartite partnership | HKIAAC

# Independent Assessment for the National Anti-Corruption Advisory Council of the 60 Presidential Commitments to implement the State Capture Commission Recommendations

July 2025 - Final Draft

PUBLIC AFFAIRS RESEARCH INSTITUTE
shaping change

# Contents


Executive Summary ..... 5
Methodology ..... 5
Section 1: Individual accountability ..... 5
Section 2: Systemic institutional/policy reforms ..... 7
Full Report ..... 22
Introduction ..... 22
Background ..... 22
Assessment methodology ..... 24
President's Response to the SCC Recommendations ..... 25
A 'strategic and systemic' perspective on the SCC Report ..... 26
Section 1: Individual accountability ..... 28
1.1 Criminal investigations and prosecutions ..... 28
1.2. Asset recovery ..... 30
1.3. Accountability and the Executive ..... 32
1.4. Referrals to professional, regulatory, and other bodies ..... 35
1.5. Corporate accountability ..... 38
Section 2: Systemic institutional and policy reforms ..... 41
2.1. Law enforcement ..... 41
2.2. Anti-corruption architecture ..... 48
2.3. Money laundering and financial crime ..... 50
2.4. Restoring the South African Revenue Service ..... 53
2.5. Procurement system reforms ..... 55
2.6. Intelligence services reforms ..... 61
2.7. Whistleblower protection measures ..... 65
2.8. Professionalisation of the public administration ..... 67
2.9. Strengthening the audit system ..... 75
2.10. State-owned enterprises ..... 77
2.11. New criminal offences ..... 80
2.12. Private sector accountability ..... 82
2.13. Amendment to the Political Party Funding Act ..... 86
2.14 Parliamentary oversight ..... 88
2.15 Electoral system reform ..... 92

# Acronyms

| | |
|---|---|
| AFU | Asset Forfeiture Unit |
| AG | Auditor-General |
| AML | Anti-money laundering |
| APP | Annual Performance Plan |
| CIPC | Companies and Intellectual Property Commission |
| CJS | Criminal justice system |
| CoJ&CD | Department of Justice and Constitutional Development |
| CSO | Civil Society Organisation |
| DPA | Deferred Prosecution Agreement |
| DPCI | Directorate for Priority Crime Investigation |
| DPME | Department of Planning, Monitoring and Evaluation |
| DPSA | Department of Public Service and Administration |
| FATF | Financial Action Task Force |
| FCPA | Foreign Corrupt Practices Act |
| FIC | Financial Intelligence Centre |
| FICA | Financial Intelligence Centre Act |
| GILAA | General Intelligence Laws Amendment Act (GILAA) |
| HoD | Head of Department |
| HOPA | Head of Public Administration |
| ID | Investigating Directorate |
| IDAC | Investigating Directorate Against Corruption |
| IEC | Independent Electoral Commission |
| IGI | Inspector-General of Intelligence |
| IPID | Independent Police Investigative Directorate |
| IRBA | Independent Regulatory Board for Auditors |
| JSCI | Joint Standing Committee on Intelligence |
| LPC | Legal Practice Council |
| MEC | Member of the Executive Council |
| MFMA | Municipal Finance Management Act |
| NACAC | National Anti-Corruption Advisory Council |
| NACS | National Anti-Corruption Strategy |
| NCOP | National Council of Provinces |
| NDP | National Development Plan |
| NDPP | National Director of Public Prosecutions |
| NEDLAC | National Economic Development and Labour Council |
| NICOC | National Intelligence Coordinating Committee |

| | |
|---|---|
| NPA | National Prosecuting Authority |
| NPCOC | National Priority Committee on Organised Crime |
| NTR | Non-trial resolution |
| OCPO | Office of the Chief Procurement Officer |
| OECD | Organisation for Economic Co-operation and Development |
| PA-EID-TAU | Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit |
| PAMA | Public Administration Management Act |
| PARI | Public Affairs Research Institute |
| PDA | Protected Disclosures Act |
| PFMA | Public Finance Management Act |
| POCA | Prevention of Organised Crime Act |
| PPA | Public Procurement Act |
| PPFA | Political Party Funding Act |
| PPSA | Public Protector South Africa |
| PRASA | Passenger Rail Agency of South Africa |
| PRECCA | Prevention and Combatting of Corrupt Activities Act |
| PSC | Public Service Commission |
| SAICA | South African Institute of Chartered Accountants |
| SALRC | South African Law Reform Commission |
| SAPS | South African Police Service |
| SARB | South African Reserve Bank |
| SARS | South African Revenue Service |
| SCC | State Capture Commission |
| SCCU | Specialised Commercial Crime Unit |
| SCM | Supply chain management |
| SIU | Special Investigating Unit |
| SOE | State-owned enterprise |
| SONA | State of the Nation Address |
| SSA | State Security Agency |
| SSC | State Security Council |
| ToRs | Terms of Reference |
| WPA | Witness Protection Act |

# Executive Summary

## Methodology

This assessment has been guided by the National Anti-Corruption Advisory Council's (NACAC) mandate, which includes advising on the effective implementation of the National Anti-Corruption Strategy (NACS 2030) with its six pillars; advising on strengthening South Africa's anti-corruption architecture; and advising on the implementation of the State Capture Commission (SCC) recommendations from a 'strategic and systemic' perspective.

The assessment has also taken guidance from the following priorities set out in NACAC's first advisory note to the President –

1. Whistleblower protection.
2. Principles to guide appointments.
3. Transparent public procurement.
4. Balancing the response to cover both private and public sectors.
5. Resourcing of law enforcement agencies.
6. Culture change towards adherence to constitutional values and ethical leadership.

94

Each (thematic) section of the report outlines the primary findings and recommendations of the Commission, which provide a basis against which to make an evaluative judgement about progress in addressing state capture. This approach is mindful of the brief to *assess progress in implementing the President's 60 commitments in response to the SCC.*

Information on the SCC original findings and recommendations is included to remind us of the systemic and structural issues raised by the Commission in responding to state capture, and their relevance for NACAC's mandate. This is followed by a summary of the specific commitments made by the President in his 2022 response, on the basis of which the Presidency has provided detailed reporting in 2023 and 2025. These two reports provide a good deal of information for tracking progress on implementation. The final part of each thematic section provides an analysis of progress against the President's 2022 commitments. Where possible, we independently verified some of the progress reported (especially regarding the extent to which legislative amendments have responded to the big issues). Verification relied on the researchers' own knowledge of the sectors, supplemented by engagement with research reports, government publications, submissions available in the public domain and media reports.

## Section 1: Individual accountability

As the Terms of Reference (ToRs) for this assessment require a systemic/strategic analysis, this assessment does not reflect on how individual cases have been managed but focuses on whether systemic weaknesses in these various forms of accountability have been revealed.

**Main problems identified by the SCC and its recommendations:** The SCC made many recommendations concerning individual instances of wrongdoing: further investigations, potential prosecutions, asset recovery, and other forms of direct consequence management.

Recommendations were also made concerning violations of statutory or professional standards, disciplinary offences, tax offences, delinquency of directors and so forth. The SCC also made adverse findings with respect to five members of the Executive at the time and certain observations about their suitability to hold these positions, and it recommended that law enforcement agencies investigate possible (criminal) violations.

**President's response:**

*Criminal justice*: In March 2025, the 'Integrated Task Force', led by the National Prosecuting Authority (NPA) with the collaboration of other law enforcement agencies, reported on 218 recommendations made by the SCC:

- 10 cases were finalised with an outcome of verdict, conviction, acquittal, withdrawal, or terminated investigation.
- 35 cases were enrolled, with trial in progress, or partially finalised.
- 111 cases were under active investigation with regular progress updates.
- Nine (9) cases were delayed but proceeding; investigation continuing despite delays from new enquiries or dependencies.
- 35 cases where progress stalled due to external dependencies such as extradition requests.
- 17 recommendations where no investigation has been initiated or authorised.

The Investigating Directorate Against Corruption (IDAC) is responsible for 125 cases, the Directorate for Priority Crime Investigation (DPCI) for 75, and the Asset Forfeiture Unit (AFU), the Special Investigating Unit (SIU) and the Independent Police Investigative Directorate (IPID) for the remaining 18. Several high-profile cases are reported as currently in progress, with trials scheduled for 2025-2026.

*Asset recovery*: There has been substantial progress in recovering the proceeds of state capture. As of March 2025, the total amount recovered by the SIU and the AFU was reported to be R10.9 billion, and assets currently under restraint or preservation orders total R10.6 billion. The South African Revenue Service (SARS) had acted against people named in the report and recovered R4.8 billion in unpaid taxes.

*Members of the Executive:* The President committed to undertaking a review of the positions of those members of his Executive implicated in wrongdoing in the report and to determine, on a case-by-case basis, in line with his discretion and obligation to observe the principle of legality and to act rationally, whether any action ought to be taken. President Ramaphosa reaffirmed in a Parliamentary reply in March 2024 that any action against members of his Executive will be informed by the outcomes of the processes undertaken by law enforcement. No further progress has been reported.

*Other referrals:* 11 recommendations concerning violations of statutory and professional standards were referred to various professional bodies, 15 recommendations concerning disciplinary offences, tax offences, delinquency of directors and other activities were referred to SARS, the South African Reserve Bank (SARB), the State Security Agency (SSA) and the boards of certain state-owned enterprises (SOEs), and three (3) recommendations concerning abuse or inaction by the South African Police Service (SAPS) were referred to the IPID. In addition, based on evidence

heard by the SCC, the Department of Public Enterprises has referred 71 director delinquency applications to the Companies and Intellectual Property Commission (CIPC) and has referred 54 former SOE directors to professional bodies for possible code of conduct breaches.

*Passenger Rail Agency of South Africa (PRASA)*: The President decided not to act on the SCC's recommendation to establish a commission of inquiry into PRASA, pending the outcomes of ongoing investigations by the DPCI and the SIU.

*Corporate accountability:* The CIPC was directed to investigate the compliance of companies implicated in the SCC Report and other issues. The CIPC has concluded 10 assessments, while another eight (8) new referrals from the SIU are under assessment. In addition, National Treasury debarred Bain & Co. for 10 years, and similar action is reportedly being considered against other companies. Settlements with firms like SAP, ABB, and McKinsey have recovered significant amounts of money.

**Analysis of government's progress:** Investigations and prosecutions are ongoing, but the justice system is facing significant challenges related to capacity, independence and institutional architecture. The President has other mechanisms available to hold implicated members of the Executive accountable, such as those set out in provisions of the Constitution and the Executive Members' Ethics Act and Code. It is both inappropriate and unnecessary to await the outcome of protracted investigations and prosecutions. Monitoring and communicating effectively with the public about state capture-related cases are critical for building trust in government and democratic legitimacy.

# Section 2: Systemic institutional/policy reforms

## 2.1. Law enforcement

**Main problems identified by the SCC and its recommendations:** The Commission found that state capture was facilitated by 'a deliberate effort to subvert and weaken law enforcement and intelligence agencies at the commanding levels so as to shield and sustain illicit activities, avoid accountability and to disempower opponents'. The SCC Report, however, made few recommendations concerning reforms to the criminal justice system (CJS), as the Commission had inadequate time to undertake a thorough investigation of issues that were 'not straightforward'.

Nevertheless, the evidence contained in the report shows clearly that these institutions need substantial reform, such as addressing law enforcement agencies' lack of independence. The evidence showed that the NPA, the DPCI, SAPS Crime Intelligence, and the IPID were politicised and compromised at the highest levels, contributing to the de-professionalisation of these institutions.

The Commission recommended that the President undertake 'a thorough reappraisal [and possibly an 'investigation'] of the structure of the NPA in order to understand the causes and the nature of its institutional weaknesses so that these can be addressed presumably by way of legislative reform'.

**President's response:** The President acknowledged the need to restore the CJS and committed to strengthening anti-corruption institutions in the following ways:

- Building the capacity of the NPA, *inter alia* by filling vacant posts, increasing the number of prosecutors and investigators in specialised roles, long-term training strategies, (re)building morale, leveraging private sector support, and increasing resourcing.
- Establishing the Investigating Directorate (ID), which investigates and prosecutes corruption and state capture matters, as a permanent entity within the NPA.
- Considering specialised courts and dedicated court rolls.
- Tracking disciplinary cases across government spheres and public enterprises.
- Considering further structural reforms to the NPA: 'a thorough reappraisal' of the NPA's structure would form part of NACAC's work 'to develop a proposal for the establishment of long-term anti-corruption institutional arrangements'.
- Introducing greater transparency and consultation in the process for selection and appointment of the National Director of Public Prosecutions (NDPP) through legislative amendments, drawing on the process adopted for the selection of the current NDPP.
- '[C]larify the Minister's "final responsibility" over the NPA … and [resolve] the NPA's financial and administrative independence'.

**Analysis of government's progress:**

*A permanent IDAC:* The establishment of the IDAC as a permanent unit with investigative powers within the NPA was an important step towards properly capacitating the NPA. It is now essential that this key piece of legislation is supported by adequate resources.

*NDPP appointment process:* There has been an extended delay by the government in effecting an amendment of the NPA Act to clarify the requirements for a 'transparent and open' (presumably competitive) and independent process for the selection of the NDPP. Government's undertaking has apparently changed to now afford the President the discretion to include a relatively informal practice in 'Guidelines' rather than the promised binding legislative amendment. The process for choosing the current NDPP's successor should be clearly communicated to the public as a matter of urgency. The NDPP is set to retire in 2026 when three deputy national public prosecutor posts will also become vacant.

*Progress towards NPA independence:* The government has not set out a timeframe within which the urgent reform of the NPA will be undertaken. It has long been recognised as deeply problematic that the NPA Act provides that the Minister exercises 'final responsibility' over the NPA and must approve its prosecution policy; that the Department of Justice and Constitutional Development (DoJ&CD) must 'in consultation with' the NDPP 'prepare the necessary estimate of revenue and expenditure of the prosecuting authority'; and that the Director-General of the DoJ&CD is responsible for managing the finances of the NPA.

The NPA's structural relationship with the DoJ&CD has other implications. For example, the Office for Witness Protection is administered by the NPA, but it reports to the DoJ&CD, with the NPA not having the authority needed to fully manage this Office. Ideally, such an office should be located in an institution that is structurally independent.

The NPA's 2023/24 Annual Report observed that '[o]perational and financial independence reinforces the rule of law and is crucial for bolstering public trust and confidence in the NPA. It is

also an important obligation under various international and regional treaty requirements and key judgements by South Africa's Constitutional Court. It's an imperative that the NPA has been championing for many years.' The NPA reported that it is 'working with the DoJ&CD to promote legislation that will entrench the NPA's operational and financial independence [and] give full effect to the President's response to the Zondo Commission's recommendations.'

*Capacity and performance:* The NPA's budget was 'substantially increased by 21.6% between 2021-2023', but cost containment measures will continue and filling vacant posts 'will depend on the new [budget] allocations.' The NPA reports crucial private sector partnerships, including with Business Against Crime for in-kind support that includes establishing a Specialised Digital Evidence Unit to enhance the IDAC's capacity to investigate complex state capture cases. While the NPA has 'significantly increased' its staff complement in the past five years, 'it experienced negative personnel growth during the last financial year due to limits on the allocated compensation budget'.

During its operations the SCC had more investigators with more experience than does the NPA currently. In May 2025, the IDAC had about 20 of its own investigators and borrowed others. The Directorate's under-capacitation (budget and skilled, experienced staff in numbers adequate to the task) remains a weakness (applicable to the entire NPA) that has contributed to the slow progress of state capture investigations and the absence to date of successful high-profile prosecutions. While the NDPP may appoint investigators as members of the IDAC, their remuneration and conditions of service are determined by the Minister of Justice. The IDAC thus struggles to be a competitive employer – losing skilled personnel to organisations that can pay higher salaries. Ideally, the NPA should, like the SIU, not be tied to DPSA-regulated salary scales.

This dependency on unduly slow-moving executive and legislative branches of the state exacerbates the pressures facing law enforcement agencies They are exemplified by the President's delay until 21 July 2025 to act on the NDPP's 2023 request to suspend South Gauteng Director of Public Prosecutions Andrew Chauke pending an inquiry into his fitness to hold office.

It is therefore necessary to monitor the extent to which the NPA and other law enforcement agencies generally comply with the STIRS criteria identified in the binding majority judgment of the Constitutional Court in the 'Glenister Two' decision. Although the ruling focused on an independent anti-corruption agency, it is suggested that these same criteria are also applicable to the NPA. Thus, they should be staffed by **S**pecialists who have **T**raining in anti-corruption expertise, enjoy structural and operational **I**ndependence, as well as adequate and guaranteed Resources and enjoy **S**ecurity of tenure in office, i.e., without fear of arbitrary dismissal (emphasis added).

The DoJ&CD stands out as having been especially slow to respond to the pressing needs for institutional and legislative reform. It has also failed to provide the NPA with appropriate practical operational support by facilitating unhindered access to the SCC database.

While reform of the NPA is important, it is concerning that no other law enforcement agencies are included in the government's reform agenda. The SAPS in particular — including the DPCI — should receive similar attention, particularly where appointment procedures are concerned. There has been no communication about a strategy for ensuring that these institutions are properly capacitated, for ensuring proper oversight, or for addressing internal corruption. It is to be hoped

that the inquiries by the Madlanga Commission of Inquiry and a parliamentary ad hoc committee into renewed allegations of politicisation, factionalism, and corruption in the CJS will now be an opportunity to address this gap in the reform strategy.

Government's slow response to NACAC's report in 2024 regarding a fit-for-purpose anti-corruption architecture, and failure to release it, have left unresolved issues of coordination regarding the allocation of cases between the NPA, the DPCI and the wider SAPS, as well as the SIU. While the National Priority Committee on Organised Crime (NPCOC) exists to coordinate this work, amongst other things, there is no higher-level strategic oversight of that structure.

There is also an urgent need (as with public procurement and personnel practices) for an integrated digital case management system. The Integrated Justice System, under development for over two decades, has not yet been established, which has major implications for efficiency and oversight of the CJS.

## 2.2. Anti-corruption architecture

**Main problems identified by the SCC and its recommendations:** The SCC Report included an extensive analysis of the flaws in the present procurement system, characterising it as a, if not the, key site of state capture, particularly the 'redirection' of state resources, and included many recommendations for reform. In the Commission's view, however, regulatory reform would not be adequate to confront the fundamental problem of undue political influence. The SCC's proposed solution was to establish a public procurement anti-corruption agency, fully independent of the Executive. The recommendations included detailed proposals for how such a body might be structured, staffed and resourced. It would include a council, inspectorate, litigation unit, tribunal and specialised court.

The SCC also proposed the establishment of a permanent commission of inquiry that would 'investigate, publicly expose acts of state capture and corruption in the way that this Commission did over the past four years, and make findings and recommendations to the President'. This commission would have oversight over the Executive and have similar powers of compulsion to the SCC, and it would also be empowered to 'step in' if the chairperson determined that Parliament was failing in its oversight functions. The SCC Report did not detail why the existing architecture was inadequate, nor did it elaborate on the specific need for a permanent commission, except to argue that such a structure should play a role in relation to Parliament due to the legislature's failure to prevent state capture.

**President's response:** The President indicated that these recommendations needed further consideration in the context of processes already underway to review and redesign South Africa's anti-corruption architecture, including by NACAC and the DoJ&CD.

**Analysis of Government's progress:** The Presidency's 2025 Progress Report indicates that NACAC has concluded its extensive research and consultations into the institutional reform recommendations of the SCC, and has submitted its proposals on both institutions, which are 'currently' under consideration by the Executive.

The 2025 Progress Report further indicates that the President announced in his State of the Nation Address (SONA) on 6 February 2025 that the Minister of Justice would report on this in the then-

'current financial year', i.e. 2024/25 ending on 31 March 2025. The Minister of Justice has not reported on this matter, nor has NACAC's report been released to the public, although NACAC has indicated its wish for it to be released.

Contrary to the statement in the Presidency's 2025 Progress Report, the SONA does not mention 'this financial year', merely 'this year', neither does the SONA indicate to whom the Minister will report: the public or Cabinet. It is therefore possible that the Minister may yet report during the 2025 calendar year, although it is unclear to whom the report will be submitted/released. It is our understanding that the report may be awaiting tabling before Cabinet for discussion.

The Department's 2025/26 Annual Performance Plan (APP) was presented to the Justice Portfolio Committee on 17 June 2025. The APP includes an undertaking that the country's anti-corruption architecture will be reviewed and strengthened through the tabling in Parliament of several pieces of legislation during the current financial year. This undertaking bears close monitoring in view of the urgency of this reform.

NACAC has already shared its recommendations publicly on several occasions, including in December 2024 and May 2025. There is therefore no apparent reason for the government to treat the document as confidential. Indeed, continued secrecy is inconsistent with the multi-stakeholder nature of NACAC's composition and with the whole-of-society approach adopted by the NACS.

## 2.3. Money laundering and financial crime

**Main problems identified by the SCC and its recommendations**: The SCC revealed money laundering networks operating within South Africa and across borders. The SCC felt it was not best placed to issue comprehensive recommendations, but made some proposals for strengthening the anti-money laundering (AML) regime, including: the need for a 'co-ordinated and co-operative approach to targeting money laundering' from all relevant law enforcement agencies; the need for a statutory framework for the sharing of detailed AML information by banks; and the need to investigate the effectiveness of the current system of suspicious transaction and cash threshold reporting to the Financial Intelligence Centre (FIC).

**President's response**: The Presidency committed to strengthening the country's AML regime in response to both the SCC and adverse findings made by the Financial Action Task Force (FATF). The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, fully commenced by April 2023, introduced stricter regulations to detect, investigate, and prevent financial crimes. The Presidency has since reported that the country is on track to be removed from the FATF grey list by October 2025. Law enforcement agencies have been working together in a number of different cooperative fora. The FIC is also reportedly finalising an independent review of the reporting of state capture transactions.

**Analysis of government's progress**: Significant progress has been made to strengthen South Africa's AML regulatory environment and to realign with FATF standards. The creation of the Beneficial Ownership Register is an especially important step forward. However, a growing body of evidence suggests that the compliance- and risk-focused global regulatory regime has significant weaknesses, and therefore should be supplemented by other reforms, including transparency measures to empower non-governmental actors to access and monitor vital information.

## 2.4. Restoring the South African Revenue Service

**Main problems identified by the SCC and its recommendations:** The SCC found that SARS was targeted by state capture and endorsed the findings of the Nugent Commission of Inquiry of a 'massive failure of integrity and governance' and made detailed recommendations 'to rebuild SARS and reverse its capture'. The SCC recommended amending the SARS Act to provide for an open, transparent, and competitive process for appointing the SARS Commissioner, in addition to other recommendations concerning the conduct of Bain & Co. and the former Commissioner.

**President's response:** The President supported the recommendations and had committed to tabling the amendment by June 2023. In 2025, this is still pending, and the President reported that Cabinet approval for the proposed amendment would be sought in December 2025. SARS has reported good progress in implementing the recommendations made by both commissions and appears to be functioning well.

**Analysis of government's progress:** The evidence uncovered by both commissions clearly demonstrates the importance and urgency of appointment reform. It is unclear what progress has been made since 2022 and why the government has missed its promised deadline to introduce legislation in mid-2023 – a delay of over two years.

## 2.5. Procurement system reforms

**Main problems identified by the SCC and its recommendations:** The Commission identified public procurement as a primary site for state capture and corruption and made more recommendations concerning public procurement than for any other area of reform – some 25 proposals. These included the establishment of an independent public procurement anti-corruption agency; the development of a national charter against corruption in public procurement, including a code of conduct; legislation protecting accounting officers/authorities from criminal or civil liability for anything done in good faith; incentivising disclosures regarding procurement fraud and corruption by awarding the whistleblower a percentage of proceeds recovered (if the information was material in the obtaining of the award); the professionalisation of the procurement function in the state; greater transparency standards for public procurement consistent with the Organisation for Economic Co-operation and Development (OECD) principles; and lifestyle audits for officials and executive authorities. The SCC recommended multiple amendments to legislation or guidelines for the procurement process, including the better regulation of deviations from competitive bidding.

The Commission recommended a greater degree of centralisation in public procurement, and greater harmonisation in public procurement legislation. Further, the Commission noted that clarity was needed concerning the state's interpretations of the relationship between (and the relative weight given to) the Constitutional provisions guiding public procurement in section 217(1), that public procurement must be done in a manner that is, 'fair, equitable, transparent, competitive and cost-effective', and the provisions concerning the use of public procurement for transformation objectives in section 217(2).

**President's response:** The President deferred responding directly to the proposal for a procurement focused ant-corruption agency, referring to NACAC's role in providing proposals to the President on a model for future anti-corruption architecture, and a process of reviewing the

anti-corruption architecture being undertaken by the DoJ&CD. The President noted that the Public Procurement Bill would address many of the SCC's concerns.

**Analysis of government's progress:** The Public Procurement Bill has since been enacted, though regulations to bring the legislation into effect are still being developed. The Act responds to several of the SCC's recommendations, i.e. regarding legislation that supports transparency and greater civil society oversight of public procurement; professionalisation of the procurement function, including the formalisation of a code of conduct; and support for lifestyle audits. Further, the Act prohibits any person from trying to interfere with or influencing procurement and it establishes mechanisms for reporting and managing unlawful instructions. The Act strengthens procedures for debarment of suppliers who violate the procurement system. These are significant positive developments for procurement integrity.

The Office of the Chief Procurement Officer (OCPO) in the National Treasury will need to be substantially resourced and staffed to effectively pursue its expanded mandate, needing capacity especially in areas of policy and legal development, governance and compliance, strategic procurement support, and ICT systems. This should be monitored. In addition, government should move with urgency to establish an integrated electronic system and set of data standards for public procurement, which covers all organs of state, to support greater oversight of the system, and anti-corruption initiatives.

Government has not substantially responded to the Commission's recommendations regarding consideration of incentivised whistleblowing (instead including it in its 2023 'Discussion Document on Proposed Reforms for The Whistleblower Protection Regime'. See 2.7 below). However, international best practice sees the incorporation of such mechanisms into sector-specific legislation, not in general law for protected disclosures. The drafting process for the Public Procurement Act (PPA) did not engage with this.

It is not clear whether the PPA addresses the fragmentation in the public procurement regulatory framework. The Act defers important policy decisions, best embodied in statute law, in as yet unpublished regulations, and the Act is facing constitutional challenge (in part related to the relationship between sections 217(1) and (2) of the Constitution). The Act contains a clause obligating the state to undertake a review of the Act within two years of its promulgation, offering an opportunity to reflect on some of the issues raised above.

## 2.6. Intelligence services reforms

**Main problems identified by the SCC and its recommendations:** The SCC found that the security and intelligence services were politicised and compromised at the highest level so that those involved in the state capture project could proceed with their illicit activities with impunity. A weak regulatory framework was put in place to ensure that the SSA could be abused for political and personal gain.

The SCC made many recommendations concerning, inter alia, improving financial controls and accountability, empowering and capacitating the Inspector-General of Intelligence (IGI), improving oversight by the Auditor-General (AG) and the Joint Standing Committee on Intelligence (JSCI), preventing Executive involvement in recruitment and operations, de-politicising the intelligence services, addressing weaknesses in vetting, gun control, the creation of intelligence reports and

other areas, and endorsed the recommendations of the 2018 High-Level Review Panel. The SCC also heard evidence about similar abuses occurring in the SAPS Crime Intelligence Division and noted that many of its recommendations on intelligence could also apply to it.

**President's response:** The President supported these recommendations. The General Intelligence Laws Amendment Act (GILAA) was enacted in March 2025. It fulfils the President's commitment to disestablish the SSA and establish two separate entities responsible for foreign and domestic intelligence, respectively, and contains a number of provisions to improve oversight and address the concerns of the SCC and High-Level Review Panel. The Act has not yet commenced, and the restructuring is still in progress; the SSA is still in operation as a single intelligence agency. The President has reported that the SCC has implemented many of the recommendations concerning various controls and internal processes. The President's response did not refer to Crime Intelligence, and it has remained unaddressed in all progress updates.

**Analysis of government's progress:** The disestablishment of the SSA is long overdue, and the GILAA does contain provisions strengthening oversight and preventing Executive interference. However, critical weaknesses in the legislative and regulatory framework remain. Some provisions in the Act are overly broad and could enable abuse, and civil society has raised important concerns about the powers and reach of intelligence agencies. Concerns remain that the AG, the JSCI, and the IGI are unable to adequately oversee expenditure from the SSA's secret service account. Weaknesses also persist in the powers, structure, and capacity of the IGI. While some former officials are facing charges, many implicated by the State Security Council (SSC) remain embedded in the SSA, and none of the key figures responsible for weaponising the organisation have been held accountable for their actions. The lack of engagement with the SCC's evidence and findings related to the Crime Intelligence unit is also a cause for serious concern.

## 2.7. Whistleblower protection measures

**Main problems identified by the SCC and its recommendations:** The SCC emphasised the critical role of whistleblowers in exposing corruption, and it recommended strengthening legal protections for those who disclose wrongdoing. The SCC recommended: (1) legislation to ensure that whistleblowers are accorded the protections stipulated in the UN Convention Against Corruption; (2) legislation to allow whistleblowers to be offered immunity in certain cases; and (3) incentivising whistleblowers by awarding them a fixed percentage of monies recovered if the information disclosed by the whistleblower has been material to the recovery of funds.

**President's response:** The President acknowledged the importance and urgency of whistleblower protection reform and reported that the DoJ&CD had commenced a review of the relevant legislation. In June 2023, the DoJ&CD published a 'Discussion Document on Proposed Reforms for The Whistleblower Protection Regime in South Africa' for public comment. This document recommended several legislative measures to strengthen whistleblower protection. In the 2025 SONA, President Ramaphosa announced the government's commitment to 'finalise the whistleblower protection framework and introduce the Whistleblower Protections Bill in Parliament during this financial year.'

**Analysis of government's progress**: The draft bill is still to be published for public comment, so it is unclear whether its provisions will adequately strengthen the whistleblower protection regime. The extended delay in finalising this vital legislation is a matter for profound concern. No reasons

have been put forward for the failure to finalise these reforms to date, and any draft bill still has to undergo lengthy public consultation and legislative processes. Reform of the whistleblower protection regime has been a consistent demand from civil society organisations (CSOs) and has been highlighted by the NACAC as a top priority.

## 2.8. Professionalisation of the public administration

**Main problems identified by the SCC and its recommendations:** The SCC found that the ability to 'strategically position' political associates in key posts within the public administration was the 'essential mechanism' of state capture. While the SCC did not provide specific recommendations on personnel practices regarding the public service and municipalities, it noted that it is unlawful to introduce political criteria into appointment and removal decisions in the public administration.

**President's response:** The President positioned the 'National Framework towards the Professionalisation of the Public Sector' (adopted in 2022) as an important instrument to address the Commission's concerns. Amongst other interventions, the President noted that the Framework considers 'an enhanced role for the Public Service Commission (PSC), working with a new Head of Public Administration, in the appointment of top officials'. The PSC's role to enhance checks and balances will 'be confined to managing appointment processes to the point of recommendation, preserving the executive's prerogative as appointing authority'. Reforms would thus be instituted which 'give effect' to key recommendations in Chapter 13 of the National Development Plan (NDP) on 'Building a Capable State' to limit the role of Ministers in appointing and dismissing accounting officers, and further amendments to legislation would resolve the conflicting provisions in the Public Service Act and the Public Finance Management Act (PFMA) concerning the respective roles of accounting officers and executive authorities. Amendments would also be made to the Guide for Members of the Executive, and a code of conduct for special advisers would be developed. Such reforms would ensure a clearer regulation of the respective roles of politicians and administrators.

**Analysis of government's progress: Public Administration**: The Public Service Amendment Bill, currently before the National Council of Provinces (NCOP), more clearly delineates the powers and responsibilities of executive authorities and Heads of Departments (HoDs). It transfers operational and administrative authority – such as appointments, performance management, and discipline – from Ministers and Members of the Executive Council (MECs) to HoDs. These amendments will reinforce the authority needed by HoDs as accounting officers to exercise their financial management responsibilities in terms of the PFMA and the Municipal Finance Management Act (MFMA). Further, the Bill prohibits HoDs or any person reporting directly to them, holding political office in a political party. It is thus important that the Bill is passed as a much-needed step in the journey towards a depoliticised public service. However, while the Bill officially establishes a 'Head of the Presidency', it does not provide for this office to play a role in supporting appointment processes for HoDs, or in the management of HoDs' career incidents.

The Public Service Commission Bill, also before the NCOP, is a positive development in the professionalisation of the public administration, in that it strengthens the independence of the PSC, and extends oversight of the PSC to the local government sphere. No mention is made, however, of a role for the PSC in safeguarding senior appointment processes in the public service. Further reforms are also needed to depoliticise the public administration in *local government.*

The legislation currently under deliberation in Parliament thus represents a partial or incomplete implementation of the promised reforms aimed at depoliticising the public administration. Given that such reform strikes at the heart of the patronage system, we suggest that there is room for government to experiment with a gradual, but progressive implementation of such reforms to reduce potential political pushback but enable further movement in the professionalisation agenda.

A Code of Conduct for Special Advisers has been drafted, and under the Professionalisation Framework, officials, politicians, and their advisors, will need to undertake mandatory induction programmes. According to reporting by the Department of Public Service and Administration (DPSA), there appears to be progress in the implementation of lifestyle audits. Amendments to the Public Administration Management Act (PAMA) (also in Parliament) strengthen prohibitions on state employees conducting business with the state – a positive development, as are the draft regulations for a central register of disciplinary cases for state employees. These latter two initiatives do not, however, cover all organs of state. These should be gradually extended.

It is vital that integrated digital infrastructures and data collection standards are developed for the whole of the public administration (including in local government and public entities) to support enhanced oversight of personnel practices by the policy holders and Parliament. Further, it will be important to ensure that the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit (PA-EID-TAU) in the DPSA has the necessary resources and legal authority to effectively implement its mandate.

**Analysis of government's progress: Executive accountability measures:** The focus here is on what the Professionalisation Framework refers to as 'professionalism' – 'practices, conduct, values and behaviour that a person exhibits regardless of training, qualifications and levels of responsibility'.

The commencement of lifestyle audits for members of the Executive constitutes welcome progress. However, it is unclear from the Presidency's Progress Report whether the scope of these audits includes members of the national and provincial executives, whether a timeline has been set for their completion, whether the outcomes will be communicated to the public, and whether these audits will be undertaken more than once. It may be necessary for provisions concerning lifestyle audits to be accorded the force of law by inclusion in the Executive Members' Ethics Act and Code.

It is noted that the current Members of the Executive were inducted in a manner that 'clarified the delineation between strategic oversight by executive authorities and the administrative responsibilities of accounting officers'. No date has been given for finalisation of the updated Guide, but it is suggested that it should not be delayed much beyond the adoption of the Public Service Amendment Bill currently before Parliament. It may be instructive to assess the extent to which the contents of the Guide differ from the guidance published by the PSC in May 2024.

Reforms such as inductions and updates to guidance provide little counterweight to a far broader problem of a political system that enables patronage. It is more important for the country to see progress on the big reforms being implemented and beginning to have impact, such as criminal prosecutions for corruption, and reforms to the Public Service Act that ensure that politicians (executive authorities) are clearly removed from any possible involvement in operational and procurement matters of departments and SOEs, etc.

## 2.9. Strengthening the audit system

**Main problems identified by the SCC and its recommendations:** The SCC highlighted concerns related to the auditing of public entities by private firms and recommended that the AG office be further capacitated to audit all public entities, or that private firms should only be appointed to audit SOEs if they can demonstrate that they have the requisite skills and understanding of their unique obligations. The SCC supported the 2018 amendments to the Public Audit Act that strengthen the ability of the AG to enforce remedial action. The SCC warned that the term 'irregular expenditure' should be used with care and specificity to avoid losing its utility as a remedial tool.

**President's response:** The President reported that the National Treasury had partnered with academia on a research project to enhance the oversight function and value of public sector audit committees, which was completed in 2022. In 2025, the Presidency reported that these findings would inform legislative reforms during the review of the PFMA/MFMA. It was also reported that the National Treasury and the AG had reviewed the concept of irregular expenditure to shift focus toward identifying corrupt, suspicious, or bad faith expenditure. These definitions were incorporated into draft amendments of the PFMA and MFMA, which have not yet been made public.

The AG developed a response plan and reported in December 2024 that it had completed 'much of the work' regarding the SCC recommendations on strengthening the audit system, which would be finalised and institutionalised during the next strategic period.

**Analysis of government's progress:** The implementation of changes to the Public Audit Act concerning material irregularities is a positive development, with the AG reporting a noticeable impact on public sector accountability resulting from these enhanced powers. Anticipated amendments to the PFMA and MFMA should be monitored, given their potential significance with regard to the definition and application of the concept of irregular expenditure.

## 2.10. State-owned enterprises

**Main problems identified by the SCC and its recommendations:** A substantial portion of the Commission's work was dedicated to corruption within SOEs, as they were the primary targets of state capture. The SCC identified improper appointments and dismissals as the key mechanism of capture in SOEs, raising concerns regarding the lack of transparency of these processes, and the unchecked power of ministers to make critical appointments to SOEs. The SCC provides a proposal for a 'Standing Appointment and Oversight Committee', comprising independent persons, to make recommendations on appointments to the boards and senior posts of SOEs.

**President's response:** The President noted that the principles of the SCC's recommendations would 'guide government's reform of board appointment processes to ensure greater transparency, scrutiny and checks and balances in the appointment of SOE board members.' The 2022 response noted, *inter alia*, government's development of a new shareholder ownership model for SOEs, which would be accompanied by enhanced governance frameworks and appointment processes. Provision would be made in the final 'Guide for the Appointment of Persons to Boards and Chief Executive Officers of State-Owned and State-Controlled Institutions' for independent panels of relevant stakeholders and experts to play a role in nominating candidates to the relevant minister.

**Analysis of government's progress:** Government has positioned the National State Enterprises Bill as the significant instrument to address governance challenges in SOEs (the Bill establishes a shareholding company into which the large SOEs will be transferred). The extent to which the Bill will in fact address the challenges is unclear, and it may be some time before the Bill comes into effect. Clarification and finalisation should be pursued with urgency.

The Bill in its current version before the National Assembly includes some robust provisions regarding the appointment of the first board of the holding company and new clauses regarding transparency on director removals. However, the Bill does not specify how the boards and executives of SOEs subsidiary to the holding company will be appointed. Under the current wording of the Bill, once SOEs are transferred to the holding company, the PFMA would no longer apply, nor the PPA once it is in force. This is worrying in view of the SCC's concerns regarding the need for greater harmonisation of legislation for public procurement. In July 2025, the National Treasury reported to Parliament that the Treasury and the Department of Planning, Monitoring and Evaluation (DPME) have 'agreed that a hybrid application of the PFMA and the Companies Act should be considered, as a proposed amendment to the [National State Enterprises] Bill'.

The Bill caters for the large public entities (some 13 entities), and not for the thousands of other entities at national, provincial and local government level. It is not clear how and when governance challenges for these entities will be addressed, but the extensive evidence in the SCC Report demonstrates the urgent need for far-reaching reform.

## 2.11. New criminal offences

**Main problems identified by the SCC and its recommendations:** The SCC recommended that the government consider creating a 'statutory offence rendering it a criminal offence for any person vested with public power to abuse public power vested in that person by intentionally using that power otherwise than in good faith for a proper purpose'. The SCC was concerned about 'the extent to which certain public representatives failed to exercise their power, and the resultant massive losses to the fiscus and the suffering caused to vulnerable members of the public.' The SCC also recommended that Prevention and Combatting of Corrupt Activities Act (PRECCA) be amended to introduce a provision criminalising the failure of persons or entities to prevent bribery (see 2.12 below).

**President's response:** The Presidency directed the DoJ&CD to research possible legislative provisions and their parameters and implications. The South African Law Reform Commission (SALRC) researched this topic, and their recommendations are under discussion and evaluation in the DoJ&CD. This is expected to produce a draft bill by November 2025.

**Analysis of government's progress:** As the SALRC's research and recommendations are not publicly available, we cannot comment on the substance of any new provisions. In any event, the benefit of a new offence depends on the ability of law enforcement agencies to detect and prosecute that offence.

## 2.12. Private sector accountability

**Main problems identified by the SCC and its recommendations:** The SCC exposed the central role played by private sector actors in corruption and state capture, through both direct involvement in corrupt deals and as 'professional enablers'. To enhance accountability, the SCC recommended: (1) amending of the Companies Act to permit applications for a director to be declared delinquent to be brought after two years; (2) amending PRECCA to criminalise the failure of persons or entities to prevent bribery; (3) introducing legislation for Deferred Prosecution Agreements (DPAs) to tackle economic crimes; and (4) amending the Political Party Funding Act (PPFA) (see 2.13 below).

**President's response:** The President supported amending the Companies Act and PRECCA, and both have been duly amended and enacted. The question of DPAs was referred to the SALRC as part of its review of the criminal justice system. SALRC has finalised a discussion paper on 'non-trial resolution' (NTR) mechanisms, including DPAs, which was released to the public in February 2025.

**Analysis of government's progress:** The President's commitments to amend the two pieces of legislation have been met, but official guidance/policy on how the new provision in PRECCA is to be applied in practice needs to be developed and adopted. The SALRC review on NTRs should be finalised without delay, and the development of an NTR framework should be a priority. Strong enforcement will be required to hold corporate actors accountable, and to ensure that NTRs and the new PRECCA provisions work effectively as intended, without allowing the wealthy to buy their way out of accountability. Neither the SCC nor the President addressed the broader systemic problems exposed by the Commission's body of evidence in how private firms do business with the state. The government should consider regulatory reforms in this regard, especially concerning professional enablers and corporate transparency.

## 2.13. Amendment to the Political Party Funding Act

**Main problems identified by the SCC and its recommendations:** The SCC identified a link between the corrupt manipulation of tenders and political party financing, which could be 'an existential threat to our democracy'. The SCC recommended that the PPFA be amended to criminalise donations to political parties in the expectation of tenders or contracts as a reward.

**President's response:** The President supported the recommendation, and the Political Funding Act has been amended to make it an offence – punishable by a fine, imprisonment, or both – where donations are made to political parties or candidates with the 'expectation' that they will 'influence' the awarding of tenders, licenses, approvals, or other government decisions.

**Analysis of government's progress:** The impact of this new offence will depend on effective enforcement. Recent attempts to increase reporting thresholds will significantly weaken the PFA's effectiveness as a tool for transparency and accountability in political financing, making it difficult to enforce the new provision. Given the dangerous role of political finance as highlighted by the SCC, this is a serious concern and further attempts to compromise the scope and efficacy of the PFA should be opposed.

## 2.14 Parliamentary oversight

**Main problems identified by the SCC and its recommendations:** The SCC found that Parliament had failed to fulfil its oversight mandate due to the lack of political will from the (then) majority party. The report found that Parliament's oversight powers and the tools available to it were generally sufficient, but that these were not used effectively. The report made specific recommendations on improving oversight, including reforms to mitigate the negative impact of the political environment.

**President's response:** The President limited his commitments to recommendations concerning the interface between Parliament and the Executive, acknowledging the need to determine whether the existing processes of reporting and accountability through the Leader of Government Business are 'sufficient and appropriate'. The 2025 Progress Report noted that engagements on these issues have taken place. Parliament developed its own response and implementation plan. It has adopted some of the SCC recommendations but decided against adopting many others, finding that it has sufficient powers and further intervention was unnecessary.

**Analysis of government's progress:** With no knowledge of the content of those engagements and any consequent decisions, it is impossible to determine whether the substantive questions raised about the legislative/Executive interface have been addressed. There have been some positive changes in Parliament; for example, the decision to proceed with a committee to oversee the Presidency is an important step forward, and it should be finalised with urgency.

The composition of Parliament and the Executive have both changed significantly since the last election, resulting in new dynamics and practices arising within the institution. Close attention should be paid to how multi-party and coalition politics will change Parliament's oversight practices and the effectiveness of its oversight function.

## 2.15 Electoral system reform

**Main problems identified by the SCC and its recommendations:** The Commission mooted the adoption of a 'constituency-based (but still proportionally representative) electoral system', and suggested consideration of constitutional amendments which would see the President of the country directly elected by citizens.

**President's response:** The President's 2022 response noted that these recommendations would require an extensive process of society-wide consultation and deliberation that would need to be debated by Parliament. At the time, the President had noted the Electoral Laws Amendment Bill was before Parliament and argued that this process should conclude before further commitments could be made.

**Analysis of government's progress:** Regarding the proposal to directly elect the country's President, the Commission's reasoning was insubstantial, and while there are arguments for and against such a significant change, the state has not responded to this proposal, nor does it appear to be an issue taken up in any notable way by civil society.

Regarding electoral reform, the Electoral Amendment Act of 2023 allows independent candidates to contest national and provincial elections; an amendment that was implemented just in time for

the 2024 national elections. However, the Act does not provide for such candidates to do so on nearly an equal footing as members of political parties. This limitation has been highlighted by recent civil society submissions to the Electoral Reform Consultation Panel, whose report on electoral reform is due by the end of August 2025.

Electoral reform is a very complex issue, with potentially profound impacts for the character of South Africa's democracy. Reforms should therefore proceed slowly and carefully. This is because of the high stakes of such change, the necessity of political consensus-building for that reform (and strong, long-running citizen education campaigns), and the need for major investment in electoral institutions, such as the Independent Electoral Commission (IEC).

# Full Report

## Introduction

### National Anti-Corruption Advisory Council (NACAC) Terms of Reference

The National Anti-Corruption Advisory Council (NACAC) developed Terms of Reference (ToRs) requiring an independent assessment of government's progress in implementing the recommendations of the State Capture Commission (SCC), also known as the Zondo Commission, with particular reference to the 'implementation by government institutions of the President's 60 actions in response to the recommendations' and to develop 'a robust assessment framework to critically assess' such implementation.

### Research team

The Public Affairs Research Institute (PARI) was approached by the NACAC secretariat to undertake an independent assessment of progress in implementing the SCC recommendations. A team of experts was convened to undertake the research that forms the basis for this assessment.

Core team members:

- Dr Sarah Meny-Gibert (PARI, Senior Researcher and Programme Lead: State Reform).
- Ms Devi Pillay (PARI Research Associate).
- Adv. Gary Pienaar (HSRC Research Associate).

We acknowledge with appreciation research assistance from the following subject experts (although any errors remain our own):

- Prof. Jonathan Klaaren (PARI Research Associate).
- Mr Ryan Brunette (PARI Research Associate).
- Mr Gareth Newham (Institute for Security Studies, Head: Justice and Violence Prevention Programme)

## Background

### NACAC Mandate

According to the NACAC ToRs, 'the primary purpose of the NACAC is to be an advisory body which will monitor the implementation of the National Anti-Corruption Strategy (NACS 2020-2023).[1]

In their Presidential appointment letters, NACAC councillors were also instructed to advise key role-players on the overarching thrust of the Strategy; advise on strengthening of South Africa's

[1] NACAC advisory note to the President regarding the implementation of the Zondo Commission's recommendations, 19 October 2022, para. 2.2.

anti-corruption architecture; host the national anti-corruption summit(s); and advise on the implementation of the recommendations of the SCC, from a 'strategic and systemic perspective' (emphasis added).[2]

This report aims to assist NACAC with the last of these functions, i.e., to advise on Government's implementation of the SCC recommendations.

### NACAC Advisory Note

In accordance with this presidential mandate and stipulated priority functions, NACAC dedicated its first advisory note to the President (NACAC, 19 October 2022) to his planned response to the SCC's recommendations. 'Given the urgency of advising on the implementation of the [SCC] recommendations',[3] the aim of the note was to make 'specific proposals that could be considered by the President when tabling his implementation plan in Parliament in relation to the recommendations'.[4]

NACAC's note highlighted that the 'strategic nature of the findings and recommendations of the Zondo Commission lie in the fact that the phenomenon of state capture, fraud and corruption has been well-diagnosed and published for all to know'.[5] In accordance with NACAC's mandate to adopt a 'strategic and systemic' approach, its advisory note, while recognising the necessarily limited scope of the SCC's mandate and resulting recommendations, focused primarily on state-owned enterprises (SOEs), nevertheless also acknowledged that 'the Zondo Commission is viewed as presenting [a] significant body of evidence that points to the fact that corruption is endemic in our country and extraordinary measures must be put in place to combat and prevent the spread and recurrence of this scourge'.[6]

The advisory note recalled that the NACS was adopted by the Cabinet in 2020 while the investigations by the Zondo Commission were still in progress. 'The six strategic pillars of the NACS cover various domains of work that should be taken forward in a whole-of-government and [whole-of-]society fashion. Additionally, the NACS acknowledged the recommendations of the previous judicial commissions of inquiry and court rulings that must be taken into consideration in the fight against corruption' (emphasis added).[7]

The advisory note thus highlighted that –

> 'The NACS is the centrepiece guide regarding South Africa's fight against corruption in a systemic and strategic manner across all spheres of government and sectors of society. The findings and recommendations of the Zondo Commission report are viewed from the integrated perspective of the vision, values, objectives and strategic pillars of the NACS to have implications beyond the mentioned individuals and institutions. As a form of grand corruption, state capture must be prevented and combated across the board using the NACS strategic pillars e.g. rebuilding the capacity of law-enforcement agencies to act without fear, favour or prejudice' (emphasis added).[8]

[2] Ibid. para. 2.3.
[3] Ibid. para. 2.5.
[4] Ibid. para. 1.
[5] Ibid. para. 4.1.
[6] Ibid.
[7] Ibid.
[8] Ibid. para. 4.1(b).

With this foundational perspective in mind, the advisory note then identified certain priority issues for the President's attention and inclusion in his response to the SCC recommendations.

It bears noting that the advisory note was possibly too late to influence preparation of the President's initial response, which was tabled in Parliament and published in the same month of October 2022. Nevertheless, subsequent progress reports from the Presidency have not reflected any acknowledgment of NACAC's recommended prioritisation of reform actions.

The priorities and proposed related actions identified in the advisory note were as follows[9] –

1. Whistleblower protection.
2. Principles to guide appointments.
3. Transparent public procurement.
4. Balancing the response to cover both private and public sectors.
5. Resourcing of law enforcement agencies.
6. Culture change towards adherence to constitutional values and ethical leadership.

## Assessment methodology

These priorities have informed this assessment's analysis of the President's initial response and subsequent updates on implementation action, specifically from NACAC's 'strategic and systemic' perspective. The assessment has been undertaken mindful of the NACS six pillars:

1. Promote and encourage active citizenry, whistleblowing, integrity and transparency in all spheres of society.
2. Advance the professionalisation of employees to optimise their contribution to create corruption-free workplaces.
3. Enhance governance, oversight and consequence management in organisations.
4. Improve the integrity and credibility of the public procurement system.
5. Strengthen the resourcing, coordination, transnational cooperation, performance, accountability and independence of dedicated anti-corruption agencies.
6. Protect vulnerable sectors that are most prone to corruption and unethical practices with effective risk management.

In each (thematic) section of the report, the research team has outlined the primary findings and recommendations of the Commission, which provide a basis against which to make an evaluative judgement about progress in addressing state capture. This approach does not assume that all the SCC's recommendations should be implemented, and we are mindful of the brief to *assess progress in implementing the President's 60 commitments* in responding to the SCC. Further, in some areas, the President's 2022 response actively engaged with the SCC's proposals to argue against the adoption of some proposals. We include information on the original findings and recommendations of the Commission to remind us of the systemic and structural issues raised by the Commission in responding to state capture (i.e. with relevance for NACAC's mandate).

This is followed by a summary of the specific commitments made by the President in his 2022 response (tabled in Parliament) and against which the Presidency has provided detailed reporting

[9] The advisory note did not explicitly indicate a priority hierarchy among these six priorities.

(in 2023, and in 2025 – further details provided below). These two reports provide a good deal of information for tracking progress on implementation. In the final part of each thematic section, we have provided an analysis of progress, i.e. against the President's 2022 commitments, and mindful of the systemic and structural issues to be addressed. Where possible, we independently verified some of the progress reported (especially regarding the extent to which legislative amendments have responded to the big issues). Verification relied on the researchers' own knowledge of the sectors, supplemented by engagement with departmental reports and reporting to Parliament, and occasional reference to external publications (research publications, media statements and reports, submissions or public comments from civil society or other stakeholders).

## President's Response to the SCC Recommendations

### The President's Response of October 2022

The President's response to the SCC's Recommendations was published in October 2022: '*Response by President Cyril Ramaphosa to the Recommendations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud'*.[10]

The Executive Summary outlined the response as follows:

> '2.1.4 The greatest number of recommendations are directed to the law enforcement agencies for investigation and possible prosecution. While these agencies are within the Executive arm of the state, they are constitutionally and legislatively mandated to exercise their responsibilities independently.
> 2.1.5 This report focuses on the recommendations that are directed to the Executive and those that affect its work.'[11]

The Preface to The President's response noted that:

> 'While the Commission's recommendations focus on the institutional and legislative mechanisms to tackle corruption, it is critical that we give equal attention to the responsibility of individuals – wherever they are – to act ethically and honestly. We need to ensure that we have people of integrity in the Executive, the public service and all other state organs who will execute their functions in service of the people of South Africa on an ethical basis and in accordance with the values of our Constitution.'[12]

Accordingly, the President's response was structured according to three primary focus areas:

1. Dealing with the perpetrators of state capture.
2. Reforms to prevent future occurrence of state capture.
3. Broader systemic reforms arising from the work of the commission.

[10] The President, 'Response by President Cyril Ramaphosa to the Recommendations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud', October 2022, published by the Presidency, https://www.gov.za/documents/other/response-president-cyril-ramaphosa-recommendations-judicial-commission-inquiry (accessed: July 2025).

[11] The President (2022: 4).

[12] The President (2022: 3).

These three focus areas and their contents have guided the structure of this assessment.

The President's response reported that the Presidency had 'established a centralised Programme Management Office (PMO) to coordinate the efforts of the institutions that are responsible for executing the response plan, SCC Steering Committee and Cabinet. The SCC Steering Committee will report to Cabinet on a quarterly basis, which will inform regular updates to the country by the President'.[13]

### Progress reporting by the Presidency

The PMO has developed public tracking reports in 2023 and 2025, the latest of which was presented to Parliament during July 2025.

The first update was published by the Presidency in November 2023, entitled '*The Tide is Turning: Progress Report on Implementation of President Ramaphosa's Response to the Judicial State Capture Commission'*. The update followed the same structure as the 2022 'Response' and included (as Annexure A) a 'High-Level Progress Table' that listed 60 actions (or commitments) and progress made as either 'In progress' or 'Completed', including their previous and current status (Presidency, 2023: 20-21). It also included a tabulated section 'Detailed Progress Against Actions'.[14]

A second progress report in 2025 followed a similar format.

## A 'strategic and systemic' perspective on the SCC Report

The exhaustive and far-reaching focus of the SCC means that its reports provide a fairly comprehensive account of state capture and the patterns of corrupt activity that took place within various state institutions. The SCC made a serious effort to track and explain the social and political context of the state capture phenomenon, as well as the mechanisms that have enabled systemic corruption.

Despite this enormous amount of work, it is apparent that the Commission could not hope to fulfil the onerous mandate given to it. As Chief Justice Zondo wrote in the first volume of the report, the ToRs "required the Commission to investigate allegations of corruption and fraud in every municipality, every provincial government department, every national government department and in every state-owned entity or organs of state. Such an investigation would take more than ten years." The Commission was also under-resourced, especially in light of the mammoth task with which it was charged. As a result, the report of the SCC is – understandably – uneven. The attention paid to different facets of state capture was sometimes inconsistent and certain areas were under-served. Not all the Commission's critical observations and findings led to specific recommendations, but government still needs to engage with this broader body of evidence if it is to meaningfully tackle corruption and state capture.

[13] The President (2022:11-12).

[14] These updates were also uploaded onto a new government website 'State of the Nation' available at: https://www.stateofthenation.gov.za/state-capture-commission-recommendations/actions-on-recommendations

It is therefore essential that the Commission's report be considered holistically, especially in terms of its findings on the systematic and structural weaknesses in the state that enabled and facilitated state capture. The recommendations contained in the report should not prevent government from exploring other ways of strengthening the state and the legal framework.

The President's response endeavoured to focus simultaneously on dealing with the perpetrators of state capture and on the measures to prevent a recurrence. However, despite the recognition of the need for coordination and prioritisation, it failed to recognise what has since become clearer – that state capture is not over but that it has merely changed its form, and in some cases is continuing as usual. In addition, the President's response failed to give due attention to all those areas that the SCC identified as needing attention but which it had not been able to fully investigate.

As a result, the response plan did not give adequate attention to the range of necessary preconditions for effectively pursuing the individual perpetrators of state capture. While systemic reforms are included in the plan, they are not presented within a framework that indicates a thorough understanding of cause and effect, of dependencies and priorities. As a result, institutions that were weakened by state capture and were denuded of adequate capacity have not been timeously reformed and rebuilt in order to enable them to effectively both pursue the identified perpetrators of state capture and prevent the continued operation of the types of networks that redirected and extracted public resources. One result of these continued institutional and systemic weaknesses has been the persistence of equally organised systems to extract state resources, as well as the deepening of corrupt networks, in many instances taking on the form of organised crime.

# Section 1: Individual accountability

Section 1 covers recommendations made by the SCC concerning individual instances of wrongdoing: further investigations, prosecutions, asset recovery, and other forms of direct consequence management. As the ToRs for this assessment require a systemic/strategic analysis, this assessment does not reflect on how individual cases have been managed but focuses on whether systemic weaknesses in these various forms of accountability have been revealed.

## 1.1 Criminal investigations and prosecutions

### Main problems identified by the SCC and its recommendations

The Commission made 218 recommendations with respect to criminal and other investigations (and possible prosecutions where relevant) of individuals, entities and named groups of people, as well as asset recovery.[15] The recommendations were directed to law enforcement agencies, in particular, the South African Police Service (SAPS), its Directorate for Priority Crime Investigation (DPCI), the National Prosecuting Authority (NPA) and its Investigating Directorate (ID). In a few cases, the Report recommended that the President 'take steps to ensure, through the relevant members of the Executive that… the NDPP [National Director of Public Prosecutions] immediately appoints a team to oversee the investigations and the prosecutions of those suspected of committing criminal offences in respect of wrongdoing'.[16]

### Nature of the President's response

According to the Presidency's 2022 response plan, the ID had enrolled 26 cases and declared 89 investigations, and 165 accused persons had appeared in court for alleged state capture-related offences.[17]

The NPA created a dedicated task force in January 2022.[18] The Task Force originally comprised internal NPA units, the ID, the Asset Forfeiture Unit (AFU), the Specialised Commercial Crime Unit (SCCU), the Tax Unit and others. The DPCI joined the Task Force and '[r]esources have been pooled between the NPA and DPCI and a well-coordinated approach to prosecution-guided investigations has been implemented. The NPA has also established an advisory panel of experienced prosecutors and investigators from the DPCI to provide advice to investigators and prosecutors dealing with complex corruption cases addressed by the ID, SCCU or the Task Force.'

The Presidency's initial response in 2022 indicated that, in addition to the people and companies named in the Commission's report, analysis by the Financial Intelligence Centre (FIC) had 'identified an additional 595 individuals and 1,044 entities that may be implicated in the flow of funds from state capture. Relevant information has been compiled into reports to various law enforcement agencies, other bodies like the State Security Agency (SSA), the South African Reserve Bank (SARB), the Public Protector South Africa (PPSA), the Independent Police

[15] The President (2022: 22).
[16] The President (2022: 22).
[17] The President (2022: 22).
[18] The President (2022: 32).

Investigative Directorate (IPID) and the Financial Sector Conduct Authority, and a number of law enforcement agencies in other countries.'[19]

### Progress reported

By March 2025, the 'Integrated Task Force', led by the NPA, and established to coordinate the implementation of the Commission's recommendations for criminal investigation, prosecution, and asset recovery, was reporting on 218 recommendations spanning the multiple focus areas identified by the Commission.[20] These matters involve Bosasa, Transnet, SAA and Associated Companies, SABC, Waterkloof Landing and the Passenger Rail Agency of South Africa (PRASA), Eskom, the 'Flow of Public Funds', SSA and Crime Intelligence, Free State Asbestos Project, Alexkor, Vrede Dairy/Estina, Gupta Bank Accounts, Denel, EOH, the South African Revenue Service (SARS), etc. Of the 2018 cases:

- 10 cases were finalised with an outcome of verdict, conviction, acquittal, withdrawal, or terminated investigation.
- 35 cases were enrolled, with trial in progress, or partially finalised.
- 111 cases were under active investigation with regular progress updates.
- Nine (9) cases were delayed but proceeding; investigation continuing despite delays from new enquiries or dependencies.
- 35 cases where progress stalled due to external dependencies such as extradition requests, including the Gupta brothers.
- 17 recommendations where no investigation has been initiated or authorised.

The Investigating Directorate Against Corruption (IDAC) is responsible for 125 cases, the DPCI for 75, and the AFU, the Special Investigating Unit (SIU) and the IPID for the remaining 18.

Several high-profile cases are reported as currently in progress, with trials scheduled for 2025-2026, including cases related to Bosasa, Transnet, the Free State, and SA Express.[21] Four state capture-related cases have concluded with guilty verdicts (the Free State housing project, a case concerning witness identity disclosure, one SSA fraud case, and one PRASA fraud case).[22]

### Analysis

While this document is largely concerned with strategic and systemic reforms, the importance of individual accountability cannot be understated. The President's response emphasises the importance of effective individual accountability and its systemic effect:

> 'Holding individuals and companies responsible for past conduct reduces future risks of violations by signalling that those who break the law are not immune from being held to account. Equally important, failing to hold to account officials and the executive authorities

[19] The President (2022: 24).

[20] The Presidency, 'Progress Report on Implementation of Actions in the President's Response to the Recommendations of the State Capture Commission as at the end of Quarter 2024/5', July 2025, published by the Presidency, p. 3. https://www.thepresidency.gov.za/sites/default/files/2025-07/PROGRESSREPORT/ (accessed: July 2025).

[21] The Presidency (2025: 4).

[22] The Presidency (2025: 4).

who have violated norms and legal requirements has a negative impact on the morale, performance and incentives of the majority of officials who have not done so.'[23]

In addition to creating effective deterrents for wrongdoing, effective accountability serves to build public trust in government and the criminal justice system, and to repair the legitimacy of the state. These are critical for the functioning of a democracy.

Effective accountability, in terms of criminal justice, relies on the ability of law enforcement agencies to effectively investigate and prosecute these cases. Our law enforcement institutions and environment are facing serious challenges. These are discussed below in section 2.1.

**Key takeaways**

- Investigations and prosecutions are ongoing, but the justice system is facing significant challenges related to capacity, independence, and institutional architecture.
- Monitoring and communicating effectively with the public about state capture-related cases are critical for building trust and legitimacy.

## 1.2. Asset recovery

### Main problems identified by the SCC and its recommendations

The Commission found that an estimated R57 billion in public funds had been 'tainted' by state capture, and it made 27 recommendations to recover funds that were the proceeds of crime in terms of the Prevention of Organised Crime Act (POCA). In addition, recommendations were made regarding legal steps to be taken by certain entities, including SOEs, themselves to recover funds.[24]

### Nature of the President's response

The Presidency 'fully supported' these recommendations and reported that they were receiving 'priority attention' from the NPA's AFU and from the SIU.[25] A Joint Task Force was established, working in collaboration with other agencies, including SARS and the FIC.

The Presidency reported that expertise had been reassigned to state capture matters and that the AFU would increase its litigation and investigative capacity. The AFU, ID, deputy directors of public prosecutions (in the NPA) and other agencies would develop a strategy for asset recovery in state capture matters. Key initiatives prioritised 'include the appointment of external forensic auditors to quantify the asset recovery potential of matters identified in the Commission's findings and the appointment of international asset recovery entities to assist with asset recovery from foreign jurisdictions using ordinary civil remedies.'[26]

[23] The President (2022: 22).
[24] The President (2022: 24).
[25] The President (2022: 25).
[26] The President (2022: 25).

The SIU had identified several recommendations that were within the scope of existing proclamations and would take action to recover losses as part of those investigations.[27] The Presidency also reported that various public entities had initiated legal processes for the recovery of funds.

### Progress reported

A specialist 'Enablers Team' was established by the FIC in June 2023 to focus solely on the enablers of state capture as identified in the recommendations as having directly and/or indirectly assisted the 'Gupta criminal enterprise'. The Team includes the NPA's IDAC and AFU, and the DPCI.[28]

The AFU has implemented a four-pronged strategy focusing on international asset recoveries, civil asset recoveries, Corporate Alternative Dispute Resolution and targeting professional enablers of state capture. These approaches 'have yielded results and will continue to be prioritised'.[29]

In 2023, the Presidency reported that R5.4 billion had been recovered and R14.18 billion in assets had been frozen in state capture-related cases. SARS had acted against people named in the report and recovered R4.8 billion in unpaid taxes.[30] As of March 2025, the total amount recovered by the SIU and the AFU has increased to R10.9 billion, and assets currently under restraint or preservation orders total R10.6 billion.[31]

### Analysis

As one might expect with the use of civil proceedings and provisional orders, asset recoveries and seizures have made notable progress. The SIU and the AFU are delivering commendable results.

The NPA's 2023/2024 Annual Report notes that the AFU has been at the forefront of the NPA's strategy to deal with corruption and the findings of the SCC.[32] The NPA notes that conviction-based recovery can be delayed by complex investigations and lengthy legal processes. The AFU therefore had focused on non-conviction-based recoveries envisaged by Chapter 6 of POCA, including the use of the Corporate Alternative Dispute Resolution mechanism adopted by the NPA in 2024. At least two major settlements (the ABB settlement of R2.55 billion and the SAP settlement of R1.16 billion) were secured through Corporate Alternative Dispute Resolution, which indicates that it is working effectively in terms of asset recovery. Corporate Alternative Dispute Resolution is discussed in more detail below, in section 2.13.

**Key takeaways**

- There has been substantial progress in recovering the proceeds of state capture.
- Non-trial resolutions (NTRs) of cases, including the NPA's Corporate Alternative Dispute

[27] The President (2022: 25).
[28] The Presidency (2023: 4).
[29] The Presidency (2025: 5).
[30] The Presidency (2023: 9).
[31] The Presidency (2025: 5).
[32] The NPA. 2024. *2023/2024 Annual Report* (11) Available at: https://www.npa.gov.za/sites/default/files/uploads/NPA%202024%20Annual%20Report_web_2.pdf

Resolution mechanism, have been effective in recovering assets.

## 1.3. Accountability and the Executive

### Main problems identified by the SCC and its recommendations

The Commission made adverse findings with respect to five members of the Executive at the time and certain observations about their suitability to hold these positions, and it recommended that law enforcement agencies investigate possible (criminal) violations:

- of the Prevention and Combating of Corrupt Activities Act (PRECCA) by Minister Gwede Mantashe in relation to the installation of a security system at his home;
- by Deputy Minister Thabang Makwetla in relation to contracts with Bosasa;
- by Deputy Minister David Mahlobo in relation to handling of cash at the SSA;
- of the Public Finance Management Act (PFMA) by members of the Board of Denel during the period when Minister Khumbudzo Ntshavheni was a member of its Board; and
- that the President considers the position of Deputy Minister Zizi Kodwa in relation to alleged payment of inducements.[33]

The Commission found that the Premier of the Free State 'should have performed his oversight function over the MEC, Mr Zwane, and the Head of Department but failed dismally. … It is necessary that there be consequences for people who fail to do their job. Otherwise, this corruption and these acts of state capture are going to continue forever to the detriment of the country and all people. … Premiers must know that they must supervise the MECs and their departments.'[34]

### Nature of the President's response

The President's response acknowledged the responsibilities of the President and premiers to hold members of their cabinet/MECs to account for wrongdoing and poor performance.[35] The President committed to undertaking 'a review of the positions of those members of his Executive implicated in wrongdoing in the report and to determine, on a case-by-case basis, in line with his discretion and obligation to observe the principle of legality and to act rationally, whether any action ought to be taken'.[36] These matters have been referred to the NPA and other law enforcement agencies for action in terms of their mandates.

The President noted that, in exercising his powers to appoint and dismiss members of the Executive, he would take into account the Commission's findings, observations and recommendations about particular individuals, and consider them while monitoring 'the status of relevant legal processes, as such matters arise'.[37]

[33] The President (2022: 64).
[34] The President (2022: 61).
[35] The President (2022: 61-62).
[36] The President (2022: 63).
[37] The President (2022: 65).

### Progress reported

President Ramaphosa reaffirmed in a Parliamentary reply on 19 March 2024 that any action against members of his Executive will be informed by the outcomes of the processes undertaken by law enforcement.[38] No further progress has been reported.

### Analysis

The slow pace of criminal investigations, (and the President's insistence on awaiting the outcomes of investigations and related legal process), and at least one legal challenge by a Cabinet Minister (Gwede Mantashe) to the Commission's findings, has meant that no members of the Executive have been removed as a result of the Commission's recommendations. Zizi Kodwa resigned under pressure from his position as Minister of Sports, Arts and Culture.[39]

There is a persistently high level of public demand for urgent accountability for members of the Executive implicated by the SCC. Resources should be prioritised to finalise investigations and institute prosecutions where warranted. However, other accountability mechanisms are available to the President, and he need not await the outcome of lengthy investigations and prosecutions, especially given the backlog of state capture criminal matters and the limited capacity within the NPA.

The President and each member of the Executive is required by their oath of office to uphold the Constitution and its values including accountability.[40] In his own response to the SCC recommendations, the President identified the relevant standards of conduct and his responsibilities. Thus, 'Presidents and Premiers must ensure that Ministers or MECs are accountable for their actions. It further implies that they should apply appropriate sanctions, which may include dismissal, in instances of poor performance or wrongdoing.'[41]

Members of the Executive are also bound by the Executive Ethics Code, which enjoins Members of the Executive to perform their duties and exercise their powers diligently and honestly; fulfil all the obligations imposed upon them by the Constitution and law; and act in good faith and in the best interest of good governance, and act in all respects in a manner that is consistent with the integrity of their office or the government, 'to the satisfaction of the President or Premier'.[42]

As the President's response plan acknowledges:

> 'The President or Premier would be expected to exercise their judgment as to whether a particular member of the Executive has breached that oath or solemn affirmation, in what respect and to what degree, and hence what action would be appropriate. In making

[38] The President (2025: 7).

[39] 'Cosatu welcomes Zizi Kodwa's resignation, questions why ANC returned him to Parliament' *Daily Maverick,* 25 July 2024. Available at: https://www.dailymaverick.co.za/article/2024-07-25-cosatu-welcomes-zizi-kodwas-resignation-questions-why-anc-returned-him-to-parliament/

[40] Constitution of the Republic of South Africa, 1996 - Schedule 2. Available at: https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-schedule-2-oaths-and-solemn

[41] The President (2022: 62).

[42] Executive Ethics Code (2000) in terms of the Executive Members' Ethics Act, 1998. Available at: https://static.pmg.org.za/docs/020628execethicscode.htm

decisions of this nature the President and Premiers are enjoined to act rationally and observe the principle of legality.'[43]

Given the evidence, findings, recommendations and observations by the Commission, the question must be asked whether the President has acted rationally and in accordance with the principle of legality by not drawing on his constitutional prerogative to act against implicated members in the Executive.

We note also that Pillar 3 of the NACS 'Ethical Governance With Oversight And Consequence Management' includes the commitment to 'Timeous and effective parallel investigation (non-criminal) of reported incidents of alleged corruption, maladministration and wrongdoing, in compliance with the relevant organisational/labour relations policies, procedures and applicable laws'.[44] Continued failure to ensure accountability further undermines public trust in government and the President, and in our constitutional democracy.[45]

Even in the absence of criminal wrongdoing, questions remain about the competence and integrity of members of the Executive implicated in the SCC. The SCC criticised the President's reluctance to use his powers of discretion relating to Executive and other senior appointments, which he expressed when he testified before the Commission. In the case of David Mahlobo and Arthur Fraser, the President remarked that he was waiting for the finalisation of the SCC Report. The SCC noted in its report that 'there is a high risk that nothing will be done for a long time while legal processes are ongoing' and that 'even if Mr Mahlobo and Mr Fraser have not been found guilty of criminal offences, the state of the SSA under their leadership – which President Ramaphosa freely acknowledges is both dire and dangerous – is surely a reflection on their competence and integrity. It is therefore difficult to understand how they could reasonably be considered suitable for appointment to senior positions in the state.'[46]

**Key takeaways**

- There is persistent public demand for Executive accountability, especially in respect of the most serious findings and recommendations by the SCC. Failure to act contributes to a worrying decline in public trust in political leadership and in our constitutional democracy.
- Instead of awaiting the outcome of lengthy criminal investigations and possible prosecutions, attention should be focused on other accountability mechanisms available to the President. These mechanisms are included in, for example, the Constitution and the provisions of the Executive Members' Ethics Code.

[43] The President (2022: 62).

[44] Republic of South Africa. 2020. 'National Anti-Corruption Strategy 2020-2030', p. 35, https://www.gov.za/sites/default/files/gcis_document/202105/national-anti-corruption-strategy-2020-2030.pdf (accessed July 2025).

[45] According to the latest (unpublished) data from the Human Sciences Research Council's (HSRC) 2024 South African Social Attitudes Survey (SASAS), trust in the President is at a consistently low level of 37%, while trust in the national government stands at 29% and the level of satisfaction with democracy is a mere 23%.

[46] Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud Report (SCC Report), Part VI, Vol. 2 (2022: 117).

## 1.4. Referrals to professional, regulatory, and other bodies

### Main problems identified by the SCC and its recommendations

The SCC made 11 recommendations with respect to further investigation of and possible action against individuals and entities for alleged violation of relevant statutory or professional standards.[47] Recommendations were directed to bodies such the SA Institute of Tax Practitioners, Legal Practice Council (LPC), South African Institute of Chartered Accountants (SAICA), Independent Regulatory Board for Auditors (IRBA) and the South African Diamond and Precious Metals Regulator. These recommendations concern professional misconduct by some legal and financial practitioners identified as enablers and perpetrators of state capture.

The SCC made 15 recommendations with respect to further investigation of and possible action against individuals and entities for disciplinary offences, tax offences, delinquency of directors and other activities. These recommendations were made to SARS, SARB, the SSA and to the boards of certain SOEs to investigate allegations against certain board members who may have breached their fiduciary duties and whether proper value was received for the sale of goods or the provision of a services.[48]

Three recommendations arising from the Commission's investigation into the Vrede Dairy Project called for independent investigation of abuses and non-responsiveness or inaction by the SAPS.[49]

The Commission recommended a special commission of inquiry to examine 'why PRASA was allowed to slide into almost total ruin, who should be held responsible for that, and who could have benefitted from … that unacceptable state of affairs.'[50]

### Nature of the President's response

The Presidency accepted these recommendations for referrals, and that these matters had been referred to the bodies identified by the Commission. The 'responsible government departments' would engage with the relevant bodies to monitor implementation of these recommendations. In particular, the Minister of Justice had engaged the LPC on referrals by the Commission for investigation of members with the LPC 'expected to determine whether these individuals should continue practicing as attorneys and advocates'. Disciplinary cases were 'unfolding in these matters.'[51]

The Presidency reported that:[52]

- SARS had actioned all recommendations for tax-related investigations.
- The SARB had actioned investigations against officials and other persons identified as transferring illegally acquired funds to overseas jurisdictions and in the process transgressing exchange control regulations.

[47] The President (2022: 27).
[48] The President (2022: 26).
[49] SCC Report, Part VI, Vol. 1 (2022: 90-94).
[50] SCC Report, Part V, Vol. 2 (2022: 854).
[51] The President (2022: 28).
[52] The President (2022: 27).

- The Department of Public Enterprises was 'working to identify and launch delinquency proceedings against former board members of SOEs which fall under their mandate', including Eskom, Transnet, Denel and Alexkor. Delinquency proceedings would be launched by 31 March 2023.
- Certain other SOEs, 'including Eskom, Denel, SAA and Transnet, [were] taking steps against board members and employees implicated by the Commission in wrongdoing.' All actions against board members and employees were to be launched by 31 March 2023.

The three matters involving SAPS conduct related to the Vrede Dairy matter were referred to the IPID, which had assigned a team of investigators to deal with these allegations. The team started its work in September 2022.[53]

Regarding PRASA, the Presidency indicated that there were 'existing initiatives that are probing the collapse of PRASA'. These included investigations into PRASA by the DPCI that were 'at an advanced stage' and a 'wide-ranging probe' by the SIU under proclamation 51 of 2019 that 'includes investigating governance and maladministration'. In addition, the Department of Transport, which oversees PRASA, advised that the PRASA board had 'embarked on a structural review of PRASA to determine an optimal model' to deliver on its mandate. Therefore, the possibility of such an inquiry would be 'held in abeyance' until the completion of the investigations by the SIU. The Presidency committed to making determination then on whether these processes sufficiently addressed the matters raised by the Commission and whether a Commission of Inquiry would serve that purpose.[54]

**Progress reported by the Presidency**

In 2025, The Presidency reported on the 11 referrals to professional bodies: 8 were concluded and 3 pending. It was also reported that the Department of Public Enterprises referred 71 director delinquency applications to the Companies and Intellectual Property Commission (CIPC) based on broader SCC evidence. CIPC has so far initiated nine court proceedings across Denel (3 cases) and Eskom (6 cases). Additional cases at Alexkor, SAA, and Transnet are paused pending court outcomes, additional evidence, or witness assistance.

The Department has also referred 54 former SOE directors implicated in the Commission's report to professional bodies for possible code of conduct breaches, including SAICA (accountants), IRBA (auditors), LPC (legal practitioners), Engineering Council of South Africa (engineers) and the Health Professions Council of South Africa (health practitioners).

The 2025 Progress Report indicated that one of the three IPID investigations is still ongoing, with two cases having reached conclusion.[55] It appears that the SIU investigation into PRASA has not yet been completed.[56]

[53] The President (2022: 28).
[54] The President (2022: 28-29).
[55] The Presidency (2025: 24).
[56] The Presidency (2025: 7).

## Analysis

There has been some positive movement and responsiveness from professional bodies that have reflected on the nature of professional sanctions for corruption. For example, although not directly in response to SCC recommendations, regulations promulgated by the IRBA have dramatically increased the penalties for 'improper conduct'. Fines of up to R10-million may be imposed against errant auditors and up to R25 million against auditing firms, per offence.[57]

While the SCC did not give focused attention to the role of professional bodies and their members in state capture, there is a need for more dedicated research on the role of 'enablers'[58] and the efficacy of these bodies in upholding professional standards of conduct and exercising discipline to sanction and deter corruption.

The delinquency proceedings should be supported and monitored, as effective enforcement may interrupt the revolving door and ensure that directors involved in or failing to prevent wrongdoing cannot be appointed to other positions.

While the outcome of the SIU's investigation of PRASA and any civil recoveries must be awaited, the NPA and the DPCI have allegedly been dilatory in finalising their criminal investigations and taking a decision whether or not to prosecute those implicated. Open Secrets recently initiated litigation seeking a court order to compel action by these agencies. As noted in the Open Secrets founding affidavit: '...almost a decade after the criminal complaints were laid, not one former PRASA Board member or executive has been prosecuted in connection with the Siyangena and Swifambo contracts'.[59]

**Key takeaways**

- Effective sanction by professional bodies would greatly enhance the accountability environment in both the private and SOE sector.
- Delinquency proceedings should be monitored and reported on.
- Consideration should be given to further research into the role of professional bodies in failing to prevent state capture and the effectiveness in exercising discipline to sanction and deter future corruption.
- Monitor litigation in *Open Secrets NPC v National Head: DPCI, National Director of Public Prosecutions and PRASA*.

[57] 'Minister of Finance gazettes maximum fines for auditor improper conduct', IRBA, 19 June 2023. Available at: https://www.irba.co.za/news-headlines/press-releases/minister-of-finance-gazettes-maximum-fines-for-auditor-improper-conduct

[58] Open Secrets (2020) *The enablers: The bankers, accountants and lawyers that cashed in on state capture.* Available at: https://www.opensecrets.org.za/the-enablers/

[59] Para. 122 of Open Secrets' Founding Affidavit dated 8 May 2025. Available at: https://www.opensecrets.org.za/hawks-npa-prasa-corruption-delays/

## 1.5. Corporate accountability

### Main problems identified by the SCC and its recommendations

The SCC made adverse findings regarding the conduct of certain private entities. It found that several companies had, in various ways, aided the process of state capture and highlighted the role of professional enablers in facilitating corruption and state capture.[60] Many individuals and firms are included in the referrals for investigation, prosecution, and other action discussed in the sections above.

Recommendations were also made in relation to asset recovery (discussed in section 1.2 above) and certain reform measures to enhance private sector accountability (discussed in section 2.12 below.)

### Nature of the President's response

The Presidency's initial response indicated that the CIPC had begun reviewing 'the compliance of companies implicated in the Commission's report with CIPC requirements, whether there is inter-connectedness of directorships, whether there is a need for concern around audit firms and partners auditing the entities, and whether there are any solvency and liquidity concerns.'

The Presidency's response indicated that action had begun to implement the SCC's recommendations:

- National Treasury has imposed a 10-year ban on Bain & Co. doing business with the South African state. This ban will run from 5 September 2022 to 4 September 2032.
- Similar action was being considered against other companies implicated in the Commission's report.
- Consideration was also being given to claims for civil damages against these companies.
- Investigative authorities overseas have been approached to investigate multinational companies involved in state capture.
- The CIPC will provide quarterly reports on the progress made on holding directors and auditors accountable for their compliance with company law requirements.[61]

### Progress reported

By 2025, the CIPC had completed reviews for 10 private sector entities implicated in the SCC Report, with six investigations still ongoing. The CIPC had received eight new referrals from the SIU related to private entities linked to SAA, which are currently under assessment. The 10 concluded reviews include LSG Sky Chefs, Bid Air Group and Bid Air Cargo, PwC, Airbus Southern Africa, Albatime, Nzunzo Investments (linked to Bosasa), Glencore Operations SA and Glencore

[60] The President (2022: 29).
[61] The President (2022: 30).

Holdings SA and EOH Holdings. Six ongoing investigations involve JM Aviation, Swissport SA, Nkonki Inc., Air Chefs, Homix,[62] and Blackhead Consulting.[63]

The National Treasury-imposed ban on Bain & Co. runs for 10 years. However, Bain has initiated litigation challenging the constitutionality of the restriction process. Bain & Co. recently announced the closure of their consultancy business in South Africa.[64] It is unclear whether this may have implications for their pending litigation.

The FIC has established the 'Enablers Project' with law enforcement agencies to trace state capture fund flows. Information requests were sent to the United Arab Emirates (UAE), China, Hong Kong, and India. The FIC has reportedly facilitated meetings between South African and UAE authorities on mutual legal assistance processes. Responses received from these countries have been analysed and shared with relevant investigative bodies including the NPA's AFU and IDAC, and the DPCI.[65]

**Analysis**

The outcome and consequences, including any sanctions, of the CIPC's 10 closed investigations are not included in the Presidency's 2025 Progress Report.

National Treasury's prompt action to debar Bain & Co. is to be welcomed. Although the debarment is currently subject to a legal challenge by Bain, the Civil Society Working Group on State Capture has noted that if the sanction is upheld, it could be 'a stepping stone for National Treasury and state institutions to effectively hold other private sector actors who are implicated in corrupt activities to account. It is a chance for companies like KPMG, McKinsey, and PwC, along with a host of other private sector actors, including banks, named in the Commission's reports, to face accountability and to break the cycle… of impunity that … allowed corruption to thrive at the expense of the public in South Africa.'[66] Many of these firms earn substantial amounts of money from doing business with the state, and the legitimate threat of debarment could prove an effective deterrent against corruption and other wrongdoing.

Significant progress has been made on recovering fees and penalties from private sector actors implicated by the SCC (see section 1.2 on asset recovery above). Many of these recoveries (SAP, ABB, and McKinsey, for example) resulted from voluntary settlements or NTRs, including the use of the Corporate Alternative Dispute Resolution mechanism by the NPA and the AFU. However, it is critical that these NTRs are used only where they are able to deliver effective accountability, and

---

[62] YAS Bhikhu and his company Homix were recently convicted on 66 counts of fraud against Transnet to the value of R66 million. He was sentenced to an effective five years in prison. The Pretoria Regional Court ordered him to reimburse Transnet in an amount of R300 000, and Homix was fined R500 000, which was conditionally suspended. The conviction was the result of an investigation by IDAC and other law enforcement agencies. 'State capture conviction: Businessman to serve five years in jail over R66m Transnet fraud', *News24,* 18 July 2025. Available at:https://www.news24.com/southafrica/crime-and-courts/state-capture-conviction-businessman-to-serve-five-years-in-jail-over-r66m-transnet-fraud-20250718-1177

[63] The Presidency (2025: 6).

[64] 'Bain shuts down SA consultancy three years after govt ban' *News24,* 29 July 2025. Available at: https://www.news24.com/business/companies/bain-shuts-down-sa-consultancy-three-years-after-govt-ban-20250729-0548

[65] The Presidency (2025: 6-7).

[66] Civil Society Working Group on State Capture (CSWG) *A Collective Civil Society Response to the Zondo Commission and the State Capture Report* (2024: 17).

that directors and employees are still held accountable for their actions, so that corporate actors are unable to 'buy their way' out of accountability via settlements. As noted by the South African Law Reform Commission, penalties imposed by NTRs should 'provide a sufficient deterrent for future wrongdoing' so that they are not 'viewed as a mere cost of doing business'.[67]

It is important to note the role of the international anti-corruption environment in the pursuit of accountability for foreign or multi-national actors. At least one significant settlement (the McKinsey settlement of R1.12 billion) was reached as a result of the U.S. Department of Justice enforcing the Foreign Corrupt Practices Act (FCPA) provisions on foreign bribery. Enforcement in other jurisdictions, especially the United States, has been helpful to many countries with comparably weaker criminal justice systems. The changing international landscape – such as President Trump's 'pause' on FCPA enforcement and dismantling of the 'Task Force KleptoCapture Kleptocracy' – may have an impact on domestic efforts to hold multi-national corporates (and foreign individuals) accountable.

**Key takeaways**

- There is still outstanding information on National Treasury's review of banks' conduct standards and CIPC outcomes.
- Monitor the Bain & Co. litigation, and National Treasury should continue to use the existing list for tender defaulters.
- Settlements with corporate parties have resulted in impressive recoveries of funds, but this must be accompanied by effective accountability and penalties to deter future wrongdoing.
- The capacity and willingness of international actors such as the US to act against multinational firms and foreign individuals is an important factor in the pursuit of accountability domestically, and changes to the international anti-corruption environment may impact this work.

[67] SALRC, *Discussion Paper 165: Review of the Criminal Justice System: Non-Trial Resolutions* (2025: 14).

# Section 2: Systemic institutional and policy reforms

Section 2 covers recommendations made by the SCC for structural, legislative, or policy reforms, as well as other systemic or strategic undertakings made by the government in direct response to the findings of the Commission.

## 2.1. Law enforcement

### Main problems identified by the SCC and its recommendations

The Commission found that state capture was facilitated by 'a deliberate effort to subvert and weaken law enforcement and intelligence agencies at the commanding levels so as to shield and sustain illicit activities, avoid accountability and to disempower opponents'. However, the Report made very few recommendations concerning the criminal justice system (CJS). At the handover ceremony for the final part of the report, the Chairperson said that corruption in law enforcement agencies was not dealt with, even though the Commission had started that line of investigation. It was taking much more time than initially anticipated, and the issues were not straightforward.[68]

Nevertheless, the evidence contained in the report — and in the Commission's body of evidence more generally — shows clearly that these institutions need substantial reform. The most alarming revelations about the CJS at the Commission concerned lack of independence. The evidence presented at the Commission showed that law enforcement agencies were politicised and compromised at the highest levels. The weakening and hollowing out of these institutions, through undue influence over appointment and removal processes, had served to de-professionalise them while enabling further patronage. The evidence presented at the Commission concerned the NPA, the DPCI, SAPS Crime Intelligence, and the IPID.

The Commission recommended that the President undertake 'a thorough reappraisal [and possibly an 'investigation'] of the structure of the NPA in order to understand the causes and the nature of its institutional weaknesses so that these can be addressed presumably by way of legislative reform'.[69]

The Commission also recommended introducing legislation for Deferred Prosecution Agreements (DPAs) by which the prosecution of a corporation accused of economic crimes can be deferred on certain terms and conditions, primarily if they cooperate with and assist in investigation of offences. This was partly proposed to reduce the burden faced by the NPA. This is discussed below in section 2.13.

### Nature of the President's response

The President's response to the SCC acknowledged the need to 'restore the criminal justice system to a healthy state' and committed to several measures to rebuild law enforcement capacity and strengthen anti-corruption institutions. The Presidency reported that the government had since

[68] https://mg.co.za/news/2022-06-22-law-enforcement-corruption-not-investigated-says-zondo/
[69] The President (2022: 63).

2018, 'embarked on far-reaching measures to restore the integrity and rebuild the capability of the country's law enforcement agencies and criminal justice system more broadly.'[70]

The President committed to strengthening the CJS in the following ways:

- Building the capacity of the NPA, including filling vacant posts, increasing the number of prosecutors and investigators in specialised roles, long term training strategies, morale (re)building, leveraging private sector support, and increased resourcing.
- Establishing the ID, which investigates and prosecutes corruption and state capture matters, as a permanent entity within the NPA.[71]
- Consideration of specialised courts and dedicated court rolls.
- Tracking disciplinary cases across government spheres and public enterprises.[72]
- Considering further structural reforms to the NPA: 'a thorough reappraisal of the structure of the NPA will form part of the work of NACAC to develop a proposal for the establishment of long-term anti-corruption institutional arrangements'.[73]
- Introducing greater transparency and consultation in the process for selection and appointment of the NDPP through legislative amendments, drawing on the process adopted for the selection of the current NDPP.[74]
- Work would be undertaken 'to clarify the Minister's "final responsibility" over the NPA … and settling aspects related to the NPA's financial and administrative independence'.

In response to the SCC's first report, the NPA created a dedicated task force in January 2022.[75] The Task Force was originally composed of internal NPA units, the ID and the AFU, Directors of Public Prosecutions who have jurisdiction over matters, as well as coordinators from specialised units such as the SCCU, the Tax Unit and others. The DPCI became a member of the Task Force and '[r]esources have been pooled between the NPA and DPCI and a well-coordinated approach to prosecution-guided investigations has been implemented. The NPA has also established an advisory panel of experienced prosecutors and investigators from the DPCI to provide advice to investigators and prosecutors dealing with complex corruption cases addressed by the ID, SCCU or the Task Force.'

### Progress reported

The National Prosecuting Authority Amendment Act, 2024 (Act No. 10 of 2024) was signed into law by the President on 24 May 2024. This Act created a permanent Investigating Directorate Against Corruption (IDAC) in the NPA, absorbing the previous Investigating Directorate established by Proclamation No. 20 of 2019. the IDAC officially commenced operations on 19 August 2024. the IDAC has been granted police powers and criminal investigation capabilities, allowing, the Presidency noted, greater effectiveness in tackling high-level corruption cases.

The commitment to enhance transparency in the NDPP appointment process through legislative amendments has been delayed due to 'constitutional considerations raised by the Department of

[70] The President (2022: 6).
[71] The President (2022: 6).
[72] Discussed in Section 2.8: Professionalisation of the public administration.
[73] The President (2022: 62-63).
[74] The President (2022: 7).
[75] The President (2022: 32).

Justice and Constitutional Development. [Nevertheless], a possible amendment to the NPA Act is now being considered that would provide for a transparent and open process to be determined by the President through the development of "Practice and Guidelines" for the appointment process of the NPA leadership. This is expected to be completed by November 2025.' The Presidency acknowledged that the 'matter remains time-sensitive as the term of the current NDPP, Advocate Shamila Batohi, ends in early 2026'.[76]

### Analysis

The NPA Amendment Act to establish the IDAC as a permanent unit with investigative powers within the NPA was an important step towards properly capacitating the NPA. It is now essential that this key piece of legislation is supported by adequate resources. This would make a meaningful contribution to rebuilding public confidence that law enforcement agencies are willing and able to act expeditiously on the SCC's findings and recommendations to effectively combat corruption and state capture. The opposite is also true, however, as a failure to change the trajectory of anti-corruption efforts will result in those implicated remaining unaccountable, with a further decline in public trust.

There has been an extended delay by the government in effecting an amendment of the NPA Act to clarify the requirements for a 'transparent and open' (presumably competitive) and independent process for the selection of the NDPP. It is unclear why the government's undertaking has apparently changed to now afford the President the discretion to include a relatively informal practice in 'Guidelines' rather than in a more binding legislative amendment as originally undertaken. Enshrining in legislation a robust process for the selection of the NDPP does not usurp Presidential prerogative to appoint; it simply introduces a check and balance into the selection process. It is suggested that there is no clear reason why such a process should not also enshrine in legislation the kind of representative and participatory process envisaged in section 193(6) of the Constitution but not followed to date except by way of the nominations stage. The relevant subsection provides that 'the involvement of civil society in the recommendation process may be provided for as envisaged in section 59(1)(a)' of the Constitution (emphasis added). Consideration may be given to including civil society (broadly defined to include, for example, civil society organisations (CSOs), academia and the legal profession) in the independent panel that the President has constituted in the past to interview and recommend suitable candidates for the President's consideration in terms of section 179(1) of the Constitution.

The process for choosing the current NDPP's successor should be clearly communicated to the public as a matter of urgency (with the NDPP set to retire in 2026), noting also that another two deputy national public prosecutors are due to retire in the next year,[77] and a deputy national public protector with lengthy experience passed away last year.

Moreover, the government has not set out a timeframe within which the urgent reform of the NPA will be undertaken. Granted, the process for amending the relevant provisions of the NPA Act, particularly section 35(1) regarding the prosecution policy, also entails amending the provisions of section 179(5)(a) of the Constitution. However, such a constitutional amendment should not be

[76] The Presidency (2025: 8).

[77] According to a written reply by the Minister of Justice and Constitutional Development in the National Assembly late last year: https://pmg.org.za/committee-question/27065/.

inordinately complex or difficult to effect since the NPA Act already provides for parliamentary oversight of the NPA's implementation of its prosecution policy. The provisions of section 35(1) of the NPA Act[78] stipulate that the 'prosecuting authority shall be accountable to Parliament in respect of its powers, functions and duties under this Act, including decisions regarding the institution of prosecutions'. However, this appearance of independence, which is akin, for example, to the accountability of independent constitutional bodies established in terms of chapters nine and ten, is undermined by the contradictory stipulations in section 33(1) that the Minister exercises 'final responsibility' over the NPA; in section 33(2) the Department of Justice and Constitutional Development (DoJ&CD) must, albeit 'in consultation with' the NDPP, 'prepare the necessary estimate of revenue and expenditure of the prosecuting authority'; and in section 33(3) that the Director-General of the DoJ&CD is responsible for managing the finances of the NPA.

*Progress towards NPA independence*

The NPA's 2023/24 Annual Report observed that '[o]perational and financial independence reinforces the rule of law and is crucial for bolstering public trust and confidence in the NPA. It is also an important obligation under various international and regional treaty requirements and key judgements by South Africa's Constitutional Court. It's an imperative that the NPA has been championing for many years'.[79]

The NPA reported that it is 'working with the DoJ&CD to promote legislation that will entrench the NPA's operational and financial independence … to give full effect to the pending legislative amendment. This will also give effect to the President's response to the Zondo Commission's recommendations.'[80]

*Capacity and performance*

The NPA's budget was 'substantially increased by 21.6% between 2021-2023.'[81] The NPA reported that it has 'averted extensive budget cuts for the next Medium-Term Expenditure Framework (MTEF), but cost containment measures will continue and filling vacant posts 'will depend on the new [budget] allocations.'[82] The NPA reported crucial partnerships, including with Business Against Crime for 'in-kind support [that] focuses on specialised consultancy services, project management support and capacity development for NPA personnel working on complex state capture matters.'[83] The NPA asked 'the private sector for in-kind support to establish a Specialised Digital Evidence Unit [to] enhance the IDAC's capacity to investigate state capture cases, particularly … complex digital evidence.'[84] While the NPA has 'significantly increased' its staff complement in the past five years, 'it experienced negative personnel growth during the last financial year due to limits on the allocated compensation budget. At the end of March 2024, the NPA had 168 fewer employees compared to the previous year' (emphasis added).[85]

[78] See https://justice.gov.za/legislation/acts/1998-032.pdf (as amended in 2024).
[79] NPA Annual Report 2023/24 (2024: 16).
[80] Ibid.
[81] The Presidency (2023: 6).
[82] Ibid. at p. 30.
[83] Ibid. at p. 31.
[84] Ibid. at p. 32.
[85] Ibid. at p. 17.

Advocate Paul Pretorius SC, who was head of the SCC of Inquiry's legal team, said recently[86] that during its operations the SCC had more investigators with more experience than does the NPA currently. Pretorius subsequently confirmed the NPA's very limited capacity when he said in May 2025 that, 'Not too long ago, a month ago, [IDAC] had about 20 of its own investigators and borrowed others. So, the capacity of the NPA is a huge problem.' He added that the quality of technology available to the NPA is also a concern, as is its 'access to the Zondo Commission archives'.[87]

Despite the legislative enhancement of the IDAC legal powers of investigation, the IDAC remains within the structurally flawed NPA, which lacks full financial, operational and prosecutorial independence. As such, while the NDPP may appoint investigators as members of the IDAC (section 19D of the amended Act), the provisions of section 19F prescribe that their remuneration and conditions of service are determined by the Minister of Justice and Constitutional Development. the IDAC thus struggles to be a competitive employer – losing skilled personnel to organisations that can pay higher salaries. Ideally, the NPA should, as is the case with the SIU, be outside of the Department of Public Service and Administration (DPSA) regulated salary scales.

The Directorate's under-capacitation in terms of budget and skilled, experienced staff in numbers adequate to the task remains a weakness (applicable to the entire NPA) that has contributed to the slow progress of state capture investigations and the absence to date of successful high-profile prosecutions.

Beyond salaries, the NPA's current location with the DoJ&CD has other implications. For example, the Office for Witness Protection is administered by the NPA, but it reports to the DoJ&CD, with the NPA not having the authority needed to fully manage this office. Ideally, such an office should be located in an institution that is structurally independent.

It bears noting that the President delayed until 21 July 2025[88] to act on the NDPP's 2023 request (submitted through the Minister of Justice) for the President to suspend South Gauteng Director of Public Prosecutions Andrew Chauke pending an inquiry into his fitness to hold office.[89] The President's own media statement acknowledged that 'The President believes Adv. Chauke's continued tenure as Director of Public Prosecutions – while facing serious accusations – would negatively affect the reputation of the National Prosecuting Authority as a whole.' While

---

[86] Adv. Pretorius delivered the keynote address at a workshop titled "What Now Since the State Capture Commission?" co-hosted by the Public Affairs Research Institute (PARI) and the Council for the Advancement of the South African Constitution (CASAC) on 15 November 2024. Author's notes of Adv. Pretorius' keynote address.

[87] SABC 'NPA not capacitated to effectively prosecute state capture cases', *SABC News*, 7 May 2025. https://www.sabcnews.com/sabcnews/npa-not-capacitated-to-effectively-prosecute-state-capture-cases/ (Accessed: 12 May 2025.)

[88] The Presidency 'President Cyril Ramaphosa suspends South Gauteng Director of Public Prosecutions' 21 July 2025. Available at: https://www.gov.za/news/media-statements/president-cyril-ramaphosa-suspends-south-gauteng-director-public-prosecutions. See also M Thamm 'Ramaphosa suspends Andrew Chauke, alleged State Capture enabler and South Gauteng prosecutions head' *Daily Maverick* 22 July 2025. Available at: https://www.dailymaverick.co.za/article/2025-07-22-ramaphosa-promptly-suspends-andrew-chauke-alleged-state-capture-enabler-and-south-gauteng-prosecutions-head/?utm_source=dm-app&utm_medium=link

[89] 'Gauteng prosecuting head's suspension at advanced stage, Kubayi tells Parliament' *News24,* 14 May 2025. Available at: https://www.news24.com/politics/gauteng-prosecuting-heads-suspension-at-advanced-stage-kubayi-tells-parliament-20250514-1115

Presidential approval for removal of senior prosecutors[90] is, in principle, an important safeguard against arbitrary dismissals from the NPA, the delay by the President was inordinate and may have perpetuated state capture dysfunction in the NPA, especially in the highly significant Gauteng provincial office of the NPA. This dependency on unduly slow-moving executive and legislative branches of the state exacerbates the pressures facing law enforcement agencies.

In addition to tracking legislative amendments and NPA performance,[91] NACAC should also monitor the extent to which the NPA and law enforcement agencies generally comply with the 'STIRS criteria'. In the 'Glenister Two' decision by the Constitutional Court,[92] the binding majority judgment requires that 'a single body, outside the control of the executive, be created to deal with corruption'.[93] The court specified detailed criteria that should characterise that body, now widely known as the 'STIRS' criteria. Thus, it should be staffed by **S**pecialists who have **T**raining in anti-corruption expertise, enjoy structural and operational **I**ndependence, as well as adequate and guaranteed **R**esources and enjoy **S**ecurity of tenure in office, i.e., without fear of arbitrary dismissal (emphasis added). While the judgment is concerned with an independent anti-corruption agency, it is suggested that these same criteria are also applicable to the NPA.

The CJS faces numerous additional challenges that affect its ability to achieve the objective of accountability. Among these challenges are basic issues involving court infrastructure, including the regular supply of electricity and water.

Another significant challenge involves the allegations that recently (re-)surfaced involving politicisation and factionalism in the SAPS, and which will now be investigated by the Madlanga Commission of Inquiry[94] and by a parliamentary ad hoc committee.[95]

In general, the DoJ&CD stands out as having been especially slow to respond to the pressing needs for institutional and legislative reform (responding to NACAC proposals, ensuring NPA operational independence, finalising a process for safeguarding the selection process for the NDPP, and updating the PDA). It has also failed to provide the NPA with appropriate practical operational support by facilitating unhindered access to the SCC database. The Department has

[90] In terms of the provisions of section 12 read with section 14 of the NPA Act.

[91] The DoJ&CD 2024/25 Annual Performance Plan (APP) targets the number of State Capture, complex corruption, and related matters 'enrolled'. Audited performance in 2022/23 was 18, while estimated performance in 2023/24 is lower at 12. Performance targets for the medium term are even lower at 6 (2024/25), 10 (2025/26) and 10 (2026/27). PMG 'DoJ&CD and NPA 2025/26 Annual Performance Plans (with Ministry)' Justice and Constitutional Development Portfolio Committee 17 June 2025. Available at: https://pmg.org.za/committee-meeting/40977/.

[92] *Glenister v President of the Republic of South Africa and Others* (CCT 48/10) [2011] ZACC 6 (17 March 2011). Available at: https://www.saflii.org/za/cases/ZACC/2011/6.html

[93] 'Accountability Now open letter to Ramaphosa on corruption complaints made by General Mkhwanazi', *Polity,* 17 July 2025. Available at: https://www.polity.org.za/article/accountability-now-open-letter-to-ramaphosa-on-corruption-complaints-made-by-general-mkhwanazi-2025-07-17

[94] The Presidency 'President Cyril Ramaphosa: Establishment of Commission of Inquiry into allegations regarding law enforcement agencies' 13 July 2025. Available at:https://www.gov.za/news/speeches/president-cyril-ramaphosa-establishment-commission-inquiry-allegations-regarding-law

[95] Parliament of SA 'National Assembly Agrees to Establish ADHOC Committee on Mkhwanazi Matter' 23 July 2025. Available at: https://www.parliament.gov.za/press-releases/national-assembly-agrees-establish-adhoc-committee-mkhwanazi-matter

provided several reasons[96] for restricting access to SCC evidence and records, but none seem entirely convincing as they have the effect of hindering the NPA from efficiently pursuing its investigations.[97]

While reform of the NPA is important, it is concerning that no other law enforcement institutions are included in this reform agenda. The SAPS in particular — including the DPCI — should receive similar attention, particularly where appointment procedures are concerned. There has been no communication about a strategy for ensuring that these institutions are properly capacitated, for ensuring proper oversight or for addressing internal corruption.

The slow response regarding a fit-for-purpose anti-corruption architecture (whether in a single or multi-agency form), has in effect meant that the issues of coordination regarding the allocation of cases between various bodies remains a significant issue between the NPA, the DPCI, and the wider SAPS, as well as the SIU. While the National Priority Committee on Organised Crime (NPCOC) exists to ensure coordination of such work, amongst other things, there is no higher-level strategic oversight of that structure.

We also note the need (as with the areas of public procurement, personnel practices) for an integrated, digital system for case management. The Integrated Justice System, under development for over two decades, has not yet been established, which has major implications for efficiency and oversight of the criminal justice system. (Pillar 5 of NACS commits to, 'Improve systems for capturing and analysing relevant intelligence information and data on reported or suspected cases of corruption.')

**Key takeaways**

- The NPA Amendment Act has made the IDAC permanent.
- The NPA Act amendment to make NPA operationally, financially and prosecutorial independent is outstanding and now requires urgent attention.
- The NPA Act amendment to ensure a transparent, open and independent appointment process for the NDPP is outstanding and now requires urgent attention, as does the need to communicate a robust succession plan for the top leadership structure of the NPA, ahead of the retirement of a number of its senior staff.
- Monitor the imminent NDPP appointment process for adherence to good practice, including both The President's undertaking and the closer involvement of civil society.

[96] National Assembly Meeting of the Justice and Constitutional Development Portfolio Committee, 'Access to the Zondo Commission evidence database: DoJ&CD and NPA input (with Minister)' 10 September 2024. Available at: https://pmg.org.za/committee-meeting/39447/

[97] See, for example, R Davis 'Shots fly between NPA and justice ministry over Zondo database access' *Daily Maverick* ,10 September 2024. Available at: https://www.dailymaverick.co.za/article/2024-09-10-shots-fly-between-npa-and-justice-ministry-over-zondo-database-access/. See also DoJ&CD Media Statement 'Justice Department and National Prosecuting Authority address access to State Capture Commission Data before the Portfolio Committee' 10 September 2024. Available at: https://justice.gov.za/m_statements/2024/20240910-StateCaptureData.html; and DoJ&CD Media Statement 'Department of Justice and NPA strengthen collaboration on State Capture Commission Database Access' 20 December 2024. Available at: https://www.justice.gov.za/m_statements/2024/20241220-State-Capture.html#:~:text=The%20Department%20of%20Justice%20and,of%20the%20State%20Capture%20Commission.

- Consider similar principles and processes and appropriate appointment criteria for heads of other CJS agencies.
- Monitor the achievement of STIRS criteria for a fully capacitated NPA that is able to increase the prioritisation of state capture cases.
- Monitor the Madlanga Commission of Inquiry and related parliamentary inquiry for their implications for effective law enforcement.
- Ensure police reform is given proper consideration in developments related to addressing state capture and continuing corruption, including urgent finalisation of the development of appropriate systems and infrastructures for law enforcement, such as a fully functioning (end-to-end) electronic case management system as part of the Integrated Justice System that has been in development for over two decades. This is critical for enhanced law enforcement effectiveness and oversight of law enforcement.

## 2.2. Anti-corruption architecture

**Main problems identified by the SCC and its recommendations**

The SCC recommended the creation of a permanent and independent anti-corruption commission, and an independent public procurement anti-corruption agency.

The SCC Report included an extensive analysis of the flaws in the present procurement system, characterising it as a, if not the, key site of state capture, particularly the 'redirection' of state resources, and included many recommendations for procurement reform (see section 2.5). In the Commission's view, however, regulatory reform would not be enough to confront the fundamental problem of undue political influence:

> '...it is not appropriate that any government department be tasked to lead the fight against corruption in public procurement. The vulnerability of any government department to undue political interference remains and will always remain and the answer to state capture does not lie in replicating the very same features that allowed state capture to succeed in the first place.'[98]

The SCC's proposed solution was to establish an independent public procurement anti-corruption agency, free from political oversight (specifically understood to be ministerial control) and fully independent of the Executive. The recommendations include detailed proposals for how such a body might be structured, staffed and resourced. It would include a council, inspectorate, litigation unit, tribunal, and specialised court.

The proposed permanent commission would 'investigate, publicly expose acts of state capture and corruption in the way that this Commission did over the past four years, and make findings and recommendations to the President.'[99] The envisaged commission would have oversight over the Executive and have similar powers of compulsion as the SCC, and would additionally be empowered to 'step in' if the chairperson determined that Parliament was failing in its oversight

[98] SCC Report, Part I, p. 843.
[99] SCC Report, Part VI, Vol. 4 (2022: 186).

functions. The public and televised nature of the proposed commission's work was emphasised. Unlike its analysis of the proposed procurement-related agency, the SCC Report did not detail why the existing architecture was insufficient, nor did it elaborate on the specific need for a permanent commission, except to argue that such a structure should play a role in relation to Parliament due to the legislature's failure to prevent state capture.

**Nature of the President's response**

The President's response indicated that '[t]hese recommendations need further consideration in the context of processes already underway to review and redesign South Africa's anti-corruption architecture, including by the NACAC and the Department of Justice.[100]

**Progress reported**

The Presidency's 2025 Progress Report indicates that NACAC has concluded its extensive research and consultations into the institutional reform recommendations of the SCC. NACAC has developed and submitted proposals 'currently' under consideration by the Executive.[101] These proposals address the SCC's recommendations on both proposed institutions.

The 2025 Progress Report further indicates[102] that the President announced in his State of the Nation Address (SONA) on 6 February 2025[103] that the Minister of Justice -'current financial year', i.e. 2024/25 ending on 31 March 2025.[104]

**Analysis**

The Minister of Justice has not reported on this matter, nor has NACAC's report been released to the public despite the fact that NACAC has indicated its wish for it to be released. It is our understanding that the report is in the office of the Director-General and is awaiting tabling before Cabinet for discussion. Contrary to the statement in the Presidency's 2025 Progress Report, the SONA does not mention 'this financial year', merely 'this year', neither does the SONA indicate to whom the Minister will report: the public or Cabinet. It is therefore possible that the Minister may yet report during the 2025 calendar year, although it is unclear to whom the report will be submitted /released.

The Department's 2025/26 Annual Performance Plan (APP) was presented to the Justice Portfolio Committee on 17 June 2025.[105] The APP includes an undertaking that the country's anti-corruption architecture will be reviewed and strengthened through the tabling in Parliament of several pieces of legislation during the current financial year.[106] The presentation to Parliament on the APP contains the following commitment for the 2025/26 FY: 'Report on the review of South Africa's anti-corruption architecture submitted in Parliament'.

---

[100] The President (2022: 6).
[101] The Presidency (2025: 8).
[102] The Presidency (2025: 8).
[103] State of the Nation Address by President Cyril Ramaphosa, 6 February 2025, Cape Town City Hall. Available at:https://www.stateofthenation.gov.za/assets/downloads/SONA_2025_Speech.pdf
[104] The Presidency (2025: 8).
[105] Available at: https://pmg.org.za/committee-meeting/40977/
[106] Available at: https://www.justice.gov.za/MTSF/DOJCD-APP-2025-26[20250722].pdf

NACAC has already shared its recommendations publicly on several occasions, including in December 2024 and May 2025. There is therefore no apparent reason for government to treat the document as confidential, especially in light of the 'whole-of-society' approach underscored in the NACS.

**Key takeaways**

- It is unclear why the DoJ&CD has not publicly released NACAC's report and recommendations on the anti-corruption architecture. The lack of transparency and silence on the matter is concerning and may give rise to unwarranted speculation and suspicion.
- Even if the Minister is working on a report due to be tabled in Parliament later this year, it would be consistent with the spirit and objectives of the NACS to release the NACAC report now for public debate pending the Minister's report.
- The undertaking to table legislation on the anti-corruption architecture in Parliament during the current financial year bears close monitoring.

## 2.3. Money laundering and financial crime

### Main problems identified by the SCC and its recommendations

The Commission revealed the existence of widespread, sophisticated money laundering networks operating within South Africa and across borders, diverting the proceeds of corruption – stolen public funds – to offshore secrecy jurisdictions. The money laundering networks used by the Gupta enterprise were 'complex, well-established and embedded in a pre-existing *milieu* of criminality and wrongdoing,' servicing criminal enterprises straddling offences currently regulated and policed by multiple enforcement agencies, and have links with international money laundering networks with multi-billion-rand turnovers.

While it did make recommendations on specific enforcement actions, the Commission noted that tools such as forfeiture orders are often poor deterrents, as they can be absorbed as a cost of doing business. Prosecution and asset forfeiture can tip the scales only when the costs of money laundering begin to outweigh the benefits. Even so, the Commission noted, because these networks are flexible and adaptable, 'prosecutions of historical contraventions alone are unlikely to make much of an impact on the money laundering industry … unless they are a part of a sustained ongoing process to target that criminal industry.'

The Commission acknowledged that it was not best placed to determine the best way to target money laundering, but it made certain specific observations about reforms to the anti-money laundering (AML) regime:[107]

- The need for a 'co-ordinated and co-operative approach to targeting money laundering' from all the relevant enforcement agencies, including at least the NPA's AFU and ID, the Hawks, FIC, SARS, SARB and SIU.

[107] The President (2022: 55-56).

- The need for a statutory framework providing for the controlled sharing of detailed AML information by banks.
- The need to investigate the effectiveness of the current system of suspicious transaction and cash threshold reporting to the FIC.

**Nature of the President's response**

The Presidency committed to strengthening the country's AML regime, both in response to the Commission and the adverse findings against South Africa by the Financial Action Task Force (FATF).

The Presidency also supported the Commission's call for a holistic and collaborative approach to AML, noting an existing forum set up by the DPCI, NPA, SARS and the Reserve Bank and an agreement between the NPA, FIC and DPCI to fast-track AML matters. It also noted that the South African Anti-Money Laundering Integrated Task Force (SAMLIT) 'has led to the preservation and directives to freeze accounts in the amount of R86 million in criminal assets.'[108]

The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, which had been tabled in Parliament and was then before the NA Finance Portfolio Committee, addressed the need for a statutory framework for partnerships to share financial information. The Bill also aimed to address the deficiencies identified in the 2021 FATF and IMF mutual evaluation of South Africa.[109]

The Presidency also reported that the FIC had appointed attorneys to conduct an urgent independent review of the effectiveness of the Financial Intelligence Centre Act (FICA) regulatory reporting regime.

**Progress reported**

In February 2023, South Africa made a high-level political commitment to work with the FATF and to strengthen the effectiveness of its AML regime.

The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022 (Act No. 22 of 2022) introduced stricter regulations to detect, investigate, and prevent financial crimes, addressing weaknesses that previously allowed illicit financial flows to go undetected. The General Laws Amendment Act introduced reforms to five key laws:

- FICA: Strengthened customer due diligence, beneficial ownership verification, and suspicious transaction monitoring.
- Trust Property Control Act: Required trustees to maintain and report records of beneficial owners.
- Companies Act: Mandated companies to submit beneficial ownership details to the CIPC, which would maintain a central Beneficial Ownership Register.
- Non-Profit Organisations Act: Required certain categories of NPOs to register and disclose funding sources.

[108] The President (2022: 56-57).
[109] The President (2022: 57-58).

- Financial Sector Regulation Act: Enhanced regulatory oversight of financial institutions.

These reforms were implemented in two phases (December 2022 and April 2023), 'significantly improving South Africa's ability to track illicit financial flows and prevent misuse of corporate and trust structures,' according to the Presidency. By February 2025, 20 of the 22 deficiencies identified by the FATF had been addressed. The Presidency reported that the country is on track to be removed from the grey list by October 2025.[110]

The Presidency reported in 2025 that the FIC, NPA and SARB 'have intensified enforcement efforts'. The FIC reported a 40% increase in compliance with AML requirements through stricter due diligence measures, improved beneficial ownership disclosures, with a rise in suspicious transaction reports being filed. Law enforcement agencies 'have also seen an increase in financial crime investigations and asset forfeiture cases, demonstrating that the regulatory framework is being actively enforced.'

The Presidency's 2025 Progress Report indicated that the FIC had completed its review, which had examined banks' reporting of state capture transactions, FIC's actions, referrals to law enforcement, and subsequent agency responses. The final Independent Review Report was delivered to the FIC on 29 March 2025. The FIC is 'finalising comments and developing an action plan to address the findings.'[111]

### Analysis

In the absence of details of the findings and recommendations in the Independent Review Report, it is difficult to make any assessment about the recommendations concerning the FIC and the reporting framework. The other SCC recommendations have been addressed, but the broader question of the strength of the AML regulatory framework remains.

At its June 2025 Plenary, the FATF determined that South Africa had 'substantially completed its action plan and warrants an on-site assessment to verify that the implementation of AML/CFT reforms has begun and is being sustained, and that the necessary political commitment remains in place to sustain implementation in the future.'[112] The next step towards South Africa exiting the grey list will be a FATF field visit scheduled for July 2025.[113]

National Treasury commended the efforts and commitment of law enforcement agencies 'for the sustained increase in investigations and prosecutions of serious and complex money laundering and terror financing activities' that made it possible for South Africa to fulfil its FATF commitments.[114]

---

[110] The President (2025: 28).

[111] The Presidency (2025: 9).

[112] Available at: https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/increased-monitoring-june-2025.html

[113] 'FATF president praises SA's 'political commitment' to getting off grey list ahead of key visit', *News24,* 18 July 2025. Available at: https://www.news24.com/business/economy/sa-has-ticked-all-or-almost-all-boxes-to-get-off-grey-list-ahead-of-key-fatf-visit-20250718-0839

[114] Available at: https://www.fic.gov.za/wp-content/uploads/2025/06/Media-release-FATF-greylisting-progress-update-for-South-Africa-June-2025.pdf

The government's AML strategy is presently aligned with global regulatory efforts as exemplified in FATF and its standards, and notable progress has been made in this regard. The creation of the Beneficial Ownership Register is an important step forward in addressing financial and economic crime.

However, it must be noted that there is an increasing body of evidence that these compliance-focused and risk-based regulatory regimes have serious shortcomings, and that there is a limited empirical understanding of existing reforms.[115]

One of the key weaknesses of the global regulatory consensus is that these measures tend to exclude non-governmental actors, with information access limited to official governmental uses and purposes. This significantly limits the effectiveness of these measures because the initial exposure of illicit financial activities – and anti-corruption initiatives more broadly – is frequently driven by the investigations of non-governmental actors such as journalists and CSOs, which are only subsequently followed-up by official investigations and enforcement actions. These actors are largely excluded from intergovernmental mechanisms, 'suggesting the need for a redefinition of the [illicit financial flows] IFF framework to better support the broad public foundations essential for government accountability.'[116]

This trend is evident in the recent reforms in South Africa; for example, the Beneficial Ownership Register is not accessible to the public. Reformers invested in strengthening our AML regime and fighting financial crime should pay close attention to the growing research on the effectiveness of these regulatory frameworks and ways to address the weaknesses that are becoming evident over time.

**Key takeaways**

- Significant progress has been made to strengthen South Africa's AML regulatory environment and to realign with FATF standards.
- The FIC review has not been made publicly available and so cannot be assessed.
- A growing body of evidence suggests that the compliance- and risk-focused global regulatory regime has significant weaknesses, and therefore should be supplemented by other reforms, including transparency measures.

## 2.4. Restoring the South African Revenue Service

### Main problems identified by the SCC and its recommendations

SARS was a key state agency hollowed out through state capture. The Commission endorsed the findings of the Nugent Commission of Inquiry established by President Ramaphosa in 2018. The Nugent Commission found a 'massive failure of integrity and governance' at SARS and made

[115] See for example Haberly et. al (2025), available at: https://giace.org/resources/the-regulation-of-illicit-financial-flows-riff-dataset/

[116] Haberly, Garrod and Barrington. (2024) *From Secrecy to Scrutiny: A New Map of Illicit Global Financial Networks and Regulation*, p. 5. Available at: https://giace.org/resources/from-secrecy-to-scrutiny-a-new-map-of-illicit-global-financial-networks-and-regulation/

detailed recommendations 'to rebuild SARS and reverse its capture'. The Nugent Commission made 16 recommendations and 27 sub-recommendations, 17 of which relate to internal governance and are the responsibility of the Commission, and 10 of which relate to external governance and are the responsibility of National Treasury.

The SCC made an additional recommendation – that the SARS Act of 1997 be amended to provide for an 'open, transparent and competitive process for the appointment' of the SARS Commissioner. The SCC also made recommendations concerning the debarment of Bain & Co. due to its involvement in weakening SARS.[117]

### Nature of the President's response

The President supported the recommendations, reporting that the National Treasury had initiated the process to amend the SARS Act, including providing for an open, transparent and competitive process for the appointment of the SARS Commissioner and the appointment of adequate oversight mechanisms such as an inspector-general. The Presidency committed to tabling this legislation by June 2023.

The President also reported additional measures undertaken to rebuild SARS, including the appointment of new leadership, a flatter, more accountable organisational structure, several measures to strengthen governance recommended by the Nugent commission, increasing capacity to tackle corruption cases, and more.

### Progress reported

The Presidency reported in 2025 that consultations with stakeholders were ongoing to review proposals concerning the appointment of the SARS Commissioner, Deputy Commissioner, and enhanced governance mechanisms. The target to complete the consultation process was reported as the second quarter of the 2025/26 financial year, and to seek Cabinet approval on the proposed amendment by December 2025.[118]

In its 2023/2024 Annual Report, SARS reported that of the 17 Nugent Commission recommendations, 14 had been implemented and 3 were ongoing. It also reported that it was acting on recommendations made by the Zondo Commission for SARS to investigate several tax-related matters.[119] The Commissioner noted that SARS has 'substantively implemented' the recommendations of the Nugent Commission and that the SCC's recommendations 'have been addressed'.[120]

### Analysis

The process to amend the SARS Act has been dilatory in the extreme. As the SCC endorsed the Nugent Commission's recommendations, it has been clear since they were made in 2018 what needed to be done to reform and strengthen SARS. It is unclear what progress has been made

[117] Discussed in Section 1.5: Corporate accountability.
[118] The Presidency (2025: 29).
[119] Ibid.
[120] SARS Annual Report 2023/24 (2024:4).

since 2022 and why the government has missed its promised deadline to introduce legislation in mid-2023 – a delay of over two years.

Nevertheless, the government has demonstrated confidence in a reforming SARS by an increased budget allocation to support SARS' revenue collection efforts.[121]

**Key takeaways**

- SARS has made good progress on implementing the recommendations by the Nugent and Zondo Commissions.
- The President initially committed to finalising the amendments to the SARS Act concerning the appointment of the Commissioner by June 2023. The unexplained delay (of almost three years) is concerning.
- The evidence uncovered by both commissions clearly demonstrates the importance and urgency of this specific reform.

## 2.5. Procurement system reforms

### Main problems identified by the SCC and its recommendations

The Commission identified public procurement as a (arguably, the) primary site for state capture and corruption and made more recommendations concerning public procurement than for any other area of reform - some 25 proposals.

In sum, it recommended:

- The establishment of an independent public procurement anti-corruption agency to combat corruption in public procurement.
- The development of a national charter against corruption in public procurement, including a code of conduct, to be signed by state leaders, political parties, organised business and labour, and civil society, and by any person and business tendering to, or contracting with, the state.
- Legislation protecting accounting officers/authorities from criminal or civil liability for anything done in good faith, unless such person acts negligently.
- Incentivising disclosures regarding procurement fraud and corruption by awarding the whistleblower a percentage of proceeds recovered, provided that the information disclosed was material in the obtaining of the award.
- Legislation to provide for the training and guidance of public procurement officials and the establishment of a professional body for procurement officials.
- Greater transparency standards consistent with the Organisation for Economic Co-operation and Development (OECD) principles for integrity in public procurement.
- Institutionalisation of routine lifestyle audits for officials in supply chain management, and 'subjecting executive authorities to lifestyle audits on a periodical basis'.

[121] 'SARS gets largest chunk of Treasury Budget transfers' *SAnews,* 9 July 2025. Available at: https://www.sanews.gov.za/south-africa/sars-gets-largest-chunk-treasury-budget-transfers. Accessed: 9 July 2025.

- Legislation to introduce DPAs by which the prosecution of an accused corporation can be deferred on certain terms, for example involving voluntary self-reporting, corrective action and payment of a fine. (This is dealt with below in section 2.12 on corporate accountability.)
- And it recommended multiple amendments to legislation or procurement process with regards to: the better regulation of competitive bidding and deviations from such bidding; for ensuring compliance with standards set for suppliers in tendering; for tighter regulation of sub-contracting and the use of implementing agents; for procurement planning and contracting management; for enhanced public procurement reporting and oversight structures; and for enhanced 'consequence management'.

The Commission recommended a greater degree of centralisation in public procurement, and greater harmonisation in public procurement legislation. Further, the Commission noted that clarity was needed concerning the state's interpretations of the relationship between (and the relative weight given to) the Constitutional provisions guiding public procurement in section 217(1), that public procurement must be done in a manner that is, 'fair, equitable, transparent, competitive and cost-effective', and the provisions concerning the use of public procurement for transformation objectives in section 217(2).[122]

### Nature of the President's response

The Presidency's 2022 report noted that the recommendations concerning a dedicated anti-corruption procurement agency were being considered by NACAC as part of its work to advise on strengthening the country's anti-corruption institutional arrangements.

Regarding the wide-ranging proposals made by the SCC concerning the public procurement system, the 2022 report noted that several of the Commission's proposals were 'already reflected to varying degrees in the draft Public Procurement Bill'.[123]

The Presidency did not consider incentives for whistleblowers as a *procurement-specific* recommendation and noted that the Department of Justice would consider this in its review of the Protected Disclosures Act (PDA).

### Progress reported

The Presidency reported in 2025 that NACAC has concluded research into the institutional reform recommendations of the Commission and has crafted proposals currently under consideration by the Executive.

The Presidency's latest report notes that the Public Procurement Act (PPA), gazetted in 2024 and enacted but not yet brought into effect, consolidates 'South Africa's previously fragmented procurement system into a single regulatory framework designed to enhance transparency, efficiency, and economic development', and addresses Zondo's recommendations regarding procurement integrity, transparency, and enhanced processes. Regulations to the Act are 'envisaged to be promulgated during the third quarter of the 2025/26 financial year'. The Presidency's 2025 update report included a detailed list of issues it feels were addressed in the new Act.

[122] *State Capture Commission Report, Part 1, Vol. 3, p. 797.*
[123] The President (2022: 7).

It noted that the recommendation for lifestyle audits for supply chain officials has been implemented: 'the eDisclosure system covers these officials using a three-tiered approach (review, investigation, evaluation) to identify discrepancies between declared assets and visible lifestyle'.

**Analysis**

The PPA responds to many, though not all, of the Zondo Commission's concerns and recommendations.

The Act establishes, amongst other institutions, the Public Procurement Office within the National Treasury, tasked with ensuring compliance, promoting standards, and fostering transparency. Its formal establishment is welcomed, though much will depend on the Office's predecessor institution, the Office of the Chief Procurement Officer (OCPO), developing the capacity to enforce the Act. The OCPO is not yet resourced and staffed to effectively pursue its expanded mandate, needing capacity especially in areas of policy and legal development, governance and compliance, strategic procurement support, and ICT systems.[124]

The Act contains provisions for enhanced oversight, transparency, and integrity. It prohibits any person from trying to interfere with or influencing procurement and it establishes mechanisms for reporting and managing unlawful instructions. It strengthens procedures for debarment of suppliers who violate the procurement system. Certain categories of people – mainly public office bearers and people who work for the state – may not do business with the state. Furthermore, the Public Administration and Management Amendment Bill provides clarification regarding the prohibition against employees conducting 'business with organs of state', and it introduces a 'cooling-off' period of 12 months for employees involved in procurement decisions, barring them from working with related service providers immediately after their tenure. That Bill is still making its way through Parliament.

In addition, the introduction of significant sanctions for the Auditor-General's (AG) findings on 'material irregularities' under the Public Audit Act is a positive development, and it should be closely monitored to assess efficacy over the next few years.

The PPA creates opportunities for greater transparency in public procurement. It requires proactive disclosure on a central online portal of a range of categories of procurement information, including the beneficial ownership records of winning bidders and the particulars of bids awarded to persons related to persons automatically excluded from procurement. It introduces transparency standards, including mandating the use of an electronic system with public access requirements.

The Act thus provides the potential for greater oversight of public procurement processes by CSOs (tendering, contract delivery). It also contains provisions for access to procurement processes, envisaging more real-time scrutiny by members of the public, civil society, and the media. These may well turn out to be very positive developments. Nevertheless, the categories of information to be proactively disclosed remain in some cases vague and open-ended. These will need to be specified and elaborated in subordinate legislation and there is some risk of over-broad

[124] PARI. 2024. 'Mapping the Public Procurement Oversight System in South Africa'. (Report commissioned by GIZ, Pretoria).

interpretation of confidentiality provisions. Moreover, the state has thus far demonstrated limited capacity to envision and develop the kinds of supporting systems and infrastructures required for substantial transparency. Plans to modernise government's information technology with the development of an Integrated Financial Management System, have been in the pipeline for over a decade. (Pillar 4 of NACS includes a commitment to, 'Establish an integrated, digital financial and procurement management system incorporating the principles of open governance and open contracting.').

The state has not substantially engaged with the Commission's proposals regarding incentivised whistleblowing (Pillar 4 of NACS includes a commitment to incentivise and support whistleblowing on illegal conduct in the public procurement system). The DoJ&CD's 2023 discussion document on whistleblowing contains little engagement with it, and in any event, internationally, legal provisions for such mechanisms are most often contained in sector specific legislation (e.g. tax law, procurement law and environmental law) and not in general legislation for protected disclosure. The reason for specific legislation is that different domains of practice create different opportunities and risks for incentivising whistleblowing, which must therefore be regulated in different ways. For instance, violations of tax and procurement law often result in large financial damages, the recovery of which can be used to amply reward whistleblowers without provisions from the fiscus. In procurement, incentivisation can encourage vexatious accusations that can delay procurement processes and thereby disrupt often urgent public operations. Constraining such accusations requires specific regulatory fixes, which may not be as necessary in taxation, where the risks of disruption to public operations are relatively small. The Public Procurement Act does not provide for sector-specific incentivised whistleblowing. In public procurement as well as in tax and financial sector governance, there is still an urgent need for the state to experiment with (pilot and administrative) incentivised whistleblowing schemes with a view to refinement and later explicit inclusion in sector-specific legislation.

In the pre-existing legislative scheme, debarment proceedings were relatively discretionary and unconstrained, which has meant limited recourse to debarment and has opened up opportunities for litigation. Section 15 of the Act strengthens procedures for the debarment of bidders or suppliers who have contravened provisions of the Act, which should have the effect of strengthening the debarment process.

The Act introduces a code of conduct for officials (though not the more encompassing charter envisioned by the SCC), and shields officials (in law at least) from liability for good faith actions. The Act includes provisions to support the professionalisation of the procurement function through the Public Procurement Office, and the 2022 Cabinet-adopted National Framework for the Professionalisation of the Public Sector includes supply chain management (SCM) as an occupation for dedicated attention under the 'professionalisation agenda'. Furthermore, Pillar 2 of NACS commits to, 'Enhanc[ing] the professionalisation of occupations within the SCM value chain in state organisations and public entities. Develop a compulsory training programme for senior management and accounting officers on SCM.' However, progress with implementing this agenda has been very slow, with little communication from the OCPO: according to the MAPS Assessment (2024), the Interim Supply Chain Management Council, which was created in 2018 to support professionalisation, has not been active since its inception.[125]

[125] MAPS (Methodology for Assessing Procurement Systems). 2024. 'Assessment of South Africa Public Procurement System', published by the National Treasury, OECD, African Development Bank and the World

Regarding lifestyle audits, and oversight of declarations of interest, it is not clear from the information provided by the Presidency whether this fully caters for the concerns raised by the SCC. For example, it is unclear how often lifestyle audits are undertaken, and how widely this is in fact being implemented. This should be specified in subordinate legislation and implementing policy.

Further, while the SCC did not make recommendations regarding local government, it is clear that the issues raised by the Commission's investigations, such as the capture of personnel decisions (appointments and dismissals) for control over procurement decisions, pervade local government.[126] While progress is being made on systems and data with relevance for anti-corruption in the public service (e.g., central register of disciplinary cases, data on compliance with minimum requirements for employment in SCM, central register for disclosures, some improvements in public procurement data), the lack of uniform data systems at municipal level significantly hampers anti-corruption efforts.[127]

There is currently no indication that the state intends picking up on the Commission's recommendations regarding a dedicated public procurement anti-corruption body. The large majority of the corruption and maladministration currently investigated by the SIU is related to public procurement, suggesting that any general anti-corruption body in South Africa may largely be dealing with public procurement in any event. Nevertheless, the government's exceedingly slow response in detailing an updated, fit-for-purpose anti-corruption architecture (and simply responding to the NACAC proposals) essentially leaves this SCC recommendation unaddressed.

Finally, the Presidency has noted that the PPA addresses the fragmentation in the public procurement regulatory framework. The SCC correctly identified this fragmentation as creating significant room for non-compliance and, by extension, corruption. It is not yet clear if the Act in fact addresses this fundamental issue. Some CSOs, academics, and businesses have argued that the Act does not provide a clear framework for public procurement.[128] For one thing, they have raised concerns about the Act's extensive recourse to subordinate law: i.e. deferring important policy decisions, best embodied in statute law, for inclusion in as yet unpublished regulations. A full evaluation of the framework provided by the Act is not yet possible in the absence of these regulations. In accordance with international best practice, the Act could have elaborated a more sophisticated outline of procurement methodology, backed by a clear elaboration of the principles guiding procurement. This would provide clearer guidance for officials and enhance the capacity of oversight institutions when evaluating decisions made in procurement by procuring organisations.

---

Bank Group: https://www.mapsinitiative.org/content/dam/maps-initiative/en/assessments/south-africa/maps-assessment-south-africa-main-report.pdf/_jcr_content/renditions/original./maps-assessment-south-africa-main-report.pdf (accessed: July 2025).

[126] Klaaren, J., F. Belvedere, R. Brunette, N. Gray (2022) 'Public Procurement and Corruption in South Africa'. Working Paper No. 2. Public Affairs Research Institute: Johannesburg. PARI website: https://pari.org.za/working-paper-public-procurement-and-corruption-in-south-africa/ (accessed: July 2025).

[127] PARI. 2024. 'Mapping the Public Procurement Oversight System in South Africa'. (Report commissioned by GIZ, Pretoria).

[128] 'Public Procurement Bill: public hearings', NCOP Select Committee for Finance, 23 February 2024, Parliamentary Monitoring Group website: https://pmg.org.za/committee-meeting/38408/ (accessed: July 2025).

The Act currently faces litigation from a number of parties. The arguments contained in these challenges vary, and none have, as yet, been brought on the basis of explicit concerns regarding how the Act responds to anti-corruption imperatives. However, the cases include challenges to the constitutionality of the Act, in part regarding the interpretations on the relationship between Sections 212(1) and (2) of the Constitution (see comments regarding Judge Zondo's concerns above).

Significantly, the Act contains a clause obligating the state to undertake a review of the Act within two years of its promulgation, offering an opportunity to reflect on some of the issues raised above.[129]

**Key takeaways**

- The PPA responds to several of the Commission's recommendations, i.e. regarding legislation that supports transparency and greater civil society oversight of public procurement; professionalisation of the procurement function, including the formalisation of a code of conduct, and support for lifestyle audits.
- The Act prohibits any person from trying to interfere with or influencing procurement and it establishes mechanisms for reporting and managing unlawful instructions. The Act strengthens procedures for debarment of suppliers who violate the procurement system.
- These are significant positive developments for procurement integrity.
- The OCPO (and its designated successor) will need to be substantially resourced and staffed to effectively pursue its expanded mandate, needing capacity especially in areas of policy and legal development, governance and compliance, strategic procurement support, and ICT systems. This should be monitored.
- Government should move with urgency to establish an integrated electronic system and set of data standards for public procurement, which covers all organs of state, to support greater oversight of the system, and anti-corruption initiatives.
- The state has not substantially responded to the Commission's recommendations regarding consideration of incentivised whistleblowing, which, as noted, needs to be catered for in sector-specific (public procurement) legislation.
- It is not clear whether the PPA addresses the fragmentation in the public procurement regulatory framework. The Act defers important policy decisions, best embodied in statute law, in as yet unpublished regulations, and the Act is facing constitutional challenge. The Act contains a clause obligating the state to undertake a review of the Act within two years of its promulgation, offering an opportunity to reflect on some of the issues raised above.
- Whether or not there is a basis for a procurement specific anti-corruption body, the state has yet to substantially respond to the Commission's recommendations regarding the creation of a permanent and independent anti-corruption commission, and an independent public procurement anti-corruption agency. This has been deferred to the state's response on NACAC's advisory regarding an Office of Public Integrity and the DoJ&CD's review, which are still pending.

[129] Section 68 provides that the Minister of Finance must review the Act's implementation and the need for amendments to the Act by 23 July 2026; consult stakeholders, including NEDLAC, during the review; and make public a report on the review and submit it to Parliament by 23 October 2026.

## 2.6. Intelligence services reforms

### Main problems identified by the SCC and its recommendations

The high-level findings of the State Security Council (SSC) relating to security and intelligence was that they were politicised and compromised at the highest level so that those involved in the state capture project could proceed with their illicit activities with impunity. A weak regulatory framework was put in place to ensure that the SSA could be abused for political and personal gain. This resulted in particular intelligence projects being conceived primarily as 'special purpose vehicles to siphon funds.'[130] Particular individuals close to the former President were implicated in a variety of unlawful activities related to vetting, mismanagement of firearms and SSA resources, and theft of funds.

The Commission's recommendations regarding the SSA focused on addressing four main concerns:

1. The concentration of power and resultant lack of checks and balances arising from the merger of various intelligence functions into a single agency.
2. Executive overreach whereby operational level programmes were directed by Ministers.
3. A breakdown or overriding of internal controls resulting in disappearance of large amounts of cash and firearms.
4. The need to investigate, prosecute implicated individuals and recover stolen assets.

Its recommendations included *inter alia*:

- Holding certain individuals accountable.
- Ensuring that security vetting processes are not abused.
- Improving financial controls and accountability.
- Ensuring the Minister is not involved in operations.
- Enhancing the mandate, powers, and capacity of the Inspector-General of Intelligence (IGI).
- Empowering the AG to access and audit intelligence services' financials.
- Clarifying the roles of the IGI, AG and Parliament to ensure that secrecy does not prevent accountability.
- Clarifying and strictly enforcing recruitment criteria and preventing Executive involvement in recruitment.
- Improving gun control directives and procedures.
- Addressing the problem of false intelligence reports.
- Preventing the intelligence services from being used for political and partisan purposes.
- Mandating an outgoing Joint Standing Committee on Intelligence (JSCI), before an election, to report to Parliament on as much as possible of the period preceding the election.
- Consider bringing the intelligence services closer to the spirit, guidelines and principles of the Intelligence White Paper.

[130] SCC Report, Part V, Vol. 1, p. 296.

Many of the Commission's findings and recommendations aligned with the report of the *High-Level Review Panel on the State Security Agency* of December 2018.[131] The panel had identified 'political malpurposing and factionalisation of the intelligence community' and recommended several key reforms including: separating the SSA into domestic and foreign services, developing a National Security Strategy, strengthening oversight mechanisms, and preventing Executive interference in operational matters.

The SCC also heard extensive evidence about Crime Intelligence, a domestic intelligence unit within the SAPS. Although its findings and recommendations in the final report were limited, the SCC found that similar abuses had occurred in Crime Intelligence, and that 'the recommendations made in respect of false reports, irregular recruitments and abuse of secrecy made earlier in this report in respect of the SSA, also hold good with regard to SAPS Crime Intelligence.'[132] In particular, the SCC heard detailed evidence about the abuse of Crime Intelligence slush funds for corrupt purposes and about irregular appointments of both employees and 'informants'.

### Nature of the President's response

The President reported that a new General Intelligence Laws Amendment Bill (GILAB) has been drafted and would be tabled by the end of the 2022/2023 financial year. The Bill would amend the National Strategic Intelligence Act (39 of 1994), Intelligence Services Act (65 of 2002) and other relevant intelligence laws so as to, among others, disestablish the SSA and establish a domestic intelligence service and foreign intelligence service in accordance with the Constitution, among other provisions to strengthen the oversight of the intelligence agencies by bodies such as the IGI, the AG, and the JSCI.[133]

The President also endorsed the principle that no member of the Executive may be involved in the operational matters of the intelligence services, and the review of the Intelligence Services Act would give practical effect to this.

The SSA's new leadership had developed and was in the process of implementing a 'comprehensive response plan' to address the SCC's recommendations, and 'consequence management' was being implemented through disciplinary action at the SSA. It was also reported that several cases had been referred to the ID for further investigation and prosecution. Furthermore, National Treasury would work with the AG and SSA to tighten financial controls, and the SSA would complete a review of recruitment directives in line with the SCC recommendations by March 2023.

The President's response does not refer to SAPS Crime Intelligence at all.

### Progress reported

The General Intelligence Laws Amendment Act (GILAA) was enacted in March 2025. The Act amends the National Strategic Intelligence Act and Intelligence Services Act to disestablish the SSA and establish two separate entities: the South African Intelligence Service (responsible for foreign intelligence) and the South African Intelligence Agency (responsible for domestic

[131] https://www.gov.za/sites/default/files/gcis_document/201903/high-level-review-panel-state-security-agency.pdf
[132] SCC Report, Part VI, Part 6, pp. 118-119.
[133] The President (2022: 51-52).

intelligence). The Act has not yet commenced, and the restructuring is still in progress. To date the SSA is still in operation as a single intelligence agency.

The Act also strengthens oversight by empowering the IGI and the National Intelligence Coordinating Committee (NICOC) Coordinator to appoint staff and determine structures, with Parliament appropriating budgets for both offices. The Act provides that the Director-General may issue functional directives ‘in consultation with the Minister,’ rather than under the Minister's direction.

In January 2023, the Director-General issued a strengthened Standard Operating Procedure on for Clearance and Dissemination of Intelligence Products, which serves as a quality control mechanism for intelligence products. The agency has introduced training and refresher programmes aimed at enhancing members' awareness of national security requirements, intelligence information management, and constitutional principles that require security services to be politically non-partisan and serve the interests of all South Africans.

To improve financial controls and accountability, the SSA has established enhanced oversight of cash holdings. The Reserve Bank grants yearly approval for the SSA to hold cash. As part of the approval, the Executive Authority reports to the Reserve Bank on all transactions that have been processed in cash during the year; including any foreign payments made. AG auditing has raised no negative findings in this regard. Internal Audit is supporting the AG in auditing the operational environment. The Office of the IGI has signed a Memorandum of Understanding with the AG as part of their oversight function.

The SSA has implemented directives for the possession, training, and storage of official firearms and ammunition. The SSA has also reviewed human resource directives to align with recruitment criteria recommendations, which are currently awaiting ministerial approval.

The National Security Strategy was approved by Cabinet in March 2024 following extensive consultations. The NICOC has completed drafting a public version, which is awaiting ministerial approval after necessary review processes.

The Presidency’s 2025 progress update reports that the SSA has referred all cases between 2020 to 2024 to the IDAC for further investigation and possible prosecution. Three cases have been successfully finalised, and the Agency has so far recouped R1.2 million through the AFU. The Minister has committed to establishing independent disciplinary panels chaired by senior counsel, to hold to account officials accused of corruption and misconduct.

Neither of the updates from the Presidency referred to SAPS Crime Intelligence in any way.

### Analysis

The initial Bill tabled in Parliament attracted significant criticism from civil society and security experts, who worried that the Bill failed to implement adequately the key safeguards identified by the Commission as critical. Civil society sounded alarms over provisions in the Bill that would dramatically expand the scope of intelligence and surveillance, while weakening oversight and

neglecting necessary safeguards.[134] Parliament also decided that it would enact no new legislative amendments to oversee the intelligence services, despite the Commission's recommendations to the contrary.

While the GILAA of 2025 was generally welcomed as an improvement on the Bill that was introduced to Parliament, a number of concerns remain. These include that terms such as 'national interest' and 'national security threat' remain overly broad and could still be open to abuse.

The Office of the IGI still cannot make legally binding recommendations, thereby enabling a lack of accountability. Moreover, the post of a Deputy Director was not provided for in the GILAA, which means that if the IGI post becomes vacant, there is no one to automatically take up the position on an acting basis. In the past, long periods went by without this post being filled, creating a lack of meaningful oversight of the SSA.

Concerns also remain that the AG, the JSCI and the IGI are unable to adequately oversee expenditure from the SSA's secret service account. This could enable continued irregular expenditure or abuse of these funds.

Of particular concern is the lack of demonstrable accountability of the individuals implicated in unlawful conduct at the SSA. While some former officials are facing charges for theft, fraud and money laundering,[135] many officials implicated by the SSC remain embedded in the SSA. Those who were on suspension as a result of their implication in the reports of the High Level Panel and SCC were reinstated into their positions by the former Minister of State Security Ayanda Dlodlo, who was eventually removed due to intelligence failures related to the July 2021 violence.[136] High profile figures deeply implicated in much of the wrongdoing unearthed by the SSC, such as former State Securitty Minister David Mhlobo (who remains in the cabinet as Deputy Minister of Water and Sanitation), former SSA Director General Arthur Fraser, and Thulani Dlomo who headed up Special Operations and reported directly to former President Zuma, remain unaccountable for their alleged unlawful conduct.

In the 2025/26 budget speech of the SSA on 15 July 2025, it was stated that a panel of two independent senior advocates and other counsel have commenced an assessment of the allegations made in various reports on the SSA, including that of the SSC with a view to initiate disciplinary actions or recommend cases for criminal action to the relevant authorities.[137] However, the precise ToRs of this panel and the timeframe for its work were not provided, nor was any indication given as to whether its findings and recommendations would be made public to ensure that accountability measures are indeed taken.

---

[134] For an overview of issues with the Bill, see for example: https://intelwatch.org.za/2024/04/08/despite-important-gains-the-new-general-intelligence-laws-amendment-bill-fails-to-safeguard-against-a-second-state-capture/

[135] https://www.news24.com/southafrica/news/former-intelligence-officers-arrested-for-alleged-theft-of-r58m-in-state-funds-20250331

[136] https://www.news24.com/investigations/ssa-denies-maintaining-criminal-networks-reappointed-suspended-officials-are-being-kept-in-check-20220221

[137] https://www.gov.za/news/speeches/minister-khumbudzo-ntshavheni-state-security-agency-dept-budget-vote-202526-15-jul

In November 2021, a panel led by Prof. Sandy Africa was commissioned to investigate the shortcomings of the security services in responding to the riots of July 2021. The panel made recommendations about stabilising the police service, depoliticising it and cleaning up Crime Intelligence, as well as national intelligence.[138] It is of significant concern that neither of these reports nor the SCC recommendations have led to any reform strategy for Crime Intelligence, and that there has been virtually no communication about the future of the unit. An escalating series of scandals, arrests, operational failures, and other indicators of dysfunction in recent years has demonstrated the need for careful and comprehensive reform. The newly-appointed Madlanga Inquiry has been mandated to investigate political interference in the CJS, including Crime Intelligence. Reform of Crime Intelligence has been sorely needed for many years and should proceed without delay.

**Key takeaways**

- The General Intelligence Laws Amendment Act does deliver many of the amendments and reforms to which the President committed himself. However, the Act has not yet commenced, and the restructuring is still ongoing. Especially, the disestablishment of the SSA and the creation of two separate agencies are long overdue. The President should provide a timeline for this work to be completed.
- Reforms in the GILAA to enhance accountability measures are welcomed, but do not go far enough. Further strengthening of the IGI is especially necessary.
- Some provisions in the Act are overly broad and could enable abuse.
- The lack of demonstrable accountability for those responsible for weaponising and damaging the institution is severely hampering reform efforts and trust in the government.
- The lack of engagement with the SCC's evidence and findings related to the SAPS Crime Intelligence Division is a cause for serious concern.

## 2.7. Whistleblower protection measures

### Main problems identified by the SCC and its recommendations

The SCC emphasised the critical role of whistleblowers in exposing corruption, and it recommended strengthening legal protections for those who disclose wrongdoing. The Commission made three key recommendations:

1. Legislation to ensure that whistleblowers are accorded the protections stipulated in the UN Convention Against Corruption.
2. Legislation to allow whistleblowers to be offered immunity in certain cases.
3. Incentivising whistleblowers by awarding them a fixed percentage of monies recovered if the information disclosed by the whistleblower has been material to the recovery of funds. (This is dealt with in the section on procurement reform above.)

[138] https://www.thepresidency.gov.za/sites/default/files/2022-05/Report%20of%20the%20Expert%20Panel%20into%20the%20July%202021%20Civil%20Unrest.pdf

### Nature of the President's response

The Presidency's plan acknowledged that whistleblowing is an 'essential weapon in the fight against corruption' and that 'whistleblowers need protection from retaliatory action – in the form of disciplinary action or criminal charges – by public and private bodies at which corruption has been alleged'.[139] It was reported that the Department of Justice had already commenced a review of the PDA and Witness Protection Act (WPA). The review would include consultation with stakeholders and NACAC, and would be completed by the end of April 2023. It also committed to considering whether the mandate for the Office for Witness Protection should be extended to whistleblowers who are not witnesses.

### Summary of progress reported by the Presidency

In June 2023, the Department of Justice published a 'Discussion Document on Proposed Reforms for The Whistleblower Protection Regime in South Africa' for public comment. This document recommended several legislative measures to strengthen whistleblower protection, including criminalising threats against whistleblowers, incentivising credible disclosures, and shifting the onus of proof to those seeking to deny whistleblower claims.

In the 2025 State of the Nation Address, President Ramaphosa announced the government's commitment to 'finalise the whistleblower protection framework and introduce the Whistleblower Protections Bill in Parliament during this financial year.'[140] In the 2025 Progress Report, the Presidency reported that the review process had progressed with inputs received and proposals refined, resulting in the preparation of a draft Bill.[141]

### Analysis

The Department's 2023 discussion document did canvass the protections mentioned.[142] The review of whistleblower protections was due to be completed by the end of April 2024.[143] The undertaking in the 2025 SONA that a Whistleblower Protections Bill would be introduced in Parliament during 'this financial year' (i.e., by 31 March 2025) was not met.[144] The Department of Justice's 2025/26 Annual Performance Plan (APP) indicates a commitment to amend the Whistleblower Framework/Bill and introduce it in Parliament in the 2025/2026 financial year.[145]

It could not be independently confirmed that a draft Bill has been prepared or that it includes the protections envisaged. The proposals put forward in the 2023 discussion document were supported by civil society groups but were criticised for not going far enough.[146] It is unknown whether the new draft bill differs meaningfully from the 2023 proposals.

---

[139] The President (2022: 53).

[140] Available at: https://www.stateofthenation.gov.za/assets/downloads/SONA_2025_Speech.pdf

[141] The Presidency (2025: 11-12).

[142] Available at: https://www.stateofthenation.gov.za/assets/scc-legislation-and-reports/20230629-whistleblower-protection-regime_cover.pdf

[143] DoJ&CD Annual Report 2023/24 (2024: 128). Available at: https://www.justice.gov.za/reportfiles/Annual-Report-2023-24-DOJCD.pdf

[144] PMG 'All tabled Bills' available at: https://pmg.org.za/bills/tabled/year/2025/

[145] Available at: https://www.justice.gov.za/MTSF/mtsf.htm

[146] See, for example, CSWG (2024: 18).

In March 2025, the Platform to Protect Whistleblowers in Africa (PPLAAF) and NACAC convened a high-level conference 'to assess and bolster whistleblower protection mechanisms and generate actionable recommendations'.[147] The conference report made important and detailed recommendations on the institutional framework for the whistleblowing regime, whistleblower protection and support, reporting systems, and specific critical provisions for inclusion in legislative reforms, incentivisation, and public education. The joint conference report emphasised the urgency of legal reforms. Civil society groups have stressed the urgent need for reform and cautioned against further delays.[148]

The extended delay in finalising this vital legislation is a matter for profound concern. No reasons have been put forward for the failure to finalise these reforms to date, and any draft bill still has to undergo lengthy public consultation and legislative processes. The draft bill is still to be published for public comment, so it is unclear whether its provisions will adequately strengthen the whistleblower protection regime.

**Key takeaways:**

- After a promising start to policy and legislative reforms, there has been slow progress, latterly outside the public domain, on a matter highlighted by NACAC as one of its top priorities in the fight against ongoing corruption.
- Draft amendments to the PDA and WPA should, as a matter of urgency, be made available for public comment.

## 2.8. Professionalisation of the public administration

### Main problems identified by the SCC and its recommendations

Appointments, dismissals, and reform of the public administration was a consistent theme throughout the various workstreams of the Commission, including in government departments, SOEs, and law enforcement institutions. The Commission found that the ability to 'strategically position' political associates in key posts within the public administration was the 'essential mechanism' of state capture. Corrupt politicians and officials used appointment and disciplinary processes to remove law-abiding public servants and replace them with those who were willing to be complicit in corruption. The SCC found that broad executive powers of appointment and removal, without effective checks and balances, have allowed patronage considerations to pervade public administrative personnel practices, blurring lines in the political-administrative interface.

The Commission recommended specific reforms to personnel practices in SARS, the intelligence services, the SOEs, and certain proposed bodies like the Public Procurement Anti-Corruption Agency. While the Commission did not provide specific recommendations on personnel practices with regards to the public service and municipalities, it noted that it is unlawful to introduce political criteria into appointment and removal decisions in the South African public administration. And the

[147] Available at: https://www.pplaaf.org/wp-content/uploads/South-Africa-Hive-Document-1-1.pdf
[148] Ibid.

Commission dedicated quite substantial space to analysing the policy of cadre deployment, declaring its efforts to influence appointment and removal decisions as unlawful.

**Nature of the President's response**

The President's response acknowledged that the SCC had found that '[a] key mechanism of state capture was the strategic positioning of individuals in positions of power through the abuse of public sector appointment and dismissal processes'. It added that the National Framework towards the Professionalisation of the Public Sector (hereafter Professionalisation Framework), adopted by Cabinet on 19 October 2022, made 'specific proposals to stabilise the political-administrative interface, ensure merit-based recruitment and selection and more effective consequence management. All public sector legislation governing professionalisation will be reviewed and, where necessary, amended to align with this Framework' (emphasis added).[149]

The Professionalisation Framework makes specific proposals to stabilise the political-administrative interface, to ensure merit-based recruitment and selection, as well as making proposals for professionalising certain occupations in the state seen as important for state capacity (SCM, HR, ICT, planning, and occupations in the built environment sector). The Presidency noted that, 'All public sector legislation governing professionalisation will be reviewed [to] … align with [the Professionalisation Framework].'[150]

The Presidency's response committed to the following:

- The Professionalisation Framework considers 'an enhanced role for the Public Service Commission (PSC), working with a new Head of Public Administration [HOPA], in the appointment of top officials'. The PSC's role to enhance checks and balances will 'be confined to managing appointment processes to the point of recommendation, preserving the Executive's prerogative as appointing authority'.
- Accounting officers' functions in the use of public funds are set out primarily in the PFMA and Municipal Finance Management Act of 2003 (MFMA). Accounting officers 'should not be penalised for audit findings that relate to minor technical missteps or actions taken in good faith'. Only decisions made in bad faith [or with corrupt intent] should expose an [accounting officer] to criminal investigation, personal financial sanctions or other disciplinary actions'.
- The reforms will 'give effect' to key recommendations in Chapter 13 of the National Development Plan (NDP) on 'Building a Capable State' to 'limit the role of Ministers in appointing and dismissing [s]' and to resolve the conflicting provisions in the Public Service Act and the PFMA concerning executive authorities' and accounting authorities' responsibilities for public sector financial management and procurement processes.
- To clarify the relationship between executive authorities and accounting officers, the following measures will be undertaken:
    - Revisit the induction process for new Ministers and reformulate relevant sections of the Guide for Members of the Executive. (Completion expected by the end of 2022/23).

[149] The Presidency (2022: 11).
[150] Ibid.

    - The Public Service Amendment Bill will regulate ‘more clearly’ the respective roles and functions of executive authority and accounting officers. (It was expected that the Bill would be submitted to Parliament in the 2022/2023 financial year).
    - Develop a code of conduct for special advisers that clarifies their role and ‘reinforces the existing provisions’ that they have authority over accounting officers and ‘shall refrain from interfering in the administration and management’ of departments.
    - Executive authorities will be ‘legally obliged to record in writing all directives and advice’ to AOs, and other officials or office-bearers in a public entity, without which it has no force or effect’.
    - Executive authority advice and directives must be channelled through accounting officers to have force and effect.
- ‘Current initiatives underway to give effect to the above include amendments to the Public Service Act, the Public Administration Management Act, the Public Finance Management Act, the Public Procurement Bill and the implementation of the [Professionalisation Framework].’[151]

**Progress reported**

The Presidency noted that:

- The Code of Conduct for Special Advisers has been developed, helping to clarify the role of Special Advisers.
- The Presidency has completed the induction of newly appointed Members of the Executive, clarifying the delineation between strategic oversight by executive authorities and the administrative responsibilities of accounting officers.
- A task team has been established with a project plan to conclude a ‘comprehensive revision’ of the Guide for Members of the Executive within the current financial year.
- The Public Service Amendment Bill currently before the National Council of Provinces (NCOP) devolves administrative powers from executive authorities to accounting officers; establishes the Director-General in the Presidency as the Head of the Public Administration; requires executive advice and directives be channelled through Accounting Authorities; and that these are recorded in writing.
- The Public Administration and Management Amendment Bill also before the NCOP ‘addresses the Commission's concerns about conflicts of interest and corruption providing clarification regarding the prohibition against employees conducting business with organs of state’ (criminalising it), and introduces a ‘cooling-off’ period of 12 months for employees involved in procurement decisions, barring them from working with related service providers immediately after their tenure. Further, the DPSA is strengthening its monitoring of Section 8 of the original Act, including monthly monitoring of the Central Supplier Database and comparing this information with the Personnel Salary System (PERSAL) to identify public service employees attempting to register as service providers.
- Draft regulations have been developed for a central register to track officials dismissed or who resigned pending disciplinary cases, noting this register applies across the three government spheres. The Register will serve as a mandatory vetting tool for all prospective public sector employees.

[151] The Presidency (2022: 72-74).

- The Commission's recommendation on lifestyle audits has been implemented for national and provincial departments, with lifestyle audits mandatory since 2021 for national and provincial departments, with 138 departments reporting implementation to the DPSA by 2024.
- The eDisclosure system has been expanded and enhanced to include senior managers, supply chain officials, and other designated categories of employees, supporting the use of lifestyle audits.

**Analysis**

Government has made slow, halting progress with reforms to personnel practices in the public administration.

Tensions at the political-administrative interface (between executive and accounting authorities) have been problematic because delegations to accounting officers have been inconsistent and discretionary, often leaving the latter vulnerable to undue political pressure from their executive authority.[152] Further, there is lack of alignment between the extensive administrative powers given to executive authorities (not DGs or HoDs) in the public service under the Public Service Act, and the increasingly stringent *responsibilities* assigned to departmental accounting officers under the PFMA, and other legislation such as the Public Audit Act. These issues were noted as early as 2012 in the NDP.[153] The Public Service Amendment Bill more clearly delineates the powers and responsibilities of Political Executives and HoDs, and transfers operational and administrative authority – such as appointments, performance management, and discipline – from Ministers and MECs to DGs and HoDs, addressing misalignment between the PFMA and the Public Service Act. These amendments in the Bill will reinforce the authority needed by accounting officers to exercise their financial management responsibilities in terms of the PFMA and MFMA.[154] It is important that the Bill is passed as a much-needed step in the journey towards a depoliticised public service.

The Code of Conduct for Special Advisers has been drafted, which is a welcome development, though it is not clear when it will be implemented. We also note that under the Professionalisation Framework, both officials and politicians will need to undertake mandatory induction programmes.

Chapter 13 of the NDP and the more recent Professionalisation Framework (2022) also call for reform to recruitment and selection processes for senior officials in the state, and the Presidency committed to movement in this regard in its 2022 response to the Commission (see above). Furthermore, in Pillar 2, NACS commits government to, 'Support[ing] professionalisation of the public sector by giving effect to Chapter 13 of NDP.'

The Professionalisation Framework proposes an enhanced role for the PSC, working with a new HOPA, in the appointment of top officials.[155] These two institutions, the PSC and the HOPA, are

---

Human Sciences Research Council. 2024. Draft Report: *Synthesis evaluation of State capacity with A special focus on Directors-General and Heads of Department*.

[153] National Planning Commission (NPC). 2012. 'National Development Plan 2030: Our Future - make it work'. NPC: Pretoria, p. 414.

[154] Public Service Amendment Bill, committee deliberations: https://pmg.org.za/bill/1147/ (accessed: July 2025).

[155] National School of Government. 2022. 'A National Framework Towards the Professionalisation of the Public Sector'. NSG: Pretoria: https://www.thensg.gov.za/wp-content/uploads/2022/10/NATIONAL-FRAMEWORK-BOOKLET.pdf p. 63 (accessed: July 2025).

to act as a check and balance in selection processes – while the Executive would retain the prerogative to make the final appointment. The NDP's proposals in this regard were more robust: the NDP envisioned the PSC playing a direct role in the recruitment of the most senior posts.[156] The chair of the PSC, together with the proposed administrative head of the public service, would convene the selection panel for DGs and HoDs and their deputies. The NDP noted that 'This would allow for a transparent process that could reinforce confidence in the way heads of department are appointed'.

In addition, the NDP proposed strengthening the PSC's independence and authority, necessary for the PSC to ensure the objective and impartial implementation of public service recruitment and appointment procedures.

The PSC Bill, passed by the National Assembly and currently being considered by provincial legislatures, does include provisions for strengthening the independence of the PSC. For example, it establishes a permanent secretariat under the authority of the PSC, with its own budget, in contrast to the (current) Office of the PSC that sits as a unit under a national department (DPSA). This Bill is a positive development, though the PSC Bill is not mentioned in the Presidency's 2025 Progress Report, despite the vital role identified for the PSC in the NDP and the Professionalisation Framework: 'the PSC needs to be a robust champion of a meritocratic public service with a stronger oversight role'.[157] It should be noted, however, that the Public Service Amendment Bill [B13B-2023] does not explicitly remove the PSC from the list of departments and entities that are part of the public service in Schedule 1 to the Act. This should be addressed to align the Public Service Act with the intentions of the PSC Bill.

The Public Service Amendment Bill also establishes the DG in the Presidency as the Head of the Presidency, officially tasked with coordination across the public service. However, the Bill does not clearly establish the DG as the HOPA.

Assuming the PSC Bill and the Public Service Amendment Bill are passed, these legislative changes only partially address the commitments made in the President's response:

- While the Public Service Amendment Bill establishes the Head of the Public Presidency, there is no mention of accounting officers' career incidents being overseen by this office, as envisaged in the NDP and Professionalisation Framework.
- Neither the Public Service Amendment Bill nor the PSC Bill provide for either the Head of the Presidency or the PSC to play a role in bolstering selection processes for senior officials.
- Similarly limited are the claimed '[r]equirements that executive advice and directives be channelled through Accounting Officers'. If these requirements are indeed present in the Public Service Amendment Bill, they appear to be largely implicit in the Bill's provisions. The only clear instance of the '[r]equirements that executive authorities record directives in writing' is limited to circumstances in which the accounting officer is reluctant (perhaps because the instructions may be irregular or unlawful in some way) to comply with an

[156] Brunette, R. 2024. 'Checking Political Discretion in Recruitment to South Africa's Public Administration', Public Affairs Research Institute (PARI) Working Paper 2 of 2024, https://pari.org.za/working-paper-checking-political-discretion-in-recruitment-to-south-africas-public-administration/ (accessed: July 2025).
[157] NPC (2012: 412).

instruction from their responsible executive authority and 'refuses or fails to fulfil a power or duty' in terms of section 3(9)(a) of the Public Service Amendment Bill. If the accounting officer persists in their refusal or failure, the executive authority must report them to the President or Premier, whichever is appropriate. Notably, they are not reported to the DG in the Presidency as a HOPA.

- Further, the Head of the Presidency appears to have no role in such disagreements or disputes, but some protection is afforded to accounting officers who may consider themselves obliged to resist potentially irregular or unlawful instructions.

An important remedial measure to promote depoliticisation of the public service that *is* included in the Public Service Amendment Bill, but that is not mentioned in the Presidency's Progress Report, is the prohibition on any '[accounting officer] or any person reporting directly to them hold political office in a political party, whether in a permanent, temporary or acting capacity'. The Amendment to the Municipal Systems Act applied this prohibition to all staff in municipalities, a clause which was successfully challenged in court by organised labour. Ideally, this prohibition should apply to senior (and possibly middle) managers in local administrations.

Further changes are needed to depoliticise the public administration in local government, including the development of more robust processes for appointing senior officials, i.e. which include check and balances in selection processes. The Professionalisation Framework moots proposals in this regard.

Regarding the PAMA, the Amendment Bill currently before Parliament criminalises an official conducting business with the state and designates this as dismissible 'serious misconduct'. The Bill's 12 months' 'cooling-off' period for public sector employees involved in procurement decisions, barring them from working with related service providers immediately after their tenure, is long overdue and to be welcomed. The Bill does not extend this offence to public entities: this a major omission.

The establishment of a central register for disciplinary cases will be a welcome development, though there is no deadline for establishing and implementing the register. Furthermore, the register does not appear to apply in the case of municipal entities. The regulations for the register also fail to provide that aggregated information should be regularly reported to the PSC and/or Parliament, so that compliance and trends can be monitored. Lastly, it will be important to ensure that the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit (PA-EID-TAU) in the DPSA, tasked with overseeing the register, amongst other related functions for integrity management, has the necessary resources and legal authority to effectively implement its mandate.

Regarding lifestyle audits, according to the latest available DPSA Annual Report (2023/24), 142 departments are compliant with the three-tiered process. It is not clear from the progress reports which entity or entities are responsible for undertaking these audits, whether there are any minimum criteria for 'compliance' and any quality assurance checks. It is unclear whether or when lifestyle audits may be extended to local government – admittedly, a substantial undertaking.

We note that the NACS includes a commitment that 'Bodies mandated to provide oversight such as Chapter 9 institutions, regulators, and those responsible for oversight in local government are supported, strengthened and adequately resourced'.[158]

### Executive accountability measures

Strictly speaking, although these measures are reported on as part of this section on professionalisation, it is not appropriate to talk about 'professionalisation' of the Executive - as elected public representatives they are quite distinct from the public administration, performing different functions and with different types of responsibilities. However, the National Professionalisation Framework distinguishes between the concepts of 'professionalisation' and 'professionalism'. It is suggested that this latter concept can be appropriately applied to Members of the Executive as it consists of 'practices, conduct, values and behaviour that a person exhibits regardless of training, qualifications and levels of responsibility'.[159]

### Summary of progress reported by the Presidency

*Lifestyle Audits for Members of the Executive*

The Presidency has developed the methodology for conducting lifestyle audits for the Members of the Executive. The 6th Administration Members of the Executive submitted their financial interest disclosures to the Registrar of Financial Interest for Members of by Executive by 24 May 2024. New Members of the Executive in the 7th Administration submitted their financial interest disclosures by 2 September 2024. Members also submitted consent forms to conduct the lifestyle audits. The process of verification and analysis of information is underway.[160]

*Induction of Members of the Executive*

As part of the reforms outlined in the President's response, the Presidency has completed the induction of newly appointed Members of the Executive. This induction clarified the delineation between strategic oversight by executive authorities and the administrative responsibilities of accounting officers.[161]

*Guide for Members of the Executive*

The President's Response also identified the need for a review of the Guide for Members of the Executive. Following an initial revision published in November 2022, a task team has been established with a project plan to conclude a comprehensive revision within the current financial year.[162]

### Analysis

The commencement of lifestyle audits for Members of the Executive constitutes welcome progress. However, it is unclear from the Presidency's progress report whether the scope of these audits includes members of the national and provincial executives, whether a timeline has been set for their completion, whether the outcomes will be communicated to the public, and whether these

[158] NACS (2020: 35).
[159] NPF (2022: 9).
[160] The Presidency (2025: 14).
[161] The President (2022: 72, 73).
[162] The President (2022: 73).

audits will be undertaken more than once. It may be necessary for provisions concerning lifestyle audits to be accorded the force of law by inclusion in the Executive Members' Ethics Act 82 of 1998 and Code.

It is noted that the current Members of the Executive were inducted in a manner that 'clarified the delineation between strategic oversight by executive authorities [EAs] and the administrative responsibilities of accounting officers'. The revised Guide (presumably the Ministerial Handbook) will be an update of an interim revision produced in 2022.[163] No date has been given for this update, but it is suggested that it should not be delayed much beyond the adoption of legislation currently before Parliament, particularly the Public Service Amendment Bill. Publication of the subsequent Guide will need to be closely monitored, and its guidance assessed. It may be instructive to assess the extent to which the contents of the Guide differ from the content of the guidance published by the PSC in May 2024.[164]

These sorts of reforms - inductions, updates to guidance - provide little counterweight to a far broader problem of a political system that enables patronage. More importantly, the country needs to see progress on the big reforms being implemented and beginning to have impact, such as criminal prosecutions for corruption, and reforms to the Public Service Act that ensure that politicians (executive authorities) are clearly removed from any possible involvement in operational and procurement matters of departments and SOEs, etc.

**Key takeaways**

*Public Administration*

- The legislation currently under deliberation in Parliament (the Public Service Amendment Bill and the PSC Bill) represents a partial (incomplete) implementation of the promised reforms aimed at depoliticising the public administration.
- Given that such reform strikes at the heart of the patronage system, we suggest that there is room for government to experiment with a gradual, but progressive implementation of such reforms to reduce potential political pushback but enable further movement in the professionalisation agenda.
- Amendments to PAMA strengthen prohibitions on state employees conducting business with the state.
- And the draft regulations for a central register of disciplinary cases is a welcome initiative.
- These latter two initiatives do not cover all organs of state. This should also be gradually extended. In addition, supporting digital infrastructure and data collection standards should be developed to enable proper oversight of personnel practices (as per the analysis above on the lack of integrated systems for public procurement across all

[163] Department of Public Service and Administration (DPSA). 2022. *Guide For Members of the Executive.* Available at: https://www.dpsa.gov.za/dpsa2g/documents/acts&regulations/Guide_for_members_of_the_executive/Guide%20for%20Members%20of%20the%20Executive%202022.pdf

[164] The Public Service Commission published a *Guide on Governance Practice for Executive Authorities and Heads of Departments* in May 2024. Available at: https://www.psc.gov.za/documents/reports/2024/PSC_Guide_on_Governance_Practice_for_EAs_and_HODs.pdf

organs of state). Integrated systems and standardised data collection would support oversight by policy holders (e.g. the Department of Cooperative Governance and by Parliament).

- It will be important to ensure that the PA-EID-TAU in the DPSA has the necessary resources and legal authority to effectively implement its mandate.

*Executive accountability*

- The commencement of lifestyle audits for Members of the Executive is welcome progress. Further details should be made available, including their scope, date for finalisation, and their outcomes, as well as their frequency.
- To enhance the influence and strengthen the impact of the mandated lifestyle audits, it may be necessary to consider inclusion of provisions mandating their methodology, scope and frequency in the Executive Members' Ethics Act.
- That the induction of the new Executive and updated guidance includes clear delineation of authority between EAs and AOs is also to be welcomed.
- Updated guidance is likely after enactment of amendments to the Public Service Act that are currently under consideration by Parliament, which requires monitoring.

## 2.9. Strengthening the audit system

### Main problems identified by the SCC and its recommendations

The Commission highlighted certain concerns related to the auditing of public entities. It noted that the auditing of private firms tends to focus on ensuring that statements have been prepared in accordance with the financial reporting framework, whereas in respect of public entities there must also be a focus on compliance with the applicable laws, regulations, SCM policies, etc. Private audit firms are sometimes ill-equipped to do this work, whereas the AG 'specialty' is ensuring compliance, and has the requisite skills, experience, and level of independence.

For this reason, the Commission recommended that the AG's office be further capacitated so that it can audit all public entities. Alternatively, to the extent that the latter is not practicable, private firms should only be appointed to audit SOEs if they can demonstrate that they have the requisite skills and understanding of their obligations to the public at large when they audit an SOE.

Specific recommendations included:

- Support and ensure compliance with the recent amendments to the Public Audit Act that strengthen the ability of the AG to enforce remedial action.
- Ensure that the term 'irregular expenditure' is used with care and specificity by the AG and in general to avoid losing its utility as a remedial tool.

### Nature of the President's response

The President's response indicated that the AG had developed a detailed response plan to the work of the Commission. It also noted that the National Treasury had partnered with academia on

a research project to enhance the oversight function and value of South Africa's public sector audit committees, which was completed in 2022. This research was to be used to inform legislative reforms.

The Presidency also committed to reviewing the respective roles of the AG and private auditors (as well as recommendations on the public sector audit committees) by September 2023.

### Summary of progress reported by the Presidency

The AG developed a response plan to the Commission, involving changes to its audit directives, training, scoping decisions, systems/tools, internal environment, consequence management, approach to material irregularities, etc. In December 2024, the AG reported that it had completed 'much of the work' regarding the Commission's recommendations on strengthening the audit system, and that the 2025-28 strategic period would be used to complete the remaining actions, and institutionalise the work delivered prior.[165]

In the 2025 Progress Report, the Presidency reported that the findings of the audit committee research project would inform legislative reforms during the review of the PFMA/MFMA, with work on the PFMA Amendments Bill continuing in the first quarter of 2025/2026. It was also reported that the National Treasury and the AG have reviewed the concept of irregular expenditure to shift focus toward identifying corrupt, suspicious, or bad faith expenditure. Instruction No. 4 of 2022/2023, issued in 2022, established new reporting requirements for irregular and fruitless expenditure, requiring detailed disclosure in annual reports and financial statements. These definitions have been incorporated into draft amendments of the PFMA and MFMA, which have been prepared for public comment with the intention of presenting to Parliament in 2026.

### Analysis

The implementation of changes to the Public Audit Act (made in 2018) concerning material irregularities is a positive development. These allow the AG to take remedial steps following the identification of a 'material irregularity', which is any fraud, theft, breach of a fiduciary duty or contravention of the law that could result in a material financial loss, the misuse or loss of a material public resource, or substantial harm to a public sector institution or the general public. The AG can refer a suspected material irregularity to a public body with the mandate and powers for dealing with that irregularity, such as the PPSA, the SIU or police, or the AG can make its own recommendations. The AG must take binding remedial action if these are not implemented, and where necessary, issue a directive to the accounting officer or accounting authority to quantify and recover the loss from the responsible person. If remedial action does not follow, the AG must issue a certificate of debt in the name of the relevant accounting officer or accounting authority. It is the responsibility of the relevant executive authority to recover the loss from the accounting officer or authority.[166] In 2023, the AGSA reported a noticeable impact on public sector accountability resulting from these enhanced powers. The AG noted that material irregularity notices often 'jolt' accounting officers into action.[167]

---

[165] https://pmg.org.za/committee-meeting/40076/

[166] Public Audit Act, sections 5A and 5B.

[167] Corruption Watch, 'Billions lost to material irregularities, but AGSA is making progress', published November 2023, https://www.corruptionwatch.org.za/billions-lost-to-material-irregularities-but-agsa-is-making-progress/ (accessed: July 2023), and AGSA 2023 Annual Report.

Regarding the update of the PFMA and the MFMA, it is a concern that planned reforms to this legislation have not proceeded with greater urgency. Given that these amendments (including changes to the definition of, and reporting requirements for, irregular expenditure) have not been made public yet, we were not able to provide specific comment on them. These amendments, once public, should be engaged with by NACAC, given the central role of the AGSA's findings on irregular expenditure as an indicator of non-compliance with law in South African public institutions.

**Key takeaways**

- The implementation of changes to the Public Audit Act (made in 2018) concerning material irregularities is a positive development, with the AGSA reporting a noticeable impact on public sector accountability resulting from these enhanced powers.
- Anticipated amendments to the PFMA and MFMA (not yet made public) should be monitored, given their potential significance with regards to the definition and application of the concept of irregular expenditure.

## 2.10. State-owned enterprises

### Main problems identified by the SCC and its recommendations

A substantial portion of the Commission's work was dedicated to corruption within SOEs, as they were the primary targets of state capture. The SCC identified improper appointments and dismissals as a key mechanism of state capture in SOEs. It raised two key concerns: the de facto unchecked power of ministers to make critical appointments to SOEs, and the lack of transparent, open, independent appointment processes.

The Commission's report provides a detailed proposal for a 'Standing Appointment and Oversight Committee'. It envisages inter alia that the Chief Justice, the LPC, and the Independent Regulatory Board of Auditors participate in constituting a committee for appointments to the boards and senior posts of SOEs.

### Nature of the President's response

The Presidency accepted 'the principle of greater transparency and rigour in the appointment of SOE boards and executive leadership' and the need for 'a process for the appointment of SOE boards that is not open to manipulation, including the involvement of independent panels with appropriate technical expertise to recommend suitable candidates to the relevant executive authority.' The initial response plan raised several, reasonable concerns with the model suggested by the Commission.

The Presidency promised that the principles of the Commission's recommendations would 'guide government's reform of board appointment processes to ensure greater transparency, scrutiny and checks and balances in the appointment of SOE board members'. It specifically committed to the following:

- The Presidential SOE Council to be tasked with considering a framework for appointments, in addition to its existing work of strengthening the SOE governance framework, which includes the introduction of overarching legislation governing SOEs and the determination of an appropriate Shareholder Ownership Model. This model would include the option of a centralised holding company, which would introduce more objectivity and transparency to appointments.
- Provision to be made in the final 'Guide for the Appointment of Persons to Boards and Chief Executive Officers of State-Owned and State-Controlled Institutions' for independent panels of relevant stakeholders and experts to play a role in nominating candidates to the relevant minister. To be finalised in 2023/24.
- The establishment of a central database of potential candidates (through a process of nomination and vetting) that can be appointed to the boards of SOEs, upon conclusion of the aforementioned Guide.
- A State-Owned Enterprises Bill and its regulations to codify the appointment process, to be finalised in 2022/2023.

### Summary of progress reported by the Presidency

In August 2023, the President stated that the draft National State Enterprises Bill would align the process for appointing SOE boards and executive management with the recommendations of the Commission, and that this new law would improve oversight, transparency and accountability of SOEs. The National State Enterprises Bill introduced the single shareholder model by establishing a holding company to supervise identified state enterprises. The draft legislation also envisages the disbandment of the Department of Public Enterprises, which was set up in the 1990s to exercise political and legislative control over SOEs. Since the latest government was formed in 2024, the ministry no longer exists.

The government reintroduced the National State Enterprises Bill to Parliament in January 2024 after it lapsed at the end of the Sixth parliament.[168] The Bill proposes the State Asset Management SOC Ltd to centralize governance of SOEs, with provisions for merit-based board appointments.

The Memoranda of Incorporation for State-Owned Companies have been reviewed to remove provisions for Board Procurement Committees and ministerial involvement in procurement processes.

The development of the 'Guide for the Appointment of Persons to Boards and Chief Executive Officers of State-Owned and State-Controlled Institutions' and the creation of a central database of potential candidates remain pending. These actions will be regulated by Regulations to be developed once the National Public Enterprises Bill becomes an Act.

### Analysis

The Presidency has pinned the majority of its SOE reform agenda on the National State Enterprises Bill. It is challenging to evaluate this package of reforms from the perspective of anti-corruption (versus the wider reform of the SOE model), because the President has not made clear the theory of change, specifically how the new ownership model will address, mitigate, or solve the structural and systemic problems in SOE *governance* demonstrated by the Commission. (We

[168] The Bill is currently in Parliament: https://pmg.org.za/bill/1208/

make no comment on the model's implications for operational efficiency, and its abilities to pursue developmental goals.)

The Commission itself made this criticism in response to the government's discussion document on vision and foundational elements for a centralised shareholder model and a state-owned holding company of SOCs dated 14 December 2021: '...the discussion document has little to say as to how, and why, its proposal for a state-owned holding company for SOCs will insulate the SOEs from state capture in the future.'[169]

The Bill is said to assist in insulating the large SOEs from political interference via their placement in the shareholding company. Certainly, the current version (B1-2024) of the Bill introduces some good provisions regarding the appointment of the first board of the holding company. Appointments are through an independent selection panel composed of a retired judge and two members of the National Executive appointed by the President, a person appointed by organised business and organised labour (respectively) represented in the National Economic Development and Labour Council (NEDLAC), and three persons appointed by the President who have been or are chief executive officers of public companies. They recommend appointees to the President. Future appointments to the board are on the recommendation of the Board and appointment by the President. NEDLAC deliberations on the Bill have seen amendments that support enhanced governance. For example, to address social partners' concerns about director removals, the holding company memorandum of incorporation will require the shareholder to publish reasons for dismissals (i.e. greater transparency), and a new clause requires the shareholder to provide written motivation for rejecting board-nominated directors.[170]

However, many of the concerns raised by the SCC remain unaddressed. The Bill does not specify how the boards and executives of SOEs subsidiary to the holding company will be appointed. In addition, there is no mention of how board appointments will be reformed in the case of public entities *not* transferred to the holding company. The Bill caters for the large public entities, such as Transnet, Eskom and so forth (some 13 entities), and not for the thousands of other entities at national, provincial and local government level.

International best practice suggests clear principles to guide appointment reform: appointment and removal should be governed by criteria of merit, performance and commitment to developmental mandate (and, per South Africa's transformation commitments, by representativity considerations); in order to guard against the introduction of patronage considerations into appointment and removal processes, independent bodies or persons should assume a role as check and balance within selection and removal processes; and appointment and removal processes must be open and transparent.

Aside from reforms to board appointment processes, other interventions are needed to insert safeguards against abuse of the procurement system in SOEs. As analysed above, the PPA contains some positive developments regarding enhanced transparency, and other integrity measures, for public procurement. However, under the current wording of the National Enterprises

[169] SCC Report, Part VI, Vol. 3 p. 220.

[170] 'National State Enterprises Bill: NEDLAC briefing', meeting of the National Assembly Portfolio Committee for Planning, Monitoring and Evaluation, 21 May 2025, Parliamentary Monitoring Group website: https://pmg.org.za/committee-meeting/40754/ (accessed: July 2025).

Bill, once SOEs are transferred to the holding company, the PFMA would no longer apply, nor the PPA once it is in force. This appears to be at odds with the push to harmonise the currently fragmented and vulnerable procurement framework. In a recent presentation to Parliament, the National Treasury has raised its significant concerns in this regard. The National Treasury and Department of Planning, Monitoring and Evaluation (DPME), custodian of the Bill, have, according to the Treasury, agreed that a hybrid application of the PFMA and the Companies Act should be considered, as a proposed amendment to the [National State Enterprises] Bill'.[171]

The Bill is not just introducing new governance measures – it is an entirely new economic and organisational model for a substantial portion of government. A legislative amendment of this scale is extremely time consuming. This Bill has taken years before being introduced into Parliament, and it will inevitably be delayed further as it is contested in the legislature. Other reform commitments by the Presidency will only be implemented after the Bill is enacted. This has led to a substantial delay in addressing the deep governance issues that continue to plague our SOEs, and gaps remain regarding reforms for the majority of public entities.

**Key takeaways**

- Government has positioned the National State Enterprises Bill as the significant instrument to address governance challenges in SOEs. The extent to which the Bill will in fact address such challenges is not yet clear, and it may be some time before the Bill comes into effect.
- For example, the Bill in its current version (B1-2024) introduces some robust provisions regarding the appointment of the first board of the holding company and new clauses regarding transparency on director removals. However, the Bill does not specify how the boards and executives of SOEs subsidiary to the holding company will be appointed.
- Under the current wording of the Bill, once SOEs are transferred to the holding company, the PFMA would no longer apply, nor the PPA once it is in force. This is worrying in view of the Commission's concerns with the need for harmonising legislation for public procurement. In July 2025, the National Treasury reported to Parliament that the Treasury and the DPME have 'agreed that a hybrid application of the PFMA and the Companies Act should be considered, as a proposed amendment to the [National State Enterprises] Bill'.
- The Bill caters for the large public entities (some 13 entities), and not for the thousands of other entities at national, provincial and local government level. It is not clear how governance challenges for these entities will be addressed.

## 2.11. New criminal offences

### Main problems identified by the SCC and its recommendations

The Commission recommended that the government consider creating a 'statutory offence rendering it a criminal offence for any person vested with public power to abuse public power vested in that person by intentionally using that power otherwise than in good faith for a proper

[171] 'National Treasury and FFC briefing on National State Enterprises Bill; with Minister', meeting of the National Assembly Portfolio Committee for Planning, Monitoring and Evaluation, 9 July 2025, Parliamentary Monitoring Group website: https://pmg.org.za/committee-meeting/41238/ (accessed: July 2025).

purpose'. The Commission explained that 'potential violations might range from the case of a president of the Republic who hands a large portion of the national wealth, or access to that wealth, to an unauthorised recipient to the junior official who suspends a colleague out of motives of envy or revenge'.[172]

The Commission was concerned about 'the extent to which certain public representatives failed to exercise their power, and the resultant massive losses to the fiscus and the suffering caused to vulnerable members of the public, [including] in respect of PRASA-related matters, and the premium that the Constitution places on accountability, perhaps it is time for South Africa to ensure that its public representatives fulfil their obligations by introducing a … sanction for what may be termed constitutional and political malpractice'.[173]

The Commission recommended that PRECCA be amended to introduce a provision criminalising the failure of persons or entities to prevent bribery. This is discussed in more detail in section 2.12 on private sector accountability.

### Nature of the President's response

The Presidency did not support or reject these recommendations, but it directed the DoJ&CD to research possible legislative provisions and their parameters and implications. This work was to be completed by December 2023.[174]

### Summary of progress reported by the Presidency

The Presidency's 2023 Progress Report confirmed this due date for completion of the research.[175]

The Judicial Matters Amendment Act (Act 15 of 2023), which commenced on 3 April 2024, added a new section 34A to PRECCA that creates an offence of failure by private sector entities or state-owned entities to prevent corruption.[176] Organisations can now be held liable if a person associated with them provides gratification to gain business advantages, unless the organisation can demonstrate it had 'adequate procedures' in place to prevent such corruption.

Regarding the creation of a statutory offence for abuse of public power, the recommendations of the South African Law Reform Commission (SALRC) are under discussion and evaluation in the DoJ&CD. This is expected to produce a draft bill by November 2025. Similarly, sanctions for constitutional and political malpractice are also being considered, with the SALRC recommendations under discussion and evaluation in the Department of Justice. This evaluation process is also expected to be completed by November 2025.[177]

[172] The President (2022: 60).
[173] The President (2022: 60).
[174] The President (2022: 60).
[175] The Presidency (2023: 18).
[176] Available at: https://pmg.org.za/bill/1133/
[177] The Presidency (2025: 15).

### Analysis

This section should be considered in relation to the earlier section on Executive accountability as the offences recommended by the SCC relate to conduct by public representatives as well as public officials.

The Presidency's progress reports provide no detailed information concerning research on these issues by the SALRC, nor could any related reference be found on the SALRC website[178] of any research, issue or discussion papers, or of any research report. In any event, the benefit of the creation of any new offences depends largely on the ability of law enforcement agencies to detect and prosecute that offence.

**Key takeaways**

- The amendment of PRECCA as recommended by the SCC is welcomed.
- It will be necessary to monitor publication by the DoJ&CD of the promised draft bill dealing with abuse of power due by November 2025.

## 2.12. Private sector accountability

### Main problems identified by the SCC and its recommendations

The Commission exposed the central role that private sector actors played in state capture, through direct involvement in procurement corruption, fraud and money laundering, but also by enabling corruption through the provision of professional services and in weakening institutions that stood in the way of state capture. Perpetrators, large multinational firms amongst them, included management consultants, advisors, accountants, auditors, lawyers, bankers and providers of goods and services.

The Commission did not make many direct recommendations for addressing the role of private sector actors in state capture, though many of the other recommendations are relevant (procurement reform, anti-money laundering reforms, and so on.) Four specific recommendations are relevant:

1. The Commission recommended amending of the Companies Act to permit applications for a director to be declared delinquent to be brought even after the two-year time bar, on good cause shown.[179] This would solve a straightforward problem identified by the Commission: it often takes many years for the facts of delinquency to be uncovered, and the two-year limit would prevent a company from holding such directors accountable (and ensure they do not serve on other boards in the future.)
2. The Commission recommended that PRECCA be amended to introduce a provision criminalizing the failure of persons or entities to prevent bribery, which would serve to 'strengthen the duty of private sector entities to put in place measures against bribery.'[180]

[178] Available at: https://www.justice.gov.za/salrc/index.htm
[179] SCC Report, Part I, p. 78.
[180] SCC Report, Part I, p. 854.

A private sector firm or incorporated SOE would be guilty of an offence under PRECCA if an employee or other person performing services for it offered or paid a bribe, *unless* that entity 'had in place adequate procedures designed to prevent persons associated with A from giving, agreeing or offering to give any gratification prohibited under Chapter 2.'

3. The Commission recommended introducing legislation for DPAs by which the prosecution of a corporation accused of economic crimes can be deferred on certain terms and conditions, primarily if they cooperate with and assist in investigation of offences. In the Commission's view, this would not solve, but would go some way to improving, the problem of 'the combatting of corrupt activities and money-laundering … being hampered by the onerous burden of proof upon prosecutors (whose tasks are frustrated by inadequate resources).'[181] The Commission proposed that DPAs (provided they are subject to oversight) could be a useful tool in that 'they enable investigators and prosecutors to become aware of corporate crimes from the perpetrators and hold them and their implicated employees and agents accountable while avoiding the harsh consequences of an indictment on innocent employees and other stakeholders.' However, the Commission stressed that a DPA should – as far as possible – be accompanied by the criminal prosecution of the implicated individuals to ensure that individuals are held accountable and to 'mitigate against any suggestion that DPAs allow the corporate criminal to "get away" with crime.'
4. The Commission recommended amending the Political Party Funding Act (PPFA) to criminalise the making of donations to political parties in the expectation of tenders, contracts or influence over government decisions. This is dealt with below in section 2.13.

The SCC also drew attention to the closure of bank accounts by banks and suggested that legislation be amended or introduced to add a requirement of fairness.

**Nature of the President's response**

The President committed to amending the Companies Act (review to be completed in late 2023) and PRECCA (to be included in the Judicial Matters Amendment Bill, to be submitted to Cabinet in late 2022) as recommended by the Commission. The President referred the question of DPAs to be considered by the SALRC as part of its review of the criminal justice system. This review was expected to be finalised at the end of the 2023/2024 financial year.[182]

Regarding banks, the Presidency's initial response indicted that:

- In terms of the Financial Services Regulation Act, the Financial Sector Conduct Authority has issued Banking Conduct Standards 3 of 2020, which requires banks to treat their customers fairly, including for bank account closures.
- National Treasury would review whether the current standards need to be strengthened to better protect retail customers from bank closures from a financial inclusion perspective, where closures are to comply with AML and other legislation.

[181] SCC Report, Part I, p. 816.
[182] The President (2022: 47-48).

### Summary of progress reported by the Presidency

The Companies Second Amendment Act (Act 17 of 2024), which commenced on 27 December 2024, amended section 162 to extend the time limits to five years for delinquency proceedings against directors implicated in serious misconduct.[183] The Judicial Matters Amendment Act (Act 15 of 2023), which commenced on 3 April 2024, added a new section (34A) to PRECCA that creates an offence of failure by private sector entities or state-owned entities to prevent corruption.[184]

The SALRC has considered DPAs as part of its review of the criminal justice system. It has finalised a discussion paper on NTR mechanisms, including DPAs.[185] The document was released to the public on 20 February 2025. Comments are reportedly being collated and analysed and are due to be factored into the report by July 2025.

In early 2024, the NPA adopted the Corporate Alternative Dispute Resolution policy. According to the NPA, Corporate Alternative Dispute Resolution 'is an important tool in the NPA's wider toolbox to extract accountability through punitive reparations, enhanced cooperation in criminal matters, and recovering stolen money swiftly to support broader law enforcement efforts.'[186] To be considered for Corporate Alternative Dispute Resolution, companies typically must pay back a significant amount of money, improve their anti-corruption policies and prevention methods, collaborate with law enforcement authorities and take disciplinary action against individual wrongdoers. The NPA is still able to proceed with prosecutions and asset forfeitures against the company's directors, employees or agents, even where a case against a corporate entity has been resolved using this mechanism.

### Analysis

It is unclear from the Presidency's progress reports whether the National Treasury has reviewed bank conduct standards.

It is understandable that the possibility of DPAs required research and an opportunity for public comments before summary implementation. It is hoped that the SALRC will finalise its report without undue delay so that a decision can be made for adoption into law.

The NPA's Corporate Alternative Dispute Resolution mechanism is an instrument of prosecutorial policy that does not require legislative reform. DPAs would be a different matter as the NPA is not empowered to enter into agreements with implicated parties nor to impose penalties, which is the purview of the judiciary (indeed, there are no explicit legal provisions for the conditional withdrawal of criminal charges in these cases.)[187] The Corporate Alternative Dispute Resolution mechanism also does not provide for transparency, oversight, or monitoring of compliance.

---

[183] Available at: https://pmg.org.za/bill/1170/

[184] Available at: https://pmg.org.za/bill/1133/

[185] Available at: https://www.justice.gov.za/salrc/dpapers/DP165-Project151-Non-TrialResolutions.pdf

[186] NPA (2024: 18). The policy is available at: https://www.npa.gov.za/sites/default/files/uploads/Annexure%20A%20PART%2051%20Corporate%20ADRM_0.pdf

[187] See https://dullahomarinstitute.org.za/acjr/acjr-publications/policy-brief-the-national-prosecuting-authority-directives-for-corporate-alternative-dispute-resolution-cadre-by-lukas-muntingh-and-jean-redpath

The SALRC draft report finds that the use of non-trial resolutions for economic crimes in South Africa would probably improve anti-corruption enforcement. However, a strong legal framework would need to be developed, and it would require careful consideration of the incentive structure for companies to enter into non-trial resolutions, given South Africa's comparably weak enforcement capability. The SALRC makes a number of detailed proposals for what that legal framework could look like and how non-trial resolutions and DPAs could work in South Africa, including the role of judicial oversight.

As emphasised by the SALRC, the SCC and other observers, the use of non-trial resolutions must accompany effective enforcement and prosecution of private sector actors in order to have any impact on the incentives of businesses to engage in corruption. The introduction of section 34A of PRECCA is an important development, but more guidance is needed about how this section is to be applied in practice, and it remains to be seen whether this will exercise a positive impact on the conduct of private sector firms. Without the threat of enforcement, it may prove to be a weak incentive for change.

The Commission did not make substantial recommendations concerning reforms to the private sector. However, the body of evidence contained in the Commission's report demonstrates serious vulnerabilities in the ways that private actors do business with the state – and with each other. Some of these vulnerabilities can be addressed through procurement reform, but others require a focus on the structure, activities, and anti-corruption controls of private sector firms themselves.

For example, both the Commission and the President in his response acknowledged the role of professional service providers as 'enablers' of corruption and state capture, and both have acknowledged the importance of addressing this issue. Yet neither party has engaged with the matter beyond consequence management for those persons and companies implicated in wrongdoing. There is a growing body of evidence on the role of enablers (especially in terms of illicit financial flows), which suggests that regulatory frameworks that are common in most jurisdictions, including ours – where 'professions' self-regulate to detect risks and report them – are not sufficient to address corruption risks.[188] The self-regulation regime puts firms in the role of both player and referee with profits on the line. There is a clear case for developing stronger oversight measures over professional activities that play a critical role in the facilitation of corruption, money-laundering, and other wrongdoing.

It is also important to consider regulatory interventions to change the 'ways of doing business' that create opportunities and incentives for corruption.[189] For example, all-service firms face conflicts of interest inherent in their business practice model. Auditors must conduct independent oversight and are mandated to act on irregularities they identify, but they may be disincentivised to do so if other arms of their firms are simultaneously engaged in high-paying work for the same client. Furthermore, legal and financial advisers are routinely employed to help clients evade accountability – while the same company conducts their audits. This is why the UK's Financial Reporting Council ordered the Big Four accounting firms to break up their audit and non-audit operations. This is one example of a structural problem and possible reform approach.

[188] See, for example, Arshinoff, Humphreys and Tassé (2022).
[189] See Thakur and Pillay (2022) and Open Secrets (2020).

On a broader level, greater corporate transparency is necessary and urgent. Beneficial ownership transparency and similar reforms would empower anti-corruption actors to detect and act against corruption and state capture (the creation of the Beneficial Ownership Register and new provisions in the PPA for capturing beneficial ownership data for public procurement are therefore welcome). Non-governmental actors have been the first movers in investigating many of the corruption cases before the Commission, and their tracking of the directorship and ownership of companies, shell companies, and other corporate vehicles was essential to unravelling state capture. Corporate transparency reforms that put vital information in the public domain could prove an effective use of the 'whole-of-society' approach espoused by the government and NACS.

**Key takeaways**

- Commitments to amend the Companies Act and PRECCA have been met, and these changes are now in place. Official guidance/policy on how section 34A of PRECCA is to be applied in practice is necessary.
- The SALRC review on non-trial resolutions should be finalised without delay, and the development of a non-trial framework should be a priority.
- Strong enforcement is required to hold corporate actors accountable, and to ensure that non-trial resolutions and the new PRECCA provisions work effectively as intended.
- Greater attention must be paid to regulatory reforms concerning the private sector, especially concerning professional enablers and corporate transparency.

## 2.13. Amendment to the Political Party Funding Act

### Main problems identified by the SCC and its recommendations

The evidence given at the Commission established a link between the corrupt manipulation of tenders and political party financing: 'Such a link can represent an existential threat to our democracy. It is inconceivable that political parties should finance themselves from the proceeds of crime, and yet there is alarming evidence to that effect.'[190] The Commission also canvassed the role of party politics in enabling corruption and state capture and in shielding party leaders from accountability.

Prosecution, in the Commission's view, would not be sufficient to address the problem, and the PPFA 'does not go as far as it should.' Therefore, the Commission recommended that the PPFA be amended to criminalise donations to political parties in the expectation of tenders or contracts as a reward.[191] In the Commission's view, for this to be effective, it would be necessary for the legislation to require external inspections both of tenderers and political parties by a designated authority with appropriate powers of search and seizure, and for significant monetary penalties to be imposed on both parties in the event of breach.

### Nature of the Presidency's response

[190] SCC Report, Part I, pp. 802-806.

[191] The Presidency (2022: 46); State Capture Commission Report, Part 1, Vol. 3, Ch. 4, p. 854.

The Presidency committed to implementing this recommendation alongside other consequential amendments that will be required following the approval of the Electoral Amendment Bill before Parliament at the time.[192]

### Summary of progress reported by the Presidency

The Electoral Matters Amendment Act (Act 14 of 2024) amended the Political Funding Act to make it an offence – punishable with a fine, imprisonment of up to five years or both – where donations are made to political parties, members, independent candidates, or representatives with the 'expectation' that they will 'influence' the awarding of tenders, licenses, approvals, or other government decisions. The Act commenced on 8 May 2024.[193]

### Analysis

The new provision in section 19(3) of the renamed Political Funding Act (PFA) creates the promised offence, which extends beyond only tenders. The provision does not require an explicit promise or undertaking in order to give rise to an 'expectation'; it requires only that the offender 'will influence' the award of a 'tender, licence, approval, consent or permission, or the relaxation of a condition or restriction in relation thereto'. The phrasing of these elements eases the burden of proof and makes any breach easier to prove. The creation of any new offence will only be as effective as the enforcement required to ensure compliance and accountability.

The Commission's proposed amendment is motivated by a concern over the influence on money over politics, and specifically the link between party financing and procurement corruption, and its body of evidence supports the need for greater transparency in politics and in state spending. It is therefore of significant concern that, in May 2025, the National Assembly voted to double the disclosure threshold and donations cap stipulated by the PFA, which were raised from R100,000 to R200,000 and R15 million to R30 million respectively. The portfolio committee had ignored objections from CSOs as well as a report prepared by the Parliamentary Budget Office, which warned that South Africa already exceeds global norms for private political donation limits.[194] The Budget Office's report revealed that the original thresholds lacked a clear foundation and rationale.[195] The National Assembly adopted the committee's recommendation and the matter is now before the President for his assent. The adoption of the new thresholds would significantly weaken the PFA's effectiveness as a tool for transparency and accountability in political financing.

**Key takeaways**

- Section 34A has been adopted and even strengthened beyond the SCC's initial recommendation. Its effectiveness will depend on enforcement.
- Recent attempts to increase the reporting thresholds will significantly weaken the PFA's effectiveness as a tool for transparency and accountability in political financing, making it difficult to enforce the new section 34(A).
- Given the role of party financing as highlighted by the SCC, this is a serious concern.

[192] The Presidency (2022: 48). Most of the other amendments to the PFA involved independent candidates.
[193] Proclamation Notice No. 165 in Government Gazette 50628 dated 8 May 2024.
[194] https://myvotecounts.org.za/na-votes-to-increase-secrecy-in-party-funding/
[195] See https://pmg.org.za/committee-meeting/40164/

Any further attempts to compromise the scope and efficacy of the PFA should be vigorously opposed.

## 2.14 Parliamentary oversight

### Main problems identified by the SCC and its recommendations

The Zondo Commission report was critical of Parliament's failure to intervene in corruption and state capture. It found that the legislature had failed to fulfil its oversight and accountability obligations because the governing party was determined to protect its leaders implicated in state capture, and it was unwilling to expose allegations of malfeasance to public scrutiny. The report found that Parliament's oversight powers and the tools available to it were generally sufficient for it to fulfil its constitutional obligation to hold the Executive accountable, but that these were not generally used effectively.

The report made a number of detailed recommendations on parliamentary oversight, including ensuring that it is properly resourced, establishing a committee to oversee the Presidency, considering the appointment of committee chairs from opposition parties, reforming the process of appointments to state institutions made by Parliament, ensuring that Members of the Executive are responsive and accountable, and monitoring, tracking and enforcing parliamentary resolutions. Most of these recommendations were directed to Parliament itself, though some concerned the interface between Parliament and the Executive.[196]

The Commission's findings on Parliamentary oversight can be summarised as follows:

- There has been a lack of political will to hold the Executive accountable. This is primarily attributable to the broader political environment, which disincentivises scrutiny of the Executive.
- There are a number of practical problems that hamper effective oversight, such as the lack of a system for tracking and monitoring the implementation of recommendations, etc. While these are not the primary cause of oversight failures, they exacerbate deeper issues and can be exploited by those wishing to avoid accountability.
- There is a need for practical mechanisms that can practically minimise the negative impact of the political environment, while respecting the democratic mandate of parties in Parliament.
- There is a need to address weaknesses in the interface between the Executive and Parliament, and specifically to track and monitor Parliamentary resolutions and Executive responsiveness.

### Nature of responses from the President and Parliament

The President, mindful of the separation of powers, did not comment on the recommendations directed to Parliament and limited its commitments to recommendations concerning the interface between Parliament and the Executive. Specifically, the Presidency acknowledged that it is necessary to determine whether the existing processes of reporting and accountability through the

[196] SCC Report, Part VI, Vol. 2.

Leader of Government Business (and any sanctions that may be imposed) are 'sufficient and appropriate' but did not make any commitments in this regard. It was also noted that the National Treasury would engage with Parliament to determine the most appropriate way to give effect to the Commission's recommendations on the funding of Parliament.

In November 2022, the National Assembly began formally processing the Zondo Report. The Rules Committee convened and adopted an Implementation Plan to deal with the Commission's recommendations.[197] In June 2023, former Speaker Mapisa-Nqakula presented a progress report on the implementation plan.[198] This progress report was the last update on these matters provided to the public to date, although information on progress can be gathered from the activities of individual committees. It is not within our scope to provide a detailed breakdown of Parliament's response to the SCC recommendations, but a summary of Parliament's decisions and actions has been developed by the Parliamentary Monitoring Group.[199]

**Progress reported**

The 2025 update states that the Leader of Government Business has interacted with Parliament's Presiding Officers on the recommendations in the President's Response that relate to the interface between Parliament and the Executive, and engagement between Leader of Government Business and Presiding Officers on relevant recommendations 'have taken place.' Budget allocation was confirmed in the 2023/24 Budget, but no information was provided on how the SCC's concerns about oversight functions being appropriately funded have been addressed.

The Rules Committee of the National Assembly considered and decided against adopting many of the SCC recommendations, finding that it has sufficient powers and did not require further intervention. A summary of key decisions made concerning the SCC recommendations is as follows:

- Parliament decided not to enact legislation protecting MPs from losing their party membership, and therefore their seats in Parliament, for exercising their oversight duties reasonably and in good faith, as it felt that MPs were already adequately protected.
- Parliament has appointed additional content advisors, legal advisors and researchers.
- The Rules Committee decided there was no need for further legislation or rules about reports by representatives of the executive to Parliament, ministers failing to attend portfolio committee meetings, or ministers failing to report back on remedial measures.
- The Rules Committee decided not to adopt any legislation on 'amendatory accountability' (i.e. where the Executive accepts that something has gone wrong and takes positive actions to remedy the situation in a substantial way).
- The Rules Committee did not agree with the recommendation that more chairpersons be elected from minority parties.

---

[197] Available at: https://static.pmg.org.za/221104RESPONSE_BY_PARLIAMENT_OF_SOUTH_AFRICA_TO_Zondo_C_reports.pdf?_gl=1*12vlaiz*_ga*MTgyMzUyNDc3NS4xNzE0NjQwNDY0*_ga_EBG7VD75NV*MTcxNTI1ODIxNC4xOC4xLjE3MTUyNjI5NDAuMC4wLjA

[198] Available at: https://www.parliament.gov.za/storage/app/media/Links/2023/6_june/30_June_2023/20230625_ACTION%20LIST_Final_pdf_230629_092834.pdf

[199] Available at: https://pmg.org.za/6th-parliament-review/articles/state-capture

- The Rules Committee decided not to amend its processes for parliamentary appointments and would continue to use 'existing best practices.'
- The National Assembly mandated the Speaker to maintain a comprehensive record of House Resolutions and to engage with the Leader of Government Business in cases of delays in responses or actions from the Executive.
- Measures to improve tracking and monitoring, including piloting of an electronic system and procedures for regular reporting on the implementation of house resolutions, have not been adopted. Parliament's 2023/2024 Annual Report noted that the new monitoring and tracking mechanism had not been developed and recommended leveraging existing Resolutions Tracking Mechanisms since House resolutions emanate from Committee recommendations. The use of the existing monitoring and tracking mechanism would be formalised during the 7th Parliament.
- The Rules Committee of the 6th Parliament did not decide whether to institute an oversight committee on the Presidency. It undertook a study tour to explore international best practice. The Rules Committee of the 7th Parliament has supported the creation of an oversight committee on the Presidency and is developing specific proposals in this regard. This work has been ongoing since October 2024.[200]
- Twelve cases of ethical breaches were referred to the Joint Committee on Ethics and Members' Interests. The 6th Parliament reported that eight were concluded and four were found to have breached the code of ethics and held accountable; another four were ongoing. There have been no further updates since the commencement of the 7th Parliament.
- The Committee noted that the previous code did not have provisions that dealt with some of the unethical conduct detailed in the Zondo report. A new Code of Ethical Conduct was adopted by the Committee in May 2024, shortly before the dissolution of the 6th Parliament, and ratified in October 2024.[201] The new Code provides for slightly stronger penalties for breaches and risk-based lifestyle audits (including members facing allegations of corruption), but no longer applies to any Member of Parliament who resigns or otherwise ceases to be a member.

### Analysis

Government has fulfilled its commitments to engage. However, without any information on the content of those engagements and any consequent decisions, it is impossible to determine whether the substantive questions raised about the legislative/executive interface have been addressed.

The Rules Committee decided against many of the recommendations as they were considered unnecessary. However, it tended to interpret the recommendations fairly narrowly. The core findings of the Commission with regards to failures of oversight were not examined and responded to in a holistic, programmatic and systematic way. If, as the Rules Committee finds, the rules are indeed sufficient (and they may well be), then how did the oversight failures of the previous Parliaments occur? The evidence of the SCC suggests that there were structural or systematic weaknesses in Parliamentary oversight that facilitated state capture, and that led to inadequate

[200] https://pmg.org.za/committee-meeting/39800/

[201] The Code was amended in November 2024. Available at: https://www.parliament.gov.za/storage/app/media/Ethics/Code%20of%20Ethical%20Conduct/Code_of_Ethical_conduct_V2.pdf

oversight more broadly. It has not been made clear how Parliament plans to address these questions or the impact of state capture on the legislature more broadly.

The decision to proceed with a committee to oversee the Presidency is an important step forward, and it should be finalised with urgency. The process appears to have moved very slowly over the past eight months, with only three political parties having made submissions.[202] The activities of the President and the Presidency are presently not subject to adequate oversight, particularly given the increasing number of programmes and bodies that are being established in the Presidency. An effective oversight mechanism that is ongoing, systematic, and programmatic is needed for the President and the Presidency. This means the activities and the outcomes of the work of the Presidency must be routinely scrutinised in a forum that is structured, predictable, resourced, supported by research, and open to the public. A portfolio committee is the best form for this kind of oversight.

Evidence supports the SCC's recommendation that oversight activities are in serious need of more resourcing. It is unclear whether there is a plan in place to take this forward, and the legacy report of the Sixth Parliament's Joint Committee on the Financial Management of Parliament shows dissatisfaction with the budget process:

> The Committee remains concerned that Parliament, although it is a separate arm of the State, is funded in the same manner as the Executive government departments. That Parliament is reliant on the Executive it is obligated to hold to account, is untenable. The slow progress in negotiations with the Minister of Finance towards a funding process that is appropriate for Parliament as a separate arm of State, remains of grave concern as it impacts Parliament's ability to execute its constitutional obligations of law-making, oversight of the Executive, and meaningful public participation. The Committee has since 2019 consistently recommended that Parliament's budget should be allocated in a separate process from that according to which the budgets of government departments and entities were allocated. In a meeting with the National Treasury held on 21 May 2021, it was agreed that as the appropriate process for the allocation of Parliament's budget was a policy matter, the discussions should most appropriately be between the Minister of Finance and Parliament's Executive Authority. Although Parliament's Executive Authority has since that meeting consistently reported discussions between the two parties were progressing well, the Committee's efforts to receive a joint briefing by both parties on progress made, have been unsuccessful.[203]

It should be noted that the national budget making process happens through the tabling of an act of Parliament, and that Parliament has more power to engage and amend the budget than has tended to be used by Parliament.[204]

---

[202] https://pmg.org.za/committee-meeting/40914/

[203] https://pmg.org.za/files/240328jcfinancialreport_1.pdf

[204] See for example here: https://www.dailymaverick.co.za/opinionista/2022-02-22-budgeting-for-a-future-hung-parliament-when-the-rubber-stamp-becomes-contested-terrain/

The evidence and analysis of the SCC shows that the failures of Parliamentary oversight, while they may have been exacerbated by structural weaknesses, were ultimately political in nature.[205] That is, they resulted from the political incentives and contestations that played out in the legislature. While reforms to Parliament's oversight functions may mitigate, to a degree, the negative impact of the political environment, they cannot address the core problems identified by the SCC. However, the composition of Parliament and the Executive have both changed significantly since the last election, resulting in new dynamics and practices arising within the institution. It is too early to assess how multi-party and coalition politics will change Parliament's oversight practices and the effectiveness of its oversight function.

One example of this is that, while Parliament declined to adopt any formal rules regarding the allocation of committee chairs to opposition parties, in practice, many more committees in the 7th Parliament are now chaired by members from different parties due to the formation of the Government of National Unity. Other changes are being noticed by observers, including the individual practices of committees and the way oversight meetings are run.[206]

**Key takeaways**

- No information has been provided about how questions about the legislative/executive interface have been addressed and resolved.
- Parliament has processed most of the SCC recommendations. Many have not been adopted as the Rules Committee deemed that Parliament was sufficiently empowered by the existing legislation and policy.
- The decision to proceed with a committee to oversee the Presidency is an important step forward, and it should be finalised with urgency.
- The composition of Parliament and the Executive have both changed significantly since the last election, resulting in new dynamics and practices arising within the institution. It is too early to assess how multi-party and coalition politics will change Parliament's oversight practices and the effectiveness of its oversight function.
- Close attention should be paid to how the existing oversight model is working in light of these changes.

## 2.15 Electoral system reform

### Main problems identified by the SCC and its recommendations

The Commission made recommendations for the consideration of amendments to the electoral system – specifically, to consider the adoption of a 'constituency-based (but still proportionally representative) electoral system', including substantial engagement with the 'majority recommendation' of the Van Zyl Slabbert report, and to consider constitutional amendments which would see the president of the country directly elected by citizens.[207]

[205] See also Pillay and Meny-Gibert (2023).
[206] See https://pmg.org.za/blog/Fivereflectionsonthe7thParliamentoneyearon
[207] SCC Report, Part VI, Vol. 4.

The Commission's concerns arose out of a sense of the limitations of the closed list proportional representation system: In this system, voters have no choice over the candidates selected to represent the party as these are determined by the party, limiting those politicians' accountability to voters, and limiting the rigour of their oversight of their own party's members' conduct (it incentivises party loyalty over programmatic commitment).

### Nature of responses from the President

The President's report acknowledged these concerns, but noted that, 'Due to the far-reaching consequences of the Commission's recommendations on electoral reform, they require an extensive process of consultation and deliberation that involves the whole of society. Among other things, this process would need to answer whether the deficiencies identified by the Commission justify revisiting previous decisions on these matters.'[208] The President's response also made reference to the original reasons for South Africa's choice of a proportionally representative system, i.e. a system that could, 'support reconciliation, nation building, peace and stability, and social and political reforms.'[209]

The President noted that the Electoral Laws Amendment Bill that was before Parliament (at the time) and argued that this process should first be concluded before making further commitments. He noted that the direct election of the President would require constitutional amendment and should be considered, 'by the various political parties represented in Parliament and by the Parliament's Joint Constitutional Review Committee.'[210]

### Progress reported

The Electoral Amendment Act of 2023 allows independent candidates to contest national and provincial elections. Further, a review of the electoral system is being undertaken by the Electoral Reform Consultation Panel, comprising academics and other experts on electoral reform, the public sector, and election administrators, whose final report will be delivered in August 2025.[211]

### Analysis

Regarding the proposal to directly elect the country's President, the Commission's reasoning was insubstantial,[212] and while there are arguments for and against such a significant change, the state has not responded to this proposal, nor does it appear to be an issue taken up in any notable way by civil society.

Regarding electoral reform, the Electoral Amendment Act of 2023 allows independent candidates to contest national and provincial elections; an amendment that was implemented just in time for the 2024 national elections. However, the Act does not provide for such candidates to do so on

[208] The President (2022: 59).
[209] The President (2022: 59).
[210] The President (2022: 59).
[211] The Presidency (2025: 16).
[212] See page SCC Report, Part VI, Vol. 4, p. 191 for the Commission's argument.

nearly an equal footing as members of political parties. This limitation in the Act has been highlighted by recent civil society submissions to the Electoral Reform Consultation Panel.[213]

There are widely varying proposals for electoral reform from different organised groups – from minor changes to the existing system (for example, a mechanism for voters to recall candidates mid-elections), to a major overhaul, such as a fully constituency-based system (proportionality, we should note, is currently enshrined in South Africa's Constitution). Electoral reform is a very complex issue, with potentially profound impacts for the character of South Africa's democracy. My Vote Counts, an NGO focused on supporting democratic participation, has cautioned that reforms should proceed slowly and carefully.[214] This is because of the high stakes of such change, and the need for major investment in electoral institutions, such as the Independent Electoral Commission (IEC), and long-running citizen education campaigns (New Zealand and Indonesia's electoral reform journeys, for example, proceeded incrementally, and over some 15 to 20 years).

The Global Network for Securing Election Integrity[215] suggests that electoral reform should be guided by the following principles: there should be political consensus-building for that reform – it must be considered legitimate by society; the process for reform should be transparent, inclusive, and informed by evidence; adequate timeframes and resources should be allocated to support the reform; and there should be clear accountability structures in place (clear leadership identified, oversight structures, and robust commitments to resourcing the process).[216]

[213] Civil Society Electoral Reform Panel's submission to the Electoral Reform Consultation Panel Call, dated 31 October 2024, and uploaded to the My Vote Counts website: https://myvotecounts.org.za/wp-content/uploads/2024/11/CSERP-Submission-31-Oct-2024-2.pdf (accessed: July 2025).

[214] My Vote Counts, 'Electoral reform is absolutely critical but should not be rushed' blog post, undated (circa 2024), https://myvotecounts.org.za/electoral-reform-is-absolutely-critical-but-should-not-be-rushed/ (accessed: July 2025).

[215] For more information see here: https://www.kofiannanfoundation.org/publication/launch-of-the-global-network-for-securing-electoral-integrity-gnsei/ (accessed: July 2025).

[216] Global Network for Securing Election Integrity, 'Principles for Democratic Electoral Reform Processes' October 2024, accessed on the International Idea website, https://www.idea.int/sites/default/files/2024-09/gnsei-principles-for-democratic-election-reform-processes.docx%20(002).pdf (accessed: July 2025).

# The Council's Work

As has been mentioned in Section 2. of Part 1, NACAC established workstreams appropriate to its mandate, in two separate phases of work, as well as setting up references groups as appropriate, consulting widely, and undertaking learning journeys. The Council undertook learning journeys to Kenya and Uganda (9 – 14 July 2003), Hong Kong (8 – 16 March 2024) and Lithuania (18 – 21 June 2024) in delegations comprised of representatives from government structures and law enforcement agencies, civil society organizations and other anti-corruption advisory bodies.

In Phase 1 (September 2022 – April 2024) the Council convened six workstreams: institutional architecture; procurement reform; monitoring and evaluation (MERL), legislation and transparency; whistleblower protection and communication. These workstreams gave rise to a number of advisories that were presented to the President.

## NACAC Workstreams

***Phase 1: September 2022 – April 2024***

| |
|---|
| The **Whistleblower Protection and Support** workstream conducted collaborative research with South African experts from civil society and undertook research visits to the Netherlands, Kenya and selected East European countries to learn about international good practice. It engaged extensively with the Department of Justice and Constitutional Development to find solutions to improve the legal and policy framework governing the support and protection of whistleblowers. This workstream developed two Advisories on whistleblowing. |
| The **Institutional Architecture** workstream convened a reference group of experts from civil society who provided research and advice. It engaged intensively with leaders from law enforcement agencies and organs of state with anti-corruption responsibilities, including at a workshop to collect data on problems faced by anti-corruption agencies. Based on this research the workstream recommended the creation of the Office of Public Integrity (OPI). |
| The **Legislative Reform and Transparency** workstream responded to recommendations from both the State Capture Commission and the NACS that transparency around and regulation of political party funding should be improved, and submitted two Advisories to the President on this matter. The workstream also hosted the NACAC "InDATA 2023- Leveraging the Power of Data and Technology to Counter Corruption" conference focused on using data analytics to combat corruption. |
| The **Public Procurement Reform** workstream established a reference group of experts from academia and civil society. A workshop, co-hosted by the United Nations Office on Drugs and Crime, allowed for input from different sectors of society and contributed to a rich evidence base that informed an Advisory to the President on the Public Procurement Bill, addressing several weaknesses in the Bill from an anti-corruption perspective. |

| |
|---|
| The **Monitoring, Evaluation, Reporting and Learning** (MERL) workstream researched the development of a monitoring system for the implementation of the NACS. It hosted a workshop to review and finalise the NACS Implementation Plan. Participants included the NACAC MERL Workstream and its Reference Group, other NACAC Workstreams, the NACAC Secretariat, representatives from the Department of Planning, Monitoring and Evaluation (DPME), the Human Sciences Research Council (HSRC), the WITS Centre for Learning on Evaluation and Results, and the GIZ Transparency, Integrity and Accountability Programme. The workstream prepared an Advisory for the President on the mainstreaming of the NACS through government. |
| The **Communications** workstream led the collaboration with broader society by hosting the National Anti-Corruption Dialogues in 2023 and 2024. The workstream also held stakeholder retreats and conducted community engagement activities at a provincial level, including anti-corruption roadshows attended by representatives from law enforcement agencies, civil society organizations, local municipalities, the Public Service Commission, the South African Social Security Agency (SASSA), religious organisations, traditional leaders, academia, labour, agricultural groups, youth groups, women structures, ethics committees and other provincial offices. |

*Phase 2: April 2024 – August 2025*

As mentioned earlier, with 18 months of its term remaining, NACAC decided to focus on three key areas, namely the Office of Public Integrity, strengthening law enforcement agencies and communications.

| |
|---|
| NACAC Workstream One: Establishment of the Office of Public Integrity (OPI)<br><br>In August 2024 the workstream convened a workshop to develop key research questions on the establishment of the OPI. They engaged the Special Investigating Unit's Executive on 8 November 2024 on the NACAC recommendations for the OPI and conducted further research on the requirements for the implementation of the Office of Public Integrity.<br><br>NACAC also engaged with the Portfolio Committee on Justice and Constitutional Development, which invited NACAC to a meeting convened on May 14, 2025, where NACAC presented its recommendations on the OPI and the similarities and differences of the proposal and the 21st Constitutional Amendment Bill, a private member's bill, that proposed the establishment of an independent anti-corruption agency. |
| NACAC Workstream Two: Strengthening Law Enforcement Agencies<br><br>This workstream undertook activities in response to the findings in Volume 6 [part 2] of the Zondo Commission's report that law enforcement agencies (LEAs) were weakened, making some complicit in corruption and seriously affecting their ability to address corruption, and to give effect to Pillar 5 of the NACS which seeks to strengthen LEAs. Research was commissioned to examine the applicable legislation, mandates, independence and resourcing of these agencies and to make recommendations to enhance the capacity of LEAs. |

*NACAC hosted a stakeholder workshop on the 26 May 2025 at which research on the OPI and the strengthening of law enforcement agencies were presented to allow representatives from state and non-state sectors to provide their feedback.*

NACAC Workstream Three: Communication and Stakeholder Engagement

In November 2024, NACAC members participated in the Futures Literacy Laboratory (FLL) to explore the intersection of gender and corruption in preparation for the national anti-corruption dialogue on December 9, 2024. By participating in the FLL, NACAC members of were equipped to use the future as a lens to reframe their present challenges and opportunities, enhancing their ability to navigate and influence an unpredictable and complex landscape.

NACAC and the Platform to Protect Whistleblowers in Africa (PPLAAF) convened a conference in March 2025 to generate actionable recommendations for protecting and supporting whistleblowers ( Error! Reference source not found.). The recommendations are:

1. Establish an independent whistleblowing authority.
2. Reform the Protected Disclosures Act in line with international good practice.
3. Introduce rewards for whistleblowers, since studies prove that this works.
4. Strengthen reporting systems to ensure that disclosures lead to substantive change.
5. Expand the definition of retaliation and include a range of intimidation.
6. Public education and cultural transformation.

# Enhancing Corruption Investigation and Prosecution in South Africa

## Introduction

1. **South Africa is currently reviewing its anticorruption institutional architecture as mandated by its National Anti-Corruption Strategy (NACS) 2020-2030, adopted in 2022.** On 29 August 2022, President Cyril Ramaphosa established the National Anti-Corruption Advisory Council (NACAC) to advise the government on the *preventative measures, institutional capabilities and resources* that are required to proactively curb a recurrence of state capture and to prevent fraud and corruption in South Africa. At the request of the NACAC, the World Bank has agreed to prepare a series of policy briefs on strengthening South Africa's anticorruption framework, including corruption prevention and enforcement functions.

2. **This policy brief addresses the anticorruption *enforcement* function, i.e. achieving accountability for corruption offences through the criminal justice processes of *investigation and prosecution*.** The analysis and recommendations are based on a review of South African legislation and consultations with South African practitioners and policymakers in May 2025. This policy brief complements a separate policy brief on corruption prevention supporting the establishment of an Office of Public Integrity (OPI) with the recommendation that the OPI's functions are limited to non-criminal law anticorruption standards relating to conflict of interest management, financial disclosure, public education, and lifestyle audits, among others.

3. **Both the National Development Plan and the NACS emphasize the need to strengthen dedicated anticorruption bodies rather than envisaging the establishment of a single overarching body.** The focus of this policy brief is accordingly on strengthening existing institutional capability to support anticorruption enforcement including criminal investigation of corruption and the prosecution of corruption cases. Such strengthening should address, among other issues, the institutional independence, mandates, operational coordination, access to case-related intelligence, and skills and professional standards of anticorruption entities. The policy brief builds on the relevant international standards, including the following:

- UN Convention Against Corruption (Article 36).[1]
- European Partners Against Corruption, Anti-Corruption Authority Standards.[2]
- Jakarta Statement on Principles for Anti-Corruption Agencies.[3]
- Colombo Commentary on the Jakarta Statement on Principles for Anti-Corruption Agencies.[4]
- OECD Anti-Bribery Convention (Article 5) and peer review country monitoring reports by the OECD Working Group on Bribery, including reports on South Africa.[5]

## Institutional arrangements for corruption investigation and prosecution

4. **South Africa's anticorruption institutional framework is characterised by a multiplicity of agencies and structures mandated with enforcing anticorruption legislation.** Prevention functions have been dealt with separately and this policy note examines the institutional architecture for investigating and prosecuting corruption. The first part of the policy brief deals with corruption investigation starting with the allocation of mandates among law enforcement agencies. This is

[1] www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.
[2] www.epac-eacn.org/fileadmin/Documents/Recommendations/Anti-Corruption_Authority_Standards.pdf.
[3] www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf.
[4] www.unodc.org/documents/corruption/Publications/2020/20-00107_Colombo_Commentary_Ebook.pdf.
[5] See, in particular, July 2025 Phase 4 report on South Africa. www.oecd.org/en/publications/oecd-anti-bribery-convention-phase-4-report-on-south-africa_32776d08-en.html.

followed by an examination of the framework for coordinating corruption investigations, as well as access to resources and information needed for investigations. The second part of the policy brief address the prosecution of corruption cases including identifying opportunities to strengthen the institutional framework for the National Prosecuting Authority (NPA) including the appointment of senior officials, the NPA's financial independence, and skills within the NPA. The policy note ends with recommendations for strengthening anticorruption enforcement capabilities including the investigation and prosecution of corruption cases.

5. **The mandate for criminal investigation of corruption is distributed across a range of law enforcement entities.** This includes the Directorate for Priority Crime Investigation (DPCI), also known as the Hawks, an independent unit within the South African Police Service (SAPS) with the mandate to investigate "priority crimes" including serious organised crime and corruption. This is in contrast to SAPS's more general mandate to investigate crime, which would accordingly include low-level corruption. In turn, the Independent Police Investigative Directorate (IPID) reporting directly to the Minister of Police has the mandate to investigate misconduct and criminal activity within SAPS, including corruption within SAPS. The South African Revenue Service's (SARS) mandate to investigate tax-related offences and financial crimes similarly means that it has a role in many corruption cases with tax crimes as a predicate offence. The Financial Intelligence Centre's (FIC) mandate to gather and analyse financial data to identify suspicious transactions as well as its forensic capabilities makes the FIC a key partner for investigations into financial crimes. These criminal investigatory functions contrast to the Special Investigating Unit's (SIU) administrative inquiries into maladministration and corruption in the public sector. While the SIU does not have criminal investigatory powers, its investigations into maladministration in many cases likewise uncover criminal offences which are referred to either law enforcement agencies for further criminal investigation or to the NPA for prosecution.

6. **The Investigating Directorate Against Corruption (IDAC) located within the NPA straddles criminal investigation and prosecution functions with a mandate covering both aspects of corruption enforcement.** Legal amendments to the NPA Act in 2024 established IDAC as a permanent prosecution-led unit within the NPA with criminal investigative powers to pursue serious, high-profile or complex corruption cases. This confers criminal investigatory powers to IDAC to conduct prosecutor-led investigations compared to the mandate of the NPA which focuses on prosecuting cases on behalf of the State. The Asset Forfeiture Unit within the NPA similarly performs an important anticorruption function regarding the recovery and forfeiture of assets derived from criminal activities including corrupt activities. This generally requires working closely with a variety of law enforcement agencies to trace and confiscate assets with a mandate complimentary to the SIU's civil recovery procedures for financial maladministration.

7. **Multi-agency approaches to anticorruption require a clear delineation of responsibilities and mandates to avoid duplication and jurisdictional conflict between entities.** This further necessitates appropriate coordination mechanisms between entities to share resources, leverage complimentary capabilities and adjudicate between jurisdictional disputes. The limited number of corruption-related convictions in South Africa, particularly in reference to state capture cases, has called into question the adequacy of the current institutional framework, including the duplication of functions and gaps in the legal and regulatory framework governing key entities.

## Mandates of corruption investigation authorities

8. **Under the United Nations Convention Against Corruption (UNCAC), States Parties are obliged to enact strong legal, institutional and policy frameworks to tackle corruption, including establishing specific bodies with mandates to combat corruption through law enforcement**. The Jakarta Principles recommend that anticorruption authorities (ACAs) '*be established by a proper*

*and stable legal framework, such as the Constitution or a special law to ensure continuity of the ACA.*[6] The Colombo Commentary reinforces this view:

> *'Experience from around the world has shown that where ACAs are effective, their success can pose a threat to their very existence. Successful prosecutions of high-level corruption can sometimes lead to political calls to either abolish ACAs or substantially curtail their powers. In order to protect ACAs from encroachments on their mandates, it is important that the legal framework establishing ACAs be designed to withstand hasty amendment'.*[7]

Given the history of specialised anticorruption agencies in South Africa, a legal basis founded on the Constitution would be ideal and a statutory basis would be preferable over a Presidential Proclamation.[8]

9. **In the context of a multiplicity of institutions mandated to fight corruption through law enforcement, it can be particularly challenging to specify each agency's substantive jurisdiction** (offences falling under their competence) in a manner that avoids conflict and ensures efficient cooperation and exchange of information. Where the mandate of the specialist anticorruption entity is limited to high-level corruption cases (so as not to overburden the body with low level corruption cases), it is crucial that the law prescribes precisely the factors for determining such jurisdiction to avoid abuse of discretion and conflicts of jurisdiction with other bodies.[9]

10. **The IDAC, the DPCI, the IPID and the SAPS each have a statutory mandate to address corruption and corruption-related offences**:

- the IDAC is responsible for 'high profile and complex' corruption offences;
- the DPCI – for 'priority crime' (serious, organised crime, crime that requires investigation at a national level, or crime which requires specialised skills to investigate);
- IPID – for corruption offences committed by members of the police; and
- the SAPS – for general corruption.

The laws establishing these entities and their associated regulations fail to define what might be regarded as 'serious', 'complex', 'high profile', or what might constitute a 'complex corruption offence' and 'a crime which requires specialised skills in its investigation', leading to significant overlap in investigative jurisdiction among these bodies.

11. **In line with the requirement of 'adequate independence' laid down by the Constitutional Court in the Glenister cases,[10] the IDAC, DPCI and IPID heads each have authority to select any case falling within its jurisdiction.** The selection of a case by the head of a specialist corruption body like the IDAC or the DPCI would deprive a body with a more general mandate, such as the IPID or the SAPS, from asserting jurisdiction. However, the absence of clear demarcation of the mandates of the IDAC and the DPCI increases the potential for conflict over cases. If the two specialist agencies, the IDAC

[6] Jakarta Statement on Principles for Anti-Corruption Agencies Jakarta, 26-27 November 2012, Principle 3 www.unodc.org/documents/corruption/Publications/2020/20-00107_Colombo_Commentary_Ebook.pdf

[7] Colombo Commentary, p 21 para 32

[8] The Khampepe Commission into the mandate and location of the Directorate of Special Operations (DSO or the Scorpions) established by President Thabo Mbeki in 2005, investigated the relationship and coordination between the DSO, the South African Police Service (SAPS), and intelligence agencies, especially as regards the investigation into organized crime and priority crimes. The ground for establishing the Commission and the reason cited for the subsequent dissolution of the Scorpions was unhealthy competition caused by their overlapping mandates. www.gov.za/sites/default/files/gcis_document/201409/khampeperptfinal-feb061.pdf

[9] A report by the Organisation for Economic Cooperation and Development (OECD) (2013), Specialised Anti-Corruption Institutions: Review of Models: Second Edition, OECD Publishing. P24 http://dx.doi.org/10.1787/9789264187207

[10] *Glenister v President of the Republic of South Africa and Others* 2011 (7) BCLR 651 (CC).

and the DPCI, both elect to investigate the same complaint, there is no mechanism in the law to determine which agency's selection prevails. No one agency can compel another to hand over the product of its investigation and instruct another to desist from any further investigation.

12. **The DPCI and the SAPS Detectives Units have developed internal criteria to be used for determining which body will handle a particular case.**[11] Criteria such as the scope, complexity, public interest and urgency of the case are each allocated points on a scale, and if the points add up to more than 80%, the cases must be referred to the DPCI. Where there is a disagreement about the appropriate entity to handle the matter, the determination by the head of the DPCI prevails. There is no such dispute resolution mechanism between the IDAC and the DPCI.

13. **The situation is further exacerbated by the fact that there is currently no central database of all reported criminal complaints relating to corruption that is accessible to all the anticorruption enforcement agencies.** SAPS requires its staff to record all criminal complaints in the national Case Administration System (CAS). In terms of the NPA Act, IDAC does not have automatic access to the CAS database and its case selections are not automatically registered on the CAS system. In addition, the DPCI is the body designated to receive reports from individuals in positions of authority obliged to make reports of certain known or suspected corrupt activities under section 34 of Prevention and Combating of Corruption Activities Act (PRECCA). The DPCI maintains a record of such reports but does not automatically share this information with other agencies. The NPA also receives referrals from non-criminal anticorruption investigation bodies like the SIU, the Auditor General and the Public Protector. Record of these referrals also do not make their way onto the CAS system, unless they are also reported to the SAPS.

14. **This means that the IDAC and the DPCI agencies may only discover that they are investigating the same matter once they have both taken statements from the same witnesses, or worse, they are ready to arrest a suspect**, only to find the suspect had already been offered immunity from prosecution in exchange for testimony in court from another entity. Duplicating investigations could happen unwittingly and still have dire consequences in court proceedings when witnesses are confronted with conflicting statements under oath made to different agencies. They could also happen deliberately, to thwart the efforts of another agency for nefarious purposes. Consequently, legislative amendments are needed to address jurisdictional overlaps.

## Coordination of corruption investigations

15. **Multiple coordination structures have been established in South Africa to address enforcement of corruption.**

- **The National Priority Crimes Operational Committee (NPCOC**) was established in April 2023 in terms of Section 17J of the SAPS Act. The functions of the *Operational Committee shall be to: (a) review, monitor and facilitate the support and assistance of the respective Government departments or institutions to the DPCI as well as secondments to the DPCI, and address problems which arise regarding such support and assistance.*

    - **The Fusion Centre** (a sub-committee of the NPCOC) aims to bring together in one place investigators and prosecutors seconded to contribute their specialised expertise and experience to maximise the detection, prevention, investigation and prosecution of *corruption-related* cases. The Fusion Centre follows an intelligence-driven approach in investigating corruption and it uses data and information analysis. It also expedites the processing of cases, reducing delays in finalising cases. The agencies that form part of the Fusion Centre, work within their legislative mandates and enhance the quality and depth of each inquiry. The South African Anti-Money Laundering

[11] See presentation by the head of the DPCI to the Parliamentary Committee on Police: https://pmg.org.za/committee-meeting/17552/

Integrated Task Force (SAMLIT) facilitates the sharing of information, providing access to financial transactional information.

- **The OECD Task Team**, (a sub-committee of the NPCOC) established to enhance foreign bribery investigations, is coordinated by the DPSA and co-chaired by the NPA and the DPCI management. It convenes monthly to discuss foreign bribery cases, exchange feedback and address bottlenecks.

- **The Integrated Task Force** was introduced by the NPA early in 2022 to enhance the monitoring and collaboration on cases related to the Zondo Commission's recommendations. The meeting is chaired by a Deputy National Director in the NPA, is attended by all relevant units within the NPA (such as the Investigating Directorate (ID now IDAC), the Asset Forfeiture Unit (AFU), the National Prosecution Service (NPDS), Specialised Commercial Crimes Unit, etc) as well as the DPCI, Special Investigating Unit (SIU), Financial Intelligence Unit (FIC) and SARS. Initiatives flowing from this meeting include the conception of the Advisory Panel, which consists of experts within the ID, SCCU and DPCI as well as *ad hoc* experts who are invited in accordance with the needs of specific case requirements. This is supported by an integrated Top 10 Priority Committee that monitors specialised commercial crimes cases, as well as other priority cases in greater detail.

- **The Interdepartmental Committee on Anti-Money Laundering** chaired by National Treasury coordinates the process to exit the grey list, and has been reporting regularly to Cabinet, and the Justice and Crime Prevention and Security (JCPS) Cluster on its progress. This committee consists of many of the same participants as the DPCI's ACTT/NPCOC and the NPA's Integrated Task Force.

16. **On coordination, the NACS expressly envisages that the ACTT, or its replacement structure, [the NPCOC] should continue to 'coordinate operational matters related to investigations, prosecutions and criminal and civil recovery of assets.'** The NACS envisages an overarching coordinating structure that will support the implementing agencies by having each agency agree to an implementation, monitoring and evaluation schedule. This suggests that the aim of coordination is to improve accountability rather than to play any meaningful role in managing operations. The 'operational coordination activities' that the existing coordination bodies undertake appear to be limited to compiling lists of reported cases for purposes of receiving progress reports and addressing any resourcing challenges. They do not address jurisdiction disputes or allocate cases between agencies. Rather, they increase risks of information leaks and other integrity lapses.

17. **An approach to manage investigations, prosecutions or asset recovery cases through inter-agency coordinating structures presents risks to operational efficiency and potential undue interference in cases.**[12] Requiring investigators and prosecutors to report on their cases to persons outside of their organisational framework may well infringe on the exercise of autonomous decision-making required in serious corruption cases and risks subjecting them to undue outside influence**.** This

[12] A similar concern is raised in South Africa's OECD Anti-Bribery Convention Phase 4 Report, 2025 at para pp62-3 under the heading *Commentary*. '*The lead examiners thus recommend that, with a view to preserving the integrity and effectiveness of its investigations and enforcement actions, South Africa (i) reassess the relevance of the participation in the OECD Task Team, the NPCOC and the Fusion Centre of individuals and entities who are not playing a direct role in advancing cases and are not subject to the same confidentiality rules; and (ii) if the participation of non-state stakeholders in these forums is maintained, develop and implement specific procedures to regulate the sharing of information and prevent potential conflicts of interest when discussing foreign bribery across agencies and across forums,'* accessible at www.oecd.org/en/publications/oecd-anti-bribery-convention-phase-4-report-on-south-africa_32776d08-en.html

function should be left to line management in the mandated agency**.** Clarifying the mandates of the respective bodies in the law as proposed above, will reduce, if not eliminate the need for an operational coordinating body. The entity mandated in the law to deal with a matter, will be responsible and accountable for the resolution of the matter.

18. **If there are cases that cut across agencies, they should be managed *ad hoc* based on a task force or joint investigation approach.** The need to establish a joint investigation task team is an issue that should be determined, in the first instance, by the head of the respective lead agency with jurisdiction in the matter. Through coordination or approval of the case prosecutor (or a higher-level prosecutor), other agencies should supply personnel and resources to the team. In this way, coordination can be managed by overarching guidelines for inter-agency cooperation where needed to ensure the exchange of information and resources in crossing cutting cases.

## Access to intelligence on corruption, undercover operations and surveillance

19. **Access to reliable intelligence on the corruption threat in the country is critical to effectively addressing corruption.** In the context of limited resources and high levels of corruption, access to reliable intelligence on the scope and scale of the problem, must inform case selection and priority setting. Modern law enforcement agencies around the world rely heavily on crime intelligence capability, integrated with case-related information to produce analysis that informs pro-active case selection and the direction of on-going investigations. To be effective, anticorruption agencies must have legal powers to carry out covert surveillance, intercept communications, conduct undercover investigations, access financial data and information systems, monitor financial transactions, freeze bank accounts, and protect witnesses.[13]

20. **In the current institutional framework DPCI is granted crime intelligence powers while IDAC's powers are limited in this area despite its importance to detecting and investigating corruption cases.** The DPCI is entitled to '*gather, correlate, evaluate, coordinate and use crime intelligence in the performance of its functions*'. In addition to its access to the Crime Intelligence component within SAPS, the DPCI relies on its Priority Crime Management Centre (PCMC) to conduct a national threat assessment that informs its threat-based investigations. Section 7 of the NPA Act no longer authorizes the IDAC to *gather, keep and analyse information relating to offences*'.[14] The result is that the head of IDAC may select cases of her own accord, but is not authorised to base the selection on the analysis of information gathered in-house. This undermines proactive case selection.

21. **Both prior to case selection and once cases are under investigation, access to financial information, intelligence, and evidence is critical.** This includes financial information produced by institutions including the Financial Intelligence Centre (FIC), the South African Revenue Service (SARS) and the Financial Surveillance Department at the Reserve Bank.[15]

22. **The FIC Act authorises the FIC *to assist* in the identification of the proceeds of unlawful activities**; the persons involved in money laundering activities and in combating money laundering activities. The FIC has extensive regulatory and administrative powers to access information from

[13] A report by the Organisation for Economic Cooperation and Development (OECD) (2013), Specialised Anti-Corruption Institutions: Review of Models: Second Edition, OECD Publishing p 13 http://dx.doi.org/10.1787/9789264187207

[14] The Scorpions, the IDAC's predecessor, was authorised by statute to 'gather, keep and analyse information relating to offences' within its mandate. The Khampepe Commission however found that the Scorpions had in fact unlawfully established intelligence gathering capabilities, that went beyond the ambit of its information gathering mandate under section 7 of the NPA Act.

[15] The FATF Recommendations emphasize the importance of inter-agency coordination in law enforcement to effectively combat money laundering with corruption as the predicate crime. FATF guidance suggests that countries should have mechanisms in place to facilitate the timely and secure exchange of information, including financial intelligence and investigative data.

domestic financial and other accountable institutions. It can also exchange information with international counterparts. It supports law enforcement agencies specified in the FIC Act by processing, analysing and interpreting information disclosed to it, and obtained by it, under the Act, and provides the reports it produces for use in investigations and prosecutions.[16] The FIC is also authorized and has developed expertise in-house to produce forensic evidence, based on the application of specialised scientific methods and techniques, pertaining to the flow of financial transactions and the links between persons, and between persons and property.[17]

23. **SARS is empowered by various tax-related laws to conduct criminal investigation into statutory tax offences**, in addition to powers to conduct other administrative and audit related inquiries. SARS has jurisdiction over general offences concerning the wilful non-compliance of various obligations relating to tax administration as well as more serious tax evasion offences. Only a senior SARS official may authorise the investigation of a tax-related criminal offence within SARS, and only a senior SARS official may lay a complaint with the SAPS or the NPA regarding a statutory tax evasion offence.[18] All tax-related investigations are triggered by information gathered by SARS, making SARS the complainant in all criminal investigations for tax related offences.

24. **In exercising their authority under the tax laws, senior SARS officials have extensive information gathering powers.** In the context of a criminal investigation a SARS official may request that material be provided under oath or solemn declaration, in accordance with the requirements of certain sections of the Criminal Procedure Act. SARS officials may conduct a formal enquiry before a presiding officer; authorise an application for a search warrant and conduct search and seizure operations. Laws, such as FICA[19], POCA[20], and PRECCA[21], and the Drugs and Drug Trafficking Act, oblige SARS to support the SAPS, the NPA, the and the FIC and other agencies in criminal investigations, particularly in the investigation of corruption and of money laundering activities. It does not, however, have a mandate to conduct these investigations on its own. South Africa is party to the Convention on Mutual Administrative Assistance in Tax Matters and has concluded more than 20 tax information exchange bi-lateral agreements and includes automatic exchange of information provisions in several double taxation agreements. These initiatives significantly extend SARS' information gathering reach, increasing the likelihood of information relating to tax non-compliance and serious corruption offenses coming to the attention of SARS.

25. **SARS is therefore an important partner in tackling serious corruption**, whether by supporting a tax investigation into an identified corruption suspect or by providing tax information to support a corruption and asset recovery investigation. SARS officials are uniquely suited to supporting inter-agency task teams on corruption.

26. **Anticorruption authorities around the world, regard the skills and capabilities to run complex undercover operations and surveillance, as critical to effectively combatting corruption.**[22] The Directorate of Special Operations (DSO or Scorpions) disbanded in 2009, had developed capability to infiltrate its members into criminal organisations, identify and recruit sources in areas of interest and handled its own agents and informants. Undercover work was undertaken as reasonably necessary for the purposes of investigating and prosecuting the matters it was authorized to investigate. These same capabilities have not been granted to IDAC and the organisation requires speedy and reliable access to digital tools to securely remove and preserve the integrity of evidence in digital format. It needs the forensic capacity to access, analyse and present the product of this

[16] In terms of section 3(1)a, aA and b of the Financial Intelligence Centre Act, 2001
[17] Section 3(2)(aA) of the Financial Intelligence Centre Act, 2001
[18] Section 245(1) of the Tax Administration Act, 2011
[19] Financial Intelligence Centre Act, 2001
[20] Prevention of Organised Crime Act, 1998
[21] Prevention and Combating of Corrupt Activities Act, 2004

analysis in court. It is unlikely to secure fully its own in-house capability. The Joint Initiative on Crime and Corruption Sub-Committee (JICC) of NPCOC, set up to mobilize business support for a Digital Evidence Unit to support prosecution of state capture cases as part of the country's efforts to be removed from the Financial Task Force (FATF) "grey list". Corruption investigations at all levels require access to this capability, but IDAC will need to work to secure priority access for its investigations.

27. **Corruption investigations often require expert testimony on a wide variety of topics, from complex procurement processes to prove corrupt influence to demonstrating complex financial flows set up disguise their true nature, origin or destination.** A Shared Forensic Capability (SFC) Division is being established within the FIC to provide forensic analytical resources to law enforcement agencies within the NPCOC. Its primary focus will be on high-end, complex financial crime cases involving money laundering and terrorist financing. The Division's core mission is to produce forensic evidence derived from the analysis of financial transactions, to support law enforcement agencies in disrupting and prosecuting criminal networks. It will also provide forensic evidence through financial transactions analysis, as per recent amendments to the FIC Act. The Division will produce forensic reports or affidavits and support exhibits, annexures which will be used by law enforcement agencies (LEAs) in judicial or court processes. Electronic Case Management software that interfaces with court technology, particularly to support the discovery process in criminal prosecutions is an essential of the trade for a prosecuting anticorruption body. Priority access to these capabilities will be crucial to IDAC's ability to effective and pro-actively investigate corruption cases.

28. **Appropriate training and specialised skills are mentioned both in Art 36 of UNCAC and in the Glenister II cases as a critical component to ensuring effectiveness of an anticorruption authority.** Specialisation requires a firm foundation in basic training. It becomes much more difficult to provide more advanced techniques required in more complex cases, if the basic foundation is absent. Specialist skill to investigate and prosecute high level corruption is in short supply in South Africa. The head of the NPA and IDAC have both publicly raised concerns about the dearth of applicants for its special investigator posts.[23] The DPCI, IPID and SAPS receive more applicants for low level posts, filling specialist posts remains a challenge. There is intense competition for investigative skills among various public sector bodies such as the SIU, various regulatory bodies, and in the private sector where investigators can command much higher salaries.

29. **When the Scorpions was first established, a critical component of the resourcing strategy was to recruit young graduates, with a promise of advanced training at Quantico in the United States and at Scotland Yard in the UK.** These training programmes produced a cadre of young Scorpions with the basic skills required to conduct corruption investigations. New IDAC recruits, particularly if they are not recruited from the SAPS, will need to undergo basic operational skills, such as tactical driving, physical fitness, physical and electronic surveillance, and conducting operations; and investigation techniques, such as conducting witness interviews, crime scene and evidence handling and testifying in court. None of this training is currently available in IDAC and may well explain the lack of applicants to investigator posts, quite apart from issues of remuneration. IDAC currently offers neither basic nor advanced training for new recruits.

## The National Prosecuting Authority

30. **The National Prosecuting Authority (NPA) plays a pivotal role in the administration of criminal justice.** It is the only body with authority, derived from the Constitution, to institute, conduct and discontinue criminal proceedings on behalf of the State.[24] IDAC, located within the NPA, is the

[23] Exodus of NPA financial investigators to private sector and SIU fuelled by salary disparity – Batohi see https://www.dailymaverick.co.za/article/2024-11-20-exodus-of-npa-financial-investigators-to-private-sector-and-siu-fuelled-by-salary-disparity-batohi/

[24] Section 179(2) of the Constitution empowers the NPA to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental to instituting criminal proceedings. The National

only body in South Africa with the statutory authority[25] to conduct both its own investigations and institute its own criminal proceedings relating to *serious, high-profile or complex corruption, commercial or financial crime cases* and any contravention of a list of common law and statutory offences involving dishonesty (including all corruption offences under PRECCA). Prosecutors in the Specialised Commercial Crimes Unit (SCCU) typically prosecute *priority* corruption cases that are investigated by the DPCI. All prosecutors may prosecute police corruption cases dealt with by IPID and *general* corruption cases investigated by the SAPS committed in the jurisdiction in which they are authorised to prosecute.

31. **The effectiveness of the NPA has, however, been undermined by a history of leadership instability and undue influence with the State Capture Commission finding that the NPA was not spared efforts to weaken and undermine its role and function.** Given the institution's history and its current levels of effectiveness in dealing with serious corruption cases, various proposals have put forward to amend the NPA Act to enhance the independence of the institution. Ensuring the independence of the NPA is even more critical in the context of the NPA housing IDAC.

## Appointment, Removal and Security of Tenure of Senior Officials

32. **The South African Constitutional Court has considered the importance of safeguarding prosecutorial independence by guaranteeing an appropriate selection process and preventing arbitrary dismissal of the National Director of Public Prosecutions (NDPP).[26]** In a key ruling on the issue, the Court quoted from a Venice Commission report[27] stating:

> *'It is important that the method of selection of the general prosecutor should be such as to gain the confidence of the public and the respect of the judiciary and the legal profession. Therefore professional, non-political expertise should be involved in the selection process. However, it is reasonable for a Government to wish to have some control over the appointment, because of the importance of the prosecution of crime in the orderly and efficient functioning of the State, and to be unwilling to give some other body, however distinguished, carte blanche in the selection process. It is suggested, therefore, that consideration might be given to the creation of a commission of appointment comprised of persons who would be respected by the public and trusted by the Government.*

More recently the Consultative Council of European Prosecutors[28] added: "*[t]he appointment/election of prosecutors general should not only be transparent, following established, objective criteria for the choice of candidates and free of undue interference, but also be perceived as such by the judicial and prosecutorial communities in particular, in addition to the public in general. This is important to foster not only trust within the judiciary and prosecution services but also, crucially, public trust in the justice system"*.

---

Prosecuting Authority Act, 1998, is the law giving effect to the constitutional injunction that prosecutors exercise their functions without fear, favour or prejudice.

[25] National Prosecuting Authority Act, 1998 (Act 32 of 1998) and National Prosecuting Authority Amendment Act, 2024 (Act 10 of 2024)
https://www.justice.gov.za/legislation/acts/acts_full.html

[26] *Democratic Alliance v President of the Republic of South Africa and others* (263/11) [2011] ZASCA 241; 2012 (1) SA 417 (SCA) (1 December 2011) at para [78]

[27] Established in May 1990, the European Commission for Democracy through Law, known as "the Venice Commission", acts as the Council of Europe's advisory body on constitutional matters.

[28] Consultative Council of European Prosecutors (CCPE) *Opinion No. 19 (2024) on Managing Prosecution Services to ensure their Independence and Impartiality*, Strasbourg, 29 October 2024 accessible at https://rm.coe.int/opinion-no-19-2024-of-the-ccpe/1680b25297

33. **When appointing the incumbent NDPP in December 2018, the President[29] departed from previous practice by enlisting the assistance of a panel of individuals from the legal fraternity and other independent institutions** established in terms of chapter 9 of the Constitution to advise him on the appointment of suitable candidates. Following a process of nominations, shortlisting and interviews that were open to the media, the advisory panel proposed five candidates for the NDPP position. The President selected a candidate from the list provided and appointed the NDPP in terms of section 179 of the Constitution. In October 2022,[30] the President, in his response to the recommendations of the Zondo Commission, announced that legislative amendments would be introduced to ensure greater transparency and consultation in the process for selection and appointment of the NDPP, drawing on the process adopted for the selection of the current NDPP. NACAC recommends that a process for the appointment of the NDPP be adopted that ensures the candidate's 'apolitical stance, impartiality, neutrality, integrity and competence'.

34. **Appointment processes for the head of IDAC should include similar provisions to ensure adequate oversight and independence.** The Constitutional Court in the Glenister II decision concluded that political involvement in the leadership selection and direction of the police, while an imperative under the Constitution,[31] is not consistent with the level of independence required for a specialised unit dealing with priority corruption cases. Glenister III[32] emphasised that ensuring that Parliament can exercise effective oversight of an executive decision to appoint or dismiss the head of an independent corruption agency is critical.

35. **Adequate independence requires special measures ensuring their employment security to enable them to carry out their duties vigorously.** The court left it to the legislature to provide for this level of parliamentary involvement in the appointment and dismissal of the head of the DPCI, which it has yet to affect. In addition to the corruption *investigation* functions of the head of the DPCI, which was the subject matter of judicial scrutiny in the Glenister decisions, the IDAC head also exercises full prosecutorial powers over serious corruption offences, in addition to investigation responsibility. This places the head in a special category of officials in the NPA, deserving of appointment and removal protections equal to those of the NDPP, and perhaps even more insulated from executive control. The same selection, tenure and removal processes adopted for the NDPP should consequently be applied to the head of the IDAC. The NDPP, as the person responsible for the NPA should be included in the selection process, as is the case of all other NPA Act senior management appointments.

36. **Practices around the appointment, removal and discipline management of senior NPA leadership are similarly critical.** While international norms are not prescriptive about the precise relationship between the prosecution and the executive branch of government, this being a matter for the domestic legal culture and norms to determine, appropriate safeguards must be put in place to protect the prosecution from undue interference.[33] The behaviour of prosecutors toward high-level public officials might be influenced by the role of political authorities in determining prosecutors'

[29] Press Statement by the President accessible at www.gov.za/news/media-statements/president-cyril-ramaphosa-appointment-national-director-public-prosecutions

[30] Response by President Cyril Ramaphosa to the Recommendations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud, October 2022

[31] Section 207(1) of the Constitution bestows upon the President the responsibility to appoint the National Commissioner of the police service, and section 207(2) requires the National Commissioner to exercise control over the police in accordance with the national policing policy and directions of the Cabinet member responsible for policing. Glenister II para [30]

[32] *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* [2014] ZACC 32

[33] The appropriate degree of independence was discussed extensively in the judgment of *Glenister v President of the Republic of South Africa and Others* (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC) ; 2011 (7) BCLR 651 (CC) (17 March 2011) and *McBride v Minister of Police* **[2016] ZACC 30**; **2016 (2) SACR 585** (CC); **2016 (11) BCLR 1398** (CC) at para 31.

careers. Decisions on appointment, promotion, discipline and dismissals determined by politicians can decrease independence. If prosecutors may be removed by representatives of the executive or the legislature, both direct and indirect political pressure is enhanced.[34]

37. **The NPA Act currently provides for extensive executive involvement in and control over the appointment and removal of senior leadership positions in the NPA.**

- The President, after consultation with the Minister responsible for Justice and the NDPP, appoints all senior managers of the NPA, including up to four deputy national directors and (approximately nine provincial) directors of prosecution. The Directors are vested with original power to make prosecutorial decisions within defined territorial boundaries. (s10, 11 and 13)

- The Minister for Justice, after consultation with the NDPP appoints all deputy directors of public prosecutions. Deputy Directors constitute the core of middle-management in the NPA, along with Chief Prosecutors who manage prosecutors in the lower courts. (s15)

- The President may suspend any NDPP, Deputy NDPP or Director, for misconduct; (ii) on account of continued ill-health; (iii) on account of incapacity to carry out his or her duties of office efficiently; or (iv) on account thereof that he or she is no longer a fit and proper person to hold the office concerned.(s12(6) and (7)

- The President may remove a director after obtaining approval from Parliament. (s12(7)

- The Minister of Justice may from time to time, in consultation with the NDPP and after consultation with the Directors, prescribe the appropriate legal qualifications for the appointment of a person as prosecutor in a lower court. (s16(3))

- The Minister, after receiving advice from the National Director shall, create a structure, by regulation, in terms of which any person may *report* to such structure *any complaint* or any alleged improper conduct or any conduct which has resulted in any impropriety or prejudice on the part of a member of the prosecuting authority, *and determining the powers and functions of such structure*. S22(5)

38. **South Africa's well documented history of political interference in the functioning of the NPA during the period of state capture, suggests that more robust safeguards from political control are appropriate.** Consideration should be given to the establishment of a National Prosecutorial Council, such as that recommended by the Venice Commission,[35] with a composition including prosecutors from all levels, but also with substantive representation of other actors such as lawyers or legal academics, to take control of appointment, professional standards, career progression and dismissal.

[34] The United Nations Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 07 September 1990 accessible at https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors and the International Association of Prosecutors (IAP) Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors accessible at www.icj.org/wp-content/uploads/2014/03/IAP-Standards-of-professional-responsibility-duties-rights-prosecutors-instruments-1999-eng.pdf The standards serve as benchmarks for prosecutors' ethics, independence, and professional duties.

[35] The *Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific,* OECD (2020) See also the Consultative Council of European Prosecutors (CCPE) CCPE Opinion No. 18 (2023) on *Councils of Prosecutors as key bodies of prosecutorial self-governance* accessible at rm.coe.int/opinion-no-18-2023-final/1680ad1b36

39. **The NPA's Office for Ethics and Accountability (OEA), established in 2023, is a newly created internal mechanism aimed at promoting ethical conduct and accountability among prosecutors in South Africa.** The OEA has two primary functions: to manage and investigate complaints against members of the NPA, and to cultivate a culture of ethics within the organisation. These functions are carried out through two internal divisions: the Ethics Management and Advocacy Division (EMAD), which focuses on promoting ethical norms and preventive strategies, and the Complaints Management and Investigation Division (CMID), which handles the intake, processing, and resolution of complaints from the public and NPA staff. Efforts to cultivate a culture of ethics within the organisation by promoting ethical norms and preventive strategies can be undertaken internally. The proposed National Prosecutorial Council can, however, play an important independent oversight role in setting the framework for ethical conduct, vetting of staff dealing with high-level corruption, merit-based recruitment of prosecutors including competence and integrity evaluation, and overseeing discipline management.

## Financial Independence of the NPA

40. **The NPA Act prescribes that the budget of the NPA must be prepared by the Department of Justice, in consultation with the NDPP and that the Director-General of the Department of Justice serves as the Accounting Officer for the NPA.** The Auditor-General as far back as 2002 has called for the financial independence of the NPA from the Department of Justice and this view has been supported by a variety of stakeholders including the NPA. Amendments to section 36(1), (2) and (3) of the NPA Act could be affected by using language provided for in laws governing institutions established in terms of chapter 9 of the Constitution. In relation to the budget of the NPA, provision could be made for its approval directly by Parliament. In relation to the appointment of its own accounting officer, the amendment could simply provide for the appointment of a suitably qualified and experienced official for the purpose of assisting the National Director in the performance of all financial and administrative functions pertaining to the NPA. Separate accounting for IDAC expenditure should also be reinforced.

## Prosecution Skills

41. **Merit-based recruitment of prosecutors, including competency and integrity evaluation, is an essential safeguard against improper influence over the exercise of prosecutorial discretion.** The stakes in prosecuting society's most powerful demand the highest level of skill and competence the state can muster. Criteria for qualification as a prosecutor, compared to the qualifying standards for legal practitioners in the private sector practising as attorneys and advocates, reveals the following disparity:

- No more than a recognised three-year legal degree obtained at a university in South Africa is sufficient to secure appointment as a prosecutor in the magistrate's court;[36] while a minimum four-year LLB qualification is required for entry into the legal profession as a legal practitioner.[37]
- A prosecutor may acquire the right to appear in any court (including the high court, supreme court of appeal and the Constitutional Court, after three years' experience as a prosecutor of a magistrates' court of a regional division.[38] No further vocational training, additional practice-related training or examinations are required. By comparison, a person intending to be

[36] Section 16(2) and (3) of the NPA Act provides that a person who obtains such legal qualifications may be appointed as a prosecutor and in terms of the Regulation which provides that – '*The appropriate legal qualifications for the appointment of a person as a prosecutor in a lower court as contemplated in section 16(3) of the Act are a recognised three-year legal degree'*

[37] Section 26 of the Legal Practice Act sets out the *26. Minimum qualifications and practical vocational training for legal practitioners.*

[38] *Section 25(2) of the NPA Act*

admitted and enrolled as an advocate in private practice must serve under a practical vocational training contract with an advocate of at least 3 years-experience as an advocate for an uninterrupted period of 12 months and a candidate attorney can be admitted by the court as legal practitioner only after serving under a contract of articles with an attorney with at least three years in practice for an uninterrupted period of 24 months, (alternatively 12 months and an additional number of hours of structured course work).

- Legal practitioners wishing to practice must, in addition, pass a rigorous competency-based examination or assessment for candidate legal practitioners and pupil advocates. Courses in subjects such as constitutional practice; professional legal ethics; high court magistrate's court and criminal court practice are examined. The training provided is standardized by the Legal Practice Council in terms of norms and standards.

42. **The NPA aspirant prosecutor programme is a 6-month practical legal training programme for newly qualified prosecutors but not all prosecutors who join the NPA undergo basic training to become prosecutors.** The training has not been benchmarked or approved by the Legal Practice Council and is not recognised by the Council as constituting equivalent legal training or recognised as a period of vocational training for purposes of prosecutors entering into legal practice as a private practitioner. This greatly limits the career mobility of prosecutors. Working with the Legal Practice Council to develop a practical vocational training and competency-based assessments for prosecutors that allow for their greater mobility in the profession, will attract more high-quality applicants to the NPA.

43. **The lack of competitive salaries is often raised as a reason for failing to attract quality candidates from outside the NPA.** Prosecution services around the world are seldom able to compete with private sector salaries. They, however, make up for lower salaries with other attractions, such as excellent training opportunities, opportunities to gain experience faster than in the private sector and a belief in the worthiness of the cause of fighting for victims of crime. Strengthening the professional training for prosecutors so that professional training for prosecutors should be brought on par with that of their counterparts in the private sector, will provide a more solid foundation for building prosecutorial competence across the board. It would further provide the kind of foundation upon which to build the specialist skills required to address complex corruption cases.

# Recommendations

44. **Recommendations draw on the findings emerging from the review of the institutional framework for anticorruption enforcement and stakeholder consultations.** This includes recommendations related to reforms to the institutional framework for law enforcement agencies with a role in criminal investigation of corruption. Key issues include clarifying mandates, establishing processes for interagency coordination, access to intelligence, and capacity building. The final set of recommendations deal with reforms to the NPA as the last link in the anticorruption accountability chain. Proposals include strengthening appointment practices for senior officials, securing the financial independence of the NPA, and expanding on the professional standards for prosecutors to build capacity within the NPA.

## Recommendations regarding corruption investigation

***Clarify investigation mandates***

1. **Legislative amendments are needed to address jurisdictional overlaps.** It is recommended that the NPA Act be amended to clearly define the mandate of IDAC to exclusively investigate corruption at the highest levels of government and in the private sector. One option is to include in its mandate cases that match one of the following conditions: 1) a corruption crime committed by certain categories of public officials (politicians serving in the executive and

legislative branches, senior members of the judiciary, the security, law enforcement and prosecution sectors and senior public servants and senior management in state owned enterprises and private sector institutions); or 2) public-sector corruption with the bribe or crime proceeds above a monetary threshold regardless of the perpetrator's position. The specific criteria should be clearly framed in the law.[39]

- **Such amendments would give IDAC exclusive jurisdiction to investigate these cases and decide over the selection of cases falling within its mandate.** The law should expressly preclude other law enforcement bodies from investigating cases falling within the mandate of the IDAC, unless IDAC has specifically referred the case to that authority for investigation. IDAC should also be able to take over other corruption cases (not within its primary jurisdiction), if they are important and instrumental in detecting or investigating cases in its core jurisdiction (for example, when investigating a petty bribe or low level official can uncover a larger corruption scheme or a high-level public official involved). The power to take over such cases outside of the IDAC's core jurisdiction should be limited by the clear link to the main jurisdiction and the need to properly justify it.
- **The DPCI corruption mandate should be defined as those cases falling outside the mandate of the IDAC**, and in addition meet the criteria for priority corruption investigations, i.e. corruption that is serious, organised, crime that requires investigation at a national level, or crime which requires specialised skills to investigate. IPID and SAPS could retain the mandate to investigate police corruption and general corruption respectively (except for cases within IDAC's and DPCI's mandates). The criteria developed between the DPCI and SAPS for determining which body will handle a particular case can continue to govern allocation of cases between the DPCI and SAPS.

***Interagency coordination***

2. **The NPA should set up a protocol (guidelines) governing joint investigative task teams and clarifying issues such as the objectives, plans, resources, modalities of operation and reporting.** Addressing overlapping mandates and the jurisdiction of agencies should reduce reliance on overly bureaucratic interagency coordination structures. After delineation of the investigative mandates, the entity mandated in the law to deal with a case, should be responsible and accountable for the investigation, prosecution and asset recovery resolution of the matter. Interagency coordination structures are not suited for managing investigations, prosecutions or asset recovery in specific cases. If personnel and other resources of other entities is required, the lead agency should convene a joint investigative task team with the prosecutor's approval.
    - **The NPA's guidelines should also determine procedures for the communication and transfer of information on matters within the operational scope of another institution**, and for the formal transfer of investigations between institutions. In the event of a genuine dispute arising from more than one entity asserting jurisdiction over a case, the law should assign responsibility to prosecutors above a certain rank in the NPA to determine which entity will assume responsibility for the matter.

[39] See for example Article 216, part 5, of the Criminal Procedure Code of Ukraine regulating the exclusive jurisdiction of the National Anti-Corruption Bureau of Ukraine as an example of an ACA whose jurisdiction specifies its focus on high-level public officials and other serious corruption offences. See also the mandate of the Indonesian Corruption Eradication Commission (KPK)Art 16 of the Law No.30/2002 on the Corruption Eradication Commission sets a financial threshold.

***Access to intelligence for investigations***

3. **To strengthen proactive detection and investigation of high-level corruption, IDAC's capabilities to access intelligence and financial information, conduct undercover operations and surveillance should be upgraded.** This will require amendments to the NPA Act to provide for the IDAC's capacity to gather, keep and analyse information relating to offences falling within its mandate. This includes empowering IDAC to rebuild basic capability in house to conduct undercover operations and surveillance, recruit sources in areas of interest and handle its own agents and informants. In line with Justice Khampepe's recommendations, legislation governing the gathering of strategic intelligence on the country's corruption threat should provide for IDAC input into and access to intelligence products; and legislation should provide for IDAC's formal participation within the National Intelligence Coordinating Committee (NICOC).
4. **Conclude a Memorandum of Understanding between the IDAC and the FIC** to facilitate collaboration on the exchange of financial intelligence in the following areas:
    - the role of the FIC in producing financial intelligence on serious corruption threats to feed into the IDAC's proactive case selection and case prioritization processes,
    - agree protocols to ensure that intelligence falling within the IDAC mandate is speedily directed to IDAC,
    - agree to dedicate analyst capacity to fast-track requests from IDAC for information and access to data held by the FIC,
    - otherwise providing priority assistance on requests for information in specific corruption and money laundering cases emanating from IDAC,
    - provide for secondment of personnel in joint operations,
    - agree protocols to be followed by FIC forensic specialists conducting forensic analysis for IDAC court-directed investigations,
    - ensure secure channels of communication for sharing financial intelligence and confidential case-related information between the two institutions, and
    - share access to tools and technology in the analysis of big data; and otherwise share training and other opportunities to improve knowledge, skills and expertise of personnel in both institutions.
5. **Conclude a Memorandum of Understanding between the IDAC and SARS** to ensure the IDAC can harness the information and capability available in SARS in the interests of addressing high profile, complex corruption cases. In particular,
    - provide for criteria to facilitate the speedy and secure exchange of tax-related information as envisaged by section 73 of POCA, at the request of IDAC,
    - ensure secure channels of communication for sharing tax-related information and confidential case -related information between the two institutions,
    - agree on mechanisms to avoid duplication of activities and ensure optimal utilisation of resources,
    - agree on protocols for conducting joint tax/serious corruption investigations, alternatively provide for governance protocols in respect of SARS officials forming part of an IDAC investigation task team, and
    - conduct joint training and provide other opportunities to improve knowledge, skills and expertise of personnel in both institutions.

***Law enforcement capabilities***

6. **Secure IDAC's expeditious access to digital evidence capability and forensic analytical resources.** This includes concluding a service level agreement with the SAPS's Digital Evidence

DRAFT

Lab to prosecute state capture cases and priority access to the services of the FIC's Shared Forensic Capability (SFC).

- Provide IDAC, either through in-house capacity or through government-wide procurement, with effective access to secure private forensic accounting and other expert/specialist services.
- IDAC should procure Electronic Case Management software that interfaces with court technology, particularly to support e-discovery processes in criminal trials.

7. **In the short term, explore with international partners the renewal of training opportunities for new IDAC recruits.** In the longer term, the IDAC and the DPCI should join forces to develop a training programme for new recruits into high level or specialised investigation posts.

## Recommendations regarding prosecution

***NPA appointment practices***

8. **Amend the NPA Act to provide for a transparent, competitive and merit-based appointment process for the NDPP.** The process adopted by the Judicial Services Commission for the appointment of judges, provides useful guidance precedent.[40]
    - The law should provide for the establishment of an Appointment Commission to advise the President on the appointment of suitable candidates. The Appointment Commission should be comprised of persons with *professional, non-political expertise* and include individuals widely respected by the public, and individuals trusted by government.
    - In selection of persons to serve on the Appointment Commission, due consideration must be given to '*whether a reasonably informed and reasonable member of the public will have confidence*' that the selection process will yield a suitably independent candidate, because '*the appearance or perception of independence plays an important role in evaluating whether independence in fact exists.'* Public confidence in mechanisms that are designed to secure independence is indispensable.
    - The amendment should specify the nomination process, evaluation criteria, standards or benchmarks to be applied in the assessment of the characteristics required in section 9(1) of the NPA Act, i.e. 'ex*perience, conscientiousness and integrity to be entrusted with the responsibilities of the office concerned'* that will be applied by the Appointment Commission.
    - Assessment of the candidate's integrity should be an essential part of the selection process. The candidate should fail the assessment if there are reasonable doubts in their integrity, including financial integrity (e.g. assets and expenses disproportionate to the lawful income). Any conclusions of other bodies should not be prejudicial for the Commission's assessment.
    - Commissioners should be required to apply assessment ratings for each criterion applied in respect of each candidate and that the ratings of each assessed candidate be made available to the President and to the public for purposes of selecting the final candidate.
    - Consideration should also be given to limiting the term of the NDPP's appointment to 7 years from the current 10 years. This will bring the tenure of the NDPP in line with that of the Public Protector, provided for in section 183 of the constitution.

[40] The JSC website sets out the process in detail, accessible at https://www.judiciary.org.za/index.php/judicial-service-commission/about-the-jsc

9. **Apply the same selection, tenure and removal processes adopted for the NDPP to the head of the IDAC**, in line with international standards. Include the NDPP in the selection process.

***Financial independence***

10. **Amend sections 36(1), (2) and (3) of the NPA Act to provide for the financial independence of the NPA** in line with international standards, using language provided for in laws governing institutions established under chapter 9 of the Constitution.
    - In relation to the budget of the NPA, stipulate its approval directly by Parliament.
    - In relation to the appointment of its own accounting officer, provide for the NDPP to appoint an Accounting Officer; alternatively, the repealed provisions of the NPA Act that provided for an accounting officer for the Directorate of Special Operations (DSO) could serve as a template for the amendment.

***Professional standards in the NPA***

11. **Develop a practical vocational training and competency-based assessments for prosecutors** that allows for increasing their expertise and improving their mobility in the profession, in order to attract more high-quality candidates to the NPA. The NPA should reassess and bring on par professional qualification for prosecutors with that of their counterparts in the private sector.
12. **Consider establishing a National Prosecutorial Council as recommended by the Venice Commission and international standards on prosecutorial governance bodies.** The proposed National Prosecutorial Council or a similar governance body should introduce a framework for ensuring ethical conduct of prosecutors, through vetting of staff dealing with high-level corruption, their merit-based recruitment, including competence and integrity evaluation, and discipline. The respective governance body should comprise external legal professionals and persons of high ethical standing.

DRAFT

# Appendix U: Acknowledgements

NACAC wishes to acknowledge the contribution of the following technical assistance and development partners who supported its research, consultations and public engagements: Transparency, Integrity and Accountability Programme of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), The European Union (EU), the Institute for Security Studies (ISS), and the United Nations Office on Drugs and Crime (UNODC).

The Council further acknowledges the contributions of individuals and organisations who participated in the research and drafting of NACAC's Advisories.

## Procurement Workstream: Advisory on Strengthening Anti-Corruption Elements of the Public Procurement Bill

Dr M Khanyile
Prof J Klaaren
Dr T Nombembe
Prof G Quinot
Ms P Reyburn
Dr R Watermeyer
Auditor General of South Africa
Corruption Watch
Public Affairs Research Institute

## Transparency Workstream: Advisory on Strengthening the Political Party Funding Act to Manage Corruption Risks and Improve Transparency in South Africa

AmaBhungane Centre for Investigative Journalism
Civil Society Working Group on Party Funding
Corruption Watch
Council for the Advancement of the South African Constitution
Department of Public Service and Administration
Financial Intelligence Centre
Helen Suzman Foundation
Human Sciences Research Council
Inclusive Society Institute
My Vote Counts
University of Sussex

## Whistleblower Protection Workstream: Advisory on the Appointment of a Retired Judge as Whistleblower Protector of South Africa

Active Citizens Movement
Department of Justice and Constitutional Development

GIZ
South African Independent Human Rights Advocacy Group
Special Investigating Unit
Whistleblower House
University of Cape Town

## Public Education and Communication Workstream:

Ahmed Kathrada Foundation
Corruption Watch
Deutsche Gesellschaft für Internationale Zusammenarbeit
Mobilise Foundation
Office of the Public Service Commission
Platform to Protect Whistleblowers in Africa
Premier's Offices (Nationally)
Soul City Institute
The Department of Monitoring and Evaluation
The Department of Public Service and Administration
The Government Communication and Information System
The Special Investigating Unit
The United Nations Office on Drugs and Crime
The World Bank

## Monitoring, Evaluation, Research and Learning Workstream:

Ms Sunelle Bruwer
Mr Dugan Fraser
Dr Salomon Hoogenraad-Vermaak
Mr Isaac Kabini
Ms Andisiwe Mthatyana
Mr Jonathan Timm
Dr Victor Naidu

Lastly, but by no means least, NACAC extends its sincerest thanks to Professor Christopher Stone for his guidance and support and to the NACAC Secretariat and Office of the Director-General in the Presidency:

Ms Phindile Baleni
Ms Mildred Nkopane
Dr Victor Naidu
Ms Sefura Matlala
Ms Shirley Maboane
Mr Thokozani Mnthungwa

# Enhancing corruption prevention institutions in South Africa

## Introduction

**The World Bank has supported the Government of South Africa (GoSA) in responding to recommendations emanating from the State Capture Commission including various requests to support the strengthening of the country's anticorruption response.** This has included training on financial disclosure and lifestyle audits, policy advice related to legal and regulatory reforms in public procurement, a data maturity assessment to identify fraud and corruption risks in procurement, technical assistance to support public sector professionalization including the regulation of accountancy professional bodies and the professionalization of public financial management functions, and law enforcement strengthening, mutual legal assistance on money laundering and asset recovery through the Stolen Asset Recovery Initiative (StAR).

**At the request of the National Anti-Corruption Advisory Council, (NACAC) the World Bank has agreed to prepare a series of technical notes on strengthening South Africa's anticorruption framework including corruption prevention functions.** This note accordingly provides input to the ongoing discussion on the future institutional architecture for corruption prevention in South Africa. The note does not attempt to cover all aspects of corruption prevention systems and focuses on the possible institutional solutions to address existing weaknesses. It complements a separate note on the proposed reforms to strengthen law enforcement capabilities to address corruption.

## Corruption prevention functions and institutional arrangements

**Corruption prevention includes a broad range of functions aimed at reducing the occurrence of corruption with the overall goal of reducing reliance on reactive law enforcement measures.** Corruption prevention includes functions commonly given to specialized anticorruption agencies as well as secondary preventative functions performed by a variety of supporting institutions. While some countries maintain dedicated corruption prevention agencies, many state institutions contribute to corruption prevention without it necessarily being an explicit function. This includes the work of supreme audit institutions, public procurement regulatory authorities, public ombudsman, tax administration authorities, financial sector regulators, etc.

**Corruption prevention includes both deterrent and constructive anticorruption methods.** Deterrent prevention is aimed at reducing incentives for individuals to engage in corrupt activity, in many cases with an emphasis on transparency or raising the risk of being caught engaging in improper conduct – for example, open procurement data, asset disclosure, auditing, and corruption risk management. Constructive prevention in turn, aims to promote anticorruption by addressing social attitudes and norms related to corruption to promote ethical behavior and change intrinsic motivations for engaging in corruption – for example, ethics training, collective action initiatives, public education on the effects of corruption, and strategies to change social norms around corruption.

**Corruption prevention functions**. The corruption prevention system can be described through three dimensions:

DRAFT

- Policy: Anti-corruption strategy and implementation plans, risk assessments and research to collect evidence for the policy development, public education and awareness raising to explain and promote anti-corruption policies.
- Institutions: Anti-corruption institutions and personnel to support and oversee policy implementation.
- Measures: Institutional level measures, cross-cutting public sector measures, and measures beyond the public sector that create an enabling environment for corruption prevention.

**Policy dimension includes the following elements**: 1) strategy and implementation plans; 2) anti-corruption legislation; 3) monitoring and evaluation of policy implementation; 4) research, surveys; 5) education and awareness raising; and 6) stakeholder engagement.

**The institutional dimension includes the following**: 1) anticorruption agency; 2) anticorruption focal points (integrity or ethics officers); 3) Supreme Audit Institution, Ombudsperson; 4) evaluation and disciplinary boards for judges and prosecutors; 5) ethics or rules of conduct committees for elected officials.

**Public-sector cross-cutting measures may include the following**: 1) codes of conduct or ethics for various categories of officials; 2) management of *ad hoc* conflict of interests; 3) conflict-of-interest-like situations (gifts, incompatibilities, post-employment, etc.); 4) asset and interest declarations, lifestyle monitoring; 5) corruption risk screening (proofing) of legislation; 6) integrity vetting (background checks); 7) the maintenance of a register of corruption offenders; 8) reporting, whistle-blower protection; and 9) public procurement monitoring and oversight.

**Measures on the institutional level may include the following**: 1) risk assessment and mapping; 2) anti-corruption programs or integrity plans; 3) counselling, guidance to public officials; 4) integrity and ethics training of public officials; 5) merit-based recruitment and promotion; 6) mainstreaming integrity in HR management; 7) random distribution of cases; 8) staff rotation; 9) integrity testing; and 10) internal control and audit.

Annex 1 provides additional details on corruption prevention policy, institutions and functions.

## Corruption Prevention Institutions

**The UN Convention against Corruption (Article 6) obliges states to ensure the existence of a body or bodies, as appropriate that prevent corruption**, including by implementing, overseeing and coordinating anti-corruption policies, as well as increasing and disseminating knowledge about the prevention of corruption. States should grant such bodies the necessary independence to carry out their duties effectively and free from any undue influence. They also should provide the necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions. The 2020 UNCAC Review of South Africa noted that South Africa has not complied with its obligation to notify the secretariat of its corruption prevention authority or authorities.[1]

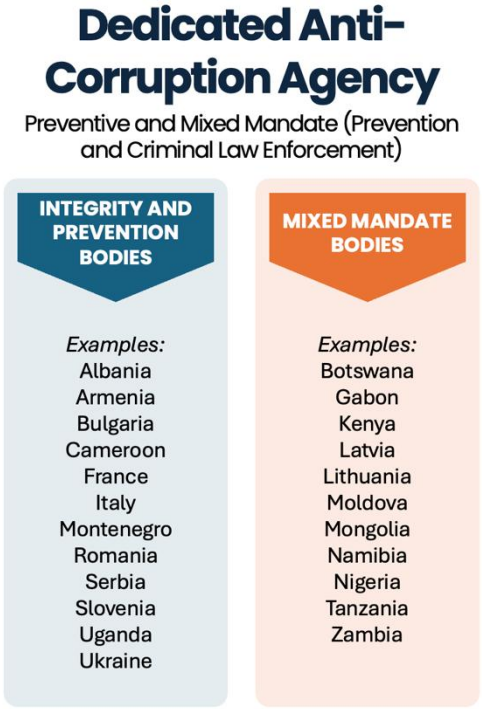
[1] UNODC (2020), Country Review of South Africa, page 5, www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2020_12_23_Final_Country_Review_Report_of_South_Africa.pdf.

DRAFT

**Preventative functions can form part of a multi-purpose anticorruption agency, be concentrated in a dedicated corruption prevention agency, or be dispersed among a range of actors in a multi-agency framework.** The appropriate model for a country will vary by the national context, the nature and scale of corruption, and the specific institutional challenges that inhibit effective corruption control. Reform proposals should consequently consider the specific challenges to corruption control that need to be addressed. Common constraints can include political interference, coordination challenges, weak systems and processes, or an absence of specialized expertise in anticorruption.

**Globally, there is no uniform model for a specialized anti-corruption body.** The mandate of the anti-corruption authority (ACA) may cover all or some of the following groups of functions: 1) policy development and coordination; 2) public education and awareness-raising; 3) enforcement of anti-corruption restrictions and requirements (asset declarations, conflict of interests, gifts, lobbying, party and electoral financing, etc.); 4) protection of whistle-blowers; 5) detection, criminal investigation, and/or prosecution of corruption offences. Countries may set up one body with a mixed mandate covering these functions or several bodies targeting all or some of them. The 2020 OECD Report on Anti-Corruption Reforms in Eastern Europe and Central Asia differentiates the following three models of specialized ACAs:[2]

1. The first model combines prevention and policy coordination functions with criminal enforcement functions in one institution – the **multi-purpose (mixed-mandate) anti-corruption agencies**. Many of them were inspired by the Hong Kong Independent Commission against Corruption and the Singapore Corrupt Practices Investigation Bureau. Examples from Africa include:
   - Botswana (Directorate on Corruption and Economic Crime)
   - Kenya (Ethics and Anti-Corruption Commission)
   - Zambia (Anti-Corruption Commission)
   - Zimbabwe (Anti-Corruption Commission)
2. The second model of specialized institutions is **specialized criminal law enforcement agencies,** which investigate and/or prosecute corruption offences. *This Note does not cover agencies that only deal with criminal law enforcement.*




3. The third and broadest model includes preventive institutions: preventive and coordinating functions are combined in one body or entrusted to different bodies. Such institutions broadly fall into three main categories:
   a. **Policy coordination councils** (commissions, committees), which combine representatives of various state institutions concerned with anti-corruption; they are not permanent,

[2] OECD (2020), Anti-Corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges, 2016-2019, pages 40-56, www.oecd.org/content/dam/oecd/en/networks/acn/documents-(pdfs)/progress-challenges-2016-19-ENG.pdf.

operate through meetings, and are supported by a dedicated secretariat. These can be high-level or working-level bodies. They also often include representatives of the non-governmental sector (NGOs, academia, business, experts, development partners, etc.). They usually lead the anti-corruption reform efforts in the country and are responsible for developing, implementing and monitoring the anti-corruption policy documents. For example, the National Integrity Committee in Malawi.

b. **Dedicated bodies for policy coordination and corruption prevention**. Such authorities have a broader mandate and often combine various prevention functions with policy development and coordination, as well as providing organizational and analytical support to the anti-corruption coordination councils. Examples:

   - Armenia (Corruption Prevention Commission),
   - Bosnia and Herzegovina (Agency for the Prevention of Corruption and Coordination of the Fight against Corruption),
   - Bulgaria (Commission for Anti-Corruption and Illegal Assets Forfeiture),
   - Georgia (Anti-Corruption Bureau),
   - France (Anti-Corruption Agency),
   - Montenegro (Agency for Prevention of Corruption),
   - Serbia (Anti-Corruption Agency),
   - Slovenia (Commission for the Prevention of Corruption),
   - Ukraine (National Agency for Corruption Prevention).

c. **Dedicated bodies for one or several specific corruption prevention issues**, like conflict of interests and asset declarations. Examples:

   - Albania (High Inspectorate of Declarations and Audit of Assets and Conflict of Interests),
   - Croatia (Commission for Prevention of Conflict of Interest in Performing Public Duties),
   - Italy (National Anti-Corruption Authority),
   - Lithuania (Chief Official Ethics Commission),
   - Moldova (National Integrity Authority),
   - Romania (National Integrity Agency),

## Prevention Functions Performed by Specialized Corruption Prevention Bodies

The specialized corruption prevention body with a broad mandate covering policy coordination and various prevention instruments can include the following functions:

**Box 1. Functions of a specialized corruption prevention body**

| | |
|---|---|
| **Anti-corruption policy**<br>• Anti-corruption policy formulation<br>• Developing implementation plans<br>• Monitoring policy implementation<br>• Evaluating the effectiveness and impact of AC policies<br>• Conducting diagnostics and research | **Risk assessment of systemic issues (national, sectoral, functional) and corruption proofing**<br>• Identifying most vulnerable areas<br>• Detecting and analyzing root causes of corruption, recommending corrective actions<br>• Quality assurance of institutional risk assessments<br>• Corruption proofing (analysis) of legislation and draft acts |

DRAFT

| | |
|---|---|
| **Public education and engagement**<br>• Developing institutional integrity and ethics management, supporting network of integrity (ethics) officers in public authorities and SOEs<br>• Promoting private sector integrity (e.g. developing a model for corporate anti-corruption compliance programs or adequate procedures to prevent corruption)<br>• Disseminating knowledge and public education<br>• Promoting international cooperation and coordination<br>• Stakeholder engagement | **Enforcement of corruption preventive measures**<br>• Financial disclosure for all branches<br>• Unjustified wealth/lifestyle audits, civil forfeiture<br>• Anti-corruption restrictions and requirements:<br>- Ad hoc conflict of interest<br>- Gifts<br>- Incompatibilities (e.g. other remunerative work)<br>- Post-employment<br>- Divestment of business interests<br>- Other restrictions (e.g. joint work of relatives, cash holdings, foreign assets)<br>• Whistleblower protection, Whistleblower portal<br>• Public procurement monitoring<br>• Lobbying regulations<br>• Political party financing control<br>• Integrity vetting of public office candidates<br>• Register of corruption offenders |

When deciding on the mandate and placement of the anti-corruption prevention authority, the following elements of the enabling environment for effective operation should be considered:

Figure 1. Enabling environment for the corruption prevention body

Source: Adapted from World Bank (2023), Institutional Assessment of the Anti-Corruption Agency of the Republic of Uzbekistan.

## Observations on the situation in South Africa

**A complex corruption prevention architecture has contributed to South Africa's challenges with corruption and state capture.** Despite several mechanisms for fostering integrity and ethics in the public administration, the existing instruments have significant gaps, are poorly enforced, and therefore have limited impact. Shortcomings in corruption prevention extend to anticorruption policy development, risk assessment systems for tackling systemic corruption issues, conflict of interest management, financial disclosure, lifestyle audits and unjustified wealth recovery. Gaps in the regulatory framework extend to financial disclosure, conflict of interest management in different parts of the public administration, post-employment restrictions, divesting of business interests, whistleblower protection, enforcement of restrictions, sanctioning, and tracking corruption offenders, among others.

Among the key issues identified:

- **Dispersal of mandate.** South Africa's decentralized approach to corruption prevention and addressing corruption vulnerabilities exhibits limited effectiveness. The public service, the executive, the parliament, the judiciary and other parts of the government each have their own institutions and procedures of various scope and robustness for preventing corruption. An approach focusing on formal compliance and building integrity systems based on individual departments monitoring themselves and decentralized follow-up, is ineffective. This level of decentralization limits the ability to oversee implementation of integrity rules more effectively when sanctions and follow-up are delegated to line ministries or other employing entities, leading to inconsistencies in the application of rules. In many cases, this has led to a lack of action on findings of misconduct – the latest Auditor-General's report for local government, for instance, found that 53 percent of audited municipalities did not comply with legislation on consequence management.
- **An incoherent and inconsistent legal framework.** The absence of uniform integrity standards that apply to all branches of government undermines corruption prevention tools. No single corruption prevention law or several targeted laws apply to all public institutions, setting uniform standards and enforcement rules. The anticorruption rules are scattered in different legal acts, with important provisions often regulated on the level of secondary legislation. Various institutions establish rules for specific cohorts of employees and self-police them.
- **Institutional fragmentation.** The country lacks a robust central authority overseeing and leading a range of corruption prevention functions, including policy development, public education and engagement, risk assessment, and enforcement of anti-corruption restrictions and requirements. Corruption prevention functions are dispersed among a range of actors and in several cases the same function is shared between multiple actors.
- **Weak sanctions for transgression.** The system is not designed to ensure enforcement through dissuasive sanctions. The delegation of follow-up to line ministries leads to inconsistencies in applying consequence management based on the individual discretion of Heads of Departments or others. Effective sanctions are rarely used in practice, even at the disciplinary level.
- **Role clarity within line ministries.** Ethics officers cannot meaningfully control compliance with anti-corruption rules, as they lack the capacity and power to follow up on misconduct allegations and have no internal autonomy within their institutions. Their role presents an inherent conflict of combining the advisory and control (compliance) roles.

DRAFT

- **Using corruption risk assessments to address vulnerabilities.** Quasi-criminal investigative measures are used to address systemic corruption vulnerabilities instead of employing analytical risk assessment and removing corruption causes. A reliance on quasi-criminal investigations represents a reactive approach to corruption vulnerabilities rather than systemically conducting corruption risk assessments at scale to identify and address vulnerabilities pre-emptively.

**Key gaps and weakness in South Africa's corruption prevention framework and options for reform are laid out below.** The note does not cover every corruption prevention function performed in South Africa and instead considers the most crucial prevention functions commonly performed by specialized anticorruption agencies. This includes financial disclosure, conflict of interest management, and the preparation of corruption risk assessments.

## Financial disclosure

**The judiciary, elected officials, and the public administration all have distinct financial disclosure provisions.** Within the Public Service, implementation and verification are further fragmented across the national and provincial departments. The DPSA sets standards and provides guidance and oversight for the Framework. At the same time, the Public Service Commission plays a key role in verifying and overseeing disclosures for members of the Senior Management Service (SMS) while individual line departments verify and oversee disclosures for designated employees below the SMS. The National Prosecuting Authority, and the South African Police Service have issued instructions adopting DPSA's financial disclosure standards for employees appointed outside of the Public Service Act, but each run their own disclosure programs. Local government in turn, operates under a separate disclosure framework for public and elected officials with limited oversight and weak compliance with legal provisions. In effect, there are many different financial disclosure systems operating in South Africa with varying implementation quality and effectiveness.

**Chapter 2 of the Public Service Regulations, 2016, regulates public service employees' financial disclosure.** Designated employees in the Public Service use the eDisclosure system to disclose their financial interests. The system maintains a database of financial disclosures known as the Register of Designated Employees' Interests. The system is also used by Heads of Department, Executive Authorities, the DPSA, Ethics Officers, and the Public Service Commission to monitor compliance and manage conflict of interest situations that could be identified through disclosure of financial interests. In June 2021, the Minister for Public Service and Administration issued a Directive on other categories of employees designated to disclose their financial interests.

The system has the following key gaps:

- South Africa's Financial Disclosure (FD) Framework is complex and cumbersome. There is no unified FD Framework ensuring coherence and effective enforcement beyond compliance monitoring. The framework is fragmented, with different parts of the public administration enforcing their own disclosure requirements of various scopes and robustness.
- Several bottlenecks reduce the Framework's effectiveness, including different submission methods (electronic vs. paper), several disclosure forms with varying scopes, and over-reliance on internal controls.
- The Framework focuses on formal compliance and is built on trust where departments monitor themselves and follow-up is decentralized. This level of decentralization limits the ability to oversee the FD regime more effectively when sanctions and follow-up are delegated to line ministries.

DRAFT

- The follow-up to the disclosure form checks is ineffective as it relies on internal controls. The system is not designed to ensure enforcement through dissuasive sanctions. The delegation of follow-up to line ministries allows for potential inconsistencies in applying consequence management based on the individual discretion of Heads of Departments. The fact that there are limited sanctions for noncompliance with the Financial Disclosure Framework does not help the situation.
- The disclosure form has substantial gaps that weaken oversight and the system's impact, prevent meaningful data analytics and do not support unjustified wealth control.
- There are limited checks, and a full-fledged in-depth verification of disclosure forms is not conducted because of insufficient information in the form, few data sources to cross-check, and limited powers to verify.
- Reliance on manual verification is cumbersome and limits the system's effectiveness in enforcing FD regulations and verifying disclosures.
- While ethics officers have been trained to implement the system, they cannot meaningfully control financial disclosures, which is expected of specialized staff. Their role regarding FD presents an inherent conflict of combining the advisory and control (compliance) roles.

## Conflict of interest management

**Mechanisms and responsibilities for conflict-of-interest management are dispersed by a bifurcated employment framework** which differentiates between officials appointed at the national and provincial level in terms of the Public Service Act, and those employed at the local government level under the Municipal Structures Act. Responsibilities for regulating and overseeing public sector employment at the national and provincial level are vested in DPSA and PSC while local government is overseen by the Department of Cooperative Governance (DCoG). Codes of conduct and integrity management initiatives are accordingly issued by the respective entities in this bifurcated framework. The Public Administration Management Act adopted in 2014 and enacted in 2019 sought to harmonize employment conditions across the two levels, but many of the provisions of the Act dealing with local government related to integrity management have not been brought into effect.

**The Act established the Public Administration Ethics, Integrity and Disciplinary Technical Unit (PAEIDTAU) within DPSA with the mandate to provide technical assistance and support to institutions in all spheres of government regarding the management of ethics, integrity and disciplinary matters relating to misconduct in public administration.** In this regard, PAEIDTAU plays a key role in policy development on issues relating to integrity including conflict-of-interest management, but regulations covering the public service are still issued by DPSA. In turn, the PSC provides oversight of the implementation of conflict-of-interest management primarily from a compliance perspective and providing advice to line ministries on managing conflicts with the expectation that line ministries retain responsibility for preventing conflicts. Under the local government framework, DCoG sets the policy framework but municipalities are charged with implementation. In terms of the code of conduct established by the Municipal Systems Act (2000), staff in key local government positions are required to submit declarations of conflicts-of-interest to the Municipal Manager with conflicts including a wide-ranging scope including share ownership in any companies, directorships, consultancies, financial interests in any business undertaking and family members engaging in business. Public sector officials appointed under separate legal frameworks including the police, military, judiciary, and elected officials are governed by frameworks distinct to their sector.

**Again, oversight and implementation of the conflict-of-interest framework is complicated by varying rules for different entities both across levels of government as well as across departments and entities**

**at the national level.** A reliance on line departments to manage and monitor conflicts of interest with limited overall oversight again presents challenges with the uneven application of rules. Weaknesses in the financial disclosure framework, including limitations in the scope of declarations and inadequate verification can likewise undermine the detection of conflicts of interest.

## Corruption Risk Assessments

**Corruption risk assessments are a widely used tool for identifying weaknesses that present opportunities for corruption or integrity breaches.** Corruption risk management is part of public institutions' internal control and integrity systems. Specialized anticorruption authorities can use the risk assessment methodology to review corruption-prone units, procedures or functions and suggest targeted measures to mitigate corruption risks and remove corruption root causes or facilitators. See the example of Lithuania in Box 2 in the Annex.

**In South Africa, corruption and fraud management is an integral part of strategic management in support of the Public Service Regulations.** The Public Finance Management Act stipulates that the Accounting Officer is responsible for ensuring that the Department has and maintains effective, efficient and transparent systems of financial and risk management and internal controls. Treasury Regulations require that risk assessments are conducted on a regular basis and a risk management strategy, which includes a fraud prevention plan, to be developed and implemented by all departments. The 2020–2030 National Anti-Corruption Strategy stipulates that sectors that are considered vulnerable or at high risk of corrupt activities must be constantly identified and additional anti-corruption and risk management measures should be implemented to protect these sectors.

**However, the corruption risk assessments are not routinely and consistently applied by all public institutions.** There is no uniform methodology and quality oversight. The focus is often on fraud prevention, which is a distinct threat from public sector corruption. Institutional capacity to implement corruption risk assessments is weak and limited by budgetary and personnel constraints. In many cases, this will also require specialized skills which are not commonly available in line departments.

**Box 1. Tackling systemic corruption**

One of the key components of the new anti-corruption set-up discussed by the South African stakeholders is addressing systemic corruption through proactive investigation with coercive means. Based on the approach employed by the Special Investigating Unit, the proposal of the new Office of Public Integrity (OPI) includes its role in tackling "systemic corruption." The latter is defined as a form of corruption that does not always involve individual criminal acts and is not necessarily punishable through criminal law; it enables corrupt actions and is usually unethical, but not always criminal. The OPI would tackle systemic corruption through investigations, powers of search and seizure, and preparation of criminal dockets.

Allocating conventional criminal law enforcement powers including the preparation of criminal dockets to the central authority responsible for prevention functions should be approached with caution by the Government. Assigning the corruption prevention authority with quasi-criminal investigative powers (including investigating systemic corruption) may raise constitutional questions about using coercive powers outside the criminal proceedings, blur the separation of responsibility with the criminal justice system institutions, and mix conflicting roles in one institution.

DRAFT

While the corruption prevention authority ideally should have strong administrative powers to enforce anticorruption requirements in individual cases (for example, to uncover false information in financial disclosures or address conflict of interest violations), systemic vulnerabilities facilitating large-scale or pervasive corruption schemes are better addressed through analytical risk assessment methods targeting corruption's root causes. In parallel, however, the criminal justice bodies should tackle specific corruption offences through criminal investigation and prosecution as administrative investigations with coercive powers cannot replace the criminal justice response to criminal networks and organized corruption syndicates.

# Recommendations for South Africa

**Preliminary recommendations for reform are outlined below** based on initial consultations with key stakeholders in South Africa's anticorruption institutional architecture and a review of the legislative and regulatory framework related to corruption prevention.

## Strengthening the Institutional Framework

1. **The GoSA should establish a permanent anticorruption policy coordination mechanism** involving public authorities and non-governmental stakeholders. This should be supported by appropriate mechanisms for monitoring and evaluating the effectiveness of anticorruption measures along with specialized expertise in preparing and evaluating anticorruption policy across sectors. Organizational support functions of the coordination body can be assigned to the new corruption prevention authority with a dedicated secretariat.
2. **Establish a robust central authority overseeing and leading various corruption prevention functions**, including policy development, public education and engagement, risk assessment, and enforcement of anticorruption restrictions and requirements. To ensure the central authority's sustainability and avoid diluting its mandate, it should focus on these functions and not engage directly in criminal proceedings. The primary law should set the new authority's mandate and scope of powers.
3. **Include the following functions of the enforcement of anticorruption restrictions and requirements**:
    a. Collecting financial disclosure forms of all public officials in all branches of government through a central electronic platform; verifying asset and interest declarations based on a risk assessment methodology, including automated risk indicators; publication of information from asset declarations.
    b. Conducting lifestyle audits and filing civil lawsuits to forfeit unjustified assets acquired by officials (directly or through proxies).
    c. Conflict of interest management for political officials and members of the collegiate public authorities, as well as other officials with no direct superiors.
    d. Oversight over compliance with requirements on reporting and resolution of conflict of interest, restrictions on gifts, incompatible work and positions, divestment of business interests, self-dealing (doing business with the state), post-employment, and other regulations.

DRAFT

e. Providing guidance and protection to whistle-blowers (including in courts and administrative authorities), and administration of a whistle-blower portal.

f. Approving lobbying regulations and running a register of lobbyist contacts.

g. Running register of persons sanctioned for corruption or corruption-related offences.

h. Monitoring public procurement and public investment by using electronic detection tools.

4. **Ensure that the new agency has necessary independence safeguards**, including financial, operational, and institutional independence, as outlined in the *Glenister* decisions of the Constitutional Court of South Africa.

5. **Provide for a transparent and competitive merit-based selection** (preferably involving independent experts) of the corruption prevention agency's leadership to ensure that candidates are not politically affiliated, have necessary integrity, and are capable of leading the institution.

6. **The new authority should be granted its own employment framework outside of the Public Service Act**, similar to independent agencies including the South African Revenue Service and Financial Intelligence Centre, to ensure that the agency can attract scarce and specialized skills.

7. **Ensure regular external assessment of the institutional capacities and performance** of the corruption prevention agency based on clear performance indicators.

8. **Ensure the agency's transparency and accountability** by publishing its institutional strategy and implementation plans, corruption risk assessment and mitigation measures, annual performance reports, external assessment reports, information on procurement and staff remuneration, financial control and audit, and other information.

9. **Grant the new authority with sufficient powers to obtain information and documents** (including confidential and restricted information) from administrative bodies and private individuals and entities, access government-held databases and data of financial institutions, access foreign sources of information, conduct or commission asset valuations, sanction non-compliance, and apply for civil forfeiture of unjustified assets.

## Strengthening Prevention Measures

10. **To address the low effectiveness of the lifestyle audit mechanism**, the GoSA can consider introducing a civil forfeiture of unjustified wealth outside of criminal proceedings based on the verification of financial disclosure forms of public officials. Such forfeiture should not be linked to criminal proceedings and should not require any prior allegation or confirmed suspicion of a predicate criminal offence. The discrepancy between income from lawful sources and acquired (directly or through proxies) assets should be sufficient to establish the rebuttable presumption of unjustified assets on the balance of probabilities.

11. **The future anticorruption agency in South Africa could have the following role in corruption risk assessments**:

a) Provide methodological guidance (procedures, templates, guidance, etc.) and ad hoc consultations to public organizations to develop institutional risk management frameworks.

b) Review the corruption risk assessment reports and mitigation measures developed in individual organizations for quality assurance. To make it feasible, the anticorruption agency

DRAFT

could conduct spot checks by randomly selecting organizations or preparing an annual plan of inspections focusing on high-risk sectors or institutions.

c) Conduct corruption risk assessment at the national, sectoral and/or functional (procedural) levels. Such assessments would provide evidence for the anticorruption policy development and support corruption risk management at the institutional level. The sectoral/functional assessments should determine typologies of corruption risks, which would help institutions operating in the sector conduct their assessments at the individual organizations' level. The anticorruption agency should have sufficient powers to conduct an external risk assessment, for example, by obtaining information from the public authorities and other entities, conducting confidential interviews, surveying organizations and individuals, and commissioning expert opinions.

d) Based on the analysis, the agency should issue directions to the relevant authorities to address the detected corruption causes. The risk assessment reports should be public. The authorities that received directions to address corruption causes should publicly report on their implementation.

## Digitization and Data as Cross-cutting Priorities

12. **Corruption risk management should use digital tools to facilitate information collection and processing, ensuring accountability and transparency.** The IT platform for corruption risk management should allow each public institution to create its risk map by entering relevant data during the corruption risk assessment process and implementing mitigation measures. The platform should include necessary templates and facilitate the operation of the corruption risk assessment working group and other personnel involved (for example, ethics officers). It should also include questionnaires for the universal functions used during the risk identification stage and other assessment process steps. The platform should be collaborative, meaning that the institution should engage and obtain stakeholder feedback, invite public submissions during the risk identification, risk analysis, and other assessment stages, and publish the risk assessment results. The platform should also keep track of and visualize (through a dashboard) the real-time implementation of risk control (mitigation) measures. The central anticorruption agency can use the platform to control the risk management process in individual institutions, collect statistics, review and ensure the quality of risk assessment and mitigation measures, rank institutions by the level of compliance and quality of their corruption risk management, and provide guidance and consultations to individual institutions. The central agency can also use the platform for its external risk assessment at the national, sectoral, or functional levels.

13. **Use digital tools to develop and implement anti-corruption tools and policies, including:**

    a. Platform for developing anticorruption policy measures and tracking their implementation.

    b. Collaborative platform for corruption risk assessment.

    c. Whistleblower portal for collecting and processing internal and external whistleblower reports, including anonymously, providing consultations and ensuring confidentiality of reports.

    d. A uniform financial disclosure system used to collect and verify disclosure forms of all declarants, automate compliance checks and risk assessment, and publish information from the disclosure forms, including in machine-readable format.

DRAFT

e. Media monitoring tools to detect unjustified assets and conflicts of interest.

f. Public register of persons sanctioned for corruption or related offences.

g. Public procurement monitoring and automated detection of irregularities.

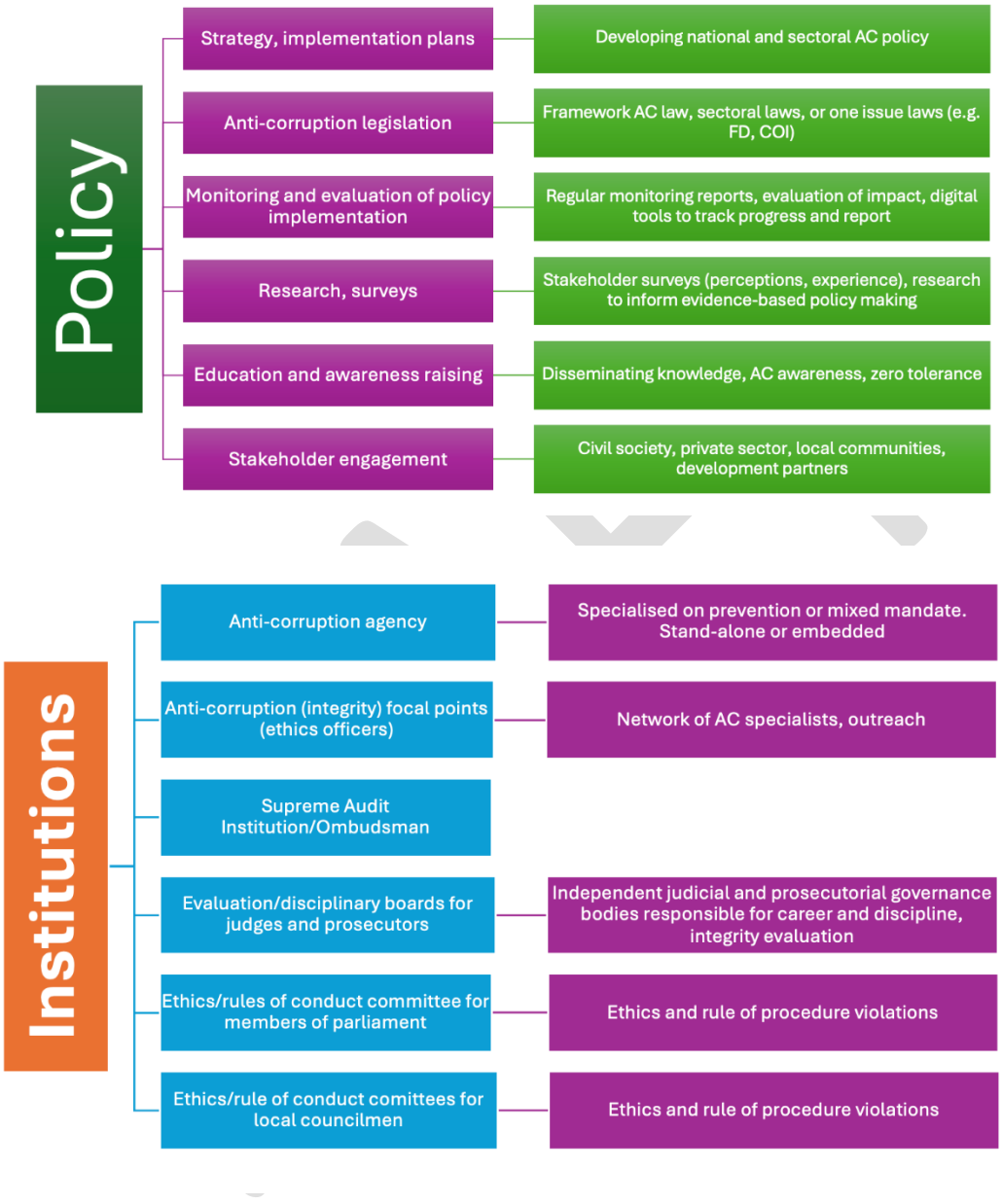
h. Platform for collecting, verifying and publishing political party financial reports.

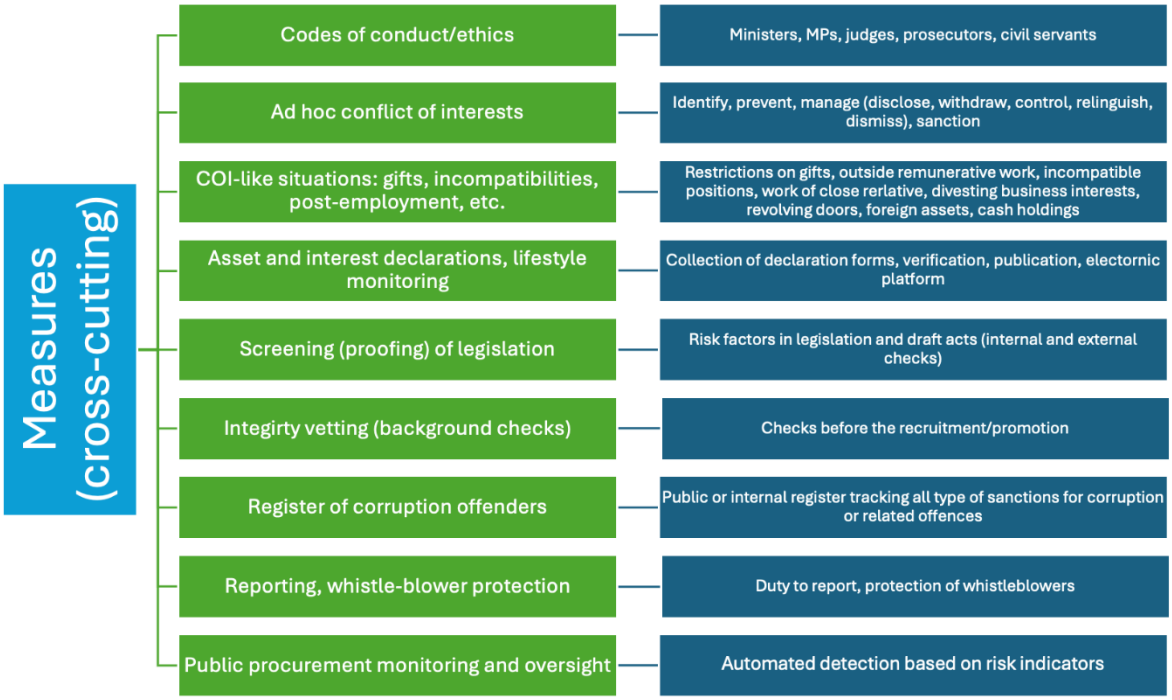
i. Registers of gifts, lobbyist contact reports, and conflict of interest reports.

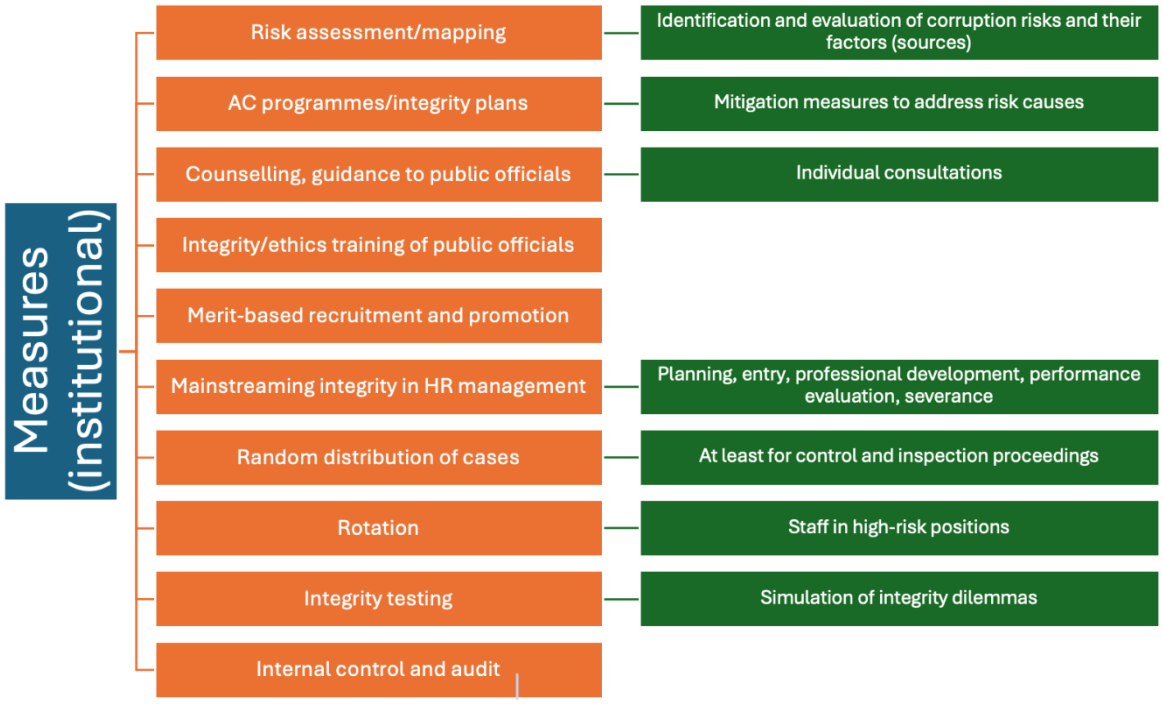
j. Use AI to develop risk indicators and conduct big data analysis to detect and prevent corruption and integrity breaches.

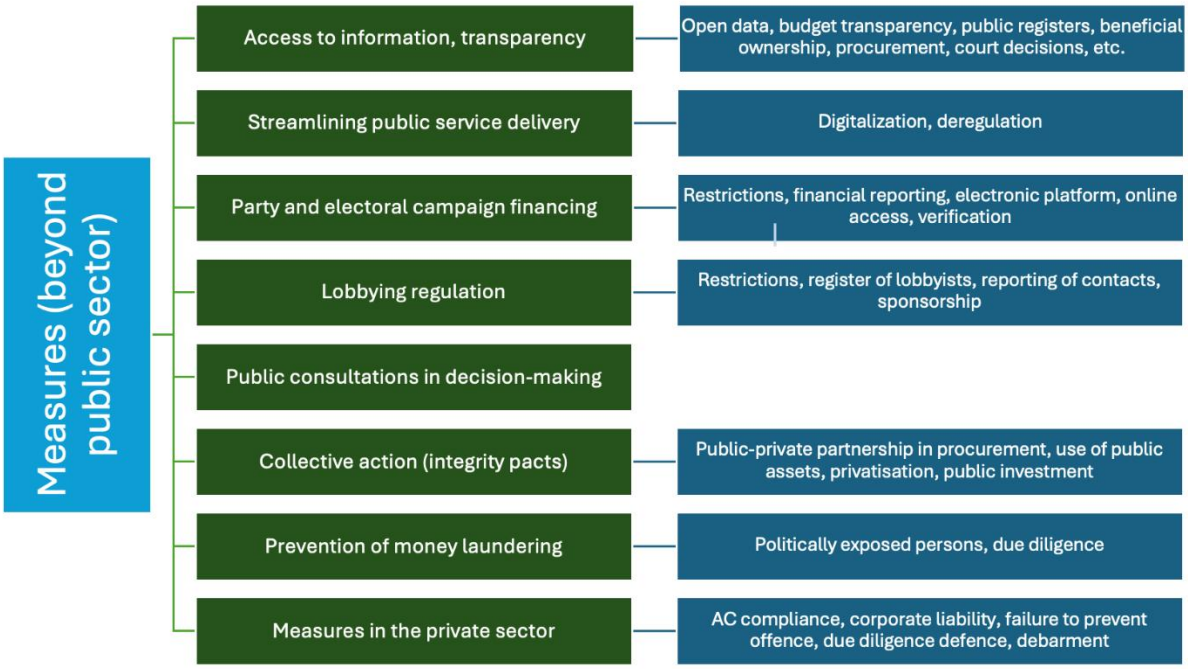
DRAFT

**Annex 1**


Policy
Strategy, implementation plans
Developing national and sectoral AC policy
Anti-corruption legislation
Framework AC law, sectoral laws, or one issue laws (e.g. FD, COI)
Monitoring and evaluation of policy implementation
Regular monitoring reports, evaluation of impact, digital tools to track progress and report
Research, surveys
Stakeholder surveys (perceptions, experience), research to inform evidence-based policy making
Education and awareness raising
Disseminating knowledge, AC awareness, zero tolerance
Stakeholder engagement
Civil society, private sector, local communities, development partners
Institutions
Anti-corruption agency
Specialised on prevention or mixed mandate. Stand-alone or embedded
Anti-corruption (integrity) focal points (ethics officers)
Network of AC specialists, outreach
Supreme Audit Institution/Ombudsman
Evaluation/disciplinary boards for judges and prosecutors
Independent judicial and prosecutorial governance bodies responsible for career and discipline, integrity evaluation
Ethics/rules of conduct committee for members of parliament
Ethics and rule of procedure violations
Ethics/rule of conduct comittees for local councilmen
Ethics and rule of procedure violations


Measures (cross-cutting)
Codes of conduct/ethics
Ministers, MPs, judges, prosecutors, civil servants
Ad hoc conflict of interests
Identify, prevent, manage (disclose, withdraw, control, relinguish, dismiss), sanction
COI-like situations: gifts, incompatibilities, post-employment, etc.
Restrictions on gifts, outside remunerative work, incompatible positions, work of close rerlative, divesting business interests, revolving doors, foreign assets, cash holdings
Asset and interest declarations, lifestyle monitoring
Collection of declaration forms, verification, publication, electornic platform
Screening (proofing) of legislation
Risk factors in legislation and draft acts (internal and external checks)
Integirty vetting (background checks)
Checks before the recruitment/promotion
Register of corruption offenders
Public or internal register tracking all type of sanctions for corruption or related offences
Reporting, whistle-blower protection
Duty to report, protection of whistleblowers
Public procurement monitoring and oversight
Automated detection based on risk indicators


Measures (institutional)
Risk assessment/mapping
Identification and evaluation of corruption risks and their factors (sources)
AC programmes/integrity plans
Mitigation measures to address risk causes
Counselling, guidance to public officials
Individual consultations
Integrity/ethics training of public officials
Merit-based recruitment and promotion
Mainstreaming integrity in HR management
Planning, entry, professional development, performance evaluation, severance
Random distribution of cases
At least for control and inspection proceedings
Rotation
Staff in high-risk positions
Integrity testing
Simulation of integrity dilemmas
Internal control and audit


Measures (beyond public sector)
Access to information, transparency
Open data, budget transparency, public registers, beneficial ownership, procurement, court decisions, etc.
Streamlining public service delivery
Digitalization, deregulation
Party and electoral campaign financing
Restrictions, financial reporting, electronic platform, online access, verification
Lobbying regulation
Restrictions, register of lobbyists, reporting of contacts, sponsorship
Public consultations in decision-making
Collective action (integrity pacts)
Public-private partnership in procurement, use of public assets, privatisation, public investment
Prevention of money laundering
Politically exposed persons, due diligence
Measures in the private sector
AC compliance, corporate liability, failure to prevent offence, due diligence defence, debarment

DRAFT

**Annex 2.**

**Box 2. External corruption risk assessment and analysis in Lithuania**

- The Special Investigative Service of Lithuania (STT) conducts corruption risk analysis (CRA). STT is an anti-corruption agency with a mixed mandate dealing with criminal investigation of corruption cases and preventive functions of risk assessment and public education.
- The analysis targets a field or process of state or municipal activity involving one or more public sector entities. The grounds and main rules for the analysis are stipulated in the Corruption Prevention Law. The STT establishes the detailed procedure for the analysis that is made public.
- The STT, in determining the necessity to perform corruption risk analysis in a certain field or process, considers the probability of manifestation of corruption (if the probability of manifestation of corruption in the relevant field of activity or process has been determined), assessments of corruption risk management, information related thereto, other information available and accessible to the STT, taking into account the priorities in the prevention of corruption approved by the STT Director.
- The field or process of state or municipal activity in which CRA will be performed is selected taking into account the following criteria: 1) whether there have been attempts, in violation of the procedure established in law, to affect the employees of the public sector entity or decisions adopted by them; 2) whether criminal acts of a corruptive nature have been detected in another similar field or process of state or municipal activity and there are grounds to believe that the risk of such corruption may also exist in this field or process of state or municipal activity; 3) whether the decisions adopted relate to the material or other benefit of the persons, the granting or restriction of permits, concessions, allowances and other additional rights, the exercise of control or supervision; 4) whether control, supervisory or law enforcement authorities have detected any infringements of law of a corruptive nature in the field or process of state or municipal activity; 5) whether other substantiated information has been received regarding corruption risk factors existing in the field or process of state or municipal activity.
- After performing corruption risk analysis, the STT submits to the public sector entity a draft conclusion with information on the detected corruption risks and their factors, and proposals of a recommendations to reduce the detected corruption risks and eliminate their factors. The public sector entity has the right to: 1) provide additional data and information on its own initiative; 2) submit comments and motivated proposals to the draft CRA conclusion and receive explanations; 3) choose the most rational way of implementing the recommendations provided in the conclusion; 4) reasonably disagree with the conclusions of the corruption risk analysis. The final CRA conclusion is made public and submitted to the entity whose activities have been analyzed.
- Within three months after receiving the CRA conclusion from the STT, the public sector entity shall make public on its website information on how the CRA proposals will be implemented. Not more than one year from the date of receipt of the CRA conclusion, the public sector entity shall make public on its website what actions have been taken and what results have been achieved in reducing the risk specified in the conclusion and (or) eliminating the risk factors, whether the proposals have been implemented, or shall substantiate why no such action has been taken.
- The STT summarizes and makes public information on the actions of public sector entities in reducing the detected corruption risk and (or) eliminating the corruption risk factors.
- The Corruption Prevention Law stipulates that methods and tools for gathering criminal intelligence may not be used for the purpose of corruption risk analysis.
- The STT also conducts anti-corruption assessment of legal acts and their drafts. According to the Corruption Prevention Law, the STT reviews draft legal acts at the request of the President of the Republic, the parliament, the Prime Minister, a parliamentary committee, commission or political faction. If there is no such a request, the STT may carry out the anti-corruption assessment of the draft

DRAFT

normative legal act or a normative legal act in force. The law determines factors considered by the STT when deciding to review a legal act or its draft on its own initiative. The review conclusions are made public. The entity that drafted or adopted the legal act should report publicly about implementation of the STT review conclusions.

- The Law on the STT stipulates that the STT performs analytical anti-corruption intelligence that includes collection, processing and collation of information on corruption and the related phenomena with other public or classified information available to the STT, as well as receiving, using and providing of qualitatively new data that is the result of processing this information to the Government and municipal agencies and officers authorized to make decisions significant in terms of reduction of the spread of corruption. The purpose of information collected and processed during the analytical anti-corruption intelligence activities is to neutralize threats and risks caused by corruption before they develop into corruption-related crimes. Moreover, the information may be used for other lawful objectives of collecting information in line with the remit of the STT.

Source: Legislation on STT, https://www.stt.lt/en/legal-information/laws/4975.

*****

DRAFT

# Enhancing corruption prevention institutions in South Africa

## Introduction

**The World Bank has supported the Government of South Africa (GoSA) in responding to recommendations emanating from the State Capture Commission including various requests to support the strengthening of the country's anticorruption response.** This has included training on financial disclosure and lifestyle audits, policy advice related to legal and regulatory reforms in public procurement, a data maturity assessment to identify fraud and corruption risks in procurement, technical assistance to support public sector professionalization including the regulation of accountancy professional bodies and the professionalization of public financial management functions, and law enforcement strengthening, mutual legal assistance on money laundering and asset recovery through the Stolen Asset Recovery Initiative (StAR).

**At the request of the National Anti-Corruption Advisory Council, (NACAC) the World Bank has agreed to prepare a series of technical notes on strengthening South Africa's anticorruption framework including corruption prevention functions.** This note accordingly provides input to the ongoing discussion on the future institutional architecture for corruption prevention in South Africa. The note does not attempt to cover all aspects of corruption prevention systems and focuses on the possible institutional solutions to address existing weaknesses. It complements a separate note on the proposed reforms to strengthen law enforcement capabilities to address corruption.

## Corruption prevention functions and institutional arrangements

**Corruption prevention includes a broad range of functions aimed at reducing the occurrence of corruption with the overall goal of reducing reliance on reactive law enforcement measures.** Corruption prevention includes functions commonly given to specialized anticorruption agencies as well as secondary preventative functions performed by a variety of supporting institutions. While some countries maintain dedicated corruption prevention agencies, many state institutions contribute to corruption prevention without it necessarily being an explicit function. This includes the work of supreme audit institutions, public procurement regulatory authorities, public ombudsman, tax administration authorities, financial sector regulators, etc.

**Corruption prevention includes both deterrent and constructive anticorruption methods.** Deterrent prevention is aimed at reducing incentives for individuals to engage in corrupt activity, in many cases with an emphasis on transparency or raising the risk of being caught engaging in improper conduct – for example, open procurement data, asset disclosure, auditing, and corruption risk management. Constructive prevention in turn, aims to promote anticorruption by addressing social attitudes and norms related to corruption to promote ethical behavior and change intrinsic motivations for engaging in corruption – for example, ethics training, collective action initiatives, public education on the effects of corruption, and strategies to change social norms around corruption.

**Corruption prevention functions**. The corruption prevention system can be described through three dimensions:

DRAFT

- Policy: Anti-corruption strategy and implementation plans, risk assessments and research to collect evidence for the policy development, public education and awareness raising to explain and promote anti-corruption policies.
- Institutions: Anti-corruption institutions and personnel to support and oversee policy implementation.
- Measures: Institutional level measures, cross-cutting public sector measures, and measures beyond the public sector that create an enabling environment for corruption prevention.

**Policy dimension includes the following elements**: 1) strategy and implementation plans; 2) anti-corruption legislation; 3) monitoring and evaluation of policy implementation; 4) research, surveys; 5) education and awareness raising; and 6) stakeholder engagement.

**The institutional dimension includes the following**: 1) anticorruption agency; 2) anticorruption focal points (integrity or ethics officers); 3) Supreme Audit Institution, Ombudsperson; 4) evaluation and disciplinary boards for judges and prosecutors; 5) ethics or rules of conduct committees for elected officials.

**Public-sector cross-cutting measures may include the following**: 1) codes of conduct or ethics for various categories of officials; 2) management of *ad hoc* conflict of interests; 3) conflict-of-interest-like situations (gifts, incompatibilities, post-employment, etc.); 4) asset and interest declarations, lifestyle monitoring; 5) corruption risk screening (proofing) of legislation; 6) integrity vetting (background checks); 7) the maintenance of a register of corruption offenders; 8) reporting, whistle-blower protection; and 9) public procurement monitoring and oversight.

**Measures on the institutional level may include the following**: 1) risk assessment and mapping; 2) anti-corruption programs or integrity plans; 3) counselling, guidance to public officials; 4) integrity and ethics training of public officials; 5) merit-based recruitment and promotion; 6) mainstreaming integrity in HR management; 7) random distribution of cases; 8) staff rotation; 9) integrity testing; and 10) internal control and audit.

Annex 1 provides additional details on corruption prevention policy, institutions and functions.

## Corruption Prevention Institutions

**The UN Convention against Corruption (Article 6) obliges states to ensure the existence of a body or bodies, as appropriate that prevent corruption**, including by implementing, overseeing and coordinating anti-corruption policies, as well as increasing and disseminating knowledge about the prevention of corruption. States should grant such bodies the necessary independence to carry out their duties effectively and free from any undue influence. They also should provide the necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions. The 2020 UNCAC Review of South Africa noted that South Africa has not complied with its obligation to notify the secretariat of its corruption prevention authority or authorities.[1]

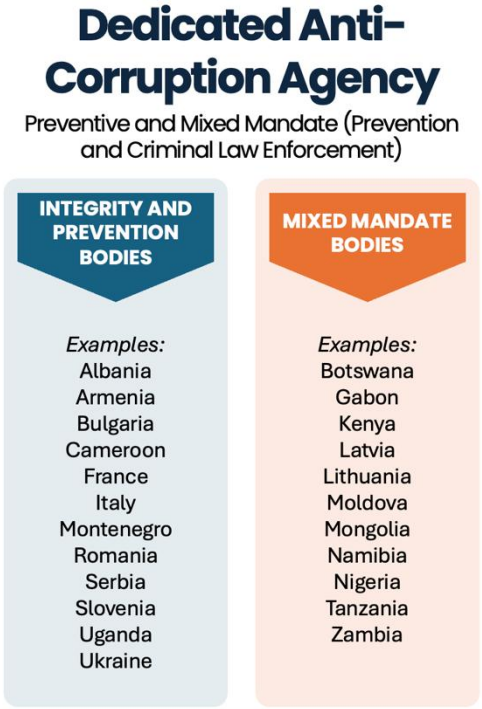
[1] UNODC (2020), Country Review of South Africa, page 5, www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2020_12_23_Final_Country_Review_Report_of_South_Africa.pdf.

DRAFT

**Preventative functions can form part of a multi-purpose anticorruption agency, be concentrated in a dedicated corruption prevention agency, or be dispersed among a range of actors in a multi-agency framework.** The appropriate model for a country will vary by the national context, the nature and scale of corruption, and the specific institutional challenges that inhibit effective corruption control. Reform proposals should consequently consider the specific challenges to corruption control that need to be addressed. Common constraints can include political interference, coordination challenges, weak systems and processes, or an absence of specialized expertise in anticorruption.

**Globally, there is no uniform model for a specialized anti-corruption body.** The mandate of the anti-corruption authority (ACA) may cover all or some of the following groups of functions: 1) policy development and coordination; 2) public education and awareness-raising; 3) enforcement of anti-corruption restrictions and requirements (asset declarations, conflict of interests, gifts, lobbying, party and electoral financing, etc.); 4) protection of whistle-blowers; 5) detection, criminal investigation, and/or prosecution of corruption offences. Countries may set up one body with a mixed mandate covering these functions or several bodies targeting all or some of them. The 2020 OECD Report on Anti-Corruption Reforms in Eastern Europe and Central Asia differentiates the following three models of specialized ACAs:[2]

1. The first model combines prevention and policy coordination functions with criminal enforcement functions in one institution – the **multi-purpose (mixed-mandate) anti-corruption agencies**. Many of them were inspired by the Hong Kong Independent Commission against Corruption and the Singapore Corrupt Practices Investigation Bureau. Examples from Africa include:
   - Botswana (Directorate on Corruption and Economic Crime)
   - Kenya (Ethics and Anti-Corruption Commission)
   - Zambia (Anti-Corruption Commission)
   - Zimbabwe (Anti-Corruption Commission)
2. The second model of specialized institutions is **specialized criminal law enforcement agencies,** which investigate and/or prosecute corruption offences. *This Note does not cover agencies that only deal with criminal law enforcement.*




3. The third and broadest model includes preventive institutions: preventive and coordinating functions are combined in one body or entrusted to different bodies. Such institutions broadly fall into three main categories:
   a. **Policy coordination councils** (commissions, committees), which combine representatives of various state institutions concerned with anti-corruption; they are not permanent,

[2] OECD (2020), Anti-Corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges, 2016-2019, pages 40-56, www.oecd.org/content/dam/oecd/en/networks/acn/documents-(pdfs)/progress-challenges-2016-19-ENG.pdf.

operate through meetings, and are supported by a dedicated secretariat. These can be high-level or working-level bodies. They also often include representatives of the non-governmental sector (NGOs, academia, business, experts, development partners, etc.). They usually lead the anti-corruption reform efforts in the country and are responsible for developing, implementing and monitoring the anti-corruption policy documents. For example, the National Integrity Committee in Malawi.

b. **Dedicated bodies for policy coordination and corruption prevention**. Such authorities have a broader mandate and often combine various prevention functions with policy development and coordination, as well as providing organizational and analytical support to the anti-corruption coordination councils. Examples:

   - Armenia (Corruption Prevention Commission),
   - Bosnia and Herzegovina (Agency for the Prevention of Corruption and Coordination of the Fight against Corruption),
   - Bulgaria (Commission for Anti-Corruption and Illegal Assets Forfeiture),
   - Georgia (Anti-Corruption Bureau),
   - France (Anti-Corruption Agency),
   - Montenegro (Agency for Prevention of Corruption),
   - Serbia (Anti-Corruption Agency),
   - Slovenia (Commission for the Prevention of Corruption),
   - Ukraine (National Agency for Corruption Prevention).

c. **Dedicated bodies for one or several specific corruption prevention issues**, like conflict of interests and asset declarations. Examples:

   - Albania (High Inspectorate of Declarations and Audit of Assets and Conflict of Interests),
   - Croatia (Commission for Prevention of Conflict of Interest in Performing Public Duties),
   - Italy (National Anti-Corruption Authority),
   - Lithuania (Chief Official Ethics Commission),
   - Moldova (National Integrity Authority),
   - Romania (National Integrity Agency),

## Prevention Functions Performed by Specialized Corruption Prevention Bodies

The specialized corruption prevention body with a broad mandate covering policy coordination and various prevention instruments can include the following functions:

**Box 1. Functions of a specialized corruption prevention body**

| | |
|---|---|
| **Anti-corruption policy**<br>• Anti-corruption policy formulation<br>• Developing implementation plans<br>• Monitoring policy implementation<br>• Evaluating the effectiveness and impact of AC policies<br>• Conducting diagnostics and research | **Risk assessment of systemic issues (national, sectoral, functional) and corruption proofing**<br>• Identifying most vulnerable areas<br>• Detecting and analyzing root causes of corruption, recommending corrective actions<br>• Quality assurance of institutional risk assessments<br>• Corruption proofing (analysis) of legislation and draft acts |

DRAFT

| | |
|---|---|
| **Public education and engagement**<br>• Developing institutional integrity and ethics management, supporting network of integrity (ethics) officers in public authorities and SOEs<br>• Promoting private sector integrity (e.g. developing a model for corporate anti-corruption compliance programs or adequate procedures to prevent corruption)<br>• Disseminating knowledge and public education<br>• Promoting international cooperation and coordination<br>• Stakeholder engagement | **Enforcement of corruption preventive measures**<br>• Financial disclosure for all branches<br>• Unjustified wealth/lifestyle audits, civil forfeiture<br>• Anti-corruption restrictions and requirements:<br>- Ad hoc conflict of interest<br>- Gifts<br>- Incompatibilities (e.g. other remunerative work)<br>- Post-employment<br>- Divestment of business interests<br>- Other restrictions (e.g. joint work of relatives, cash holdings, foreign assets)<br>• Whistleblower protection, Whistleblower portal<br>• Public procurement monitoring<br>• Lobbying regulations<br>• Political party financing control<br>• Integrity vetting of public office candidates<br>• Register of corruption offenders |

When deciding on the mandate and placement of the anti-corruption prevention authority, the following elements of the enabling environment for effective operation should be considered:

Figure 1. Enabling environment for the corruption prevention body

Source: Adapted from World Bank (2023), Institutional Assessment of the Anti-Corruption Agency of the Republic of Uzbekistan.

## Observations on the situation in South Africa

**A complex corruption prevention architecture has contributed to South Africa's challenges with corruption and state capture.** Despite several mechanisms for fostering integrity and ethics in the public administration, the existing instruments have significant gaps, are poorly enforced, and therefore have limited impact. Shortcomings in corruption prevention extend to anticorruption policy development, risk assessment systems for tackling systemic corruption issues, conflict of interest management, financial disclosure, lifestyle audits and unjustified wealth recovery. Gaps in the regulatory framework extend to financial disclosure, conflict of interest management in different parts of the public administration, post-employment restrictions, divesting of business interests, whistleblower protection, enforcement of restrictions, sanctioning, and tracking corruption offenders, among others.

Among the key issues identified:

- **Dispersal of mandate.** South Africa's decentralized approach to corruption prevention and addressing corruption vulnerabilities exhibits limited effectiveness. The public service, the executive, the parliament, the judiciary and other parts of the government each have their own institutions and procedures of various scope and robustness for preventing corruption. An approach focusing on formal compliance and building integrity systems based on individual departments monitoring themselves and decentralized follow-up, is ineffective. This level of decentralization limits the ability to oversee implementation of integrity rules more effectively when sanctions and follow-up are delegated to line ministries or other employing entities, leading to inconsistencies in the application of rules. In many cases, this has led to a lack of action on findings of misconduct – the latest Auditor-General's report for local government, for instance, found that 53 percent of audited municipalities did not comply with legislation on consequence management.
- **An incoherent and inconsistent legal framework.** The absence of uniform integrity standards that apply to all branches of government undermines corruption prevention tools. No single corruption prevention law or several targeted laws apply to all public institutions, setting uniform standards and enforcement rules. The anticorruption rules are scattered in different legal acts, with important provisions often regulated on the level of secondary legislation. Various institutions establish rules for specific cohorts of employees and self-police them.
- **Institutional fragmentation.** The country lacks a robust central authority overseeing and leading a range of corruption prevention functions, including policy development, public education and engagement, risk assessment, and enforcement of anti-corruption restrictions and requirements. Corruption prevention functions are dispersed among a range of actors and in several cases the same function is shared between multiple actors.
- **Weak sanctions for transgression.** The system is not designed to ensure enforcement through dissuasive sanctions. The delegation of follow-up to line ministries leads to inconsistencies in applying consequence management based on the individual discretion of Heads of Departments or others. Effective sanctions are rarely used in practice, even at the disciplinary level.
- **Role clarity within line ministries.** Ethics officers cannot meaningfully control compliance with anti-corruption rules, as they lack the capacity and power to follow up on misconduct allegations and have no internal autonomy within their institutions. Their role presents an inherent conflict of combining the advisory and control (compliance) roles.

DRAFT

- **Using corruption risk assessments to address vulnerabilities.** Quasi-criminal investigative measures are used to address systemic corruption vulnerabilities instead of employing analytical risk assessment and removing corruption causes. A reliance on quasi-criminal investigations represents a reactive approach to corruption vulnerabilities rather than systemically conducting corruption risk assessments at scale to identify and address vulnerabilities pre-emptively.

**Key gaps and weakness in South Africa's corruption prevention framework and options for reform are laid out below.** The note does not cover every corruption prevention function performed in South Africa and instead considers the most crucial prevention functions commonly performed by specialized anticorruption agencies. This includes financial disclosure, conflict of interest management, and the preparation of corruption risk assessments.

## Financial disclosure

**The judiciary, elected officials, and the public administration all have distinct financial disclosure provisions.** Within the Public Service, implementation and verification are further fragmented across the national and provincial departments. The DPSA sets standards and provides guidance and oversight for the Framework. At the same time, the Public Service Commission plays a key role in verifying and overseeing disclosures for members of the Senior Management Service (SMS) while individual line departments verify and oversee disclosures for designated employees below the SMS. The National Prosecuting Authority, and the South African Police Service have issued instructions adopting DPSA's financial disclosure standards for employees appointed outside of the Public Service Act, but each run their own disclosure programs. Local government in turn, operates under a separate disclosure framework for public and elected officials with limited oversight and weak compliance with legal provisions. In effect, there are many different financial disclosure systems operating in South Africa with varying implementation quality and effectiveness.

**Chapter 2 of the Public Service Regulations, 2016, regulates public service employees' financial disclosure.** Designated employees in the Public Service use the eDisclosure system to disclose their financial interests. The system maintains a database of financial disclosures known as the Register of Designated Employees' Interests. The system is also used by Heads of Department, Executive Authorities, the DPSA, Ethics Officers, and the Public Service Commission to monitor compliance and manage conflict of interest situations that could be identified through disclosure of financial interests. In June 2021, the Minister for Public Service and Administration issued a Directive on other categories of employees designated to disclose their financial interests.

The system has the following key gaps:

- South Africa's Financial Disclosure (FD) Framework is complex and cumbersome. There is no unified FD Framework ensuring coherence and effective enforcement beyond compliance monitoring. The framework is fragmented, with different parts of the public administration enforcing their own disclosure requirements of various scopes and robustness.
- Several bottlenecks reduce the Framework's effectiveness, including different submission methods (electronic vs. paper), several disclosure forms with varying scopes, and over-reliance on internal controls.
- The Framework focuses on formal compliance and is built on trust where departments monitor themselves and follow-up is decentralized. This level of decentralization limits the ability to oversee the FD regime more effectively when sanctions and follow-up are delegated to line ministries.

DRAFT

- The follow-up to the disclosure form checks is ineffective as it relies on internal controls. The system is not designed to ensure enforcement through dissuasive sanctions. The delegation of follow-up to line ministries allows for potential inconsistencies in applying consequence management based on the individual discretion of Heads of Departments. The fact that there are limited sanctions for noncompliance with the Financial Disclosure Framework does not help the situation.
- The disclosure form has substantial gaps that weaken oversight and the system's impact, prevent meaningful data analytics and do not support unjustified wealth control.
- There are limited checks, and a full-fledged in-depth verification of disclosure forms is not conducted because of insufficient information in the form, few data sources to cross-check, and limited powers to verify.
- Reliance on manual verification is cumbersome and limits the system's effectiveness in enforcing FD regulations and verifying disclosures.
- While ethics officers have been trained to implement the system, they cannot meaningfully control financial disclosures, which is expected of specialized staff. Their role regarding FD presents an inherent conflict of combining the advisory and control (compliance) roles.

## Conflict of interest management

**Mechanisms and responsibilities for conflict-of-interest management are dispersed by a bifurcated employment framework** which differentiates between officials appointed at the national and provincial level in terms of the Public Service Act, and those employed at the local government level under the Municipal Structures Act. Responsibilities for regulating and overseeing public sector employment at the national and provincial level are vested in DPSA and PSC while local government is overseen by the Department of Cooperative Governance (DCoG). Codes of conduct and integrity management initiatives are accordingly issued by the respective entities in this bifurcated framework. The Public Administration Management Act adopted in 2014 and enacted in 2019 sought to harmonize employment conditions across the two levels, but many of the provisions of the Act dealing with local government related to integrity management have not been brought into effect.

**The Act established the Public Administration Ethics, Integrity and Disciplinary Technical Unit (PAEIDTAU) within DPSA with the mandate to provide technical assistance and support to institutions in all spheres of government regarding the management of ethics, integrity and disciplinary matters relating to misconduct in public administration.** In this regard, PAEIDTAU plays a key role in policy development on issues relating to integrity including conflict-of-interest management, but regulations covering the public service are still issued by DPSA. In turn, the PSC provides oversight of the implementation of conflict-of-interest management primarily from a compliance perspective and providing advice to line ministries on managing conflicts with the expectation that line ministries retain responsibility for preventing conflicts. Under the local government framework, DCoG sets the policy framework but municipalities are charged with implementation. In terms of the code of conduct established by the Municipal Systems Act (2000), staff in key local government positions are required to submit declarations of conflicts-of-interest to the Municipal Manager with conflicts including a wide-ranging scope including share ownership in any companies, directorships, consultancies, financial interests in any business undertaking and family members engaging in business. Public sector officials appointed under separate legal frameworks including the police, military, judiciary, and elected officials are governed by frameworks distinct to their sector.

**Again, oversight and implementation of the conflict-of-interest framework is complicated by varying rules for different entities both across levels of government as well as across departments and entities**

**at the national level.** A reliance on line departments to manage and monitor conflicts of interest with limited overall oversight again presents challenges with the uneven application of rules. Weaknesses in the financial disclosure framework, including limitations in the scope of declarations and inadequate verification can likewise undermine the detection of conflicts of interest.

## Corruption Risk Assessments

**Corruption risk assessments are a widely used tool for identifying weaknesses that present opportunities for corruption or integrity breaches.** Corruption risk management is part of public institutions' internal control and integrity systems. Specialized anticorruption authorities can use the risk assessment methodology to review corruption-prone units, procedures or functions and suggest targeted measures to mitigate corruption risks and remove corruption root causes or facilitators. See the example of Lithuania in Box 2 in the Annex.

**In South Africa, corruption and fraud management is an integral part of strategic management in support of the Public Service Regulations.** The Public Finance Management Act stipulates that the Accounting Officer is responsible for ensuring that the Department has and maintains effective, efficient and transparent systems of financial and risk management and internal controls. Treasury Regulations require that risk assessments are conducted on a regular basis and a risk management strategy, which includes a fraud prevention plan, to be developed and implemented by all departments. The 2020–2030 National Anti-Corruption Strategy stipulates that sectors that are considered vulnerable or at high risk of corrupt activities must be constantly identified and additional anti-corruption and risk management measures should be implemented to protect these sectors.

**However, the corruption risk assessments are not routinely and consistently applied by all public institutions.** There is no uniform methodology and quality oversight. The focus is often on fraud prevention, which is a distinct threat from public sector corruption. Institutional capacity to implement corruption risk assessments is weak and limited by budgetary and personnel constraints. In many cases, this will also require specialized skills which are not commonly available in line departments.

**Box 1. Tackling systemic corruption**

One of the key components of the new anti-corruption set-up discussed by the South African stakeholders is addressing systemic corruption through proactive investigation with coercive means. Based on the approach employed by the Special Investigating Unit, the proposal of the new Office of Public Integrity (OPI) includes its role in tackling "systemic corruption." The latter is defined as a form of corruption that does not always involve individual criminal acts and is not necessarily punishable through criminal law; it enables corrupt actions and is usually unethical, but not always criminal. The OPI would tackle systemic corruption through investigations, powers of search and seizure, and preparation of criminal dockets.

Allocating conventional criminal law enforcement powers including the preparation of criminal dockets to the central authority responsible for prevention functions should be approached with caution by the Government. Assigning the corruption prevention authority with quasi-criminal investigative powers (including investigating systemic corruption) may raise constitutional questions about using coercive powers outside the criminal proceedings, blur the separation of responsibility with the criminal justice system institutions, and mix conflicting roles in one institution.

DRAFT

While the corruption prevention authority ideally should have strong administrative powers to enforce anticorruption requirements in individual cases (for example, to uncover false information in financial disclosures or address conflict of interest violations), systemic vulnerabilities facilitating large-scale or pervasive corruption schemes are better addressed through analytical risk assessment methods targeting corruption's root causes. In parallel, however, the criminal justice bodies should tackle specific corruption offences through criminal investigation and prosecution as administrative investigations with coercive powers cannot replace the criminal justice response to criminal networks and organized corruption syndicates.

# Recommendations for South Africa

**Preliminary recommendations for reform are outlined below** based on initial consultations with key stakeholders in South Africa's anticorruption institutional architecture and a review of the legislative and regulatory framework related to corruption prevention.

## Strengthening the Institutional Framework

1. **The GoSA should establish a permanent anticorruption policy coordination mechanism** involving public authorities and non-governmental stakeholders. This should be supported by appropriate mechanisms for monitoring and evaluating the effectiveness of anticorruption measures along with specialized expertise in preparing and evaluating anticorruption policy across sectors. Organizational support functions of the coordination body can be assigned to the new corruption prevention authority with a dedicated secretariat.
2. **Establish a robust central authority overseeing and leading various corruption prevention functions**, including policy development, public education and engagement, risk assessment, and enforcement of anticorruption restrictions and requirements. To ensure the central authority's sustainability and avoid diluting its mandate, it should focus on these functions and not engage directly in criminal proceedings. The primary law should set the new authority's mandate and scope of powers.
3. **Include the following functions of the enforcement of anticorruption restrictions and requirements**:
    a. Collecting financial disclosure forms of all public officials in all branches of government through a central electronic platform; verifying asset and interest declarations based on a risk assessment methodology, including automated risk indicators; publication of information from asset declarations.
    b. Conducting lifestyle audits and filing civil lawsuits to forfeit unjustified assets acquired by officials (directly or through proxies).
    c. Conflict of interest management for political officials and members of the collegiate public authorities, as well as other officials with no direct superiors.
    d. Oversight over compliance with requirements on reporting and resolution of conflict of interest, restrictions on gifts, incompatible work and positions, divestment of business interests, self-dealing (doing business with the state), post-employment, and other regulations.

DRAFT

e. Providing guidance and protection to whistle-blowers (including in courts and administrative authorities), and administration of a whistle-blower portal.

f. Approving lobbying regulations and running a register of lobbyist contacts.

g. Running register of persons sanctioned for corruption or corruption-related offences.

h. Monitoring public procurement and public investment by using electronic detection tools.

4. **Ensure that the new agency has necessary independence safeguards**, including financial, operational, and institutional independence, as outlined in the *Glenister* decisions of the Constitutional Court of South Africa.

5. **Provide for a transparent and competitive merit-based selection** (preferably involving independent experts) of the corruption prevention agency's leadership to ensure that candidates are not politically affiliated, have necessary integrity, and are capable of leading the institution.

6. **The new authority should be granted its own employment framework outside of the Public Service Act**, similar to independent agencies including the South African Revenue Service and Financial Intelligence Centre, to ensure that the agency can attract scarce and specialized skills.

7. **Ensure regular external assessment of the institutional capacities and performance** of the corruption prevention agency based on clear performance indicators.

8. **Ensure the agency's transparency and accountability** by publishing its institutional strategy and implementation plans, corruption risk assessment and mitigation measures, annual performance reports, external assessment reports, information on procurement and staff remuneration, financial control and audit, and other information.

9. **Grant the new authority with sufficient powers to obtain information and documents** (including confidential and restricted information) from administrative bodies and private individuals and entities, access government-held databases and data of financial institutions, access foreign sources of information, conduct or commission asset valuations, sanction non-compliance, and apply for civil forfeiture of unjustified assets.

## Strengthening Prevention Measures

10. **To address the low effectiveness of the lifestyle audit mechanism**, the GoSA can consider introducing a civil forfeiture of unjustified wealth outside of criminal proceedings based on the verification of financial disclosure forms of public officials. Such forfeiture should not be linked to criminal proceedings and should not require any prior allegation or confirmed suspicion of a predicate criminal offence. The discrepancy between income from lawful sources and acquired (directly or through proxies) assets should be sufficient to establish the rebuttable presumption of unjustified assets on the balance of probabilities.

11. **The future anticorruption agency in South Africa could have the following role in corruption risk assessments**:

a) Provide methodological guidance (procedures, templates, guidance, etc.) and ad hoc consultations to public organizations to develop institutional risk management frameworks.

b) Review the corruption risk assessment reports and mitigation measures developed in individual organizations for quality assurance. To make it feasible, the anticorruption agency

DRAFT

could conduct spot checks by randomly selecting organizations or preparing an annual plan of inspections focusing on high-risk sectors or institutions.

c) Conduct corruption risk assessment at the national, sectoral and/or functional (procedural) levels. Such assessments would provide evidence for the anticorruption policy development and support corruption risk management at the institutional level. The sectoral/functional assessments should determine typologies of corruption risks, which would help institutions operating in the sector conduct their assessments at the individual organizations' level. The anticorruption agency should have sufficient powers to conduct an external risk assessment, for example, by obtaining information from the public authorities and other entities, conducting confidential interviews, surveying organizations and individuals, and commissioning expert opinions.

d) Based on the analysis, the agency should issue directions to the relevant authorities to address the detected corruption causes. The risk assessment reports should be public. The authorities that received directions to address corruption causes should publicly report on their implementation.

## Digitization and Data as Cross-cutting Priorities

12. **Corruption risk management should use digital tools to facilitate information collection and processing, ensuring accountability and transparency.** The IT platform for corruption risk management should allow each public institution to create its risk map by entering relevant data during the corruption risk assessment process and implementing mitigation measures. The platform should include necessary templates and facilitate the operation of the corruption risk assessment working group and other personnel involved (for example, ethics officers). It should also include questionnaires for the universal functions used during the risk identification stage and other assessment process steps. The platform should be collaborative, meaning that the institution should engage and obtain stakeholder feedback, invite public submissions during the risk identification, risk analysis, and other assessment stages, and publish the risk assessment results. The platform should also keep track of and visualize (through a dashboard) the real-time implementation of risk control (mitigation) measures. The central anticorruption agency can use the platform to control the risk management process in individual institutions, collect statistics, review and ensure the quality of risk assessment and mitigation measures, rank institutions by the level of compliance and quality of their corruption risk management, and provide guidance and consultations to individual institutions. The central agency can also use the platform for its external risk assessment at the national, sectoral, or functional levels.

13. **Use digital tools to develop and implement anti-corruption tools and policies, including:**

    a. Platform for developing anticorruption policy measures and tracking their implementation.

    b. Collaborative platform for corruption risk assessment.

    c. Whistleblower portal for collecting and processing internal and external whistleblower reports, including anonymously, providing consultations and ensuring confidentiality of reports.

    d. A uniform financial disclosure system used to collect and verify disclosure forms of all declarants, automate compliance checks and risk assessment, and publish information from the disclosure forms, including in machine-readable format.

DRAFT

e. Media monitoring tools to detect unjustified assets and conflicts of interest.

f. Public register of persons sanctioned for corruption or related offences.

g. Public procurement monitoring and automated detection of irregularities.

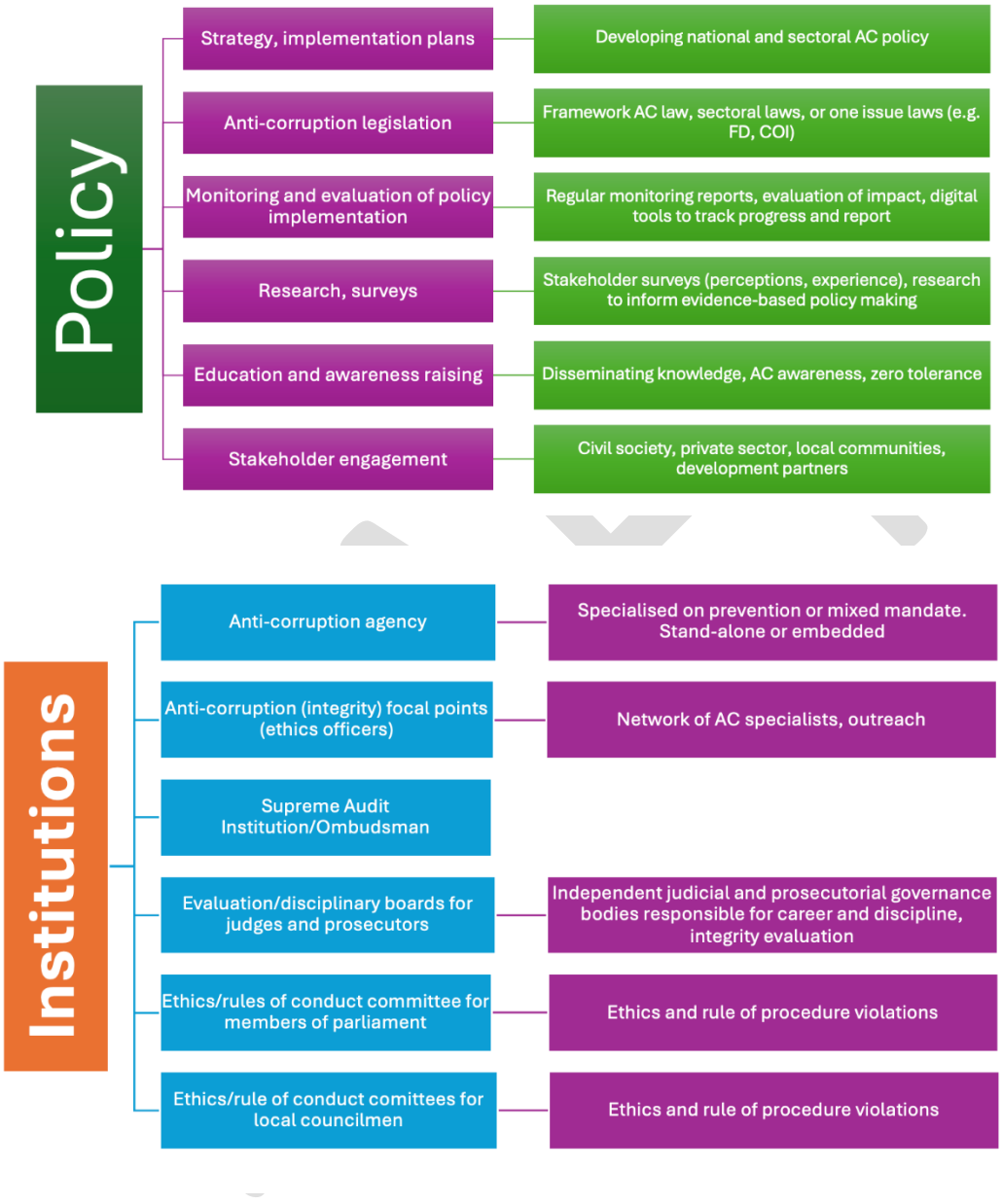
h. Platform for collecting, verifying and publishing political party financial reports.

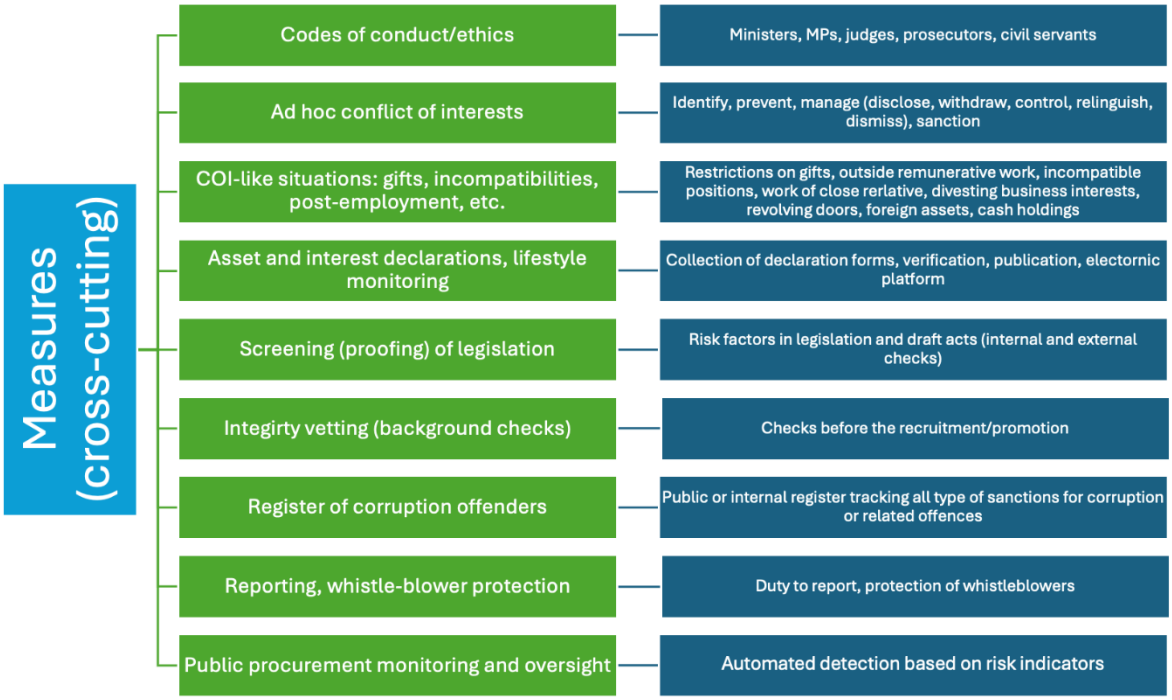
i. Registers of gifts, lobbyist contact reports, and conflict of interest reports.

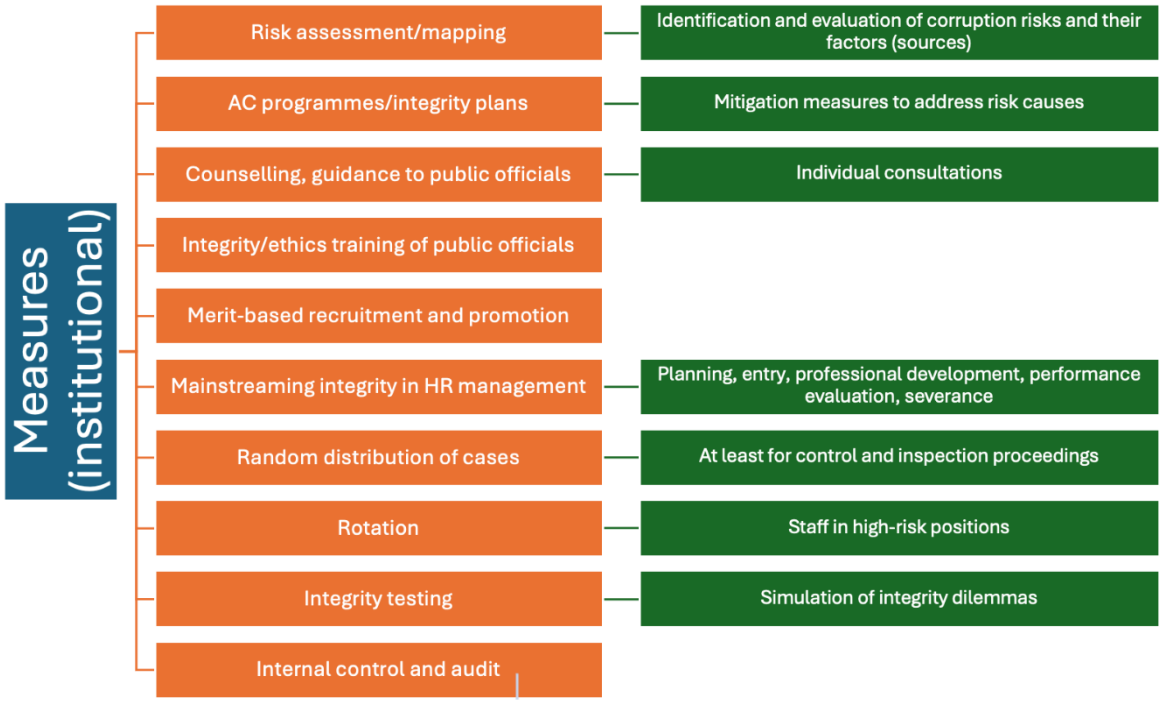
j. Use AI to develop risk indicators and conduct big data analysis to detect and prevent corruption and integrity breaches.

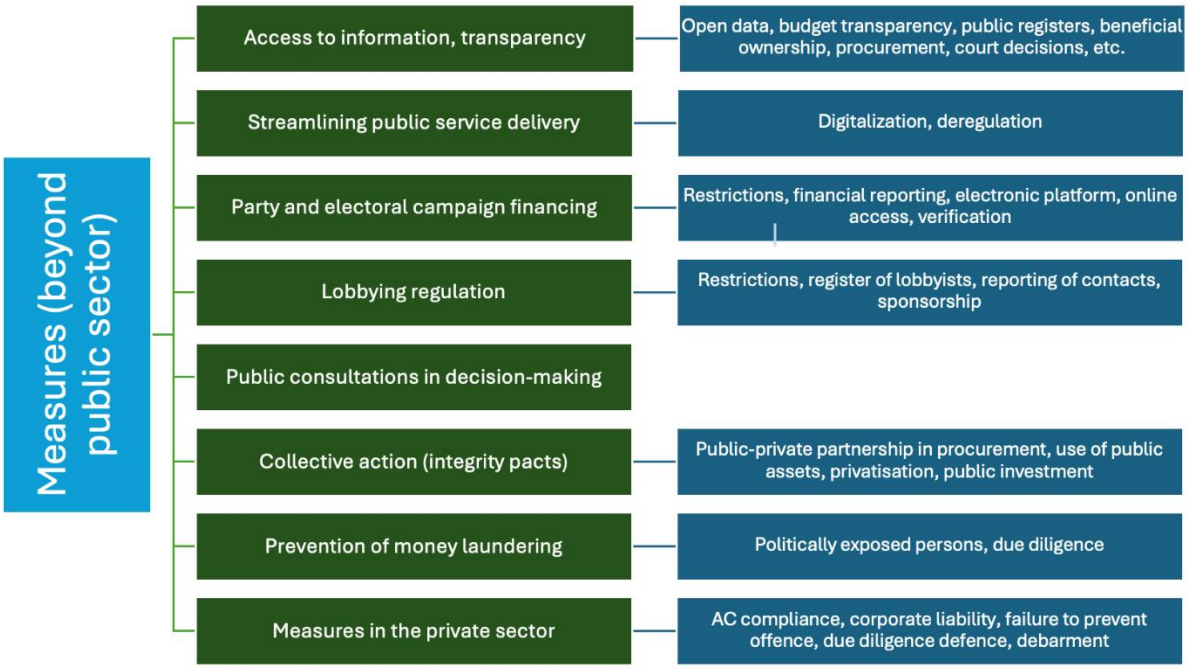
DRAFT

**Annex 1**


Policy
Strategy, implementation plans
Developing national and sectoral AC policy
Anti-corruption legislation
Framework AC law, sectoral laws, or one issue laws (e.g. FD, COI)
Monitoring and evaluation of policy implementation
Regular monitoring reports, evaluation of impact, digital tools to track progress and report
Research, surveys
Stakeholder surveys (perceptions, experience), research to inform evidence-based policy making
Education and awareness raising
Disseminating knowledge, AC awareness, zero tolerance
Stakeholder engagement
Civil society, private sector, local communities, development partners
Institutions
Anti-corruption agency
Specialised on prevention or mixed mandate. Stand-alone or embedded
Anti-corruption (integrity) focal points (ethics officers)
Network of AC specialists, outreach
Supreme Audit Institution/Ombudsman
Evaluation/disciplinary boards for judges and prosecutors
Independent judicial and prosecutorial governance bodies responsible for career and discipline, integrity evaluation
Ethics/rules of conduct committee for members of parliament
Ethics and rule of procedure violations
Ethics/rule of conduct comittees for local councilmen
Ethics and rule of procedure violations


Measures (cross-cutting)
Codes of conduct/ethics
Ministers, MPs, judges, prosecutors, civil servants
Ad hoc conflict of interests
Identify, prevent, manage (disclose, withdraw, control, relinguish, dismiss), sanction
COI-like situations: gifts, incompatibilities, post-employment, etc.
Restrictions on gifts, outside remunerative work, incompatible positions, work of close rerlative, divesting business interests, revolving doors, foreign assets, cash holdings
Asset and interest declarations, lifestyle monitoring
Collection of declaration forms, verification, publication, electornic platform
Screening (proofing) of legislation
Risk factors in legislation and draft acts (internal and external checks)
Integirty vetting (background checks)
Checks before the recruitment/promotion
Register of corruption offenders
Public or internal register tracking all type of sanctions for corruption or related offences
Reporting, whistle-blower protection
Duty to report, protection of whistleblowers
Public procurement monitoring and oversight
Automated detection based on risk indicators


Measures (institutional)
Risk assessment/mapping
Identification and evaluation of corruption risks and their factors (sources)
AC programmes/integrity plans
Mitigation measures to address risk causes
Counselling, guidance to public officials
Individual consultations
Integrity/ethics training of public officials
Merit-based recruitment and promotion
Mainstreaming integrity in HR management
Planning, entry, professional development, performance evaluation, severance
Random distribution of cases
At least for control and inspection proceedings
Rotation
Staff in high-risk positions
Integrity testing
Simulation of integrity dilemmas
Internal control and audit


Measures (beyond public sector)
Access to information, transparency
Open data, budget transparency, public registers, beneficial ownership, procurement, court decisions, etc.
Streamlining public service delivery
Digitalization, deregulation
Party and electoral campaign financing
Restrictions, financial reporting, electronic platform, online access, verification
Lobbying regulation
Restrictions, register of lobbyists, reporting of contacts, sponsorship
Public consultations in decision-making
Collective action (integrity pacts)
Public-private partnership in procurement, use of public assets, privatisation, public investment
Prevention of money laundering
Politically exposed persons, due diligence
Measures in the private sector
AC compliance, corporate liability, failure to prevent offence, due diligence defence, debarment

DRAFT

**Annex 2.**

**Box 2. External corruption risk assessment and analysis in Lithuania**

- The Special Investigative Service of Lithuania (STT) conducts corruption risk analysis (CRA). STT is an anti-corruption agency with a mixed mandate dealing with criminal investigation of corruption cases and preventive functions of risk assessment and public education.
- The analysis targets a field or process of state or municipal activity involving one or more public sector entities. The grounds and main rules for the analysis are stipulated in the Corruption Prevention Law. The STT establishes the detailed procedure for the analysis that is made public.
- The STT, in determining the necessity to perform corruption risk analysis in a certain field or process, considers the probability of manifestation of corruption (if the probability of manifestation of corruption in the relevant field of activity or process has been determined), assessments of corruption risk management, information related thereto, other information available and accessible to the STT, taking into account the priorities in the prevention of corruption approved by the STT Director.
- The field or process of state or municipal activity in which CRA will be performed is selected taking into account the following criteria: 1) whether there have been attempts, in violation of the procedure established in law, to affect the employees of the public sector entity or decisions adopted by them; 2) whether criminal acts of a corruptive nature have been detected in another similar field or process of state or municipal activity and there are grounds to believe that the risk of such corruption may also exist in this field or process of state or municipal activity; 3) whether the decisions adopted relate to the material or other benefit of the persons, the granting or restriction of permits, concessions, allowances and other additional rights, the exercise of control or supervision; 4) whether control, supervisory or law enforcement authorities have detected any infringements of law of a corruptive nature in the field or process of state or municipal activity; 5) whether other substantiated information has been received regarding corruption risk factors existing in the field or process of state or municipal activity.
- After performing corruption risk analysis, the STT submits to the public sector entity a draft conclusion with information on the detected corruption risks and their factors, and proposals of a recommendations to reduce the detected corruption risks and eliminate their factors. The public sector entity has the right to: 1) provide additional data and information on its own initiative; 2) submit comments and motivated proposals to the draft CRA conclusion and receive explanations; 3) choose the most rational way of implementing the recommendations provided in the conclusion; 4) reasonably disagree with the conclusions of the corruption risk analysis. The final CRA conclusion is made public and submitted to the entity whose activities have been analyzed.
- Within three months after receiving the CRA conclusion from the STT, the public sector entity shall make public on its website information on how the CRA proposals will be implemented. Not more than one year from the date of receipt of the CRA conclusion, the public sector entity shall make public on its website what actions have been taken and what results have been achieved in reducing the risk specified in the conclusion and (or) eliminating the risk factors, whether the proposals have been implemented, or shall substantiate why no such action has been taken.
- The STT summarizes and makes public information on the actions of public sector entities in reducing the detected corruption risk and (or) eliminating the corruption risk factors.
- The Corruption Prevention Law stipulates that methods and tools for gathering criminal intelligence may not be used for the purpose of corruption risk analysis.
- The STT also conducts anti-corruption assessment of legal acts and their drafts. According to the Corruption Prevention Law, the STT reviews draft legal acts at the request of the President of the Republic, the parliament, the Prime Minister, a parliamentary committee, commission or political faction. If there is no such a request, the STT may carry out the anti-corruption assessment of the draft

DRAFT

normative legal act or a normative legal act in force. The law determines factors considered by the STT when deciding to review a legal act or its draft on its own initiative. The review conclusions are made public. The entity that drafted or adopted the legal act should report publicly about implementation of the STT review conclusions.

- The Law on the STT stipulates that the STT performs analytical anti-corruption intelligence that includes collection, processing and collation of information on corruption and the related phenomena with other public or classified information available to the STT, as well as receiving, using and providing of qualitatively new data that is the result of processing this information to the Government and municipal agencies and officers authorized to make decisions significant in terms of reduction of the spread of corruption. The purpose of information collected and processed during the analytical anti-corruption intelligence activities is to neutralize threats and risks caused by corruption before they develop into corruption-related crimes. Moreover, the information may be used for other lawful objectives of collecting information in line with the remit of the STT.

Source: Legislation on STT, https://www.stt.lt/en/legal-information/laws/4975.

*****

DRAFT

**THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA**

**Private Bag X1000, Pretoria, 0001**

# Review of the implementation plan and M&E framework of the National Anti-corruption Strategy – recommendations to strengthen reporting and accountability

## (31 March 2025)

This report was compiled by:

Dr Victor Naidu

Chief Director: Anti-Corruption Programme M&E

## EXECUTIVE SUMMARY

This report focuses on the review the implementation, of the NACS.

The report provides progress made by government institutions and key social partners in the implementation of key interventions and targets in the National Anti-Corruption Strategy 2020-2030.

Based on the assessment, the report identifies catalytic interventions in the revised National Anti-Corruption Strategy 2020- 2030 Implementation Plan in line with the MTDP 2024 -2029 to guide the relevant departmental Annual Performance Plan 2025/26.

Further, the report outlines the Revised Monitoring and Evaluation Framework to track the institutionalization of key interventions.

Finally, the report proposes key recommendations to strengthen reporting and accountability by key governance structures.

## PART A: INTRODUCTION

### 1.1 BACKGROUND

The National Anti-Corruption Strategy (NACS) 2020-2030 is a comprehensive “whole of society” strategy approved by Cabinet on 18 November 2020 to prevent and combat corruption. The NACS responds to Constitutional values and its commitment to create a just and equitable society, and is also aligned to the imperatives of United Nations Convention against Corruption (UNCAC) and the National Development Plan 2030. The National Anti-Corruption Advisory Council (NACAC) was appointed by the President in October 2022 to provide leadership in institutionalizing the NACS.

This report focuses on the review of the implementation of the NACS, examines the progress made by government institutions and key social partners in the implementation of key interventions and targets in the National Anti-Corruption Strategy 2020- 2030; and assesses the gaps and makes recommendation for the revision of the implementation plan, monitoring and reporting framework. Secondly, the review describes the catalytic interventions in the revised National Anti-Corruption Strategy 2020- 2030 Implementation Plan in line with the MTDP 2024 -2029 to guide the relevant departmental Annual Performance Plan 2025/26. Thirdly, the review outlines the Revised Monitoring and Evaluation Framework to track the institutionalization of key interventions and, finally, proposes key recommendations to strengthen reporting and accountability.

Why the review? Section 8 of the NACS states the importance of periodic review and reporting to ensure the strategy remains up-to-date, relevant, responsive to domestic and global developments, and impactful. It is further stated in section 8.2 (b) that the review will be the result of ongoing monitoring and the periodic evaluation of the strategy. The monitoring framework is being finalized to comply with the ongoing monitoring requirements and relevant evaluation questions have been identified for a first evaluation of the NACS. While the process is not explained in detail in the NACS, a review usually involves collecting and analyzing evidence, engaging stakeholders, and reflecting on what has worked, what hasn't, and why — with the goal of informing decision-making and adjustments. Given the midpoint of the strategy's timeframe is approaching, a review is

both timely and strategic. The report will be presented at the Executive Management Meeting in the Office of the Director-General in the Presidency, the Executive Management meeting of the Department of Planning, Monitoring and Evaluation, and the NACAC Plenary Meeting. The report will be presented in the relevant governance structures.

## 1.2 APPROACH IN WRITING THE REPORT

The scope of this report is to describe the review of the NACS Implementation Plan; and the Monitoring and Evaluation framework to track the institutionalization of key strategic interventions in the NACS for the MTDP 2024 -2029 and relevant departmental Annual Performance Plan 2025/26. The review was based on the assessment of the sources of data that included - quarterly departmental and Cabinet reports, NACAC reports, 2024/25 progress report on implementation of the 60 actions contained in the President's Response to the Recommendations of the State Capture Commission, and reports from non-state partners. The prioritization and choice of strategic interventions from the NACS in the revised NACS Implementation Plan 2025 -2029 was informed by – priorities in the NDP 2030, MTDP 2024 – 29, NACAC mid-term report recommendations, G20 Anti-Corruption Working Group priorities and a review of DPME -GIZ TIP I and planning for TIP2 anti-corruption partnership programme.

## 1.3 BACKGROUND

### 1.3.1 Strategic Intent of the National Anti-Corruption Strategy 2020 – 2030

The strategic intent of the National Anti-Corruption Strategy 2020 – 2030 is to guide state and non-state actors on the implementation, monitoring and reporting of interventions on how to prevent and combat corruption*.* The NACS **intentionally focuses more on preventive measures to combat corruption** by using the collective power of the whole of society to establish an ethical, transparent, and accountable state, business sector, and civil society. The strategy is based on the assumption that the greater effort in using the "whole of society" approach to prevent corruption will have a higher probability of reducing corrupt practices in government and the different sectors of society. The focus on prevention is described as -

"*The NACS is premised on the principle that there should be more emphasis on the prevention of corruption through good governance, transparency, integrity management and accountability in society, and early detection of potentially corrupt practices to supplement the reactive measures executed by law enforcement agencies and other anti-corruption bodies in society*." (NACS 2020:9).

To achieve this there needs to be a significant focus on public awareness and education about corruption ein all its facets, the promotion of constitutional values and ethical leadership.

The **"whole of society approach"** is a significant feature of the NACS. The strategy is the product of an extensive multi-stakeholder process involving leading expertise from government, civil society, labor, business, and academia. The NACS advocates both non-state and state actors to co-own, coordinate, and implement the interventions, monitor, and report on the strategy.

The NACS has seven (7) strategic objectives and its implementation was conceptualized around six (6) strategic pillars, which are to be actioned through twenty (20) proposed thematic programs (as reflected in NACS Annexure G).

### 1.3.2 The Pillars of the National Anti-Corruption Strategy 2020 – 2030

The NACS's implementation was conceptualized based on systems thinking, and broad programmes cluster proposed activities (to achieve the strategic objectives and to develop systemic resilience in line with the NDP 2030 around six strategic pillars.

**Figure 1: Six Strategic Pillars of the National Anti-Corruption Strategy 2020-2030**

Source: National Anti-Corruption Strategy 2020-2030

## 2. PART B: PROGRESS MADE IN THE IMPLEMENATION OF NACS

### 2.1 Role of the National Anti-Corruption Advisory Council

National Anti-Corruption Advisory Council (NACAC) responded to the State Capture Commission recommendations, through a broad consultative process with key national and international stakeholders and social partners, NACAC developed a proposal for the establishment of an independent anti-corruption entity, The new entity will work with existing law enforcement agencies to strengthen the detection, investigation, and prosecution of systemic corruption. The NACAC Mid-Term Report was acknowledged by the President. The Chair of the Council has presented the recommendations in its mid-term report to the SCC Steering Committee and JPCS DG Cluster. The Chair and Council members met with the Minister of Justice on 27 Feb 2025. NACAC has planned to conduct with governance structures (FOSAD and JPCS Ministers Cluster) through the ODG in the Department of Justice. Consultation also planned with critical stakeholders in line with the "whole of society" approach.

Furthermore, NACAC produced evidenced-based advisories to the President to strengthen procurement, mitigate risks of party-political funding, and implement reforms to whistleblower protection and support policies.

NACAC, in partnership with PSC, hosted International **Anti-Corruption Day** (9 Dec 20240) and **National Dialogue** (10 Dec 2024) with 500 participants- active state and non-state participation in both events. The stakeholders from different sectors made a critical assessment of the institutionalization of the NACS. Their key reflections were an important source of information for this review and informed the prioritization of intervention of NACS 2005- 2029.

## 2.2 Progress in Implementation of key targets in NACS by government institutions.

This section will highlight key milestones achieved and areas of improvement in the institutionalization of the NACS.

**Pillar One - Promote and encourage active citizenry.**

To strengthen the transparency and accountability of political parties in the context of the June 2024 national and provincial elections, NACAC developed and submitted an advisory to the President on political party funding and has had engagements with the IEC's unit responsible for administering the register of party funding as per the Act. The **Electoral Matters Amendment Act,** accented by the President, amends the Political Party Act to make it an offense – punishable with a fine, imprisonment, or both – where donations are made to gain political influence and favour. A multi-year and interdisciplinary research study, 'Tracking Social Norms and Behavior Change in South Africa: Measuring Attitudes to Corruption' by the HSRC will provide the baseline information to the monitoring and evaluation of the NACS Framework. NACAC and PSC hosted International Anti-Corruption Day and National Dialogue (9-10 Dec 2024) with 500 participants across different sectors reflecting on the progress made in the institutionalization of the NACS. The National Anti-Corruption Advisory Council (NACAC) and the Platform to Protect Whistleblowers in Africa (PPLAAF) hosted a conference to 0n 3-4 March 2025 to discuss the amendments to South Africa's whistleblower protection framework under the theme: Strengthening Whistleblower Protection Mechanisms In South Africa. The conference brought together key stakeholders, including legal experts, civil society leaders as well as public and private sector representatives.

**Pillar 2 - Advance the professionalism of employees**

**T**wo key legislative reforms were introduced in parliament to give effect to the **to the framework** towards the Professionalisation of the Public Sector.

The Public Service Amendment Bill seeks to amend the Public Service Act, 1994, to provide for, among others, the devolution of administrative powers from executive authorities to heads of department**,** while strategic powers are required to reside with executive authorities. It also provides that the Director-General in the Presidency is to be the Head of the Public Administration. The Public Service Amendment Bill was submitted to Parliament on 31 March 2023 and has been processed through the National Assembly and is currently with the National Council of Provinces for further processing.

The Public Administration Management Amendment Bill provides for the transfer of employees between the public service and municipalities and between municipalities with consent to ensure the mobility of employees across the spheres of government where human resource deficiencies exist or where operational requirements necessitate. **DPSA issued a directive on revised criteria for the appointment of SMS**.

Draft Public Administration Management Regulations for the Central register was published for public comment in the Government Gazette of 24 January 2025. The Central Register will enable DPSA to track disciplinary cases across government spheres and public enterprise, to disqualify officials who have dismissed to reemployed in the public sector. In line with the Professionalization Framework for the Public Sector, the National School of Government has rolled out mandatory programmes to instil a culture of continuous learning and accountability. NSG flagship Nyukela programme, a pre-entry assessment for the appointment of senior managers, has almost at 100 percent compliance. Conference hosted by South African Association of Public Administration and Management (SAAPAM) 23 – 27 Sept 2024 focused on professionalization of public service.

**Pillar 3 - Enhance ethical governance**

President Cyril Maphosa signed the Companies Amendment Bill and the Second Amendment Bill (collectively, "Bills") into law on 26 July 2024. The Bills will facilitate the compliance of Corporate Boards and businesses to ethical governance standards. Implementation of the President's Response Plan is currently at 40 % of the 60 actions recorded as complete. Monitoring reports by NT to address the greylisting

by the Financial Action Task Force (FATF), indicated that the country has addressed 16 of the 22 action items in its Action Plan (FATF).

**Pillar 4 – Improve the public procurement system**

The Public Procurement Act was enacted on 23 July 2024. Section 15 provides for comprehensive procedures for the disbarment of bidders or suppliers who contravened a provision of this Act. To promote greater transparency, Beneficial ownership is created registered at CIPC. There had been joint initiatives by the State institutions to prevent and combat crime and corruption leveraging private sector capacity. The National Treasury commissioned a research report on designing a Governance Risk Assessment System (GRAS) for public procurement data systems. The National Treasury's has implemented an e-procurement system with key stakeholders emphasizing transparency, community oversight, and blacklisting corrupt suppliers. These measures aim to address irregular contracts, bid rigging, and inadequate contract management, fostering accountability and efficiency. The SOCs Memoranda of Incorporation were reviewed to prohibit board members and Ministers involvement in operational or procurement in SOEs.

**Pillar 5 -** Enhancing **Capacity and Independence of Anti-Corruption Agencies**

For the President's assent, several pieces of anti-corruption legislation were submitted to strengthen the anti- corruption architecture. NPA Amendment Act, establishing **the Independent Directorate Against Corruption** as a statutory body, empowered to undertake search and seizures and effect arrests; **General Intelligence Laws Amendment Bill -** proposes amendments to the National Strategic Intelligence Act, 1994 (Act 39 of 1994) - to address the weaknesses identified through Financial Action Task Force process, including measures to combat money laundering and terrorist financing. There is slow but steady progress in the prosecution of criminal referrals. The appointment of the National Director of Public Prosecutor and Commissioner of SARS followed rigorous and transparent processes.

Asset Forfeiture Unit and SIU report that R10.752 billion (ten billion, seven hundred and fifty-two million rand) has been recovered in state capture related cases. This has been achieved through forfeiture orders, confiscations and settlement payments reached through alternative dispute resolution mechanisms. In Feb 2024 SONA the total recovered

was reported as R8,6bn. A further R17,65 billion is currently subject to preservation or restraint orders pending the outcome of court processes.

In response to the recommendation of the State Capture Commission and the NACS, the National Anti-Corruption Advisory Council in its mid-term report recommended to the President to establish the Office of Public Integrity (OPI) as an independent Chapter 9 institution with constitutional protections. The OPI will address systemic corruption, conduct civil investigations, issue binding recommendations, and lead preventative measures through public education and institutional capacity-building.

**Pillar 6 – Protect Vulnerable sectors against corruption**

Public Procurement Act, which takes forward several recommendations of the State Capture Commission, to protect vulnerable sectors against future state capture. SIU drafted the Risk Management and Prevention Framework for consultation. SIU established risk management sector forums.

Based on the above assessment of the institutionalization, the following key areas for improvement in the next phase of the implementation of NACS will include the following actions -

The amendment to the Public Disclosure Act to strengthen whistleblower protection and support has been slow and needs to be fast-tracked by the Doja. Proposed amendments include expanding the scope of the Protected Disclosures Act, criminalizing retaliation, and establishing independent bodies to manage disclosures and provide support. There is a need for more public awareness and education campaigns to destigmatize whistleblowing and foster a culture of integrity by both government institutions and non-state actors.

The multi-sector National Dialogue held on 9-10 Dec 2024 highlighted the need for integrating gender and youth perspectives and a more inclusive approach to addressing systemic inequalities and promoting ethical governance. Strategies include developing gender-sensitive anti-corruption policies, engaging youth through innovative tools such as social media, and empowering marginalized communities to participate in governance structures.

To strengthen a capable and ethical developmental state, there is a need for acceleration of the roll out of mandatory professionlsation courses like the ethics training programme by NSG in partnership with Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit, DPSA, there is a need to implement the Competency-based recruitment and to execute the reforms in performance management, in particular, disciplinary management by DPSA.

The National Treasury has to implement the public procurement reforms through regulations, technical guidance notes, and capacity building. The ethical governance of SOEs and vulnerable sectors needs to be strengthened.

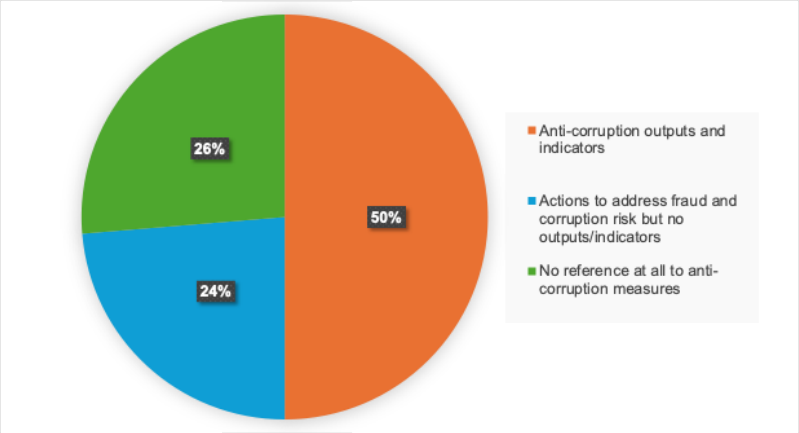
The recommendation of NACAC has to be processed through the DOJ to the governance structures to Cabinet for considerations and recommendations. The key areas to strengthen the capability of anti-corruption agencies include: Agencies such as the Hawks, the National Prosecuting Authority (NPA), and the Special Investigating Unit (SI face significant resource and capacity challenges. Recommendations included increasing funding, improving forensic capabilities, and establishing a dedicated unit within the NPA to prosecute complex corruption cases. Inter-agency collaboration and enhanced coordination, guided by a streamlined case management system, is deemed essential for effective law enforcement.

There is a need for more targeted oversight of the most vulnerable at-risk sectors—including healthcare, education, and local government; and enhanced public involvement, improved mechanisms for service delivery improvement, and heightened accountability. As part of the preventative strategy, recently established sector forums by SIU should facilitate conducting risk assessment to identify and prioritise potential risks in vulnerable sectors and develop, implement, and monitor the mitigation plan.

**2.3 Analysis of Departmental APPs**

This section examines the alignment of national department annual performance plans 2024/25 with NACS outputs and indicators.

The figure below shows the extent of the nationalization of the NACS outputs and indicators across national departments' 2024/25 annual performance plans.




The analysis of the 38 APPS of National Departments showed that 19 APPs contained outputs and indicators on anti-corruption in line with NACS, 19 contained related fraud and anti-corruption measures in the risk mitigation but no clearly defined outputs and indicators related to NACS, and 10 Apps had no mention of anti-corruption measures. The analysis shows that the NACS has not been fully institutionalized with government departments.

| | | | |
|---|---|---|---|
| • Basic Education<br>• Human Settlements<br>• SASSA | • Employment and Labour<br>• Mineral Resources and Energy<br>• Transport | • Civilian Secretariat of Police<br>• Correctional Services<br>• Defence<br>• Home Affairs<br>• IPID<br>• Justice (including NPA)<br>• Office of the Chief Justice<br>• SAPS (including DCPI)<br>• Special Investigations Unit | • DPME<br>• DPSA<br>• Public Service Commission<br>• The Presidency |

| Categories | Number of outputs |
|---|---|
| Awareness and education to prevent and combat corruption | 6 |
| Prevention of administrative corruption in public sector | 15 |
| Enforcement and consequence management | 13 |
| Monitoring and oversight | 8 |

Departments/entities in the Justice Crime Prevention and Security Cluster (JCPS) and Governance, State Capacity and Institutional Development Cluster (GSCID) were more likely to have outputs and indicators on anti-corruption than departments in the other clusters. Departments in other clusters tend to have anti-corruption measures under Programme 1: Administration, as part of institutional governance and/or employment relations.

The review has shown that in the 2025/26 APP has DPME to ensure NACS targets are included in the Departments/entities in Justice Crime Prevention and Security Cluster (JCPS); and Governance, State Capacity and Institutional Development Cluster (GSCID); and NACS interventions to be mainstreamed in Porgramme 1 of all national and provincial departments Annual Performance Plans.

To strengthen the institutionalization of the NACS, the revised NACS implementation plan 2025 -2029 has been developed. In the section below the draft revised implementation plan 2025- 29 will be described.

## 3. PART C: DRAFT REVISED IMPLEMENTATION PLAN 2025- 2029 FOR THE NATIONAL ANTI- CORRUPTION STRATEGY

The Draft Implementation of the Strategy prioritizes catalytic interventions that will contribute to significantly reduced levels of corruption and improved investor and public confidence and trust in South Africa.

Annexure 1 provides a detailed revised NACS implementation plan.

The revised NACS implementation plan prioritizes the following outcomes -

- Promote and encourage active citizenry to act with integrity and transparency and blow the whistle on corrupt practices;
- Advance the professionalism of employees in all sectors to optimize their contribution to create a corruption-free workplace
- Enhance ethical governance, oversight, and consequence management
- Improve the integrity and credibility of the public procurement system;
- Strengthen capability and inter-agency coordination of anti-corruption agencies to investigate and prosecute corruption-related cases.
- Protect vulnerable sectors most prone to corruption with effective risk management through functional sector forums.

## 4. PART D: DRAFT MONITORING AND REPORTING FRAMEWORK ANTI-CORRUPTION STRATEGY 2020 -2030

The Draft Monitoring and Reporting Framework of the implementation of the Strategy is intended to track progress against key output and outcome targets. Annexure 2 provides a detailed revised NACS monitoring and reporting framework. A summary of the key outcome indicators to guide the tracking of the effectiveness and impact of the revised implementation plan is described below.

- Percentage change in attitudes/ values and norms related to ethics, integrity, and transparency to encourage whistle-blowing disaggregated into different sectors and gender (Source of data – surveys by research institutes – e.g., HSRC);
- Percentage increase in compliance by employees to ethical and professional standards in line with the Constitutional values in Chapter 9 and Professionalization Framework for the Public Service (Source of data – DPSA Annual Report);
- Percentage increase in clean audits in government institutions (Source of data – AG annual audit reports);

- Percentage increase in transparency in public procurement to improve integrity and credibility (Source of data – Procurement Transparency Index);
- Percentage increase in investigation, prosecution of corruption-related cases, and total amount of asset recovery (Source of data- DOJCD Annual Reports);
- Percentage reduction in corruption-related incidents in Identified vulnerable sectors (Source of data – AG annual reports and SIU reports).

## 5. PART E: RECOMMENDATIONS AND CONCLUDING REMARKS

To strengthen the institutionalizing of the NACS, the following recommendations are made -

### 5.1 Recommendations

1. The Presidency to strengthen oversight and accountability of respective HoDs responsible for the implementation of the NACS through its governance mechanism – State Capture Steering Committee, FOSAD, GISCD and JPCS Clusters.
2. DPME, DPSA and DoJ (SIU) to improve coordination and collaboration of implementation of NACS by government and non-state partners. Key national departments and institutions to take ownership of implementing key interventions.
3. DPME to ensure NACS targets are included in the 2025/26 APPs of Departments/entities responsible for the implementation of the Strategy: Justice and Correctional Services; Police; Finance; Cooperative Governance and Traditional Affairs; and Public Service and Administration.
4. DPME to strengthen monitoring and reporting by state and non-state actors bi-annually on the progress made in institutionalizing the NACS through the GISCD to Cabinet.
5. GCIS to improve communication on government fight against corruption.

## 5.2 CONCLUDING REMARKS

The overall assessment, despite a well-designed strategy, the efforts by government institutions and social partners in the communication, institutionalization, and implementation as a “whole of society approach” have not been effective in preventing and combatting corruption. Public confidence in the state's ability to deal with corruption is relatively low. To strengthen the institutionalizing of the NACS, the report provided for the review and draft NACS implementation plan (2025 -29) with a revised monitoring and reporting framework. The next step will be to convene key stakeholders to discuss the implementation arrangements, the meeting will be convened and facilitated by the NACS M&E expert at the Department of Planning, Monitoring and Evaluation (DPME), who also serves as the Head of the NACAC Secretariat.

**This report was compiled by:**

**Dr Victor Naidu**
**Chief Director: Anti-Corruption Programme M&E**
**Date: 31 March 2025**

**1: DRAFT IMPLEMENTATION PLAN 2025- 2029 FOR THE NATIONAL ANTI-CORRUPTION STRATEGY**

**1. STRATEGIC PILLAR ONE: CITIZEN PARTICIPATION**

***Focus: Promote and encourage active citizenry, whistleblowing, integrity , and transparency in all of society:***

**Public awareness and education to prevent and combat corruption**

1.1 Promotion of **values reorientation education in the schooling system and civil society** to inculcate constitutional values, ethics and integrity; and increase awareness on how to prevent and combat corruption - DoE; non-state actors.

1.2 **Awareness and training** of government officials and the whole of society on **whistleblower protection and support** to encourage people to willingly report corruption – State - PSC/ DPSA and NSG; Non-state actors PPLAAF.

1.3 Host **public dialogues and International Anti-Corruption Day** to create awareness of all sectors of society to prevent and combat corruption within their spheres of influence

- PSC/DPSA and non-state partners.

1.4 Enhance **communication of anti-corruption** messages to all sectors - GCIS and media.

**Prevention of administrative corruption**

15. Drafting **legislation and regulations on whistleblower protection and support** in South Africa. Lead department - DoJ and DPME.

1.6 **Departmental Directive on protection and support whistleblowing** to guide departments and encourage officials to report suspected corrupt activities and unethical behavior to the employer - DPSA.

1.7 **Review the Public Access to Information Act** and strengthen oversight to improve compliance with PAIA – Lead departments - PSC/DPSA/ OTPs.

**Enforcement and consequence management**

1.8 Enforcement of prosecution and conviction of persons for any criminal offence against whistleblowers.

1.9 Monitor and report on the implementation of the 60 actions of the State Capture Commission to promote transparency and accountability – Presidency/ DoJ.

## 2. STRATEGIC PILLAR TWO: PROFESSIONAL CONDUCT

***Focus: Advance the professionalization of employees in all sectors to optimize their contribution to create corruption-free workplaces***

**Public awareness and education to prevent and combat corruption**

2.1 Programme to create **awareness for public and private sectors to embrace a values-based work ethos and adherence to ethical principles** - DPSA and departments; non- state partner Ethics Institute.

**Prevention of administrative corruption**

2.2 Implementation and Monitoring of "A National Framework Towards the Professionalization of the Public Sector" - DPSA/ DPME.

2.3 Institutionalization of the Ethics Officer function within departments - DPSA.

2.4 Compliance to financial declarations and lifestyle audits of all executives, SMS - PSC/ DPSA.

**Enforcement and consequence management**

2.5 Enforce discipline management in the Public Sector- PSC/ DPSA. Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit (PA-EID-TAU)

## 3. STRATEGIC PILLAR THREE: ETHICAL GOVERNANCE

***Focus: Enhance governance, oversight, and consequence management in organizations.***

**Public awareness and education to prevent and combat corruption**

3.1 Training of executive leadership in ethics and integrity management – NSG; Ethics Institute.

3.2 Public dialogues on the role of stakeholders in the promotion of integrity, ethics, and accountability in challenging environments like labor and traditional leadership (PSC/ Unions/Traditional Leaders)

**Prevention of administrative corruption**

3.3 Monitor organizational compliance with measures to ensure good governance DPME/ DPSA.

3.4 Monitor the implementation of recommended actions by the Auditor-General in three spheres of government to address identified material irregularities to enhance ethical governance and accountability in line with the Public Audit Amendment Act (2018)1 - AG/NT/ DPME. DCOG.

**Enforcement and consequence management**

3.5 Case resolution in the public sector of alleged corruption, maladministration, and wrongdoing, in compliance with the relevant organizational/labor relations policies and procedures and the applicable law - PSC and DPSA/ SIU.

3.6 Implement the Central Register, which aims to prevent officials dismissed from one sphere of government from finding employment in another sphere, unless rehabilitated - PSA/DPSA.

## 4. STRATEGIC PILLAR FOUR: CREDIBLE, TRANSPARENT PROCUREMENT SYSTEM

***Focus: Improve the integrity and credibility of the public procurement system.***

**Public awareness and education to prevent and combat corruption**

4.1 Professional development interventions of officials involved in procurement – NT/NSG.

**Prevention of administrative corruption**

4.2 Implementation of the Public Procurement Act and regulations to prevent and combat procurement fraud - NT.
4.3 Monitoring and reporting of the public procurement regulations. - NT

**Enforcement and consequence management**

4.4 Investigations and prosecution of anyone for misconduct and engaged in procurement-related criminal practices – DPSA, SAPS, SIU.
4.5 Creation and implementation of the Central Register, which aims at debarment of bidders and suppliers found to have engaged in corrupt practices – NT

## 5. STRATEGIC PILLAR FIVE: STRONG ANTI-CORRUPTION AGENCIES

***Focus: Strengthen the resourcing, coordination, transnational cooperation, performance, accountability, and independence of dedicated anti-corruption agencies.***

**Public awareness and education to prevent and combat corruption**

5.1 Continuous professional development of officials in the anti-corruption law-law-enforcement law-enforcement agencies and judiciary – DoJ and NSG.
5.2 Strengthening official capacity and organizational capabilities in law enforcement agencies' areas of investigation, prosecution, and Asset Recovery functions; and specific scare skill areas of forensic investigation and financial crime investigation – DoJ.

**Prevention of administrative corruption in the public sector**

5.3 Research on the strengthening of law enforcement and anti-corruption agencies, their investigative and prosecutorial capability, performance, and independence to inform legislative reforms - NACAC.
5.4 Establish an Anti-Corruption Agency as a Chapter 9 institution to combat and prevent systemic corruption as revealed by the State Capture Commission – DoJ/ NACAC.

5.5 Strengthen Coordination Mechanisms of Law Enforcement Agencies - Presidency, NACAC, and DoJ

**Enforcement and consequence management**

5.6 Accelerate enforcement to increase the number of prosecutions, convictions of corruption cases - DOJ

5.7 Increased asset recoveries related to corruption in the public and private sectors - DoJ, NPA, SIU, SAPS, and SARS

## 6. STRATEGIC PILLAR SIX: PROTECTION OF VULNERABLE SECTORS

***Focus: Protect vulnerable sectors that are most prone to corruption and unethical practices with effective risk management***

**Public awareness and education to prevent and combat corruption**

6.1 Training of Board of Directors and executive leadership in vulnerable sectors (in particular State-Owned Entities, and Municipal Councils) - in good governance - ethics and integrity management – Presidency/NSG/ SALGA.

**Prevention of administrative corruption in the public sector**

6.2 Establish sector risk management committees and implement risk management plans of vulnerable sectors – SIU/ DCOG/ NT.

6.3 Monitoring and reporting the implementation of the anti-corruption interventions in vulnerable sectors – PSC, Presidency, NT, DPME, and DCOG.

**Enforcement and consequence management**

6.4 Enforcement of discipline management of corrupt of officials in vulnerable sectors. – PSC and DPSA.

6.5 Enforcement to increase the number of prosecutions, convictions, and asset recoveries related to corruption in the vulnerable sectors in both public and private sectors – DOJ, NPA, SIU, SAPS, and SARS.

**Annexure 2 DRAFT MONITORING AND REPORTING FRAMEWORK ANTI-CORRUPTION STRATEGY 2020 -2030**

This section will discuss the Draft Monitoring and Evaluation Framework of the NACS in line with the Medium-Term Development Plan 2024 -2029**.**

## 1. STRATEGIC PILLAR ONE: CITIZEN PARTICIPATION

### 1. 1 PROPOSED INTERVENTIONS AND INDICATORS TO PROMOTE AND ENCOURAGE ACTIVE CITIZENRY, WHISTLEBLOWING, INTEGRITY, AND TRANSPARENCY IN ALL OF SOCIETY.

**MTDP 2025 -29 OUTCOME 1:** PROMOTE AND ENCOURAGE ACTIVE CITIZENRY TO ACT WITH INTEGRITY AND TRANSPARENCY AND BLOW THE WHISTLE ON CORRUPT PRACTICES.

**MTDP 2025-29 OUTCOME INDICATOR 1 -**

Percentage **change** in attitudes/ values and norms related to ethics, integrity, and transparency to encourage whistle-blowing disaggregated into different sectors and gender (Source of data – surveys by research institutes – e.g., HSRC).

**Public awareness and education to prevent and combat corruption**

1.1.1 **Promotion of values-reorientation programs by different sectors to inculcate ethical values and integrity to prevent and combat corruption - Lead department:** Department of Education/ Lead sectors

**Outcome indicator:** Percentage change in attitudes/ values and norms related to ethical values and integrity disaggregated into different sectors – schooling sector, civil society-based organizations, business. (Measured through HSRC surveys that capture the change in attitudes/ values and norms related to ethics and integrity).

**Output indicator:** Number of sectors implementing anti-corruption programs to inculcate ethical values and integrity.

1.1.2 Whistleblower **protection and support training to government officials and citizens to encourage people to report corruption —**PSC/ DPSA and NSG.

**Outcome indicator:** Percentage of whistle-blowing reports on observed corrupt conduct and practices disaggregated into public officials and citizens reporting corruption. (Measured through whistleblowing Hotline data hosted by the Public Service Commission.)

**Output indicator:** Number of government officials and citizens trained on whistle-blower policies and procedures. (Measured through annual data from DPSA and NSG training register, NGO training registers).

.

1.1.3 **Promotion of awareness to prevent and combat corruption in all sectors of society through public dialogues and International Anti-Corruption Day -** NACAC and PSC.

**Outcome indicator**: Percentage increase in public awareness of anti-corruption efforts (measured through participant perception feedback data).

**Output indicators**: Number of participants attending public dialogues and annual anti- corruption day events (measured through attendance registers).

1.1.4 **Enhance communication of anti-corruption messages to all sectors - GCIS.**

**Outcome indicator:** Percentage increase in public awareness of corruption-related messages (measured through annual surveys by GCIS).

**Output Indicator:** Periodic reports on the number of anti-corruption messages by GCIS.

**Prevention of administrative corruption in the public sector**

1.1.5 **Reviewing of legislation and drafting of regulations on whistleblower protection and support in South Africa - Lead department - DPSA.**
**Outcome indicator –** Increase in the number of whistle-blowers using legal protections to report corruption cases (measured through reports from anti-corruption agencies and whistle-blower protection units).
**Output indicator - Amendments** to the Protected Disclosures Act and regulations to strengthen whistle-blower protection and support approved by Parliament**.**

1.1.6 Review **the Public Access to Information Act and strengthen oversight to improve compliance with PAIA** – Lead departments - PSC/DPSA/ OTPs.
**Outcome indicator** - Percentage increase by departments' compliance with PAIA requests (measured through data from PSA)
**Output indicator** - Review of Public Access of Information Act passed by Parliament. (Measured through DPSA reports)

**Enforcement and consequence management**

1.1.7 Enforcement of prosecution and conviction of persons for any criminal offence against whistleblowers.
**Outcome indicator –** Percentage increase in prosecution and conviction of persons for any criminal offence against whistleblowers.

**Output indicator –** Number of prosecutions and convictions of persons for any criminal offence against whistleblowers year to year.

1.1.8 **Monitor and report on the implementation of the 60 actions of the State Capture Commission to promote transparency and accountability** – Presidency/ DPME/DoJ.

**Outcome indicator –** Percentage increase in public confidence in government anti-corruption measures related to the implementation of recommendations of the State Capture Commission (measured through perception surveys).
**Output indicator –** Number of the 60 actions implemented by government departments and agencies (measured bi-annually by the Presidency).

## 2. STRATEGIC PILLAR TWO: PROFESSIONAL CONDUCT

### 1 PROPOSED INTERVENTIONS AND INDICATORS TO ADVANCE PROFESSIONALISATION OF EMPLOYEES IN ALL SECTORS

**MTDP 2024 -2029 OUTCOME 2 –** ADVANCE PROFESSIONALISM OF EMPLOYEES IN ALL SECTORS TO OPTIMISE THEIR CONTRIBUTION TO CREATE A CORRUPT-FREE WORKPLACE.

**MTDP 2024 -2029 OUTCOME INDICATOR 2- :**
PERCENTAGE INCREASE IN COMPLIANCE BY EMPLOYEES TO ETHICAL AND PROFESSIONAL STANDARDS IN TERMS CONSTITUTIONAL VALUES IN CHAPTER 9 AND NATIONAL PROFESSIONALISATION FRAMEWORK FOR THE PUBLIC SERVICE (Source of data - DPSA employee annual survey).

**Public awareness and education to prevent and combat corruption**

2.1.1 **Programme to create awareness among public servants to embrace a value-based work ethos and adhere to Batho Pele principles in the Public Service—DPSA and departments.**

**Outcome indicator:** Percentage increase in adherence to Batho Pele principles that promote values-based work ethos (Source of data - DPSA annual departmental survey).
**Output indicator**: Number of public servants trained in Batho Pele principles and ethics in their respective departments (Source of data - annual training data by DPSA/NSG).

**Prevention of administrative corruption in the public sector**

2.1.2 **Implementation and Monitoring of "A National Framework Towards the Professionalization of the Public Sector" - DPSA/ DPME.**

**Outcome indicator:** Percentage increase in satisfaction levels by employees in implementing the pillars of the professionalization framework by their department (source of data - DPSA employee annual satisfaction survey).

**Output indicator**: Bi-annual monitoring reports on the implementation of the pillars of the professionalization framework by departments (source of data – DPME Bi-Annual Monitoring of MTDP reports).

2.1.3 **Institutionalization of the Ethics Officer function within departments** - DPSA.

**Outcome indicator**: Percentage of departments with fully operational Ethics Committee (source of data - DPSA annual surveys).

**Output indicator** Directive will be issued on the institutionalization of ethics officer function in the public service by March 2026. (DPSA Bi-Annual MTDP progress reports).

2.1.4 **Compliance to financial declarations and lifestyle audits of all public servants**

**-**

**PSC/ DPSA.**

**Outcome indicator –** Percentage of investigations into public officials based on detection of inconsistencies or unethical financial behaviour (source of data – PSC reports.

**Output indicator – Number** of public servants complying with submission of financial declarations and lifestyle audits (source of data – PSC/ DPSA compliance reports).

**Enforcement and consequence management**

2.1.5 **Enforcement of discipline management in the Public Sector- (**Source of data - PSC/ DPSA. Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit (PA- EID-TAU)

**Outcome indicator -** Percentage of disciplinary cases resolved within prescribed timeframes with appropriate sanctions or dismissals (source of data – PSC/DPSA annual disciplinary management reports).

**Output indicator -** Number of disciplinary cases processed and concluded using the strengthened discipline management framework. (PSC/ DPSA annual disciplinary management reports)

## 3. STRATEGIC PILLAR THREE: ETHICAL GOVERNANCE

### 3.1 PROPOSED INTERVENTIONS AND INDICATORS TO ENHANCE ETHICAL GOVERNANCE, OVERSIGHT, AND CONSEQUENCE MANAGEMENT IN ORGANISATIONS

**MTDP 2024- 29 OUTCOME –**

ENHANCE ETHICAL GOVERNANCE, OVERSIGHT , AND CONSEQUENCE MANAGEMENT

**MTDP 2024 -29 OUTCOME INDICATOR –**

PERCENTAGE INCREASE IN CLEAN AUDITS IN GOVERNMENT INSTITUTIONS THAT DEMONSTRATES ETHICAL GOVERNANCE AND OVERSIGHT (Source of data - Auditor-General annual audit report).

**Public awareness and education to prevent and combat corruption**

3.1.1 **Training of executive leadership in ethics and integrity management** – NSG.

**Outcome indicator** – Percentage increase in clean financial audit statements by Auditor-General demonstrating ethical and integrity management of institutions (source of data – Annual Auditor-General report).

**Output indicator** - Number of Directors-General and Deputy Directors General in the public sector trained in ethics and integrity management (source of data – NSG training data).

3.1.2 **Public dialogues on the role of stakeholders in the promotion of integrity, ethics, and accountability.** (NACAC/PSC).

**Outcome indicator -** Percentage of stakeholders implementing ethical practices with their organizations (source of data - follow-up surveys).

**Output indicator -** Number of stakeholders participating in public dialogues on ethics and accountability (source of data – attendance registers).

**Prevention of administrative corruption in the public sector**

3.1.3 **Monitor organizational compliance with measures to ensure good governance and support the promotion of ethics and ethical behavior in all government institutions - PSS/ DPSA.**

**Outcome indicator-** Percentage of government institutions complying with good governance and ethical standards (source of data – PSC annual compliance reports).

**Output indicator –** Number of government institutions implementing good governance and ethical standards (source of data- PSC annual compliance reports).

3.1.4 **Develop and monitor the recommended actions by the Auditor-General in three spheres of government to address identified material irregularities to enhance accountability and compliance with the Public Audit Amendment Act (2018)1 - AG/NT/ DPME. DCOG.**

**Outcome indicator** – Percentage reduction in material irregularities by government institutions (source of data – Annual Auditor- General Report).

**Output indicator** – Monitoring reports on the implementation of recommended actions by the Aud itor-General in three spheres of government to address identified material irregularities (source of data – Bi-annual reports by DPME and DCOG).

**Enforcement and consequence management**

3.1.5 **Case resolution in the public sector of alleged corruption, maladministration, and wrongdoing by PSC.**

**Outcome indicator-** Percentage of non-criminal investigations initiated and concluded in compliance with organizational policies and labour laws (PSC annual reports)

**Output indicator –** Number of non-criminal investigations initiated and concluded by departments in compliance with organizational policies and labour laws (departmental and PSC case management reports)

3.1.6 **Implement the Central Register, which aims to prevent officials dismissed from one sphere of government from finding employment in another sphere, unless rehabil\itated - PSA/DPSA.**

**Outcome indicator –** Percentage reduction in re-employment of dismissed officials in other government spheres (source of data - PSA Central Register)

**Output indicator -** Number of government institutions using the Central Register during recruitment processes (source of data PSA Central Register

## 4. STRATEGIC PILLAR FOUR: CREDIBLE, TRANSPARENT PROCUREMENT SYSTEM

### 4.1 PROPOSED INTERVENTIONS AND INDICATORS TO IMPROVE THE INTEGRITY AND CREDIBILITY OF THE PUBLIC PROCUREMENT SYSTEM.

**MTDP 2024 – 2029 OUTCOME 3 –**

IMPROVE THE INTEGRITY AND CREDIBILITY OF THE PUBLIC PROCUREMENT SYSTEM.

**MTDP 2024 – 2029 OUTCOME INDICATOR 3 -**

INCREASED TRANSPARENCY IN PUBLIC PROCUREMENT TO IMPROVE INTEGRITY AND CREDIBILITY (Source of data - Procurement Transparency Index)

**Public awareness and education to prevent and combat corruption**

4.1.1 **Procurement Office to ensure professional development and training of officials involved in procurement** – NT/NSG.

**Outcome indicator –** Rate of compliance with procurement regulations by trained procurement officials (annual survey of compliance report by NT).

**Output indicator -** Number of procurement officials trained through professional development programmes (source of data – NSG training registers and NSG annual training report)

**Prevention of administrative corruption in the public sector**

4.1.2 Implementation **of the Public Procurement Act and regulations** to **prevent and combat procurement fraud** - NT.

**Outcome indicator** - Increase **in transparency score for public procurement (source of data - Procurement Transparency Index):**

**Output indicators** – Monitoring reports on the implementation of the **Public Procurement Act and regulations** to **prevent and combat procurement fraud** (source of data – DPME Bi-annual Report on MTDP) 4

**Enforcement and consequence management**

4.1.3 Investigations **and prosecution of anyone for misconduct and engaged in procurement-related criminal practices – DPSA, SAPS, SIU**.

**Outcome indicator -** Percentage of procurement-related investigations concluded with appropriate sanctions (source of data - SIU annual reports).

**Output indicator -** Number of procurement-related investigations initiated annually by the Public Procurement Office or other designated bodies (source of data – SIU annual reports)

4.1.4 **Creation of the Central Register, which aims at debarment of bidders and suppliers found to have engaged in corrupt practices** – NT

**Outcome indicator -** Percentage reduction in procurement contracts awarded to debarred bidders and suppliers listed on the Central Register (source of data- NT procurement records)

**Output indicator - Number** of debarment of bidders and suppliers detected and listed on the Central Register (data source – Central Register

## 5. STRATEGIC PILLAR FIVE: STRONG ANTI-CORRUPTION AGENCIES

### 5.1 PROPOSED INTERVENTIONS AND INDICATORS TO STRENGTHEN THE ANTI-CORRUPTION AGENCIES

**MTDP 2024 -29 OUTCOME –**

STRENGTHEN RESOURCING, COORDINATION, TRANSNATIONAL COOPERATION, PERFORMANCE, AND INDEPENDENCE OF ANTI-CORRUPTION AGENCIES.

**MTPD 2024 -29 OUTCOME INDICATOR –**

PERCENTAGE INCREASE IN INVESTIGATION, PROSECUTION OF CORRUPTION-RELATED CASES AND ASSET RECOVERY THROUGH STRENGTHENED LAW ENFORCEMENT AND ANTI-CORRUPTION INSTITUTIONS, AND INTER-AGENCY COORDINATION AND COLLABORATION. (Annual Report from DOJCD).

**Public awareness and education to prevent and combat corruption**

5.1.1 Continuous professional development of officials in the anti-corruption law-law-enforcement law-enforcement agencies and judiciary – Doja and NSG.

**Outcome indicator –** Percentage improvement in the performance of officials trained (annual survey conducted by DPSA/DoJCD).

**Output indicator -** Number of officials trained in specific areas such as forensic investigation, prosecution, and asset recovery (source of data – NSG training report/ Justice College training report)

**Prevention of administrative corruption in the public sector**

5.1.2 Research **on the strengthening of law enforcement and anti-corruption agencies, their investigative and prosecutorial capability, performance, and independence to inform legislative reforms** - NACAC.

**Outcome indicator – Percentage improvement in** investigative and prosecutorial capabilities of law enforcement agencies through implementation of the recommendations (annual survey by DOJ/CD).

**Output indicator -** Research report with key findings and recommendations on the capabilities of law enforcement agencies (source of data – NACAC report).

5.1.3 Establish **an Anti-Corruption Agency as a Chapter 9 institution to combat and prevent systemic corruption as revealed by the State Capture Commission** – NACAC.

**Outcome indicator -** Parliament approved legislation establishing an Anti–Corruption Agency as a Chapter 9 institution to combat and prevent systemic corruption.

**Output indicator** - Drafting of legislation with a funding model for the establishment of an Anti-Corruption Agency as a Chapter 9 institution to combat and prevent systemic corruption.

5.1.4 **Strengthen coordination mechanisms of Law Enforcement Agencies** - Presidency, NACAC, and DoJ

**Outcome indicator** – The percentage increase in investigations and prosecutions of corruption-related cases through inter-agency collaborations.

**Output indicator** - Monitoring report on coordination mechanisms for joint operations by anti- corruption agencies to prevent and combat corruption (source of data – annual report by DoJ/Presidency)

**Enforcement and consequence management**

5.1.5 Accelerate enforcement to increase the number of prosecutions, convictions, and asset recoveries related to corruption in the public and private sectors - DoJ, NPA, SIU, SAPS, and SARS.

**Outcome indicator -** Percentage increase in corruption-related prosecutions and amount of asset recoveries. (Source of data – NPA annual report).

**Output indicator -** Number of corruption cases prosecuted by the NPA and amount of assets recovered (source of data – NPA annual report).

## 6. STRATEGIC PILLAR SIX: PROTECTION OF VULNERABLE SECTORS

### 6.1 PROPOSED INTERVENTIONS AND INDICATORS TO PROTECT VULNERABLE SECTORS MOST PRONE TO CORRUPTION WITH EFFECTIVE RISK MANAGEMENT

**MTDP 2024 – 29 OUTCOME –**

PROTECT VULNERABLE SECTORS MOST PRONE TO CORRUPTION WITH EFFECTIVE RISK MANAGEMENT

**MTDP 2024 – 29 OUTCOME INDICATOR –**

PERCENTAGE REDUCTION IN CORRUPTION-RELATED INCIDENTS IN IDENTIFIED VULNERABLE SECTORS (Source of data – Auditor General annual audit reports and SIU sector forum periodic reports).

**Public awareness and education to prevent and combat corruption**

**6.1.1 Training of Board of Directors and executive leadership in vulnerable sectors ethics and integrity management**

**Outcome indicator -** Percentage increased in adherence to ethical and integrity management standards by the Board of Directors and executives in vulnerable sectors (source of data – annual survey Professional Bodies for Board of Directors).

**Output indicator -** Number of Board members and executives trained on ethics and integrity management standards (source of data – training reports of NSG and Executive Management Training Institutions).

**Prevention of administrative corruption**

6.1.2 Establish sector risk management committees and **implement risk assessment and mitigation plan in vulnerable sectors through sector forums** – SIU.

**Outcome indicator** - Percentage reduction in corruption-related incidents in identified vulnerable sectors (source of data – Auditor General reports and SIU sector f forum reports).

**Output indicator** – Number of vulnerable sectors forums established and number of targets achieved in the risk management plan.

6.1.3 M**onitoring and reporting of the implementation of the anti- corruption interventions in vulnerable sectors** – PSC, Presidency, NT, DPME, and DCOG.

**Outcome indicator -** Percentage reduction of corrupt practices in vulnerable sectors (source of data – Auditor-General annual reports).

**Output indicator – Number of m**onitoring and evaluation reports on the implementation of the anti-corruption interventions in vulnerable sectors – (DPME Bi-annual MTDP reports and DPME evaluation reports)

**Enforcement and consequence management**

6.1.4 Enforcement **to increase the number of prosecutions, convictions, and recoveries related to corruption in the vulnerable sectors in both public and private sectors** – DOJ, NPA, SIU, SAPS, and SARS.

**Outcome indicator -** Percentage increase in corruption-related prosecutions in identified vulnerable sectors and total amount of recoveries (source of data - SIU and NPA annual reports).

**Output indicator –** Number of corruption cases in vulnerable sectors prosecuted and number of recoveries per year (source of data - SIU and NPA annual reports)

The table below is a summary of the prioritization of outcomes and indicators from the NACS to guide the MTDP 2024- 29.

**Table 1 -Summary of prioritization of outcomes and indicators from the NACS to guide the MTDP 2024- 29**

| Pillar of NACS 2020 -2030 | MTDP 2025 – 29 Outcome | MTDP 2025 -29 Outcome indicator |
|---|---|---|
| Pillar 1 – Promote Active Citizenry | Outcome 1<br>Promote and encourage active citizenry to act with integrity and transparency and blow the whistle on corrupt practices**.** | Outcome indicator 1<br>Percentage change in attitudes/ values and norms related to ethics, integrity, and transparency to encourage whistle-blowing<br>disaggregated into different sectors and gender (Source of data – surveys by research institutes – e.g., HSRC). |
| Pillar 2 - Professional Conduct | Outcome 2<br>Advance professionalism of employees in all sectors to optimize their contribution to create a corruption-free workplace. | Outcome indicator 2<br>Percentage increase in compliance by employees to ethical and professional standards in line with the Constitutional values in Chapter 9, and Professionalisation Framework for the Public Service (Source of data – DPSA Annual Report) |
| Pillar 3 - Ethical Governance | Outcome 3<br>Enhance ethical governance, oversight, and consequence management | Outcome indicator 3<br>Percentage increase in clean audits in government |

| | | |
|---|---|---|
| | | institutions (Source of data – AG annual audit reports). |
| Pillar 4 - Credible and transparent public procurement system | Outcome 4<br>Improve the integrity and credibility of the public procurement system. | Outcome indicator 4<br>Percentage increase in transparency in public procurement to improve integrity and credibility<br>(Source of data – Procurement Transparency Index). |
| Pillar 5 – Strong anti-corruption agencies | Outcome 5<br>Strengthen capability and inter-agency coordination of anti-corruption agencies to investigate and prosecute corruption-related cases. | Outcome indicator 5<br>Percentage increase in investigation, prosecution of corruption-related cases, and total amount of asset recovery<br>(Source of data- DOJCD Annual Reports) |
| Pillar 6 – Protection of vulnerable sectors | Outcome 6<br>Protect vulnerable sectors most prone to corruption with effective risk management through functional sector forums. | Outcome indicator 6<br>Percentage reduction in corruption-related incidents in Identified vulnerable sectors<br>(Source of data – AG annual reports and SIU reports ). |

NACAC

National
Anti-Corruption
Advisory Council

# NATIONAL ANTI-CORRUPTION ADVISORY COUNCIL

## Final Report
## To the President, the Cabinet, and the Country

**AUGUST 2025**

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

NACS
National Anti-Corruption Strategy

PSC

german cooperation
DEUTSCHE ZUSAMMENARBEIT

Implemented by:
giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

State Secretariat for Economic Affairs SECO

UNODC
United Nations Office on Drugs and Crime

# TABLE OF CONTENTS


**EXECUTIVE SUMMARY** 4

NACAC's work and achievements 4
NACAC's key recommendations 5

**FOREWORD** 10

**LIST OF ABBREVIATIONS** 11

**INTRODUCTION** 13

**CHAPTER 1 - THE STORY OF NACAC** 16

NACAC's mandate 18
NACAC's way of working 18

**CHAPTER 2 - CORRUPTION IN SOUTH AFRICA: BACKGROUND AND CONTEXT** 20

Drivers of corruption 21
Types of corruption 21
The impact of corruption 23
Responses to corruption 24

**CHAPTER 3 - THE OFFICE OF PUBLIC INTEGRITY** 27

Establishing the Office of Public Integrity and Anti-Corruption 28
Building on the successes of the Special Investigating Unit 33
Mandate 33
Functions 34
Powers 36
Transitional arrangements 38

**CHAPTER 4 – COMMUNICATION: MOBILISING SOCIETY** 39

NACS communication strategy 40
National anti-corruption dialogues 40
The OPI's role in taking the NACS communication strategy forward 45

**CHAPTER 5 - STRENGTHENING LAW ENFORCEMENT AGENCIES** 47

Introduction 48
Mandates and a new coordination mechanism 49
Independence and integrity 57
Resources 62
Harnessing artificial intelligence and digital tools 63

**CHAPTER 6 - NACAC'S ADVISORIES** 67

NACAC Advisories to the President 68

Advisory 1: Implementation of the recommendations of the Zondo Commission (Appendix D.1). 68
Advisory 2: Public support for whistleblowers (Appendix D.2) 69
Advisory 3: Regarding the implementation and roll out of the National Anti-Corruption Strategy (Appendix D.3) 69
Advisory 4: Strengthening the Political Party Funding Act to manage corruption risks and improve transparency in South Africa (Appendix D.4) 70
Advisory 5: Appointment of a retired judge as Whistleblower Protector of South Africa (Appendix D.5) 70
Advisory 6: Strengthening anti-corruption elements of the Public Procurement Bill (Appendix D.6) 71
Advisory 7: Electoral Matters Amendment Bill (Appendix D.7) 72

NACAC Monitoring of NACS implementation 73
NACAC Monitoring of Zondo recommendations 73

**CHAPTER 7 - THE WAY FORWARD** 78

NACS implementation 79
Who will champion the NACS? 79
The way forward 80
Table of immediate and short-term actions 81

**APPENDICES** 83

# Executive summary

The National Anti-Corruption Advisory Council (NACAC) presents its final report, marking the culmination of three years of work to advise on the fight against corruption in South Africa. This report comes five years after the adoption of the National Anti-Corruption Strategy (NACS), both of which are critical interventions in the ongoing struggle against corruption, an existential threat to our democracy.

As a relatively young democracy, South Africa has courageously exposed corruption through several commissions of inquiry and media and civil society. The investigations and findings of the Commission of Inquiry into State Capture (the Zondo Commission) in particular have provided significant information and guidance, forming a crucial framework for the next phase of the anti-corruption programme.

The NACS is premised on the principle that **preventing corruption** through robust governance, transparency, and accountability should be given greater emphasis to mitigate corruption risks, thereby reducing the need for costly reactive measures. NACAC's work has remained true to this guiding principle, acknowledging, too, that combating corruption is not the sole responsibility of any single government department or agency, but rather a collective task for **'all of government and all of society'.**

## NACAC's work and achievements

Since its appointment in September 2022, NACAC, comprised of diverse members from civil society, academia, labour and traditional leadership, has worked hard to address the mandate given to it by the President.

NACAC executed this mandate through a comprehensive approach, including:

- **In-depth research and analysis:** NACAC commissioned extensive research that supported the analysis of legislative and systemic weaknesses that enable corruption, and the understanding of the nature and characteristics of 'systemic corruption' detailed in the Zondo Commission's reports. This thorough analysis has enabled the crafting of tailored solutions.

- **Stakeholder engagement:** NACAC engaged widely with stakeholders from all levels of society, consulting government institutions, law enforcement agencies (LEAs), academics, and civil society experts. Learning journeys to countries like Kenya, Serbia, Lithuania, and Hong Kong provided valuable insights from the tackling of similar challenges globally.

- **Strategic Advisories:** A core part of NACAC's work involved drafting and submitting a series of Advisories to the President. These Advisories provided specific proposals on critical areas, including:

  - **Implementing Zondo Commission recommendations:** Advising on strategic and systemic implementation, including acknowledging and supporting whistleblowers, preventing retaliation, and exploring mechanisms for incentivised disclosures. It also covered principles for appointments to state-owned entities (SOEs), transparency in public procurement, balancing public and private sector accountability, and resourcing LEAs.

- **Public support for whistleblowers:** Highlighting the urgent need for robust protection and support mechanisms for whistleblowers, calling for legislative reforms to criminalise retaliation and establishing independent bodies for managing disclosures and providing comprehensive support (legal, medical, physical, and psycho-social).

- **NACS implementation:** Advising on embedding the NACS as the principal framework across all government levels and departments, with a strong emphasis on monitoring and evaluation.

- **Strengthening electoral integrity:** Proposing legislative amendments to the Political Party Funding Act (PPFA) and the Electoral Matters Amendment Bill (EMAB) to enhance transparency and reduce corruption risks associated with political party funding, ensuring accountability to the electorate rather than donors.

- **Public procurement reforms:** Recommending revisions to the Public Procurement Bill to align it with anti-corruption objectives, focusing on institutional arrangements, preferential procurement, professionalisation of procurement officers, and the integration of e-procurement systems.

- **National anti-corruption dialogues:** NACAC successfully hosted two multi-sectoral national dialogues in 2023 and 2024. The 2023 dialogue, attended by President Cyril Ramaphosa and Chief Justice Raymond Zondo, underscored the momentum gained in the fight against corruption and the collective determination to build an ethical society. The 2024 dialogue specifically engaged youth, leading to their own anti-corruption pledge and focusing on vital topics such as strengthening whistleblower protections, transforming public procurement, enhancing law enforcement capacity, and fostering professionalisation in the public sector.

- **Monitoring and evaluation:** NACAC considered progress in the implementation of the NACS and the Zondo Commission recommendations, observing significant steps taken, including critical legislative amendments. While progress has been achieved, NACAC's work has provided crucial insights into areas needing acceleration and further attention.

NACAC discussed the complex drivers of corruption in South Africa, identifying historical economic inequality, weak public sector governance, political patronage networks, and the pervasive influence of problematic social norms. NACAC's work was informed by an understanding of the corrosive impact of corruption on the economy, public services, trust in institutions, and the proliferation of organised crime. This comprehensive understanding informed the design of targeted and effective anti-corruption actions, emphasising the importance of proactive prevention measures alongside robust enforcement.

## NACAC's key recommendations

NACAC's final report outlines the path forward, with several key recommendations designed to build a more resilient anti-corruption architecture in South Africa.

## Establishment of the Office of Public Integrity and Anti-Corruption (OPI)

NACAC's key recommendation is the **establishment of the OPI** as a permanent, independent, overarching anti-corruption body. This body should be **entrenched in Chapter 9 of the Constitution,** signalling society and government's serious commitment to combating corruption as a way to safeguard constitutional democracy. **The Minister of Justice and Constitutional Development should be responsible for driving this process to speedy resolution.**

- **Absorption of the Special Investigating Unit (SIU):** The OPI should **absorb the mission, powers, and resources of the SIU,** enabling it to become operational immediately with a proven investigative and recovery capability. This move will provide an operational foundation, leveraging existing skilled investigators and institutional knowledge, and avoiding duplication.

- **Mandate:** The OPI's mandate would be to **prevent, investigate, and remedy systemic corruption** involving government and other organs of state, enhancing transparency, accountability and integrity in their operations. This includes conducting systemic anti-corruption audits, inquiries and investigations, providing policy guidance, protecting and supporting whistleblowers, and leading social mobilisation and public education programmes. The OPI must also approach its work with a deep understanding of the gendered nature of corruption, addressing issues like sexual corruption.

- **Functions and powers:** The OPI will perform investigative functions, including risk mapping, systemic audits, and civil investigations. It will coordinate the implementation of the NACS across all sectors and actively remedy systemic corruption risks by developing standards, providing advice, and training staff across all organs of state. Crucially, the OPI will **protect and support whistleblowers,** managing disclosures, ensuring their safety, and taking action where retaliation takes place. To support its independence and effectiveness, the OPI should have **control over its budget and human resources,** allowing it to recruit a multi-disciplinary team with specialised skills. It should have the power to **convene public hearings and pursue investigations** with powers to summon witnesses, access classified materials, conduct inspections, and seize evidence. Furthermore, the OPI should be empowered to **institute civil proceedings for the preservation and forfeiture of assets,** playing a vital role in recovering stolen public money. Its recommendations arising from audits and investigations should be **binding,** although available to judicial review, and enforceable by court order. The OPI's governance system, led by a council appointed through a transparent public process, must safeguard its integrity and independence.

- **Interim arrangements to protect and support whistleblowers:** The SIU should be empowered and resourced to provide protection and support to whistleblowers on an urgent basis until such time as the OPI takes over this function.

## Strengthening LEAs

NACAC has made crucial recommendations to strengthen existing anti-corruption LEAs, ensuring a coherent and effective multi-agency system.

- **Rationalising mandates:** NACAC recommends **reorganising the mandates of key LEAs.** A **strengthened Investigating Directorate Against Corruption** (IDAC) should be solely responsible for investigating and prosecuting serious corruption and serious commercial crime. The Directorate for Priority Crime Investigation (DPCI) should focus exclusively on organised crime. This clarification aims to eliminate overlaps, enhance focus, and improve effectiveness. **An interministerial task-team of the Justice Crime Prevention and Security (JCPS) Cluster, chaired by the Minister of Justice and Constitutional Development, should be established to lead this rationalisation process and should be required to report progress to the public each month.**

- **Coordination mechanism:** A **case management committee (CMC)** should be established, comprising senior representatives from IDAC, the National Prosecuting Authority (NPA), DPCI, South African Police Service (SAPS), Independent Police Investigative Directorate (IPID), and the OPI. **Chaired by the National Director of Public Prosecutions,** the CMC will coordinate investigations, allocate cases, and monitor progress, ensuring seamless collaboration and collective accountability.

- **Senior leadership appointments:** NACAC recommends introducing statutory, transparent procedures for appointing senior leaders in the criminal justice system (CJS) to ensure ethical, qualified, strong leaders. The proposed reforms include legislated timelines, independent expert-led selection committees, public disclosure of shortlisted candidates, and the establishment of a National Police Board (NPB) to advise on SAPS leadership appointments, with these processes codified in law to safeguard against future manipulation.

- **NPA independence and resourcing:** A comprehensive **overhaul of the NPA's legislative framework is urgently needed** to ensure its financial and institutional independence. This includes granting the NPA control over its budget and human resources, reforming the appointment processes for senior leadership through public consultation, and improving conditions of service to attract and retain critical skills. NACAC is also calling for increased resourcing for the NPA's specialised units – IDAC, Specialised Commercial Crime Unit (SCCU), Asset Forfeiture Unit (AFU) – and the court system to effectively handle corruption cases. **The Department of Justice and Constitutional Development (DOJ&CD), of which the NPA is a programme, should initiate and drive this process.**

- **The SAPS:** NACAC recommends a **comprehensive reform programme** with high-level political commitment for: the establishment of an independent NPB to oversee a SAPS Integrity and Professionalisation Strategy, legislative amendments to strengthen accountability mechanisms, targeted lifestyle audits, and strengthening the Anti-Corruption Investigation Unit's (ACIU) capacity and independence. Additional measures include enhanced data-driven monitoring, robust disciplinary processes, the integration of ethics into performance systems, and stronger promotion of corruption-reporting channels. Collectively, these reforms aim to restore credibility, deter misconduct, and embed a culture of integrity within SAPS. **The Ministry of Police should initiate and drive this process.**

- **Security for personnel and witnesses:** Given the high rate of violence against investigators, **more resources should be urgently provided to protect law enforcement and auditing staff and witnesses.** Mechanisms extending these protections to civil investigations and oversight personnel, such as investigators, prosecutors, and forensic auditors, should be instituted with equal urgency. A collective effort by the SAPS, NPA, DPCI and SIU is required in this regard.

- **Leveraging technology:** NACAC strongly advocates for the **integration of digital technologies and advanced analytics** into law enforcement institutions to support the shift towards an intelligence-led, risk-based enforcement model. This should include artificial intelligence (AI)-driven anomaly detection tools and a **comprehensive anti-corruption data sharing framework** to overcome fragmented data practices. Furthermore, the report highlights the growing threat of deepfakes and AI-generated content to democracy, recommending that LEAs be equipped with detection tools and training to verify digital evidence. **A high-level inter-departmental task-team of the JCPS Cluster comprising Directors-General of the cluster and/or relevant and appropriate Chief Directors and Heads of LEAs and supporting institutions and/or their relevant and appropriate executives should be established to lead the development of an AI and data analytics strategy for immediate implementation by the LEAs.**

## Broader anti-corruption initiatives

Beyond institutional reforms, NACAC's recommendations extend to societal mobilisation and legislative enhancements:

- **Strategic communications strategy:** A strategic communications strategy is essential to mobilise society against corruption. This involves driving social behaviour change communication, adopting a gender-transformative approach, including youth in messaging, and establishing a **National Communications Partnership (NCP)** led by the OPI to coordinate collective action across government, civil society, and the private sector. **In the interim, the SIU should intensify their current anti-corruption communications efforts, drawing on the findings of NACAC's research, and coordinate these efforts with other sectors. Once the OPI is established it will take over this communication function.**

- **Embedding NACS implementation:** Under the **leadership of the Minister of Justice and Constitutional Development,** executive authorities of all government departments and entities, at all levels, should **embed an anti-corruption and integrity-building framework** within their operations, complete with corresponding monitoring and evaluation mechanisms. This will ensure that implementation of the NACS becomes an integral part of daily government business.

- **Legislative amendments:** Urgent amendments are recommended for the Political Party Funding Act, Public Procurement Act, Electoral Amendment Act and the SAPS Act to address public integrity risks, enhance transparency in political financing and public procurement, and to improve the coherence of the SAPS Act, respectively.

NACAC's work has laid a **strong foundation for South Africa's future anti-corruption efforts.** While the full realisation of the OPI and other reforms will require sustained political will and significant effort, NACAC urges government to move forward with these proposed courses of action as quickly as possible. Strong and speedy action is vital for strengthening our young democracy and building a future free from the scourge of corruption and state capture.

*Figure 1: Members of NACAC with President Ramaphosa after a meeting to present the work of NACAC*

# Foreword

It is with a deep sense of responsibility and hope that I present this final report of the NACAC. Since our appointment in September 2022, NACAC has been entrusted with a critical mandate: to advise the President and the nation on implementing the NACS 2020–2030, and to shape South Africa's comprehensive response to the recommendations of the Zondo Commission.

In workshops and national dialogues – including events held on International Anti Corruption Day and youth and gender sessions – we deliberately positioned citizens not only as beneficiaries of reform but as key changemakers. Our engagements have been informed by extensive consultations with civil society, law enforcement, academia, and local communities – within South Africa and through international study visits to places such as Hong Kong, Kenya, and the Balkans.

Drawing on these engagements, our mid-term report of March 2024 proposed the creation of an OPI – a constitutionally entrenched body with broad investigatory powers, civil recovery tools, oversight duties, and a mandate to mobilise public education and participation. The OPI is intended to integrate the strengths of the existing SIU, while offering greater independence, continuity, and capacity to address the prevention of systemic corruption.

Our proposals are grounded in the STIRS criteria – specialisation, training, independence, resources, and security of tenure – laid down in the landmark Glenister judgments. We emphasised the need for an institution insulated from political interference but still empowered to collaborate with other bodies – such as the NPA and Public Protector – within a strengthened anti-corruption architecture.

This final report captures the culmination of NACAC's full term: our research-based recommendations, our public and sectoral dialogues, and our clear message to government and the South African people. It sets out why preventive measures must be given a much stronger focus, and why we must tackle corruption as a structural and societal challenge – not merely a moral failing.

I would like to thank all members of NACAC and our many partners – including civil society, academia, local communities, and international peers – for their collaboration and insights. We submit this report in the belief that a revitalised, democratically accountable, and transparently governed state is not only possible – it is essential.

To those who read this report – government officials, members of parliament, students, civic leaders, and concerned citizens – I urge you to engage with its findings. Let us transform critique into action; let us ensure this report becomes a living blueprint that inspires reform, builds integrity, and restores public trust.

Chairperson, National Anti Corruption Advisory Council

# List of abbreviations

| | |
|---|---|
| African Policing Civilian Oversight Forum | APCOF |
| Annual Performance Plans | APP |
| Anti-Corruption Investigation Unit | ACIU |
| Artificial Intelligence | AI |
| Asset Forfeiture Unit | AFU |
| Association of Anti-Corruption Agencies in Commonwealth Africa | AAACOA |
| Auditor General of South Africa | AGSA |
| Case Management Committee | CMC |
| Civilian Secretariat for Police Service | CSPS |
| Criminal Justice System | CJS |
| Deferred Prosecution Agreements | DPAs |
| Department of Justice and Constitutional Development | DOJ&CD |
| Department of Planning, Monitoring and Evaluation | DPME |
| Directorate of Priority Crime Investigation | DPCI |
| Directorate of Special Operations | DSO |
| Directors of Public Prosecution | DPPs |
| Deutsche Gesellschaft fuer Internationale Zusammenarbeit | GIZ |
| Electoral Matters Amendment Bill | EMAB |
| Ethics and Anti-Corruption Commission | EACC |
| Financial Action Task Force | FATF |
| Financial Intelligence Centre | FIC |
| Futures Literary Laboratory | FLL |
| G20 Anti-Corruption Working Group | ACWG |
| Global Organised Crime Index | GOCI |
| Human Sciences Research Council | HSRC |
| Independent Electoral Commission | IEC |
| Independent Police Investigative Directorate | IPID |
| Information and Communication Technologies | ICTs |
| Institute for Security Studies | ISS |
| Investigating Directorate Against Corruption | IDAC |
| Law Enforcement Agencies | LEAs |
| Justice Crime Prevention and Security Cluster | JCPS |
| National Anti-Corruption Advisory Council | NACAC |
| National Anti-Corruption Strategy | NACS |
| National Communications Partnership | NCP |
| National Development Plan | NDP |
| National Director of Public Prosecutions | NDPP |
| National Economic Development and Labour Council | NEDLAC |
| National Police Board | NPB |
| National Prosecuting Authority | NPA |
| Non-Trial Resolution | NTR |
| Office of Public Integrity and Anti-Corruption | OPI |
| Organisation for Economic Cooperation and Development | OECD |

# List of abbreviations continued

| | |
|---|---|
| Political Party Funding Act | PPFA |
| Prevention and Combatting of Corruption Act | PRECCA |
| Prevention of Organised Crime Act | POCA |
| Promotion of Access to Information Act | PAIA |
| Protection of Personal Information Act | POPIA |
| Public Affairs Research Institute | PARI |
| Public Procurement Anti-Corruption Agency | PPACA |
| Public Procurement Office | PPO |
| Public Service Commission | PSC |
| South African Law Reform Commission | SALRC |
| Senior Management Structure | SMS |
| Serious Fraud Office | SFO |
| South African Police Service | SAPS |
| South African Revenue Service | SARS |
| Sexual Offences and Community Affairs | SOCA |
| Specialised Commercial Crime Unit | SCCU |
| Special Investigating Unit | SIU |
| State Owned Enterprises/Entities | SOEs |
| State Security Agency | SSA |
| Theory of Change | ToC |
| United Nations Convention Against Corruption | UNCAC |
| United Nations Office of Drugs and Crime | UNODC |

# Introduction

South Africa's struggle against corruption is unfolding in a complex socio-economic landscape, shaped by the legacies of apartheid-era exclusion and structural inequality. While economic power and opportunity remain unevenly distributed, and many – particularly among the black majority – continue to face barriers to quality education, healthcare, housing, water, and employment, there have been significant strides made since 1994.

Institution-building is a long-term project. Over the past three decades, South Africa has expanded access to basic services, built democratic institutions, and made notable progress in delivering housing, electricity, and social grants to millions. Yet, despite these gains, the full promise of inclusive growth, meaningful economic participation, and social justice remains unrealised. This is due to factors such as governance challenges, persistent corruption, and policy approaches that have struggled to meaningfully transform the underlying economic structure.

It is in this context that corruption has become systemic. The revelations of large-scale state capture under previous administrations exposed how public institutions and state-owned enterprises were repurposed for private gain, draining billions from the public purse. This entrenched corruption continues to divert resources away from vital social and economic programmes, weakening public trust in institutions and eroding the rule of law.

The impacts of corruption are not felt equally across South Africa's population. With high levels of poverty affecting a significant share of the population, the poor are especially vulnerable to the failures of basic service delivery and the diversion of resources meant for social development. Women, who are more likely to live in poverty and to rely on public services and social grants, often bear the brunt of dysfunctional service delivery and diminished state capacity. Corruption in sectors like housing, healthcare, and social welfare perpetuates cycles of poverty and deepens the gendered dimensions of structural inequality.

The persistence of corruption undermines the state's ability to function as an effective agent of development. The National Development Plan (NDP) envisions a capable state that can drive inclusive economic growth, reduce inequality, and expand opportunities for all. Yet, widespread graft compromises governance, weakens oversight bodies, and distorts policy implementation, stalling progress towards these goals. Institutionalising democracy therefore needs to incorporate anti-corruption mechanisms.

It is within this context that the NACS 2020–2030 was developed to provide a national framework to tackle corruption more strategically and systematically. The NACS emphasises that corruption is not just about unethical individuals but about systemic weaknesses in governance and accountability systems that must be addressed at all levels. It outlines measures to strengthen institutions, improve oversight, promote transparency in political and public life, and ensure consequences for wrongdoing. Importantly, it calls for stronger partnerships between government, civil society, and the private sector to build an active citizenry that asserts public integrity, demands accountability and protects whistleblowers.

The NACS also highlights how corruption worsens poverty and exclusion by siphoning resources away from critical social and economic programmes. It recognises that addressing corruption entails advancing economic transformation and social justice. By safeguarding public resources and ensuring that services reach those who need them most, the NACS aims to restore trust in the state and support the broader goals of reducing inequality and building an inclusive society.

In September 2022, the President appointed the NACAC to advise on the implementation of the NACS and the design of a new anti-corruption institution. From the start, NACAC has been conscious that it is working in the interests of the people of South Africa and it is for their benefit that it exercises its mandate.

It is time to act on this will of the people, and to strengthen the government's response to corruption. Senior government leaders have committed to making progress against corruption, embracing a pro-integrity culture, and working to embed systems to safeguard against corruption.

Translating these commitments into concrete action is especially important in this new phase of South Africa's maturation as a democracy. Low-growth and heightening social insecurity demand the highest levels of probity in the governance of the new wave of loan-based investments into growth-driving public infrastructure and the economy.[1] Exposing and neutralising organised crime networks that have corroded the delivery of public goods and services and which endanger our people daily is all the more urgent.

NACAC's term of office has not been without challenges, many of which are inevitable when working in the field of anti-corruption. Anti-corruption councils around the world have always worked in difficult circumstances and generated controversy, and probably always will.

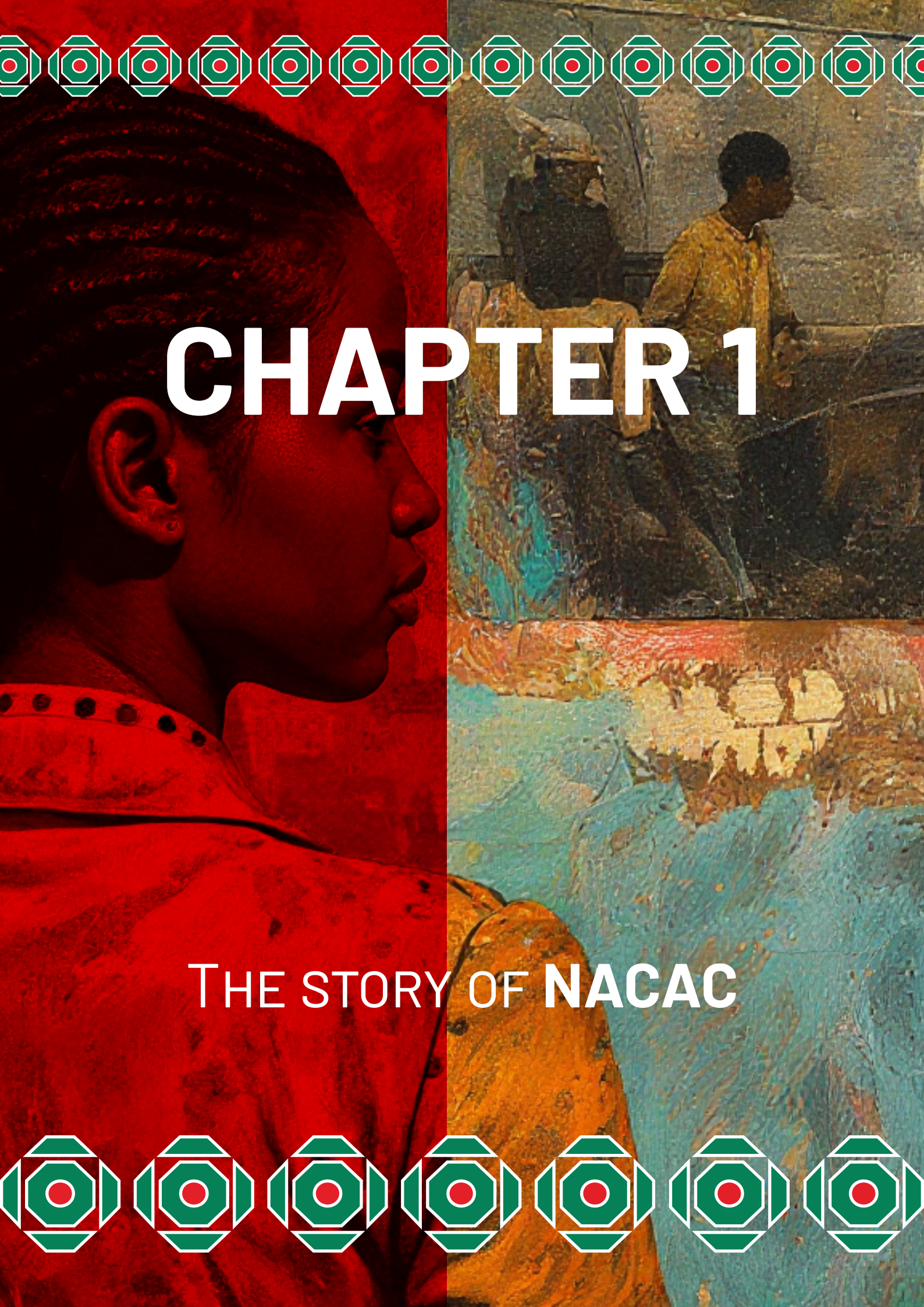
NACAC was established to advise the President on how to make good on South Africa's aspiration for concrete actions that will make a material difference in the fight against corruption. Understandably, South Africans are watching NACAC expectantly, waiting for its recommendations. However, NACAC was appointed to advise the President. As such, its recommendations have not yet been made public. NACAC delivered its Advisories and its two reports – the mid-term report and this final report – to the President for his consideration.

This report has three main objectives, namely:

- to describe how NACAC carried out its mandate;
- to outline NACAC's proposal for a dedicated, independent anti-corruption institution, operating within a strengthened framework of LEAs; and
- to present recommendations made in NACAC's Advisories to the President.

[1] World Bank. 2025. Driving inclusive growth in South Africa: Quick wins with competitive markets and efficient institutions . https://www.worldbank.org/en/country/southafrica/publication/driving-inclusive-growth-in-south-africa-quick-wins-with-competitive-markets-and-efficient-institutions

The report is made up of seven sections. After the Introduction, Chapter 1 tells the story of the NACAC, describing its mandate and way of working. Chapter 2 gives necessary background information about corruption in South Africa. Chapter 3 describes the new anti-corruption agency – the OPI. Chapter 4 explains the NACAC's communication and society mobilising efforts. Chapter 5 sets out essential measures for strengthening existing LEAs. Chapter 6 summarises NACAC's Advisories and recommendations, and Chapter 7 sets out the way forward. More detailed information is provided in comprehensive appendices, which include research reports and the full Advisories to the President.



# CHAPTER 1

## THE STORY OF **NACAC**

The story of NACAC began when President Cyril Ramaphosa, following a public call for nominations, appointed nine Councillors to advise him on improving South Africa's response to corruption.

NACAC was composed of individual members drawn from civil society, academia, labour, private sector, and traditional leadership, broadly representative of society and giving effect to the all-of-society and all-of-government approach to combatting corruption. NACAC members collectively brought decades of experience in areas of anti-corruption, public service and social justice, and this diversity of voices allowed for robust discussion and a balancing of views.

Professor Firoz Cachalia (Chair)

Inkosikazi Nomandla Dorothy Mhlauli (Deputy Chair)

Mr Nkosana Dolopi

Ms Thandeka Gqubule-Mbeki

Adv. Nokuzula Gloria Khumalo

Mr David Lewis

Mx Sekoetlane Phamodi

Ms Kavisha Pillay

Ms Barbara Schreiner

## NACAC's mandate

The President appointed NACAC with a mandate to:

- Advise on the effective implementation of the NACS by government, civil society and the private sector, including the design of the new anti-corruption agency described in the NACS;
- Advise key role-players on the overarching thrust of the NACS, namely the six pillars upon which it is premised;
- Advise on the strengthening of South Africa's anti-corruption architecture;
- Host the national anti-corruption summit(s), bringing together government, civil society, business, and academia, to set the country's anti-corruption agenda and evaluate progress in the implementation of the NACS;
- Advise on public awareness about corruption in all its facets; and
- Advise on the implementation of the recommendations of The Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State (the Zondo Commission) from a strategic and systemic perspective.

NACAC prioritised key aspects of its mandate, while addressing other tasks as its resources allowed. NACAC's most important contribution has been to lay the groundwork for South Africa's new anti-corruption agency. This new, independent, overarching institution will play a leading role in the country's anti-corruption effort, in collaboration with existing LEAs, which need to be strengthened to better address corruption.

This work supports South Africa's compliance with its international obligations. The United Nations Convention against Corruption (UNCAC) requires countries to ensure the existence of a body or bodies that prevent corruption (Article 6), and that specialise in combating corruption through law enforcement (Article 36). It provides that countries shall give these institutions enough independence and resources to carry out their work. NACAC is committed to supporting the government to fulfil these obligations.

## NACAC's way of working

Civil society partnered with government in a rich multi-stakeholder process over many years to develop the NACS. NACAC built on this foundation of anti-corruption work by civil society, citizens and many ethical government officials. NACAC also drew on the valuable work of the Zondo Commission – a unique South African accomplishment on the road away from corruption and towards greater integrity.

NACAC established several workstreams, some of which established reference groups that brought together external experts on a specific topic. Reference group members provided inputs and contributed to the development of advisories. NACAC adopted a consultative approach to its work, engaging with a large number of organisations involved in the anti-corruption struggle in South Africa. NACAC commissioned research from institutions, worked closely with leaders of LEAs, and consulted academics and other experts. It held workshops to engage with stakeholders and sector experts and went on learning journey-exchanges with international counterparts.

These numerous engagements allowed NACAC to obtain deep and varied evidence for its advice to the President. Despite NACAC's efforts, engagement with some stakeholders, notably the DOJ&CD and the SAPS, proved difficult. More details on NACAC's work are in Appendix T.

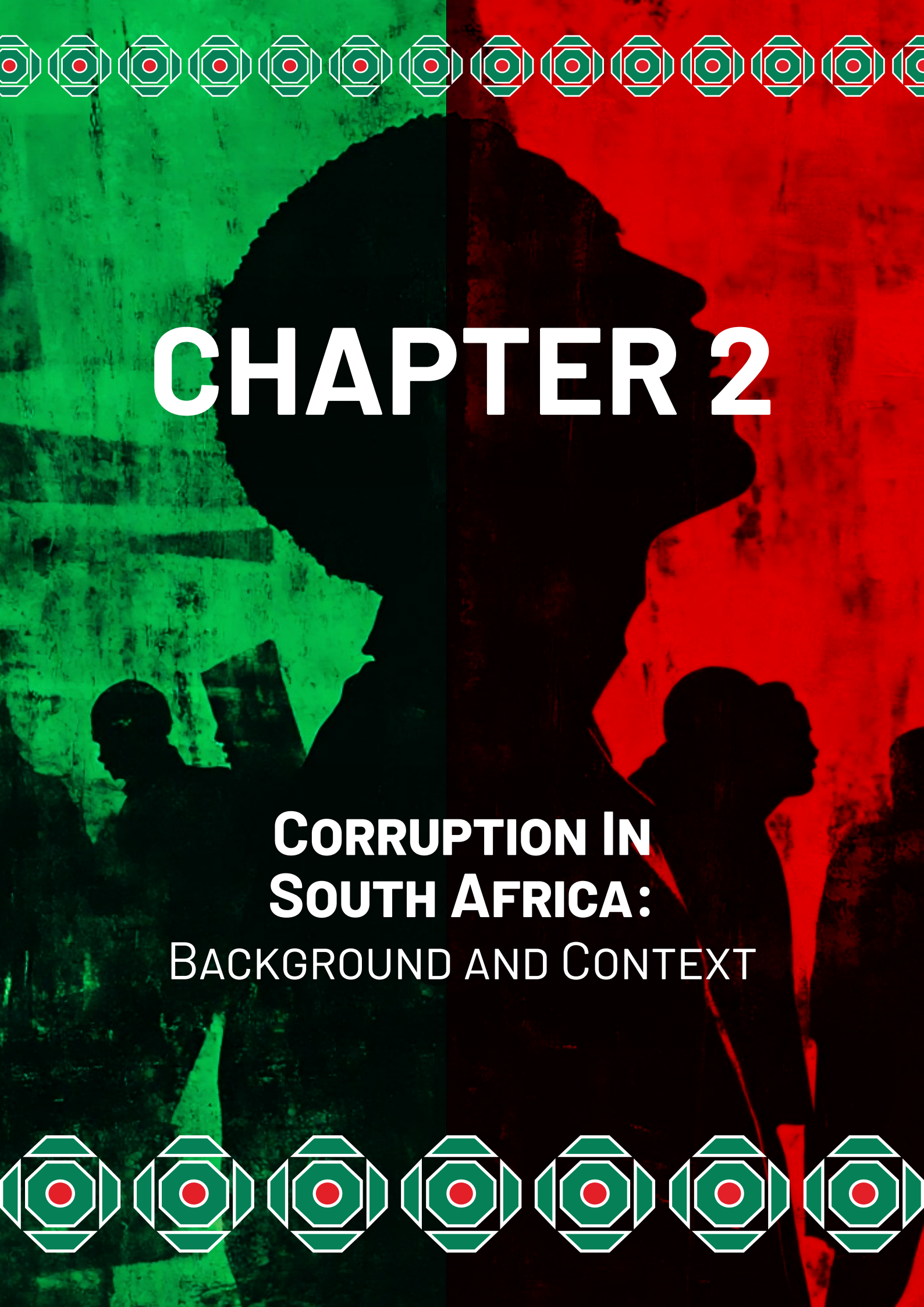
NACAC's decisions were taken at plenary meetings on a consensus-based approach, underpinned by full and robust discussion by Councillors. Advisories to the President were approved by the full Council before submission to the President.

NACAC delivered its mid-term report to the President in May 2024. The mid-term report (Appendix G) described the work and key milestones achieved by NACAC in executing its mandate, from its inception in 22 September 2022 to 31 March 2024. The report was also presented to the State Capture Commission Steering Committee on 16 September 2024, and to the JCPS Cluster on 5 November 2024. The Ministry of Justice and Constitutional Development was asked to champion the recommendation for the OPI and to ensure that these recommendations were considered by the JCPS Ministerial Cluster.

For Phase 2 of its work (May 2024 – August 2025) NACAC prioritised three areas of work, setting up three workstreams focused on:

- Refining the proposal for the proposed OPI;
- Strengthening of the existing anti-corruption LEAs; and
- Communications for an all-of-government and all-of-society approach to combatting corruption.

NACAC would like to thank all those who have contributed their time and support to the work of NACAC (Appendix U), including the secretariat staff; members of the reference groups; members of government, civil society and the private sector; Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ); the United Nations Office of Drugs and Crime (UNODC); and other development and technical assistance partners such as the Public Affairs Research Institute (PARI), the Dullah Omar Institute, the African Policing Civilian Oversight Forum (APCOF), and the Institute for Security Studies (ISS). Special thanks is due to the Public Service Commission (PSC) which co-hosted the national dialogues. Thanks too to Prof. Chris Stone of Oxford University for his support and advice, and to Colette Ashton and Tersia Lewis for their hard work in pulling this report together.



# CHAPTER 2

## Corruption In South Africa:

### Background and Context

# Corruption In South Africa: Background and Context

Understanding corruption is essential to designing effective remedies. As such, NACAC commissioned research on the drivers and types of corruption in South Africa.

## Drivers of corruption

There are various drivers of corruption in South Africa, including economic inequality, poverty and a legacy of state corruption from colonial and apartheid governments. There are other drivers such as weak institutions and political patronage networks. While government is the 'demand side' of corruption, the private sector is the 'supply side'. Research shows that social norms – peoples' expectations about how others think they should behave – are also a strong driver of corrupt behaviour.[2]

The Human Sciences Research Council (HSRC) survey on social norms and behaviour change (Appendix N) found that public trust in government is declining. Many South Africans believe that accepting bribes is permissible. Only 45% of respondents said that they would report corrupt behaviour. Fear emerged as a factor and a clear majority of the population sampled felt that reporting corruption could bring retaliation from the community in which they lived. Many people thought that inadequate law enforcement was part of the problem.

There is a lack of 'primary empirical research' into corruption in South Africa – which makes it difficult to understand the drivers of corruption in depth.[3] This is a challenge for reformers, "because understanding local contextualities is crucial to effective anti-corruption design and implementation".[4] More robust empirical research into the drivers of corruption, particularly at provincial, local, and sector-specific levels, is needed to inform policy in South Africa in future.

## Types of corruption

### State capture

Corruption manifests in many forms. One particularly destructive form of corruption which South Africa has experienced is state capture. The Zondo Commission defined state capture as a systematic project where a group of actors, inside and outside of the state, conspire to redirect state resources for their own gain. This process involves weakening or exploiting key state institutions and public entities, manipulating public narratives and undermining oversight mechanisms.[5] State capture left in its wake many damaged institutions vulnerable to systemic corruption.

2 C. Scharbatke-Church & D. Chigas. 2019. Understanding Social Norms: A Reference Guide for Policy and Practice. The Fletcher School: Tufts University. www.kpsrl.org/sites/default/files/2019-11/SN_CorruptionRefGuide_AUG2019-linked.MR__0.pdf

3 T. Amanquandor. 2024. Limitations of the international approach to anti-corruption: a systematic review of South Africa's compelling case of failing anti-corruption. Crime, Law and Social Change, Vol 82. Pp 493-516. www.link.springer.com/article/10.1007/s10611-024-10152-y

4 T. Amanquandor. 2024. Limitations of the international approach to anti-corruption: a systematic review of South Africa's compelling case of failing anti-corruption. Crime, Law and Social Change, Vol 82. Pp 493-516. www.link.springer.com/article/10.1007/s10611-024-10152-y

5 Judicial Commission of Inquiry into State Capture Report. Part VI, Vol 2. Pp 5-40. www.statecapture.org.za/site/files/announcements/670/OCR_version_-_State_Capture_Commission_Report_Part_VI_Vol_II_-_CR.pdf

## Systemic corruption

State capture is one manifestation of systemic corruption. Corruption is systemic when it is deeply embedded in the structures and functioning of an organisation, institution, or society. It occurs when corruption is not limited to isolated cases but becomes a regular, normalised, and pervasive feature in an organisation, sector or society. Systemic corruption does not always involve criminal acts and is not necessarily punishable through criminal law. It is always unethical, but not always criminal. It is widespread in South Africa.

Systemic corruption involves hidden networks of public and private actors that distort and capture democratic and state processes to facilitate the misuse of public authority for their own personal and political advantage. These networks are governed by unwritten rules and are held in place by rewards (including promotion) or punishments (including bullying and even death threats). Systemic corruption has eroded the value systems of state institutions, turning their purpose from *ubuntu* to personal and political gain (see Appendix B, p 9).

Taking account of definitions by the World Bank, Transparency International, UNODC and the Anti-Corruption Resource Centre, systemic corruption has the following key characteristics:

- **Commonplace and institutionalised:** Systemic corruption describes environments where corrupt practices have become commonplace, institutionalised, or normalised (also called 'legal corruption').
- **Political decay:** Corruption becomes integral to the system, often involving those in power shaping the system to serve corrupt ends.
- **Everyday experience:** Systemic corruption refers to environments where corruption, such as bribery, is a common experience for the population in their interactions with the state.
- **Collective norm:** Systemic corruption can function as a collective norm, tolerated or even encouraged by those in power, and supported by low levels of trust that others will behave non-corruptly (see Appendix B, p 10).

## Frontline corruption

Systemic corruption may include frontline corruption, including corruption in access to public services such as health, police services and education. Frontline corruption refers to corruption or the abuse of power at the point where the public interact daily with the state, such as clinics, schools, police stations, licensing departments, or grant offices. It typically involves informal payments, favours, or coercion, demanded by public officials in exchange for basic services where access should be a matter of right.

While often dismissed as "small-scale" or "petty", frontline corruption can be systemic in nature. It reinforces inequality, weakens trust in public institutions, and entrenches exclusion – particularly for the poor, marginalised, or politically disempowered people who may not be able to offer gratification to unlock access to public goods, services or opportunities they should otherwise be able to access freely or by operation of established procedures. Additionally, it can distort political behaviour by entrenching patronage networks, eroding accountability, and undermining democratic participation. Over time, frontline corruption shifts the very terms on which the public relate to the state, from one of rights and services to one of survival, favours, and transactions. And frontline corruption – as the examples cited above illustrate – also targets some of the largest procurement budgets in the public sector.

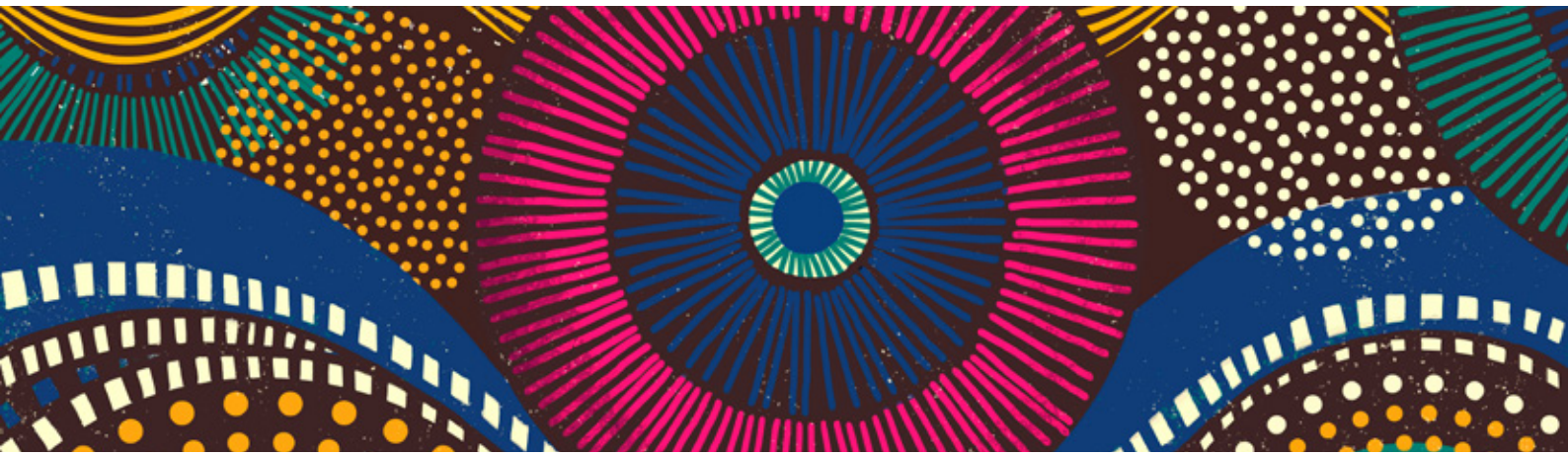
## The impact of corruption

Regardless of how one defines corruption, its impact is highly corrosive. Corruption in South Africa has caused far-reaching damage, impacting on the economy, the ability of state institutions to effectively carry out their service delivery functions, confidence in the private sector and the country's reputation, as well as public trust. Financial losses as a result of corruption are starkly illustrated by the Zondo Commission's investigations.

The Commission estimated the total amount of money spent by the state which was 'tainted' by state capture to be around R57 billion.[6] Other estimates which take a wider view place the figure in the region of R1.5 trillion in losses to the budget, debt servicing costs, lost tax revenue collection, project overspends, and losses from the value of South African bonds and listed companies.[7] A South African Reserve Bank economist estimated that the economic impact of state capture in South Africa amounted to 4% of GDP growth.[8]

Failure to control economic crime and corruption has additional consequences. In 2023 South Africa was added to the Financial Action Task Force's (FATF) list of "Jurisdictions under Increased Monitoring" or grey list. Being on the grey list signals that a country needs to address weaknesses in its anti-money laundering and counter terrorism finance frameworks and makes doing any business in the country more difficult, so that the country becomes less competitive. It comes with significant reputational damage and damages sentiment towards the economy.

In the past two years, South Africa has taken significant steps to improve these frameworks and the country is likely to exit the grey list in October 2025. This positive development will bring a measure of economic relief.



6 Public Affairs Research Institute. 2022. The Zondo Commission: A bite-sized summary. P 6. https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf

7 Marianne Merten. Daily Maverick. 2019. State capture wipes out third of SA's R4.9-trillion GDP – never mind lost trust, confidence, opportunity. https://www.dailymaverick.co.za/article/2019-03-01-state-capture-wipes-out-third-of-sas-r4-9-trillion-gdp-never-mind-lost-trust-confidence-opportunity/

8 News24. 2024. Damage from state capture 'worse than suspected' – SARB. https://www.news24.com/business/damage-from-state-capture-worse-than-suspected-sarb-20190606

However, the proliferation of organised crime, which is facilitated by corruption, sees South Africa scoring poorly for criminality syndicated activities by ENACT's Global Organised Crime Index (GOCI). South Africa has become a major transit and destination country for drug trafficking, and crimes such as kidnappings and extortion are on the rise. Local and foreign criminals seek and find refuge in the country and are able to evade arrest through bribery of border and police officials.[9]

As mentioned, the differentiated impact of corruption means that women, youth, people living with disabilities, and those with fewer resources and those highly dependent on public services, such as poor rural and urban households, often bear a disproportionately higher burden. The health sector is an example of a sector where corruption is rife in both the private and public sector. Rampant procurement corruption, corrupt employment practices, theft and medical claims fraud have reduced access to healthcare for the most vulnerable in society.

The extent of the harm done by corruption was acknowledged by the President at the inaugural National Dialogue on Anti-Corruption in 2023, where he said:

> "Corruption has wounded our democracy and shaken people's faith in our institutions. If corruption is not arrested, the greatest damage will not be in the funds stolen, the jobs lost or the services not delivered. The greatest damage will be to the belief in democracy itself."[10]

## Responses to corruption

There is currently impunity for perpetrators of serious corruption in South Africa.[11] Continued impunity for powerful and politically exposed people implicated in corruption is responsible for eroding public trust in government. NACAC regards the current crisis in law enforcement as a threat to the stability and future of South Africa. Making recommendations to strengthen anti-corruption enforcement was therefore a key focus area of NACAC.

Prosecution of complex, systemic corruption in particular requires significant financial and human resources, and can take years. It is globally recognised that a law enforcement approach to addressing corruption is necessary, but not sufficient, and must be paired with a strong preventive strategy.

Corruption prevention is as important as anti-corruption enforcement. It helps to tackle corruption before it can result in serious negative consequences and addresses its root causes. The UNCAC, the Organisation for Economic Cooperation and Development (OECD) Anti-Bribery Convention, the NDP, and the NACS all emphasise the importance of corruption prevention. The NACS is premised on the approach that prevention must be emphasised at least as strongly as reactive measures. Six of the NACS's seven strategic objectives have a direct corruption prevention focus.

Corruption prevention refers to the proactive measures and strategies implemented to deter, detect, and eliminate the root causes of corruption before it can occur or cause significant harm. Corruption prevention methods include:

[9] ENACT. Africa Organised Crime Index. 2023. Increasing criminality, growing vulnerabilities. https:enact-africa.s3.amazonaws.com/uploads/pages/1708078753063-2023-11-24-oci-africa-final.pdf

[10] President Cyril Ramaphosa. 2023. Keynote address: National Dialogue on Anti-Corruption. https://www.thepresidency.gov.za/keynote-address-president-cyril-ramaphosa-national-dialogue-anti-corruption-birchwood-hotel-gauteng

[11] National Prosecuting Authority. 2021. Annual Report. P 8.

**1. Promoting transparency and open government through, for example,**

- **Access to information laws:** Ensuring public access to government records and decision-making processes.
- **Open budgets and spending:** Publishing budgets, procurement data, and government contracts.
- **Public disclosure of assets:** Requiring officials to declare assets, incomes, and interests.

**2. Strengthening accountability through, for example,**

- **Internal controls:** Establishing clear procedures, checks and balances, and oversight within institutions.
- **Codes of conduct and ethics:** Implementing clear rules for public officials' behaviour.
- **Independent oversight bodies:** Strengthening agencies tasked with anti-corruption oversight including auditors-general.
- **Whistleblower protection:** Providing safe channels and legal protection for reporting wrongdoing.

**3. Improving governance and institutions through, for example,**

- **Professionalisation of the civil services:** Merit-based recruitment and promotion to reduce patronage and nepotism.
- **Institutional capacity building:** Training public servants on ethics, integrity, and anti-corruption measures.
- **Streamlining bureaucracy:** Simplifying overly complex procedures to reduce opportunities for corruption.

**4. Promoting civic engagement and public awareness through, for example,**

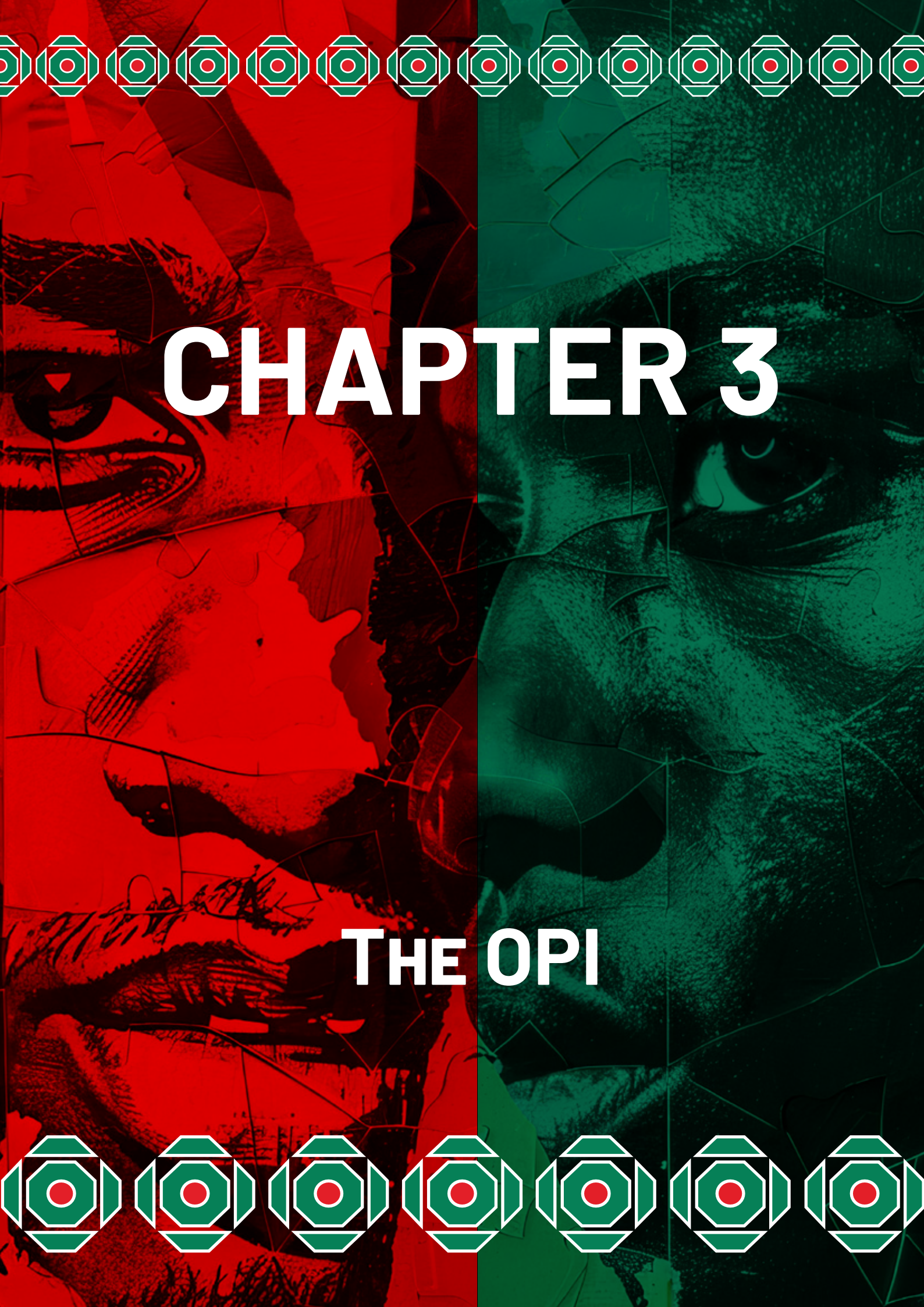
- **Civic education campaigns:** Informing citizens about their rights and how to report corruption.
- **Engaging civil society and media:** Supporting investigative journalism and NGOs in monitoring corruption.
- **Social norms change:** Engaging with officials and the public in programmes to change pro-corruption social norms.

**5. Risk management and corruption proofing through, for example,**

- **Corruption risk assessments and remedial action:** Identifying sectors or processes most vulnerable to corruption and implementing remedial action.
- **Audit and monitoring systems:** Routine audits and performance monitoring of public programmes.

As a signatory to UNCAC, South Africa is obliged to give effect to the provisions of the Convention. In terms of articles 6 and 36 of UNCAC, state parties have an obligation to establish a body or bodies that are dedicated to preventing corruption. These bodies must be able to discharge their functions in an independent manner. Independence means these bodies must discharge their functions without any undue influence from anyone. States have an obligation to provide the necessary material resources and specialised staff, as well as the training that such staff may need to carry out their functions. The African Union Convention on Preventing and Combatting Corruption and the Southern African Development Community Protocol Against Corruption, both of which South Africa is a signatory to, entail similar obligations.

It is important for South Africa to fully comply with these international obligations given the leading role it continues to play in global and continental anti-corruption structures. In December 2024, South Africa assumed the chairmanship of the G20, and with that, leads the G20 Anti-Corruption Working Group (ACWG). South Africa also currently chairs the Association of Anti-Corruption Agencies in Commonwealth Africa (AAACOA), an organisation that works to strengthen anti-corruption efforts across Commonwealth African countries and will keep the chairperson's seat throughout the 2025-2026 term.



# CHAPTER 3

## The OPI

## Establishing the OPI

The Zondo Commission recommended that:

> "...a permanent Commission be established the main function of which will be to investigate, publicly expose acts of state capture and corruption in the way that this Commission did over the past four years, make findings and recommendations to the President. Such a Commission could be called the Anti-State Capture and Corruption Commission."[12]

The Zondo Commission also recommended that:

> "Government introduce legislation for the establishment of an independent Public Procurement Anti-Corruption Agency (PPACA)... as an independent body subject only to the Constitution and the law; which has jurisdiction throughout the Republic; which is impartial and must perform its functions without fear, favour or prejudice; which is financed from: money that is appropriated by Parliament for the Agency; fees payable to the Agency by all tenderers for public procurement contracts; money received from any other source."[13]

NACAC considered these recommendations and the requirements of the UNCAC, which requires countries to:

> "ensure the existence of a body or bodies to prevent corruption... implement and coordinate anti-corruption policies, increase and disseminate knowledge about corruption prevention, and oversee preventive measures."

The UNCAC provides that these bodies must have independence and sufficient resources to carry out their functions free from undue influence.

NACAC considered the international standards for anti-corruption bodies known as the Jakarta Principles and studied the Constitutional Court's judgments in the *Glenister* cases. It conducted research on appropriate institutional arrangements and discussed options with the heads of government institutions, including the Public Protector of South Africa, the PSC, and the SIU. NACAC consulted former Chief Justice Zondo and legal officers of the State Capture Commission, LEA heads from the NPA and DPCI, as well as experts from academia and civil society.

NACAC learned much from study tours to Kenya, Serbia, Lithuania and Hong Kong (see Appendices P, Q and R) allowing us to interact with institutions – new and old – that have tackled related challenges across our continent and elsewhere in the world.

---

12 Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State. 2022. Volume 4: Summary of Recommendations. P 186. https://www.statecapture.org.za/site/files/announcements/672/OCR_version_-_State_Capture_Commission_Report_Part_VI_Vol_IV_-_Recommendations.pdf

13 Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State. 2022. Volume 4: Summary of Recommendations. P 17. https://www.statecapture.org.za/site/files/announcements/672/OCR_version_-_State_Capture_Commission_Report_Part_VI_Vol_IV_-_Recommendations.pdf

*Figure 3: Learning journey to Hong Kong. March 2024*

*Figure 4: NACAC members engage with members of the Ethics and Anti-Corruption Commission on the learning journey to Kenya. 2023*

Based on this work, NACAC recommends the establishment of a permanent, independent, overarching anti-corruption body.

**Recommendation 1 – Establish a new anti-corruption agency as a permanent, independent institution in terms of Chapter 9 of the Constitution.**

NACAC recommends that the OPI is established as a Chapter 9 institution with the mandate to prevent, investigate and remedy systemic corruption involving government and other organs of state and to enhance transparency and integrity in their workings.

This recommendation is in alignment with the NACS, which states:

> "This overarching body will drive strategy roll-out and coordinate all the anti-corruption activities in the country. It is premised on an integrated operational model with cross-sectoral collaboration, in line with the country's whole-of-government and whole-of-society approach to combating corruption." (NACS, P 51)

This strategic intent of the NACS was reiterated by President Ramaphosa in his 2021 State of the Nation Address, where he explained that he is relying on NACAC to "oversee the initial implementation of the strategy and the establishment of an independent statutory anti-corruption body that reports to Parliament".

## Systemic corruption poses a serious challenge to democracy

NACAC's mid-term report described how South Africa "face[s] challenges to our democracy from systemic corruption that are distinct from challenges elsewhere and are particular to our society, our history, and our continuing struggles."[14] Drawing from the findings of the Zondo Commission and engagements with social partners including the leadership of the LEAs, NACAC concluded that "the institutional mechanisms of our young democracy have failed and been harmed most dramatically. Corruption has affected the functioning of public institutions and impacted negatively on public welfare and the delivery of public services."[15]

The preamble to the Prevention and Combatting of Corrupt Activities Act (PRECCA) expounds on the corrosive effects of corruption on social and political life, and the duty of the state to take all necessary measures to fight corruption effectively and efficiently as part of its obligation to respect, protect, promote and fulfil the rights enshrined in the Bill of Rights.

The PRECCA, along with other legislation, provides for a suite of LEAs responsible for **reacting** to corruption through a multi-agency approach. The continued prevalence of systemic corruption despite the existence of this law enforcement architecture is a clear indication that a complementary **preventive** institution is also required to reduce corruption.

14 NACAC. 2024. Mid-Term Report to the President, the Cabinet and the Country. P 7.

15 NACAC. 2024. Mid-Term Report to the President, the Cabinet and the Country. P 9.

## Why a Chapter 9 institution?

In *Glenister II* the Constitutional Court held:

> "SA needs an agency dedicated to the containment and eventual eradication of the scourge of corruption. We also agree that the entity must enjoy adequate structural and operational independence to deliver effectively and efficiently on its core mandate."[16]

Establishing the OPI as a Chapter 9 institution responds to two imperatives. Firstly, it signals the seriousness with which society and government view corruption and the risk it poses to our constitutional democracy. A proper response to this risk requires the establishment of an institution with a **dedicated** rather than merely incidental mandate of corruption prevention. This institution should have extensive powers of intervention such as the other Chapter 9 institutions which support and strengthen constitutional democracy. This would be in keeping with the seriousness with which the drafters of PRECCA viewed the risk that corruption poses to South Africa's constitutional democracy.

Secondly, establishing the OPI as a Chapter 9 institution would provide legal safeguards for its **independence** and would mitigate the risk of executive interference by removing the institution from the direct sphere of influence of an executive authority. It would depoliticise the OPI's mandate and functions by making it accountable to parliament. Most importantly, entrenching the OPI as a Chapter 9 institution would require a two-thirds majority in parliament to disband it. This would help to protect the OPI from suffering the same fate as the Directorate of Special Operations (DSO or 'Scorpions'), founded in terms of mere statute, which was dissolved with a simple parliamentary majority in 2009.[17]

Chapter 9 of the Constitution provides for a range of institutions supporting constitutional democracy that have related and sometimes overlapping mandates that are, for various reasons, not always properly fulfilled. NACAC's proposal to introduce a new Chapter 9 institution was not made lightly. NACAC concluded that it would enable existing Chapter 9 institutions with overlapping corruption investigation mandates to carry out their primary mandates which would complement the OPI's dedicated mandate to prevent, investigate and remedy **systemic corruption.**

In taking the establishment of the OPI forward, if its establishment as a Chapter 9 institution will significantly delay its establishment, the option exists to establish it as a statutory body with the intention to transform it into a Chapter 9 institution when the correct circumstances arise. Attention will also have to be paid to ensuring that the proposed functions and powers are in no way constrained by its Chapter 9 status.

16 *Glenister v The President of the Republic of South Africa* 2011 (7) BCLR 651 (CC), Para 2.

17 Berning, J. & Montesh. M., 'Countering corruption in South Africa: The Rise and Fall of the Scorpions and Hawks.' SA Crime Quarterly No. 39. Pp 3-11. https://issafrica.s3.amazonaws.com/site/uploads/CQno39March12.pdf

## Urgency of action

The establishment of a permanent anti-corruption body is urgent. The NACS, adopted in 2020, anticipated that "[i]t will take some time, possibly up to two years, before a permanent body will be in place, with the required legislation passed, and appointments and budgets finalised."

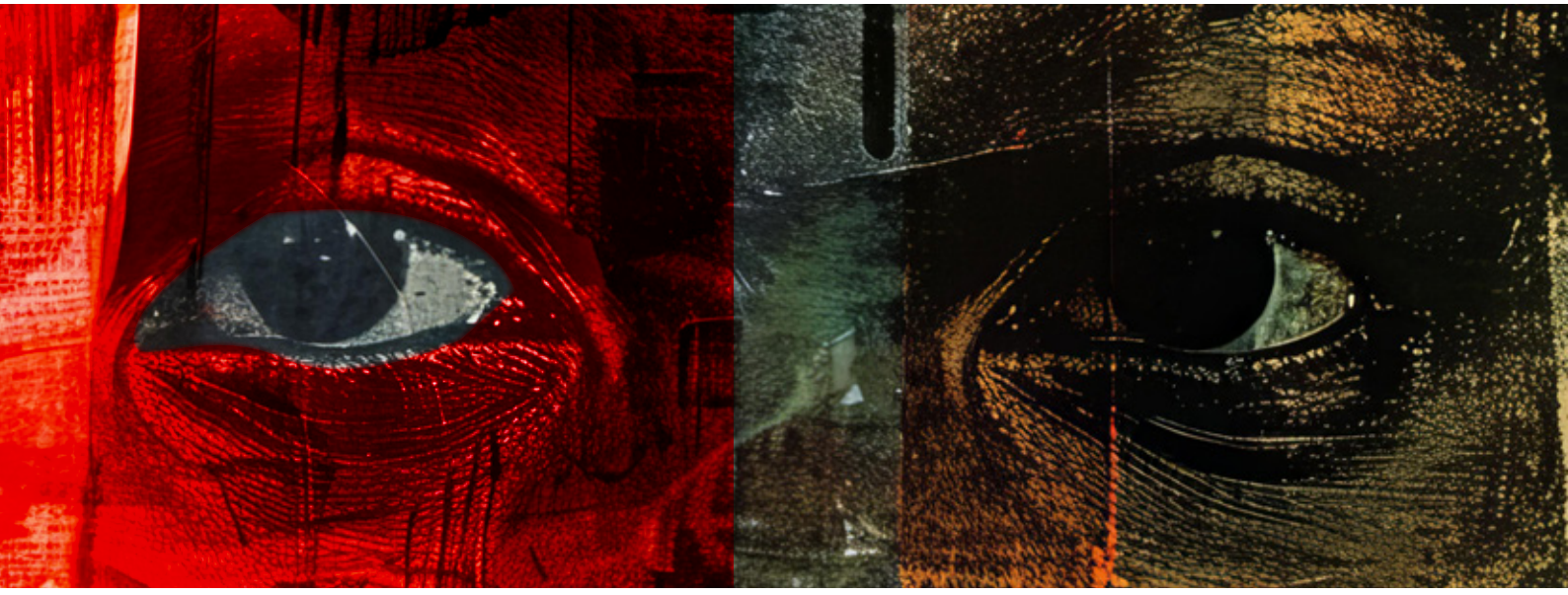
The establishment of the new anti-corruption body is therefore already **overdue** and swift action is required by the DOJ&CD to draft the necessary legislation for the OPI and to expedite its processing through parliament.

**Recommendation 2 – Retain and strengthen the multi-agency approach to anti-corruption enforcement**

NACAC recommends that South Africa should retain its multi-institutional architecture rather than consolidating all anti-corruption powers and functions in a single institution. This is in line with international law, standards and good practice. For this to be effective, it is necessary to strengthen existing bodies tasked with anti-corruption functions, and the cooperation between them – strategically locating the OPI within a multi-agency framework of organisations with **complementary** powers and functions. The effective functioning of the multi-agency system requires clear mandates, effective coordination and cooperation between agencies.

South Africa has a successful model of inter-agency cooperation in the Fusion Centre. This initiative proved that a **collaborative**, intelligence-driven, and multi-agency approach is essential for effectively investigating and prosecuting complex financial crimes, including corruption and fraud. The Fusion Centre brings together key institutions like the NPA, SIU, SAPS, Financial Intelligence Centre (FIC), and South African Revenue Service (SARS), and others to share data, expertise, and resources, resulting in faster case resolution and successful convictions.

The OPI should adopt this collaborative and multi-disciplinary approach which is critical to dismantling systemic corruption without duplicating or encroaching on the distinct and successful capability the Fusion Centre has modelled. Further to this, the OPI should continue to have a relationship with the Fusion Centre which incorporates the role the SIU has played thus far.



## Building on the successes of the SIU

**Recommendation 3 – The OPI should absorb the mission, powers, and resources of the SIU, maintaining its full portfolio of work, thus enabling the OPI to be operational with immediate effect and adding to its functions, powers, staff, and resources.**

Absorbing the SIU into the OPI will:

- enable the OPI to move forward swiftly and avoid the costs and inefficiencies of adding an entirely new state institution to the existing array;
- provide an operational foundation with already-skilled investigators, legal experts, and digital forensic capacity;
- enable continuity by embedding existing tools, systems, and institutional knowledge;
- accelerate the functionality of the OPI, reducing the lead time required for capacity development;
- ensure the OPI enters the system with proven investigation and recovery capability, leveraging the SIU's existing case load, infrastructure, and footprint;
- avoid duplication and streamline mandates, avoiding parallel investigations and overlapping mandates between the OPI and the SIU.

Until the OPI has been established, all lawful and practical measures should be taken to **empower the SIU** to start implementing the relevant and appropriate aspects of the OPI mandate and functions.

## Mandate

**Recommendation 4 – The mandate of the OPI should be to prevent, investigate and remedy systemic corruption involving government and other organs of state and to enhance transparency and integrity in their workings.**

The OPI should have a mandate to prevent systemic corruption by:

- leading social mobilisation, **behaviour change,** public awareness and education programmes;
- conducting **systemic audits** into public institutions either as a function of a request or special projects determined by itself – systematic reviews of institutional policies and practices guided by risk-based frameworks appropriate to the institution, industry and/or sector;
- conducting **civil investigations** into systemic corruption, either through a Presidential Proclamation or of its own accord and in line with the mandate given to it by new enabling legislation;
- providing policy guidance and **binding directives** on corruption-risk reduction measures to any and all organs of state;
- protecting and supporting **whistleblowers**, ensuring that those who expose corruption are safeguarded from retaliation; and
- conducting research.

Social mobilisation, behaviour change, and public awareness and education should be key components of the OPI's strategy to prevent systemic corruption. The OPI should lead efforts to foster integrity and anti-corruption values from a young age, engaging with educational institutions, communities, and the private sector. The OPI should partner with government, civil society and private institutions to provide guidance on changing social norms across society.

## Functions

To fulfil its mandate, NACAC recommends that the OPI should be empowered and appropriately resourced to perform a range of functions related to the prevention of systemic corruption. The key functions are outlined below. Full details on the proposed functions are given in Appendix A.

**Recommendation 5 – The OPI should perform the following functions: civil investigations, risk mapping and systemic audits into government institutions, policies, and practices.**

The OPI should conduct investigations into systemic corruption involving government or any organs of state. Investigations should be triggered either by proclamation of the President of the Republic of South Africa, or by a decision of the OPI. Currently, the SIU's ability to undertake investigations and litigate for preservation and civil forfeiture orders depends on a presidential proclamation. This poses serious and inherent risks for the independence of the organisation and the anti-corruption role it plays. The ability of the SIU to achieve the exemplary track-record it has even through the state capture years is not because but in spite of this arrangement. We therefore propose that in addition to acting on the basis of a presidential proclamation, **the OPI should be able to undertake investigations of its own accord.**

Investigating systemic corruption effectively requires predictive analysis using data-driven methods potentially empowered by AI. This will enable the OPI to compile **risk maps** of public institutions, and their exposure to corruption risk. Systemic audits will enable the OPI to assess and determine the nature, scope and drivers of these risks, and issue recommendations to mitigate them and prevent loss. This may include recommending and enforcing consequence management measures.

The OPI should perform the following functions:

- develop frameworks and measures to monitor, inspect, detect and expose corruption risk, and enhance transparency and accountability in government and other organs of state;
- conduct audits into the corruption risk of institutional policies and practices in government and other organs of state; and
- conduct audits into systemic corruption involving government or any organs of state.

**Recommendation 6 – The OPI should coordinate the implementation of the NACS.**

NACAC recommends that the OPI should drive the long-term roll-out of the NACS. It should advise the government on policy measures to advance the NACS, to educate and mobilise the public, to gather and analyse data relevant to corruption and anti-corruption, and to develop relevant frameworks and measures to prevent, investigate and remedy corruption.

This is in line with the NACS which calls for the new anti-corruption agency to "drive the long-term roll-out of the strategy and all its related programmes". Neither the NACS nor NACAC imagines that the OPI would undertake all the activities required to drive the NACS on its own, but it is anticipated that the OPI will drive the implementation of this strategy across the whole of government and society and monitor its implementation and effectiveness.

**Recommendation 7 – The OPI should remedy systemic corruption in government institutions or organs of state.**

NACAC recommends that the OPI should partner with government institutions to remedy systemic corruption in various ways. It should:

- develop and issue standards and guidelines for organs of state to mitigate systemic corruption risk and/or promote integrity;
- provide advice to organs of state in the field of remedying systemic corruption and promoting integrity;
- train staff of government institutions to uphold integrity measures; and
- recommend the development of government policies and legislation for mitigating the risk of systemic corruption and promoting integrity.

**Recommendation 8 – The OPI should protect and support whistleblowers.**

The protection of whistleblowers is an integral part in the fight against corruption and upholding our democracy. Positioning the OPI to play an oversight role in ensuring that the Zondo Commission's recommendations on the protection of whistleblowers are implemented would demonstrate a decisive and urgent commitment to protecting those who expose corruption, reinforce the OPI's institutional integrity, and elevate it as a trusted defender of public interest. Restoring public confidence, fostering a culture of accountability, and ensuring that disclosures are not silenced by fear or intimidation is essential.

A whistleblower protection and support function should be located in the OPI. It should:

- receive and review whistleblower disclosures and refer these to the appropriate authorities;
- lead whistleblower protection and support functions across government in line with relevant whistleblower legislation;
- receive and manage dedicated resources for the protection and support of whistleblowers;
- advise on and support the implementation of any national, provincial or local policy and legislation, as well as institutional policies and practices, on the appropriate treatment of disclosures, and protection and support of whistleblowers.

NACAC understands the plight of whistleblowers and takes their struggles seriously. Interim arrangements for their support and protection should be put in place urgently. The SIU currently supports whistleblowers, including through its institutional partnership with civil society organisation Whistleblower House. The SIU should be empowered and resourced to protect and support whistleblowers on an urgent basis until the OPI is established.

## Powers

The OPI's powers must be carefully framed in law to ensure that it has the authority to investigate systemic corruption while avoiding an overly broad scope that allows it to pursue any matter arbitrarily.

**Recommendation 11 – The OPI should have powers to conduct investigations into systemic corruption.**

The OPI should have the powers necessary to conduct investigations into systemic corruption. These include:

- powers of search and seizure;
- powers to summon and interview witnesses under oath;
- powers to undertake joint operations with LEAs; and
- powers to publish reports on its investigations.

**Recommendation 12 – The OPI should be empowered to convene public hearings/public inquiries into systemic corruption.**

The Zondo Commission recommended the establishment of a permanent commission to investigate and expose acts of state capture and corruption, hold public hearings, and make findings and recommendations to the President. NACAC supports this recommendation and proposes that the OPI be given the necessary authority to convene public hearings/public inquiries into systemic corruption. This is a tested model in South Korea, for example, where the Anti-Corruption and Civil Rights Commission has used public hearings to promote transparency in systemic corruption cases.

**Recommendation 13 – The OPI should be empowered to apply to a court of law or a competent tribunal for asset recovery orders.**

Recovering stolen public money should be a top priority for the OPI, including the value of assets acquired through corrupt, irregular or unlawful conduct uncovered in the course of an inquiry into systemic corruption. For the OPI to recover money lost to corruption effectively, it requires strong asset recovery powers.

NACAC recommends that the OPI be granted powers to make civil applications for the preservation and forfeiture of assets. These should be aligned and exercised in collaboration with those of the AFU and subject to the provisions of the Prevention of Organised Crime Act (POCA).

The OPI should be empowered in law to apply for restraint, preservation or recovery orders, or any other relief necessary to protect property, which includes assets in South Africa and other countries, and any interest on or proceeds of these assets.

**Recommendation 14 – The OPI should have powers to issue binding recommendations for remedial action pursuant to its systemic audits or civil investigations.**

NACAC recommends that the OPI's recommendations arising from its public inquiries, audits and investigations of systemic corruption should be binding on the institution in the same way those of the Public Protector are.

The OPI should be empowered to supervise the implementation of those recommendations, apply to a court to enforce the implementation of the recommendations, and institute other civil proceedings incidental to its mandate.

**Recommendation 15 – The OPI should be funded in ways that support its independence, enable its resilience, and reflect its importance to the fiscus.**

NACAC recommends that the OPI should receive funds from the following sources:

- parliamentary appropriations;
- government institutions and organs of state for services rendered;
- a proportion of assets recovered;
- disbursements from the Criminal Asset Recovery Account; and
- appropriate donors, in ways that uphold the independence and integrity of the OPI.

**Recommendation 16 – The OPI should have independence over its human resources.**

NACAC recommends that the OPI should have statutory authority to create an organisation and to employ staff with expertise in particular areas. The OPI should have the power to independently recruit a multidisciplinary team with skills in forensics, data analysis, law, and public administration. The OPI should have the powers to set its own pay structures in order to be able to recruit suitably qualified staff. This approach aligns with global good practices, as seen by the UK's Serious Fraud Office (SFO) and Kenya's Ethics and Anti-Corruption Commission (EACC).

The OPI should have powers to obtain professional advice and assistance from organisations or persons it deems appropriate, including from the private sector.

**Recommendation 17 – The OPI's governance system must safeguard its integrity and independence.**

NACAC recommends that the governance system of the OPI must safeguard its integrity, and the appointment criteria for the head of the OPI should safeguard its independence.

NACAC recommends appointing a council of between five and nine members as the governing body of the OPI, with a CEO serving as the accounting officer, in line with the Constitution and the Public Finance Management Act. These members must be fit and proper persons, with suitable qualifications and experience, and with a record of honesty, integrity and outstanding service to society within the scope of the OPI's mandate and functions.

The OPI Council should be appointed by the President on the recommendation of parliament, following a rigorous process that is open to public scrutiny and participation. There should be similarly robust procedures in place for the removal of members.

This model, consistent with other Chapter 9 institutions, ensures clear separation between strategic oversight and operational execution, enhancing both accountability and efficiency. This should be embedded in the appointment procedures.

The chairperson of the OPI should direct the work and staff of the OPI. The OPI should appoint a chief financial officer who will be the accounting officer. The OPI should also appoint other executives as necessary for the proper performance of its mandate. Internal governance mechanisms should be set up to ensure there are sufficient checks and balances inside the organisation and the integrity of the OPI remains above reproach.

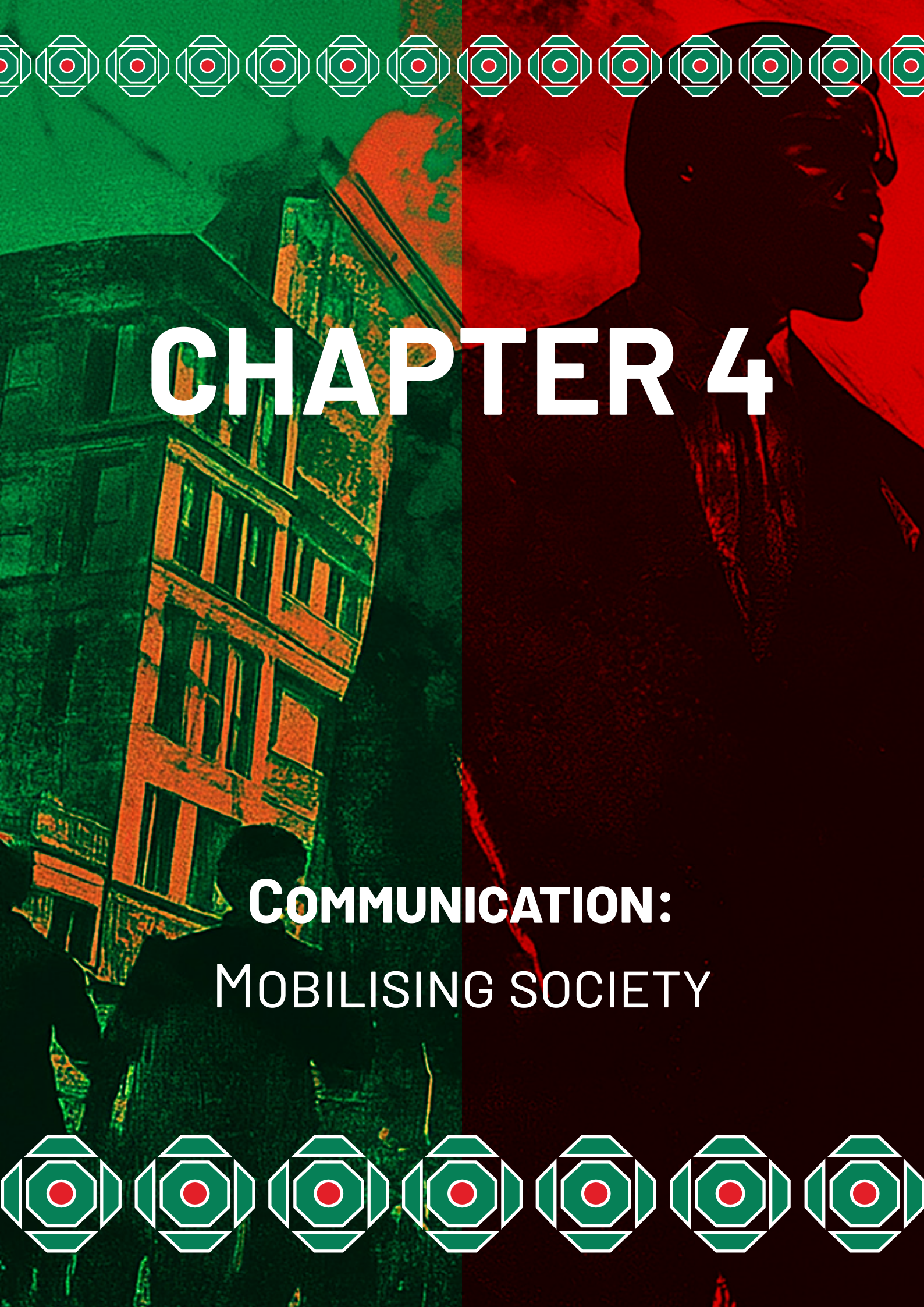
## Transitional arrangements

NACAC concludes that courageous, visible and sustained political leadership is necessary to implement its recommendations. NACAC urges government to take the following steps to build institutional alignment and momentum for implementation:

- Mandate the Minister of Justice and Constitutional Development to drive and oversee implementation of NACAC's recommendations regarding the OPI within the next three years.
- Empower the SIU to undertake the functions of the OPI not requiring legislative amendments in the transitional period.
- Dedicate substantial public resources to establish and sustain the functions of the OPI.

NACAC's detailed proposals for the establishment of the OPI are attached as Appendix A.
The research report commissioned by NACAC on the OPI is attached as Appendix B.

*Figure 5: NACAC members present the OPI proposal to the Presidency, represented by Minister of Justice and Constitutional Development, Ms Mmamoloko Kubayi – Union Buildings, Pretoria. July 2025*



# CHAPTER 4

## COMMUNICATION:

## MOBILISING SOCIETY

# Communication: Mobilising society

This chapter explains the importance of communication as an anti-corruption strategy to change value systems. It provides information about NACAC's work in this area and tells the stories of NACAC's public engagements. Finally, it sets out the role of the OPI in taking the communication strategy forward.

In NACAC's appointment letter, the President expressed the key principle that informs NACAC's work: **Combatting corruption is a task for 'all of government/all of society'.**

Combatting corruption is not a task for a single public agency – it is a task for all government departments and all public agencies which are obliged to embed the anti-corruption struggle in their daily work. Fighting corruption is not a task for government alone. It is a task for all of society and must be taken up by all people of South Africa in their homes, schools, workplaces, in their trade unions, their businesses, and their sports clubs.

Communication is key to mobilising the support of citizens for anti-corruption agencies. Anti-corruption fighters will have no reason to fear the wrath of the powerful if they enjoy the support of a well-informed public.

## NACS communication strategy

In 2022 a comprehensive communications and engagement strategy was developed to support the implementation of the NACS. This strategy mapped key stakeholder groups as well as their information needs and communications preferences. It also proposed umbrella messaging and a whole-of-society approach that aimed to build a culture of integrity and active citizenry. The NACS takes a long-term view, providing a communication and engagement framework, considering all sectors of society as key target audiences.

The NACS communication strategy has a dual focus: to build an identity for NACS and anti-corruption work, and to create a whole-of-society anti-corruption movement. It is based on four communication cornerstones: awareness, education, prevention and mobilisation.

NACAC picked up on the importance of communication and the mobilisation of society, both in relation to its own work and in relation to the longer-term fight against corruption. The sections below set out the work done by NACAC in relation to communication and mobilisation as well as the recommendations for a longer-term programme.

## National anti-corruption dialogues

One of NACAC's mandate areas was to host anti-corruption summits to revive multi-sectoral dialogues on corruption challenges and anti-corruption collaboration, a practice which had ceased a decade ago.

NACAC hosted several preparatory events for the national dialogues. There were two anti-corruption roadshows in North West and Limpopo provinces, hosted by the respective Premiers' offices.

*Figure 6: NACAC Deputy Chairperson, Nkosikazi Mhlauli, engages community members in the North West. 2023*

NACAC members also participated in a Futures Literary Laboratory (FLL) organised by GIZ, together with government departments, civil society, and academics, to explore the intersection of gender and corruption in preparation for the national anti-corruption dialogue on December 9, 2024. A FLL is a learning by doing collective intelligence process that involves getting participants to describe and imagine different kinds of futures in the context of a particular topic. The topic of this particular lab, "The Future of Gender and Trust in Governance in 2040", was chosen to engage participants in exploring the intersection of gender and corruption in South Africa. The year 2040 is significant as it marks 20 years since the launch of the NACS. Through the lab, participants engaged with different ways of using the future, imagining probable, preferred as well as strange and unexpected futures and generated a list of recommendations. See Appendix H for a full report on this exercise.

In November 2024 NACAC partnered with the Ahmed Kathrada Foundation and the Youth Coalition to host South Africa's first **Youth Anti-Corruption Dialogue,** where the youth developed their own anti-corruption pledge (See Appendix L).

*Figure 7: Youth Anti-Corruption Dialogue Attendees. November 2024*

Encouraging wider collaboration with and support for organisations empowering young people is critical. The inclusion of ethics and social values courses in the national school curriculum, a programme in the NACS, has yet to be designed and implemented.

## NACAC's two national dialogues, in 2023 and 2024

NACAC hosted two national dialogues. The 2023 National Dialogue was held on 8 and 9 November 2023 in Boksburg under the theme: "Together Building a Corruption-Free Society – Xelela Abanye, Bolella ba Bangwe, Vhudzani Vhanwe, Byelani Vanwani, Tell Others". It was attended by President Cyril Ramaphosa, Chief Justice Raymond Zondo, cabinet ministers, leaders of LEAs, representatives from the National Economic Development and Labour Council (NEDLAC), foreign dignitaries, civil society organisations, the media, and hundreds of South Africans.

The President's keynote address emphasised the need to strengthen the shared determination to build an ethical society:

> "While there is a long road ahead, the fight against corruption is gaining momentum. [...] We meet here as diverse constituencies, but with a common purpose. We are here to identify the further measures we need to take to build a South Africa that does not allow for corruption or capture. We are here to strengthen our shared determination to build an ethical society founded on the values of our democratic Constitution."[18]

Justice Zondo highlighted the need to protect whistleblowers and incentivise them in cases where money was recovered, saying,

[18] UNODC Regional Office for Southern Africa. 2023. The South African movement toward anti-corruption reform. https://www.unodc.org/rosaf/stories/2023/November/the-south-african-movement-toward-anti-corruption-reform.html

"Whistleblowers helped to stop State Capture. Everybody talks about the protection of whistleblowers, but all of you would be aware the commission went beyond that, recommending we incentivise them to blow the whistle..."[19]

The **2024 National Dialogue** was hosted by the Presidency, NACAC, and the PSC on 9 and 10 December in Boksburg, under the theme: "Uniting with youth against corruption: Shaping tomorrow's integrity". The event was attended in person by around 500 people, with many more online.

Day one featured panel-led group discussions on the following topics, aligned with the NACS pillars:

- Improving whistleblowing in South Africa and mainstreaming gender and youth into anti-corruption strategies (Pillar 1)
- Professionalisation of the public service (Pillar 2)
- Ethical governance and consequence management (Pillar 3)
- Credible, transparent procurement system (Pillar 4)
- Strengthening anti-corruption agencies (Pillar 5)
- Protecting vulnerable sectors and improving service delivery (Pillar 6)

Day two featured the launch of the NACAC Mid-Term Report, which outlined NACAC's progress, recommendations and vision for combatting systemic corruption in South Africa.

The outcomes and resolutions of two days of vigorous discussions were:

1. **Establishing the OPI**
   Participants endorsed the expedited establishment of the OPI as a Chapter 9 institution with Constitutional protections, to address systemic corruption, issue binding recommendations and lead preventive measures through public education and institutional capacity building.

2. **Strengthening whistleblower protections**
   The critical role of whistleblowers in exposing corruption and the need for urgent legislative reforms to strengthen protections was emphasised. Measures proposed included expanding the scope of the Protected Disclosures Act, criminalising retaliation and establishing independent bodies to manage disclosures and provide support. Public education campaigns were recommended to destigmatise whistleblowing and foster a culture of integrity.

3. **Transforming the public procurement system**
   The National Treasury's commitment to implementing an e-procurement system to address procurement, a key vulnerability in governance, was commended, with stakeholders emphasising the need for improved transparency, community oversight and the blacklisting of corrupt suppliers.

[19] Schreiber, S. Business Day. 2023. Pay whistleblowers, Zondo urges government. https://www.businesslive.co.za/bd/national/2023-11-09-pay-whistleblowers-zondo-urges-government/

4. **Enhancing the capacity and independence of anti-corruption agencies**
   In light of the significant resource constraints faced by anti-corruption agencies, recommendations included increased funding, enhancing forensic capabilities and establishing a dedicated unit with the NPA to prosecute complex corruption cases. Inter-agency cooperation, guided by a streamlined case management system, was recognised as critical to the fight against corruption.

5. **Professionalisation of the public sector**
   To establish a capable and developmental state, participants emphasised the necessity of mandatory ethics training, competency-based recruitment, and reforms in performance management.

6. **Inclusive anti-corruption strategies**
   Crafting gender sensitive anti-corruption policies and programmes, involving youth through innovative means such as social media, and empowering marginalised communities to engage in governance were recognised by participants as vital for tackling systemic inequalities and fostering ethical governance.

7. **Safeguarding vulnerable sectors and communities**
   Participants recognised that the impact of corruption on at-risk sectors – including health, education, and local government – highlights the necessity for targeted oversight and reform. Increased public engagement, enhanced mechanisms for service delivery, and greater accountability are critical priorities.

The dialogue laid the groundwork for a cohesive, action-oriented anti-corruption agenda by uniting stakeholders across sectors, underscoring the urgency of safeguarding South Africa's democratic and developmental future. See Appendix F for the full reports on the National Dialogue.

*Figure 8: National Dialogue. December 2024*

## The OPI's role in taking the NACS communication strategy forward

**Recommendation – The OPI should be responsible for the implementation of a national communication, education and behaviour change programme and should have an experienced and appropriately resourced communication capability.**

Research and consultations conducted by NACAC highlighted that future anti-corruption awareness-raising, behaviour change, communication, and education work should be driven by the OPI and should:

- be designed in accordance with behavioural psychology and social norms theory;
- reach communities in their own languages;
- include youth in anti-corruption awareness programmes; and
- adopt a gender-transformative approach.

The anti-corruption communication effort must inform and mobilise all of government and all of society. This cannot be done using the conventional approach – a small communications team informing society through a media liaison channel alone. This is a strategic function with social and behavioural change goals. It requires an experienced and appropriately resourced capability empowered with the capacity, creativity, independence and resources to drive major social and behavioural change communications campaigns that are capable of shifting the value system of South Africa's diverse public.

The OPI should be empowered to build on the NACS communication strategy and develop a plan that incorporates innovation to move beyond traditional messaging in order to shift attitudes and behaviour, increase knowledge so that corruption is better understood, and showcase success in order to build trust and affirm the intention of the majority of citizens to live with integrity. The strategy should be carefully targeted and tailored, using different channels and messages reflective of the lived experiences of individuals.

This communication work would cover the four elements of the NACS communication strategy. One of the mandate areas of the OPI would be to drive **social behaviour change communication,** a process of building an idea into a norm using a circle of communication that frequently includes peer opinion, information, education, and dialogue. Encircling audiences with layered messaging across various touchpoints helps to shift perceptions and attitudes and ultimately drive behaviour change.

A clear, well-researched theory of change (ToC), a planning and evaluation framework that maps out how and why a desired change is expected to happen in a given context, will enable the development of indicators that are aligned to each stage of change, making it possible to measure progress, assess effectiveness, and adapt strategies as needed. Without a strong ToC, monitoring and evaluation efforts risk missing the nuances of behaviour change or focusing on the wrong metrics.

However, no single institution can shift the needle on corruption and achieve social and behaviour change. We need society-wide ownership and participation. By enabling shared ownership, content development and amplification through an inclusive, values-driven partnership model led by the OPI, we can have a whole-of-society impact.

This communication effort should have **five strategic pillars:**

**Pillar 1: A bold and targeted communications approach** to address the 'corruption fatigue' and disengagement of the majority of South African residents;

**Pillar 2: Multi-channel communications strategy and audience segmentation** to address low awareness, trust gaps, and knowledge deficits by using mediums and messengers that audiences trust and are comfortable using;

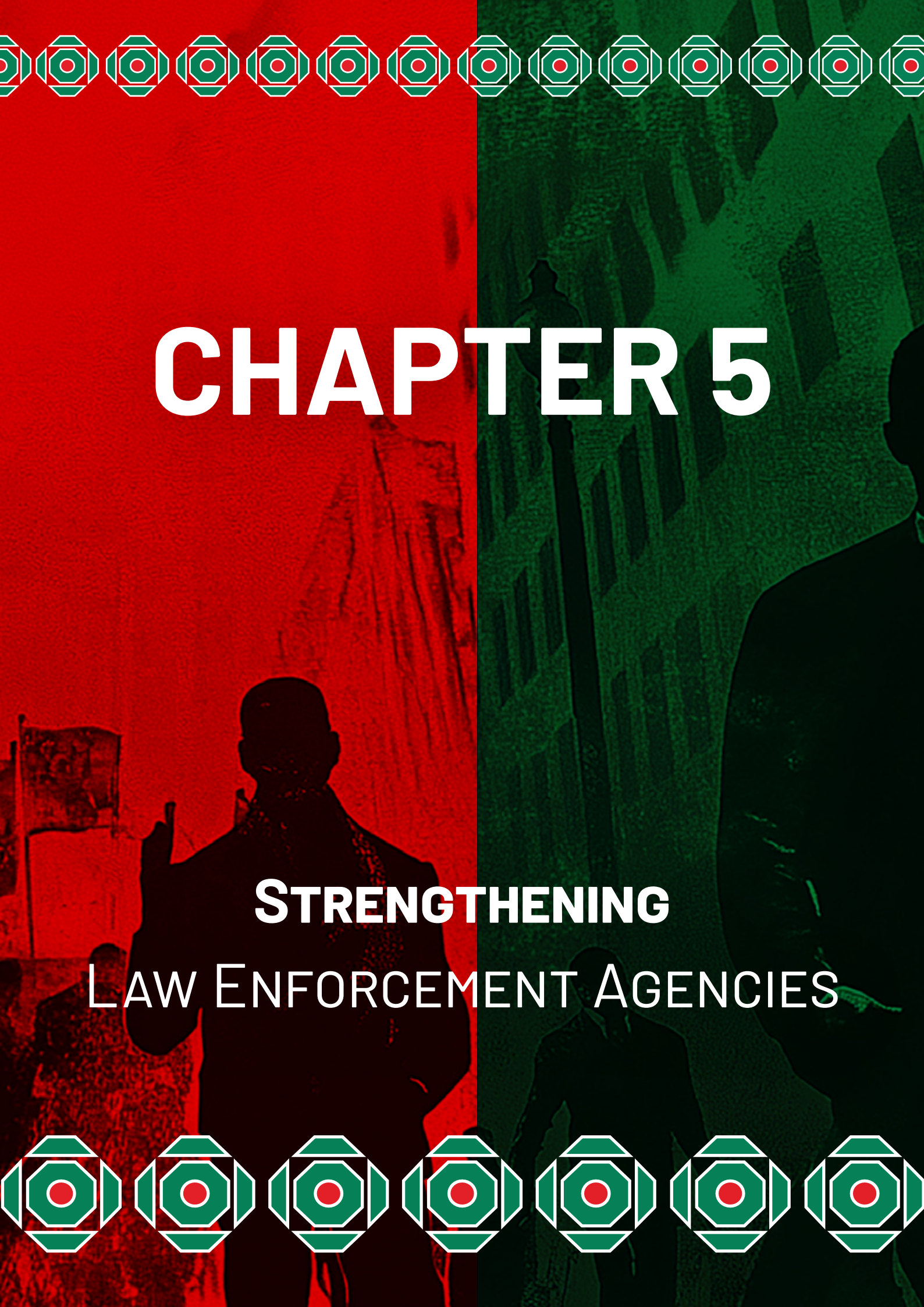
**Pillar 3: Operationalising a NCP,** under the leadership of the OPI, bringing together key communication partners from government, the private sector, the trade unions, civil society, and other relevant stakeholders to ensure solutions to the resourcing, coordination, legitimacy and fragmentation challenges that often plague similar processes. Until such time as the OPI has been established, the SIU should drive this partnership and the communication programme;

**Pillar 4: Lifelong engagement approach** to prevent shallow impact, campaign fatigue, lack of sustained change and moral and ethical erosion and to ensure engagement with children from a young age;

**Pillar 5: Well-resourced and professionally led** to address operational capacity, coordination failure, lack of data, and funding instability, and ensure that the approach is implemented as intended.

The success of this ambitious communication and behaviour change plan will depend on ensuring the programme is delivered by a well-resourced team of skilled social and behavioural change practitioners, researchers, and creatives, and in an enabling environment that supports credibility, coherence, and sustained public engagement.

Further information about how the OPI will drive the anti-corruption communication and behaviour change effort is contained in a detailed report entitled "Supporting the establishment of the Office of Public Integrity and a National Anti-Corruption Movement" which is attached as Appendix O.



# CHAPTER 5

## Strengthening
## Law Enforcement Agencies

## Introduction

South African citizens believe that their LEAs have not risen to the challenge of protecting the country against corruption.[20] This is also the view of international organisations; the FATF and the OECD Working Group on Bribery both state that South Africa needs to improve its prosecution rate for corruption cases. [21]

Prosecuting corruption is a uniquely difficult task for law enforcement institutions across the world. The legal system is ill-suited to prosecute complex commercial crimes beyond a reasonable doubt where the benefits are hidden by teams of professional enablers in multi-layered corporate structure across national borders – and there are no willing witnesses to the crime.[22] In South Africa, this problem is greater because LEAs were intentionally harmed by perpetrators of state capture, who benefitted from weakening the rule of law. [23]

NACAC has engaged in intensive research and consultation with local and international experts and heads of LEAs. NACAC has concluded that there are serious weaknesses at the heart of our CJS and the time has come to address these challenges.

NACAC's key research findings concerned problems with the mandates, resourcing, independence, and integrity of LEAs. Overall, a picture emerges of problematic legislative mandates, structural challenges, and weak financial and human resource capacity.

NACAC welcomes the promulgation of the Terms of Reference for the Judicial Commission of Inquiry into Criminality, Political Interference, and Corruption in the Criminal Justice System arising from the specific allegations made public by Lieutenant General Nhlanhla Mkhwanazi on 6 July 2025 (the 'Madlanga Commission'). This commission should provide valuable insights into problems in the SAPS.

20 Human Sciences Research Council. 2024. Tracking Social Norms and Behaviour Change In South Africa: Measuring Attitudes To Corruption. https://hsrc.ac.za/press-releases/dces/corruption-and-behaviour-change-tracking-social-norms-and-values-in-south-africa/

21 Financial Action Task Force. 2025. South Africa. https://www.fatf-gafi.org/en/countries/detail/South-Africa.html; OECD Working Group on Bribery. 2016. Implementing the OECD Anti-Bribery Convention Phase 3 Report South Africa. https://www.oecd.org/en/publications/implementing-the-oecd-anti-bribery-convention-phase-3-report-south-africa_7b6204d0-en.html

22 C. Ashton. 2024. SA must look beyond prosecution for anti-corruption remedies that work. https://issafrica.org/iss-today/sa-must-look-beyond-prosecution-for-anti-corruption-remedies-that-work

23 Public Affairs Research Institute. 2022. The Zondo Commission: A bite sized summary. P 3. https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf

NACAC's recommendations cover four focus areas:

1. **Mandates and coordination mechanism**

   The mandates of some LEAs are uncertain, overlapping, and overbroad. There is a need for clear and aligned legal frameworks that are harmonised across sectors and levels of government to avoid gaps, contradictions, or unresolvable overlaps. For these reasons NACAC has made recommendations directed at clarifying the mandates of each agency and NACAC has also placed great emphasis on the coordination of case management between the agencies.

2. **Independence and integrity of LEAs**

   Independence and integrity are essential for LEAs to effectively combat corruption and uphold the rule of law. Without operational and institutional independence, agencies are vulnerable to political interference, selective enforcement, or protection of powerful interests, which undermines public trust and the legitimacy of their actions. Integrity policies and practices ensure that officials within these agencies adhere to ethical standards, resist bribery or undue influence, and apply the law impartially. Together, independence and integrity create the conditions for credible investigations, fair prosecutions, and consistent accountability – key elements in preventing impunity and fostering public confidence in justice systems.

3. **Resources**

   The capacity allocated to address South Africa's core problem of corruption is inadequate. It is essential to enhance the capacity of all existing agencies, and to make better use of existing resources. In the same way that there is a need for policy coherence, there needs to be coherence in the allocation of resources.

4. **Harnessing information and communication technologies (ICTs) including AI**

   Traditional investigative methods are no longer sufficient to confront a form of corruption that is systemic, networked, and increasingly embedded within digital infrastructures. LEAs require new tools, and capabilities that leverage technology strategically, ethically, and at scale. These should include appropriate digital technologies, including AI.

## Mandates and a new coordination mechanism

Responsibility for investigating corruption and commercial crime is presently assigned to the SAPS, the DPCI, the NPA, and the IPID.

The DPCI is responsible for investigating serious corruption, serious commercial crime, and organised crime. The NPA, through its specialised directorate, the IDAC, is responsible for investigating and prosecuting serious corruption.

Corruption deemed insufficiently serious to merit the attention of the DPCI and IDAC is investigated at SAPS station level and prosecuted by the regional divisions of the NPA. The Crime Intelligence unit of SAPS plays, or should play, a critical role in the investigation of serious corruption and organised crime. The SIU is responsible for conducting civil investigations into corruption and maladministration.

## Vague and overlapping mandates

Research shows that the mandates of the various LEAs are overlapping, and some are poorly defined in their governing statutes.[24] The agencies' performance metrics are competing and not designed to promote cooperation. This contributes to turf wars between the agencies, which decreases the effectiveness of the multi-agency system.

The mandate of the **DPCI** is of particular concern. Research shows that it is overbroad and unmanageable.[25] While the DPCI is currently mandated to be the agency responsible for investigating serious corruption, it is also charged with investigating serious commercial crime and organised crime as well as a wide range of other 'priority' crimes, ranging from treason to terrorism related offences, from sedition to mercenary activities. [26]

The Constitutional Court in *Glenister II* found that the DPCI's mandate in the SAPS Act is confusing and unsuited to an anti-corruption agency:[27]

> "Sections that provide for the jurisdiction of the DPCI are scattered in different parts of the SAPS Act. This makes it difficult to identify the offences that the DPCI is empowered to prevent, combat and investigate. Section 17D is headed 'Functions of Directorate'. One might justifiably assume that all the functions are set out under that section. Regrettably, one has to look elsewhere for the definition and the list of national priority offences. Ordinarily, all the definitions are to be found in section 1 of an Act. Although section 1 of the SAPS Act does define several concepts, 'national priority offences' is not one of them. It is instead located in section 17A which in turn refers to section 16 which sets out national priority offences. The complication does not end there. For other offences that constitute national priority offences, section 16(2)(iA) points to the Schedule to the Act. It should be evident from the discussion of other aspects of the Act, like the suspension and removal of the National Head, as well as the extension of tenure that the quality of drafting could use some improvement."[28]

24 African Policing Civilian Oversight Forum & Dullah Omar Institute. 2025. *Strengthening Law Enforcement Agencies in Combatting Corruption: Mandates and Resourcing.* Pp 5-7.

25 African Policing Civilian Oversight Forum & Dullah Omar Institute. 2025. *Strengthening Law Enforcement Agencies in Combatting Corruption: Mandates and Resourcing.* P 15.

26 Parliamentary Question 3964: Internal Question Paper 45-2023: 17 November 2023. www.static.pmg.org.za/RNW3964-2023-12-18.pdf

27 *Glenister v The President of the Republic of South Africa* 2011 (7) BCLR 651 (CC). Para 233.

28 *Glenister v The President of the Republic of South Africa* 2011 (7) BCLR 651 (CC). Para 93.

The court also expressed its concern at the inclusion of national priority offences which "do not deserve the attention of an anti-corruption agency if that agency were to pay adequate attention to its core mandate." It held: "We point out in this regard that the DPCI is not, in itself, a dedicated anti-corruption entity."[29]

The DPCI is responsible for investigating serious corruption, serious commercial crime, organised crime and a host of other 'priority crimes'. Research shows that the overwhelming preoccupation of the DPCI is with violent organised crime such as drugs, people and arms smuggling, and cash-in-transit heists, with a relatively small proportion of its attention devoted to investigating serious corruption.[30]

The lack of mandated focus on fighting corruption means that, in practice, the DPCI does insufficient investigation of corruption. The DPCI must be at the centre of any effort to refine and reallocate the mandates of the LEAs. There is an urgent imperative to focus institutional attention and resources on the investigation and prosecution of serious corruption.

The mandates assigned to the DPCI and IDAC currently overlap, since both agencies are mandated to investigate serious corruption. This results in inefficiencies, conflicts and duplication of efforts. It does not support the effective cooperation required to make the multi-agency system function optimally. NACAC recommends a reordering of these mandates in order to overcome these difficulties.

NACAC examined alternative options for reorganising the allocation of mandates. In its process of consideration, NACAC engaged with the staff of some of the LEAs, researchers in the field of policing and security, and civil society experts. Based on these engagements and on empirical research,[31] NACAC finalised its recommendations without the benefit of consulting the SAPS, which did not make itself available to meet with NACAC. NACAC recognises that the Madlanga Commission may make findings that influence the debate on the SAPS and welcomes this prospect.

After a process of research and consultation, NACAC concluded that the IDAC should have a mandate to investigate and prosecute serious corruption and serious commercial crime and the DPCI should have a mandate to investigate organised crime. This recommendation will have far-reaching implications for the LEAs.

29 *Glenister v The President of the Republic of South Africa* 2011 (7) BCLR 651 (CC). Para 233.

30 African Policing Civilian Oversight Forum & Dullah Omar Institute. 2025. *Strengthening Law Enforcement Agencies in Combatting Corruption: Mandates and Resourcing.* P 13.

31 See for instance Kinnes, I. & Newham, G. Freeing the Hawks: Why an anti-corruption agency should not be in the SAPS. SA Crime Quarterly. Pp 33-40. https://issafrica.s3.amazonaws.com/site/uploads/CQno39March12.pdf; and African Policing Civilian Oversight Forum & Dullah Omar Institute. 2025. *Strengthening Law Enforcement Agencies in Combatting Corruption: Mandates and Resourcing*

**Recommendation 1 – Reorganise the mandates of the LEAs as follows: the IDAC should be solely responsible for investigating and prosecuting serious corruption and serious commercial crime; the DPCI should be solely responsible for investigating organised crime.**

The DPCI's responsibility and resources for investigating serious corruption and serious commercial crime should be transferred to IDAC, with IDAC simultaneously relieved of responsibility for prosecuting any crimes other than those categorised as serious corruption and serious commercial crime. The DPCI should retain responsibility for investigating organised crime as well as the other serious crimes listed in Section 16(2)(iA) of the schedule to the SAPS Act.

This would resolve the current overlap in the designated responsibilities of both the DPCI and IDAC for investigating serious corruption and serious commercial crime, locating all responsibility for investigating these categories of crime in IDAC.

It will eliminate the greatest shortcoming of the present model, namely the DPCI's focus on organised crime at the expense of serious corruption. This will allow the DPCI to focus on organised crime, as recommended by researchers.[32]

There are interconnections and overlaps between organised crime and serious corruption. They are both types of financial crimes, usually involving secretive networks. Corruption facilitates organised crime and perpetrators may belong to the same networks. However, policing commercial crimes and corruption demands a different investigative and prosecutorial skill set and institutional ethos from policing organised crime. As such, different agencies are required to deal with these different crime types.

## Resourcing the IDAC

NACAC recommends that IDAC should be given far greater resources and capacity. It should be empowered to investigate and prosecute any politician or public official above the level of senior middle management (i.e. the rank of chief director or the equivalent and above) and their networks. It should also investigate and prosecute complex corruption emanating from the private sector involving powerful companies or business people.

In the short term the resources in the DPCI dedicated to tackling corruption should be allocated to the IDAC, which should be rebranded and launched within six months to signal the seriousness with which the current administration takes the issue of addressing corruption. IDAC should have its own intelligence capability, and like SARS or the SIU, be freed from the salary and recruitment constraints of the public sector. It should be able to recruit or contract the best available legal, forensic and analytical skills and have dedicated security for its staff and access to the NPA Witness Protection Programme.

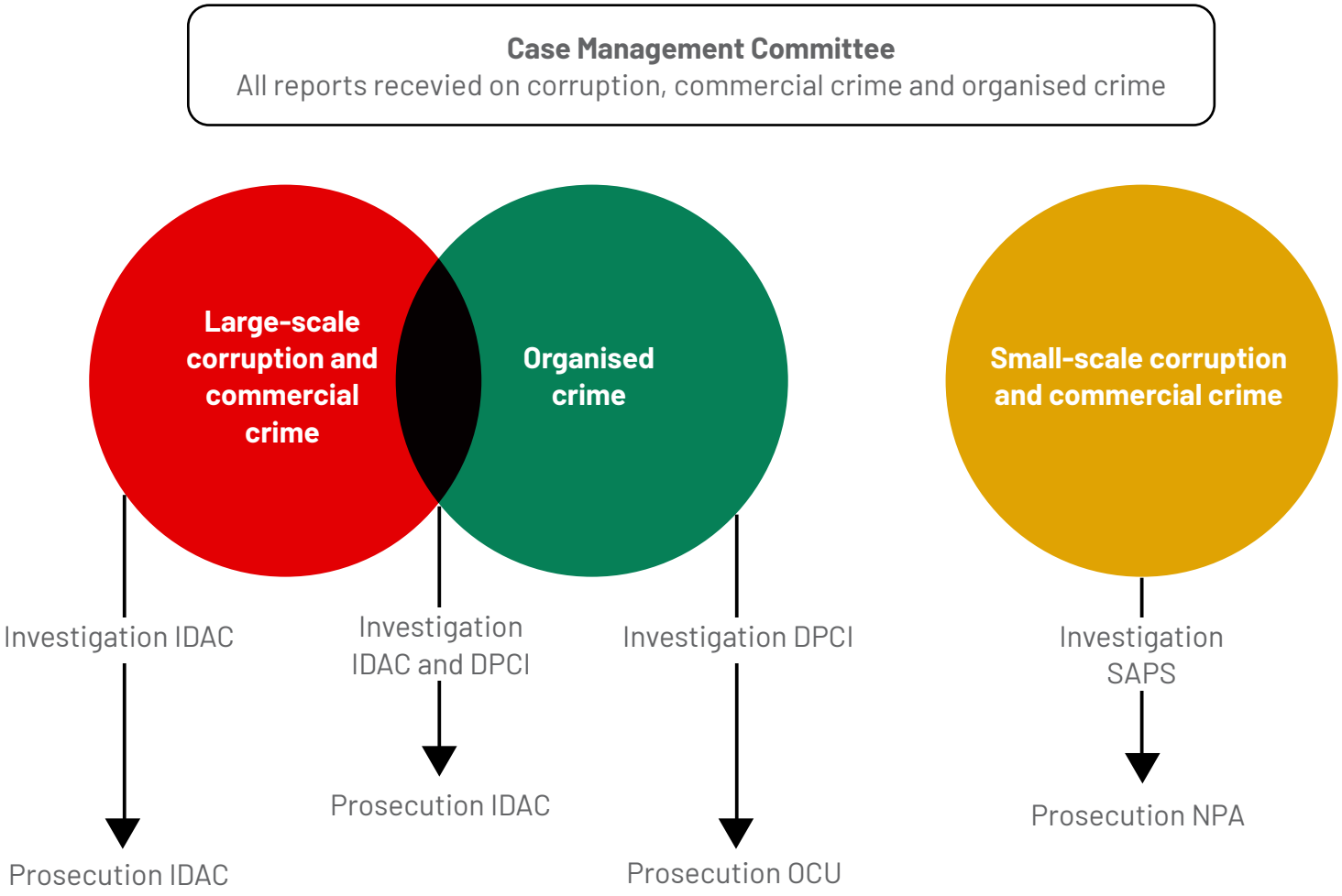
[32] Kinnes, I. & Newham, G. Freeing the Hawks: Why an anti-corruption agency should not be in the SAPS. SA Crime Quarterly. Pp 33-40. https://issafrica.s3.amazonaws.com/site/uploads/CQno39March12.pdf

## Focusing the SAPS

The DPCI should remain in its current form and be fully resourced to tackle transnational or national **organised crime.** The DPCI should have no less than 5000 investigators and the necessary intelligence, legal, forensic, and analytical capability.

The SAPS should ensure that within each district there are dedicated anti-corruption investigation teams that are able to focus on **corruption** occurring within the provinces. These teams should investigate corruption in government institutions and organs of state by officials below the level of senior middle management i.e. chief directors, or the equivalent thereof.

### Chart 1: Reorganised mandates of law enforcement authorities




This chart illustrates NACAC's recommendation that the IDAC should have a mandate to investigate and prosecute serious corruption and serious commercial crime and the DPCI should have a mandate to investigate organised crime. The SAPS should investigate small-scale corruption and commercial crime.

**Recommendation 2 – Establish a Case Management Committee (CMC) to coordinate the investigation and prosecution of corruption.**

NACAC recommends that a coordinating structure – the CMC – should be established comprising senior representatives of IDAC, the NPA, DPCI, SAPS, IPID, and OPI.

The boundaries of serious corruption, serious commercial crime, and organised crime are porous – there are overlaps and similarities between these crime types. For these reasons NACAC places great emphasis on the coordination of case management between the LEAs in these types of cases. The LEA coordination mechanism – the CMC – should determine which agency or agencies are responsible for investigating a particular case.

## Institutionalisation of the CMC

A permanent secretariat responsible for serving this structure should be established by, and located in, IDAC. Since the NPA should play a leadership role in guiding other agencies, the CMC should be chaired by the National Director of Public Prosecutions (NDPP). NACAC recommends that the CMC secretariat located in IDAC should be responsible for receiving and recording all reports alleging corruption, commercial crime and organised crime.

Upon receipt of the reports the CMC secretariat should undertake an initial **filtering** exercise distinguishing between reports of corruption, commercial crime and organised crime. It should also distinguish the reports of serious corruption and serious commercial crime from less serious crimes of these categories. The outcome of this filtering exercise should be reported to the following meeting of the CMC with the outcome of the meeting deciding the allocation of reported matters to the respective agencies represented there. A deadlock in the CMC should be resolved by decision of the chairperson, who should be empowered to provide **strong leadership.** Subsequent meetings of the CMC should receive reports of progress made in the investigation and prosecution of each allocated report.

The agencies entitled to participate in the CMC should be: the DPCI, NPA, SAPS, IPID, and the OPI. Agencies that are in possession of information often important for the investigation and prosecution of serious corruption – for example the SARS, the Financial Intelligence Centre (FIC) and the Auditor General of South Africa (AGSA) – should be invited to the CMC on an 'as-needed' basis. The CMC should be provided for in statute. Given the role assigned to the **NPA**, which should provide the secretariat and **chair** the committee, the NPA Act should be amended for this purpose.

There are interfaces between serious corruption and serious commercial crime – and both categories of crime will be investigated and prosecuted by IDAC. An internal IDAC coordination mechanism should be established to assign responsibility for the investigation and prosecution of each report of serious corruption and serious commercial crime to the respective units within IDAC. In addition, serious corruption and serious commercial crime reports have to be distinguished from less serious reports, the latter to be assigned to SAPS.

Reports of corruption, serious and less serious, should be submitted to the secretariat of the CMC located in IDAC. The secretariat should distinguish reports concerning serious corruption from those concerning less serious corruption. NACAC recommends that this initial filtering be based entirely upon the seniority of the local, provincial or national public official or politician implicated in the alleged corruption. The initial filtering should also recommend a preliminary allocation of serious corruption, serious commercial crime, and organised crime between IDAC and the DPCI.

The outcome of this initial filtering exercise should be reported to the CMC. All reports on less serious corruption should be submitted to a designated CMC official in the office of the SAPS Commissioner, who should filter the reports received by the province in which the alleged corruption has occurred. The reports should be submitted to the relevant provincial SAPS Commissioner.

Allegations of corruption committed by SAPS officials should be submitted to the CMC and filtered as per the proposals above with the rank of implicated official determining the allocation between serious and less-serious corruption.

Although the OPI will not, strictly speaking, be a LEA, NACAC has nevertheless included it in the ranks of the LEAs because its key preventive function will be to conduct inquiries into systemic corruption, that is corruption within a public institution so pervasive as to suggest managerial and governance shortcomings that render the institution in question vulnerable to corruption. Although its principal remedial findings should be aimed at correcting these managerial and governance shortcomings, NACAC has recommended that the OPI be included in the LEA coordination mechanism because:

- in the course of enquiring into systemic corruption, the OPI will frequently encounter evidence of criminal conduct which it would be obliged to refer to the LEA coordinating mechanism for possible further investigation and prosecution;
- in order to effectively inquire into systemic corruption, the OPI will be given investigative powers enforced, where necessary, by the criminal justice authorities, viz. the power to compel testimony and to conduct search and seizure operations;
- NACAC has recommended that the OPI be designated responsible for coordinating the 'all of government/all of society' approach to combatting corruption. For this reason too, it is important that the OPI be a member of the mechanism coordinating the anti-corruption LEAs. This would enable the OPI to play a mediating role between the public and the LEAs.

**Recommendation 3 – Align the performance metrics of the LEAs to reward cooperation, not competition.**

NACAC recommends that the performance incentives system governing the LEAs should reward cooperation between agencies, and excellence within them.

The imperative to focus institutional attention and resources on the investigation and prosecution of serious corruption requires a multi-disciplinary approach. In addition to law reform, there is another, complementary way to support the emergence of a culture of cooperation instead of competition among LEAs.

The potential of **incentives** to motivate behaviour change in organisations should be maximised. Currently incentive structures for LEAs set different agencies targets for reclaiming the same proceeds of crime. For example, the AFU, SARS and SIU compete to recover the same assets. Performance metrics incentivise competition between agencies, causing sub-optimal inter-agency cooperation and turf wars. These performance metrics should be revised to encourage the inter-agency cooperation that is essential for the effective functioning of the multi-agency approach.[33] Incentives such as promotion should be directly linked to performance and integrity in order to maximise the performance of staff in these institutions. [34]

**Recommendation 4 – The Terms of Reference of the Madlanga Commission should be amended to include a focus on crime intelligence.**

NACAC commends the President's establishment of the Madlanga Commission of Inquiry into the SAPS.

While each of the various components of SAPS plays an important role in combatting corruption, NACAC recommends that the Madlanga Commission should pay special attention to the dire state of crime intelligence because of the critical role played by that division in the investigation of corruption.

NACAC recommends further that the Madlanga Commission should consider the possibility of establishing dedicated crime intelligence units in the agencies responsible for investigating serious corruption and organised crime.

The exact ambit of crime intelligence is not defined in legislation. The Crime Intelligence division in the SAPS appears to be responsible for security vetting and risk assessments, and the generation of intelligence reports. SAPS Crime Intelligence has two sub-programmes, being Crime Intelligence, and Intelligence and Information Management. It is unclear the extent to which there is a focus on corruption.

Many of the posts in Crime Intelligence were inappropriately filled during the period of state capture. It may be advisable for all persons currently occupying these posts first to be vetted. Given that it is Crime Intelligence itself that carries out such vetting, this poses a conundrum.

[33] C. Ashton. 2024. Rethinking anti-corruption in South Africa: Pathways to reform. P 16. https://issafrica.org/research/southern-africa-report/rethinking-anti-corruption-in-south-africa-pathways-to-reform

[34] C. Ashton. 2024. Rethinking anti-corruption in South Africa: Pathways to reform. P 21. https://issafrica.org/research/southern-africa-report/rethinking-anti-corruption-in-south-africa-pathways-to-reform

Particular concern has been expressed regarding the dysfunctionality of Crime Intelligence. This unit is meant to provide a critical service to the policing units fighting corruption. Not only does it appear that Crime Intelligence has performed woefully in its function, but corruption within the division has reached epidemic proportions. NACAC was advised by people with deep knowledge and familiarity with fighting corruption and organised crime that the Crime Intelligence division should be disbanded and reconstructed afresh. Whilst NACAC has not gone this far, NACAC recommends that the Madlanga Commission accords priority attention to investigating Crime Intelligence. NACAC has also recommended that consideration be given to permitting IDAC and the DPCI to establish appropriately resourced, dedicated, internal crime intelligence units.

## Independence and integrity

**Recommendation 5 – Provide statutory processes to ensure transparent, merit-based appointments of ethical senior leaders in the criminal justice system.**

Urgent attention must be given to the processes – or lack thereof – governing the appointment of senior officials in the NPA and the SAPS. At present the appointment of the NDPP and the SAPS Commissioner are at the sole discretion of the President. There is an urgent necessity to ensure that the processes of appointment to these positions are fair, transparent and merit-based.

It has been well established and contained in the submissions to the Zondo Commission that there was an abuse of appointments of top managers to various LEAs.[35] The purpose thereof was to ensure that these institutions could protect those involved in state capture and to persecute those who were trying to hold those responsible for corruption accountable. This was achieved through appointing those perceived to be loyal to former President Zuma into the top management echelons of criminal justice agencies. In some cases these individuals were later found by the courts or inquiries not to have the necessary expertise, skill or integrity to fulfil the functions of the posts they hold. Another tactic was to appoint people in acting positions who could be removed if they did not comply with instructions.

These top managers would replicate this flawed process by appointing personnel throughout the organisation, based on their perceived loyalty and not ability. Many professional members of the SAPS, NPA, DPCI, and other agencies left as they found the working conditions and interference in their jobs intolerable. The consequences of this included declining capabilities and performance as these agencies became negatively affected by toxic organisational cultures characterised by a lack of transparency, accountability, bullying and mediocracy. While there has been much work undertaken to address this in the NPA and DPCI, this is not yet the case in the SAPS and IPID. Both organisations remain negatively impacted by this period as no clear programme of reform and institutional strengthening has occurred.

[35] Institute for Security Studies and Corruption Watch joint submission to the Zondo Commission: State Capture and the poitical manipulation of criminal justice agencies. 2019. https://issafrica.org/research/books-and-other-publications/state-capture-and-the-political-manipulation-of-criminal-justice-agencies

It is necessary to put in place a mechanism whereby the process to fill top leadership positions in the CJS begins at least one year in advance of the positions becoming vacant. Amendment of legislation should be instituted to require that posts are filled before incumbents retire or complete their term of office. This will not pertain where the incumbents leave for other reasons outside of the control of the executive authority. A stipulated timeframe for filling posts under such conditions should be included in legislation.

The processes for selecting candidates to occupy top leadership positions in the CJS agencies should follow a similar process as that used to appoint the NDPP Advocate Shamila Batohi. In this instance, President Ramaphosa required that the post be advertised and appointed a high-level panel to interview the candidates despite the fact that no law mandated this process.

While NACAC accepts the final decision-making role of the President, NACAC recommends that it be exercised on nomination from an appropriately composed **selection committee** comprising independent subject matter specialists and senior human resource practitioners. A selection committee of experts should be assembled on each occasion there is a senior appointment. The purpose of this committee should be to make recommendations to the President.

The selection committee should make its nomination on the basis of a shortlist of candidates who have responded to widely circulated advertisements which specify a detailed job description and the qualification requirements for the post in question. Should the President reject the selection committee's nominee, he/she must provide reasons to the committee which must be required to recommence its search for appropriate candidates. In all these appointment processes the CVs of the shortlisted candidates must be placed on the websites of either the NPA or SAPS, depending on the post advertised.

With respect to SAPS, the Minister of Police should investigate the form of an appropriate structure – taking into account the recommendation in the 2012 NDP that a **NPB** should be established. The proposed NPB should advise the President on senior leadership appointments for the posts of National Commissioner, Deputy National Commissioners, Provincial Commissioners and Divisional Commissioners – from the level of brigadier up.

To ensure that this process remains the practice in the long term and to protect these institutions from potential future attempts at capture, it is necessary to codify the processes in law as per amendments to the relevant legislation. This should be a legally required process for all senior managers to be appointed in the SAPS, DPCI, NPA, SARS, FIC, SIU/OPI, IPID, and other key criminal justice agencies.

**Recommendation 6 – Overhaul the legislative framework of the NPA to provide for greater operational independence.**

In any democracy, the police and the prosecutorial agency require **operational independence** to take policing and prosecutorial decisions without fear or favour. But these agencies are vested with extraordinary powers and they must therefore also be accountable for the exercise of these powers.

The entire accountability architecture of the state hinges on an effective, efficient, independent, and accountable NPA. Success in investigating and prosecuting high-level corruption matters remains elusive. Lacking institutional and financial independence, the effective functioning of the NPA is a core challenge and must be addressed to improve law enforcement capability.

NACAC recognises that the overall governance of the NPA compromises its independence and, by extension, that of the IDAC to prosecute corruption cases effectively. NACAC has made recommendations to strengthen the independence of the NPA in line with the criteria for independence set out in the Jakarta Principles for Anti-Corruption Agencies and the Constitutional Court's leading judgment in *Glenister II.*

At present the NPA is not an independent agency. It is a mere programme of the DOJ&CD. The NPA's budget and many HR decisions are controlled by the DOJ&CD – this is a serious constraint on the NPA's ability to function effectively and independently.

To combat corruption more effectively, an overhaul of the legislative framework of the NPA is needed in the following areas:

- its **financial independence;**
- the appointment and removal of the senior echelon;
- conditions of service of staff to attract and retain critical skills; and
- setting standards for accountability and transparency.

In support of the preceding:

- Special consideration should be given to mechanisms such as independent or special prosecutors in cases of corruption involving members and former high members of the executive.
- Significant delegation or expansion of the prosecuting role to other players would be required, as well as significantly better allocation and support of judicial officers in courts hearing these matters, and efficient management of their time. There is an urgent need to bolster the independence, accountability, and effectiveness of the NPA, to protect whistleblowers from physical violence – not just in the employment relationship, and not only when they are to give evidence in court.

NACAC concludes it is urgent that legislation provides:

- The establishment of a system to brief counsel in private practice to prosecute certain matters.
- Clarification of the mandate of the Investigating IDAC. It should be granted a large ring-fenced discretionary budget for the procurement of ad-hoc specialist skills.
- Term limits that apply to directors of public prosecution (DPPs), and the removal of the age limit of 65.
- That the NPA should be required to respond with a decision to referrals for prosecution for corruption from other agencies within specified time limits, and it should be required to maintain a register of all referrals for prosecution.
- Protection for whistleblowers and related persons, even if they are not to testify in court. Whistleblower protection must be effective and perceived to be effective.

**Recommendation 7 – Implement integrity mechanisms to ensure that the SAPS becomes a professional organisation characterised by high levels of integrity.**

As the country's single largest law enforcement agency, SAPS plays a crucial role in engendering public trust in the government's efforts to tackle corruption. Currently, and for the past three years, only 22% of the public have any level of trust in the SAPS. [36]

All indications are that corruption is widespread and endemic across all functions and at all levels of the organisation. Unless a clear programme of organisational reform to address this and instil a culture of professionalism and integrity is undertaken and seen to be so by the public, any government-driven initiative to tackle corruption in South Africa will be stillborn.

International experience shows that the most effective way to tackle police crime and criminality is to have well resourced, dedicated and protected **internal investigation units.** If they are staffed by carefully screened, experienced detectives, they can be the most effective structure for both ensuring accountability for, and therefore deterrent against, police crime and corruption.

To ensure that the SAPS becomes a professional organisation characterised by integrity, NACAC recommends:

1. The Minister of Police, the Portfolio Committee for Police, and the Civilian Secretariat for Police Service (CSPS) should emphasise the need for a coherent, integrated and effective response to police corruption to be prioritised – employing the **'tone from the top'** leadership strategy.

2. That the Minister of Policy consider the establishment of an independent, multi-sectoral **NPB** with appropriate and credible expertise as recommended by the 2012 NDP, with a mandate to assist with the development and oversight of a SAPS integrity and professionalisation strategy. The NPB should be comprised of a task team of five experts which will make recommendations to the CSPS on professionalism and integrity in the SAPS. The NPB should be given the necessary secretarial and other required support from the CSPS.

3. This strategy should be co-developed with and implemented by the SAPS top management structure and rigorously monitored and assessed by the NPB, which reports to the Minister of Police, who in turn reports to parliament on its implementation and impact.

4. The SAPS Act should be amended to establish the NPB and describe its functions. The SAPS Act should also support the strategy to support clear measures that improve police transparency and ensure regular independent reviews of the effectiveness of accountability mechanisms.

5. An appropriate agency such as the SIU/OPI or SARS should undertake **lifestyle audits** and risk assessments of SAPS top managers. The SAPS Integrity Management Component must be capacitated to undertake a variety of integrity enhancement measures including targeted lifestyle audits and risk assessments at ranks below top management. Oversight should be provided by the CSPS.

36 HSRC Survey. 2024. Tracking Social Norms and Behaviour Change. Appendix N.

6. Regarding allegations of corruption against the senior management structure (SMS) of SAPS, including the ranks brigadier and above, the SMS cannot and should not investigate allegations of corruption against themselves. Such investigations should be taken on by IDAC as per the recommendations made above.

7. The SAPS SMS should take full responsibility for investigating allegations of corruption at the levels of colonel and below. This requires improved internal capability in the **Anti-Corruption Investigation Unit (ACIU)** to drive integrity processes in SAPS. The SAPS internal ACIU should be strengthened so that it at least has the resources and capacity of the SAPS Anti-Corruption Unit (ACU) that existed between 1996 and 2002. In addition, it should have its own intelligence capability and be able to undertake proactive integrity tests where there is reasonable suspicion of police corruption. All personnel admitted to the unit should be thoroughly vetted. MOUs should be developed where necessary to address the sharing of information with IDAC, DPCI and IPID. The unit should function independently but fall under the authority of the national commissioner for accountability purposes.

8. Available data on police corruption should routinely be analysed to identify police units, components, functions or divisions that are linked to allegations of corruption so that investigative resources for addressing police corruption can be targeted effectively.

9. An integrated **police corruption monitoring system,** providing coherent information on reported allegations of police corruption and on the outcome of disciplinary processes and criminal investigations related to police corruption, should be established. For this purpose, clear and straightforward guidelines should be developed for reporting and recording police corruption that must be adhered to by the SAPS and other bodies involved in investigating police corruption. These reports should be submitted to the relevant parliamentary portfolio committee and be made publicly available.

10. The amended SAPS Act must provide for the above capacity and be clear that failure by SAPS members to cooperate with the work of ACIU and the SAPS disciplinary structures is considered serious misconduct and can result in a dismissal.

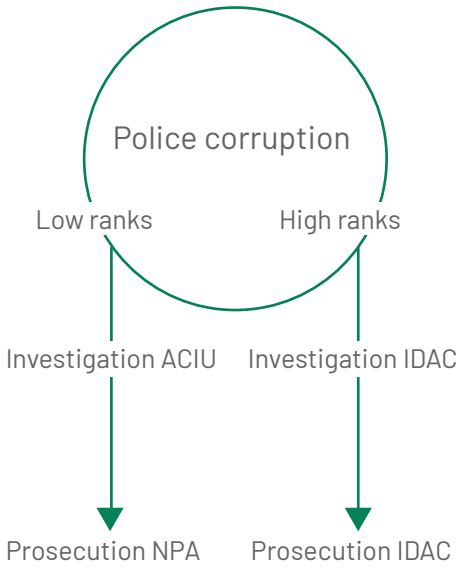
11. Where a SAPS member resigns following allegations of corruption, the investigation and **disciplinary processes** must continue until a verdict is reached, irrespective of whether the subject SAPS member cooperates or not. If a negative finding is achieved for serious corruption, this person should be disqualified from serving in any public sector post for life. No pension or other payouts should be received by any person facing allegations until the disciplinary process is completed.

12. The NPA should establish **dedicated prosecutorial capacity** with experienced prosecutors who are tasked with any prosecution related to serious police criminality or corruption. These cases must be prioritised and expedited to send a message that this form of corruption is recognised as particularly egregious.

13. The SAPS **Code of Ethics and Conduct** should be integrated into performance management or promotions assessments. SAPS supervisors should assess the attitudes and conduct of those they assess. If the supervisor raises concerns, then a review of the SAPS member should be undertaken by the SAPS Human Resource Management Division or the SAPS Integrity Management component.

14. The public profile of systems for **reporting** police corruption should be promoted more vigorously – both outside the SAPS and internally.

**Chart 2: Investigating police corruption**




This chart illustrates the principle that high-ranking SAPS officials should not be empowered to investigate allegations of corruption against themselves; and that the internal integrity function of the SAPS should be capacitated to investigate allegations of corruption against lower-ranking SAPS officials.

## Resources

It is necessary to enhance the capacity of all existing agencies, and to make better use of existing resources. In the same manner that there is a need for policy coherence, there needs to be coherence in the allocation of resources which is informed by need and evidence. The capacity allocated to the core problem of the country is inadequate, yet there are real budget constraints.

**Recommendation 8 – Give the NPA more operational control over its budget**

NACAC recommends that the NPA should have its own budget vote and accounting officer. The NPA should control its own budget, staffing and salary decisions and allocations to units of the NPA, such as Sexual Offences and Community Affairs (SOCA) and SCCU.

The salary structure within the NPA should be reviewed and adjusted to be more in line with equivalent positions in the SIU. At the same time, consideration should be given to raising the requirements for appointment as a prosecutor to the NPA. It should be possible for the NPA itself to address vacancies not filled within one year by short-term procurement processes involving contracts.

Consideration should be given to adopting a funding model for anti-corruption agencies in which they retain a portion of funds they recover to invest in institutional capacity.

**Recommendation 9 – Strengthen the resourcing and operational capability of the court system to combat corruption.**

The courts are a key component in our constitutional democracy. Yet their resourcing is fractured and insufficient, and there appears to be inadequate attention paid to their optimal operation. Courts do not have enough judicial officers.[37]

Court infrastructure challenges contributing to court delays should urgently be addressed. A thorough critical review of the operation of the courts towards maximising efficiency should be carried out.

A new model of prosecution should be discussed and consulted upon, which permits either the appointment of special counsel in sensitive matters, or that, as a matter of course, provides for the briefing of prior-approved counsel in private practice by the prosecuting authority (the Commonwealth model).

**Recommendation 10 – Provide more security to protect law enforcement staff and witnesses.**

NACAC recommends that, given the high rate of violence against investigators, more resources should urgently be provided to protect investigators and witnesses.

NACAC also recommends that greater attention be given to effective human resource management including workplace conditions and the management of disciplinary and grievance procedures.

## Harnessing AI and digital tools

The fight against corruption in South Africa must evolve to meet the sophistication and scale of the threat it faces. Traditional investigative methods are no longer sufficient to confront a form of corruption that is systemic, networked, and increasingly embedded within digital infrastructures. LEAs require new tools and capabilities that leverage technology strategically, ethically, and at scale.

Through the 2023 Indata Workshop, convened by NACAC, NACAC engaged with law enforcement practitioners, government departments, Chapter 9 institutions, the banking sector, and civil society organisations to consider how digital innovation can transform the anti-corruption landscape.

[37] African Policing Civilian Oversight Forum & Dullah Omar Institute. 2025. *Strengthening Law Enforcement Agencies in Combatting Corruption: Mandates and Resourcing*. P 62.

**Recommendation 11 – Integrate AI and advanced analytics into law enforcement institutions.**

NACAC proposes that a key component of the national anti-corruption architecture going forward must include the coherent and integrated use of AI and advanced analytics.

## An intelligence-led model

South Africa's enforcement model must shift from being primarily reactive to becoming intelligence-led and risk-based. This shift requires the integration of AI-driven anomaly detection tools that can proactively identify suspicious patterns across government systems, particularly in procurement, budgeting, licensing, and human resource management.

Machine learning models, trained on historical data including tender records, pricing benchmarks, supplier networks, beneficial ownership registries, and financial transactions, can flag outlier behaviour in real time. These red flags, such as inflated pricing, supplier collusion, irregular payments, or conflicts of interest, should be automatically referred to dedicated corruption analysts embedded within law enforcement units.

Rather than waiting for complaints or whistleblower reports, this model allows LEAs to intervene earlier and disrupt corrupt schemes before they cause significant loss.

## Data sharing: risks and responses

One of the most consistent findings from the Indata workshop was that South Africa's ability to conduct cross-agency, multi-sectoral anti-corruption intelligence and investigations, is hampered by fragmented, inconsistent, and overly restrictive data sharing practices. Corruption cases often stall because key evidence, such as beneficial ownership, financial transaction data, or procurement records, sits in silos or cannot be lawfully accessed by investigators in a timely manner.

The barriers are both legal and institutional. The Protection of Personal Information Act (POPIA), while critical to safeguarding privacy, has been inconsistently interpreted by different departments and state entities, leading to a culture of risk aversion, where data is withheld even when lawful sharing is permissible. In some cases, information that could be vital for investigations is classified unnecessarily or bound up in bureaucratic procedures.

**Recommendation 12 – Develop an anti-corruption data sharing framework governed by principles of necessity, proportionality, transparency, and accountability.**

This framework should:

- Define lawful pathways for sharing data between designated anti-corruption agencies, in line with POPIA and Promotion of Access to Information Act (PAIA).
- Include mandatory data-sharing protocols and timelines, especially for procurement, company ownership, and financial records relevant to investigations.
- Be overseen by the Information Regulator to ensure that data requests are lawful, necessary, and free from undue influence.

## The threat of deepfakes and AI-generated content

One of the emerging digital threats to the anti-corruption and law enforcement ecosystem is the proliferation of deepfakes and AI-generated content. These technologies, which use advanced machine learning models to synthetically create or manipulate images, audio, and video, pose a serious challenge to investigative integrity, public trust, and democratic institutions.

Globally, deepfakes have been used to harass whistleblowers, intimidate journalists, impersonate public figures, and discredit corruption investigations. In South Africa, where political contestation is high and trust in public institutions is brittle, the use of AI-generated content to impersonate investigators, fabricate evidence, or engineer public confusion could be devastating.

NACAC recommends that this growing risk be recognised as a priority issue across the anti-corruption and security architecture. Specific measures should include:

- Equipping LEAs with AI detection tools and training to identify and validate potentially manipulated content.
- Develop technical guidelines for verifying the integrity of digital evidence, including chain of custody, metadata preservation, and tamper-detection mechanisms, particularly in high-profile corruption cases.
- Establish a small, inter-agency advisory group on AI and disinformation threats, which can be activated when there is a suspected incident involving synthetic media that could affect an investigation or public trust.
- Build public awareness about the risks of deepfakes and AI-generated disinformation, so that citizens are equipped to critically assess content and avoid being manipulated by coordinated smear campaigns or falsehoods.

If left unchecked, the use of deepfakes could significantly hamper anti-corruption efforts, not only by confusing the public, but by polluting the evidentiary environment investigators rely on. As AI-generated deception becomes easier and cheaper to produce, South Africa must proactively develop the institutional and legal capacity to respond, or risk seeing corruption disguised behind a veneer of digital illusion.

## Ethics and training

Technology, no matter how advanced, cannot compensate for weak institutions or a lack of integrity. The successful use of AI and digital tools must be underpinned by a strong ethical framework, institutional safeguards, and public accountability. All systems deployed for anti-corruption work must be transparent, auditable, and subject to regular review by independent experts.

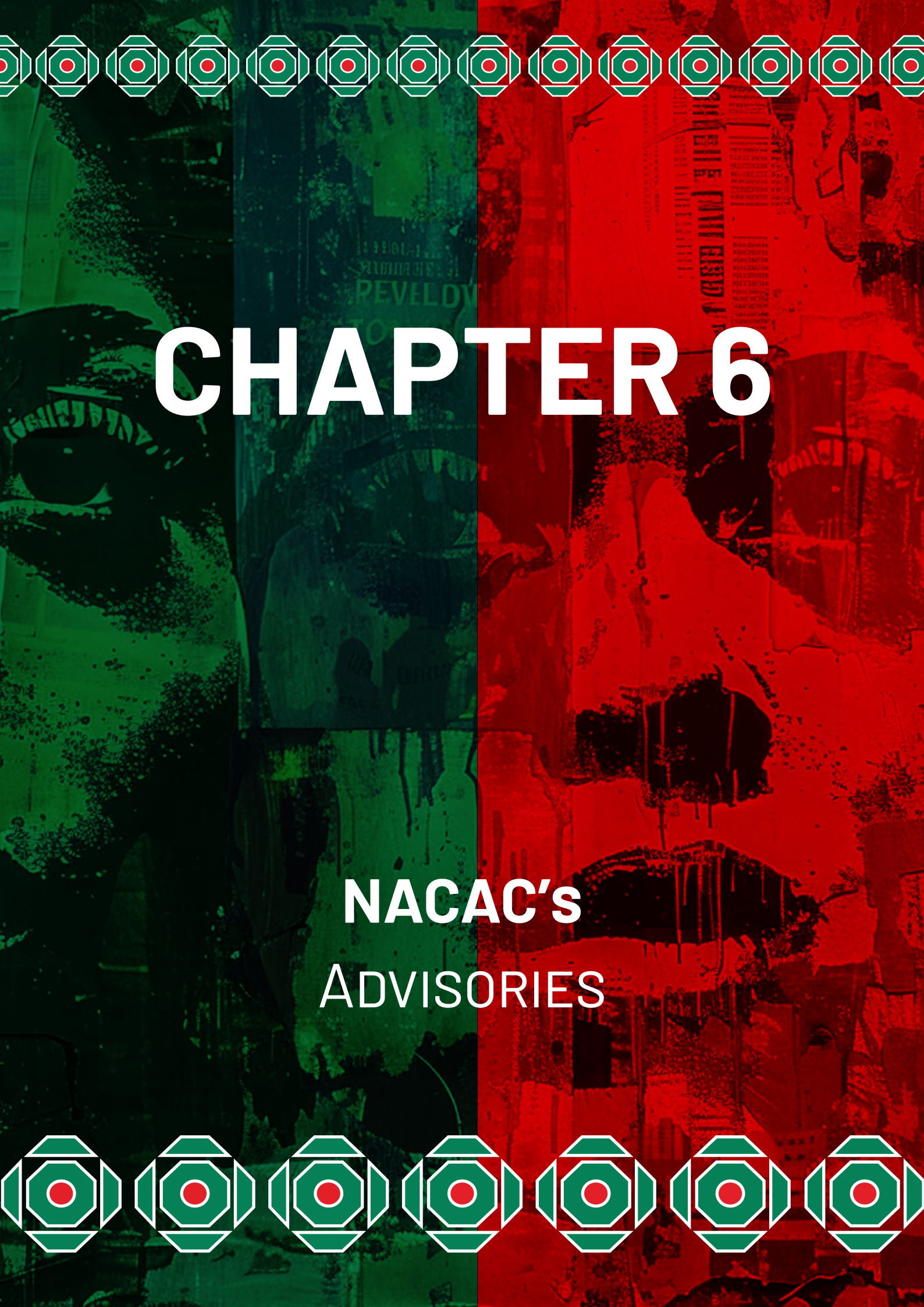
Equally essential is investing in human capability. The state currently lacks sufficient technical expertise in digital forensics, data science, and cybersecurity within its anti-corruption institutions. NACAC recommends that all LEAs build strategic digital forensics and advanced analytics capacity. In parallel, an AI literacy programme should be introduced for prosecutors, investigators, and compliance officers to build a foundational understanding of how digital systems can support case-building, asset tracing, prosecution, as well as identifying deepfakes and digitally manipulated evidence.

## Conclusion

South Africa's anti-corruption institutions must move beyond 20th-century tools to confront 21st-century crimes. The digitalisation of public services and financial flows creates both risk and opportunity. NACAC concludes that, with the right safeguards and investment, technology can become a force multiplier in the state's efforts to detect, disrupt, and deter corruption.

But digital systems are only as ethical and effective as the institutions that wield them. South Africa must build this future deliberately: by embedding transparency, investing in technical capability, safeguarding rights, and coordinating across sectors. The alternative is clear: corruption will adapt faster than our institutions can respond.

*Figure 9: NACAC Members with Heads of South Africa's LEAs. L-R: Adv. Gloria Khumalo, Mx Sekoetlane Phamodi, Adv. Andy Mothibi (SIU), Prof. Firoz Cachalia, Lt. Gen Godfrey Lebeya (DPCI) and Adv. Rodney de Kok (NPA) on a learning visit to Hong Kong. March 2024*



# CHAPTER 6

## NACAC's Advisories

## NACAC Advisories to the President

During its three years of existence, NACAC researched and drafted Advisories to the President on a number of topics including procurement reforms and measures to protect whistleblowers. The focus and key recommendations from the advisories produced by the NACAC workstreams are summarised below. The full advisories are attached as appendices.

### Advisory 1: Implementation of the recommendations of the Zondo Commission (Appendix D.1).

One of NACAC's key mandate areas was to advise the President on the implementation of the recommendations of the Zondo Commission from a strategic and systemic perspective. NACAC's first Advisory to the President focused on this topic and made specific proposals for consideration by the President.

Viewing the Zondo Commission Report recommendations from an integrated perspective, NACAC proposed that grand corruption and state capture should be prevented and combatted using the framework of the NACS strategic pillars. NACAC also proposed that a monitoring system with timeframes and a decision register against each of the Commission's recommendations should be created.

This Advisory also began NACAC's efforts to advocate for and advise on whistleblower protection. It called on the President to acknowledge the role of whistleblowers, civil society activists and journalists in exposing corruption; to denounce retaliation against whistleblowers in the workplace; to establish a temporary discretionary fund to support bona fide whistleblowers in dire need; and appoint a temporary "Protector of Whistleblowers" in the form of a retired judge to deal with the most serious violations of whistleblower rights.

NACAC also advised that a reconfigured Whistleblower Act be passed to address a number of issues: to criminalise retaliatory action; to extend the number of bodies that a bona fide whistleblower could make a disclosure to; and to create stiffer penalties for corporate violation of whistleblower legislation. NACAC recommended that the new Act should extend protections further than the narrow confines of the employer-employee relations stipulated in labour law and the current Protected Disclosures Act, thus making the Act an important cog in South Africa's human rights law. The new Act should establish a fund from which whistleblowers could draw and provide a framework for legal immunity for whistleblowers.

NACAC recommended that the framework for whistleblower protection in South Africa should align with international good practice, e.g. for example the UNCAC. It should include a mechanism for incentivised disclosures and an Independent Whistleblower Ombud's body with the capacity to provide legal, medical, physical and psycho-social support.

This Advisory also proposed that the Zondo Commission's recommendations on "appointments to the boards and executives of SOEs" be translated into principles and procedures that would apply across the board beyond the SOEs. It made recommendations on: measures to improve transparency in public procurement; a balanced response to corruption in the private and public sectors; and the resourcing of LEAs. Lastly it highlighted the need to address issues of poverty, unemployment and inequality as part of the struggle against corruption and the importance of ethical leadership and behaviour change at the societal and individual level.

## Advisory 2: Public support for whistleblowers (Appendix D.2)

This standalone Advisory on whistleblower support further developed the proposed actions in the first Advisory. NACAC expressed concern about the socio-political environment in South Africa which allows for the ongoing harassment, retaliation, victimisation and threats to the lives, livelihoods and dignity of whistleblowers.

Key recommendations in this report included public communication in support of whistleblowers by the President as well as Cabinet endorsement of consequences for those engaged in acts of retaliation and victimisation. NACAC urged the President to consider public recognition of whistleblowers and awarding national orders of merit to whistleblowers.

## Advisory 3: Regarding the implementation and roll out of the NACS (Appendix D.3)

NACAC recommended that Cabinet and all political principals in national, provincial and local government should champion the process of implementing the NACS throughout government. Government should use the NACS as the framework for the development and implementation of all anti-corruption and integrity-building programmes and projects and develop the capability for embedding the NACS in the Mid-Term Strategic Framework of the 7th Administration.

NACAC called on executive authorities of all government departments and entities, including state-owned and municipal entities, to lead the alignment of their respective organisations' anti-corruption and integrity-building activities with the NACS. They should detail their progress in their organisations' annual performance plans (APPs), ensuring that NACS related reporting on identified outputs are also embedded in their APPs.

Crucially, NACAC advised Cabinet to assign responsibility for cluster-level cooperation, coordination and performance management of NACS programmes to an appropriately suited department and allocate sufficient capacity and resources for the department to perform this function. This would ensure effective implementation of the NACS. NACAC recommended that the Department of Planning, Monitoring, and Evaluation in the Presidency is allocated responsibility for fulfilling this function.

## Advisory 4: Strengthening the PPFA to manage corruption risks and improve transparency in South Africa (Appendix D.4)

The Zondo Commission exposed evidence that political parties were sometimes accountable to their donors rather than to their electorate. NACAC reviewed the PPFA and found that the 2019 PPFA contained vulnerabilities for corruption and undue influence. NACAC proposed legislative amendments aimed at strengthening transparency and reducing vulnerabilities for corruption and undue influence in the context of party funding.

NACAC recommended that the PPFA should not include the Corrupt Donation Crime as a separate offense. Instead it should reference section 13 of PRECCA which already criminalises corrupt donations. Further recommendations included: amendments to the existing thresholds for disclosure and caps on donations should be postponed until sufficient evidence is available to make informed decisions regarding more appropriate thresholds and caps; donations of amounts exceeding the Section 9(1)(a) threshold should be required to be disclosed directly to the Independent Electoral Commission (IEC); and natural persons and juristic entities should be prohibited from circumventing the Section 8(2) cap by making multiple donations through related juristic entities.

NACAC also proposed a requirement that all private monetary donations to political parties be deposited directly into the bank account specifically created for donations. NACAC recommended that donations made to internal party leadership contests should be subjected to the same disclosure thresholds and prescribed maximum caps as those applied to political party funding. It recommended that it should be mandatory for political party investment vehicles to disclose sources of investment income. It also recommended that donations received by independent candidates should be regulated and guidelines set for how they receive money from public funds.

NACAC also advised that the Political Party Funding Unit within the IEC be adequately resourced and staffed to effectively conduct oversight, monitor donations, and investigate complaints.

## Advisory 5: Appointment of a retired judge as whistleblower protector of South Africa (Appendix D.5)

NACAC continued its work aimed at addressing the hardships experienced by whistleblowers. It noted that the existing framework has failed to provide sufficient protection for whistleblowers. This Advisory focused on a proposal for a specialist institution that is closely attuned to the experiences and needs of whistleblowers. It proposed that the institution should be headed by a retired judge and made suggestions for the characteristics, mandate, and resourcing of such an institution.

The Advisory identified the essential features that the proposed institution would need to have, including: a clearly defined whistleblower protection mandate; independence; adequate resources; and a single focus on protecting whistleblowers. The institution should be headed on a full-time basis by a retired judge, appointed through a legitimate and transparent process who would enjoy security of tenure.

The institution's functions would include: certifying a whistleblower's status; carrying out any risk assessment and making any necessary referrals based on these assessments; assisting whistleblowers to obtain interdicts in the case of retaliation; instructing institutions to take protective actions in favour of whistleblowers; providing financial assistance to whistleblowers in financial distress; and conducting research in order to make policy recommendations on whistleblower protections.

Mindful of the urgency of the plight of whistleblowers, NACAC proposed a two-phase process for the formation of the institution: an interim phase in which the President would establish the institution and appoint the retired judge to lead it, followed by a permanent institution as set out in the Advisory.

## Advisory 6: Strengthening anti-corruption elements of the Public Procurement Bill (Appendix D.6)

This Advisory focused on the Public Procurement Bill that was before Parliament in January 2024. The Bill had been revised and passed by the National Assembly but had yet to be considered by the National Council of Provinces.

This Advisory expressed the opinion that the Bill which had been passed did not properly address the recommendations of the Zondo Commission on procurement corruption, and could still open the doors for graft. It expressed concerns about the procedure of passing the Bill and the limited nature of the parliamentary participation process. Significant changes had been made to the Bill in relation to preferential procurement during the parliamentary process, and there had been very limited consultation on these changes.

The Advisory explained where revisions to the Bill would be required in order to align it with the anti-corruption objective that is the heart of the NACS. It drew on research and expert knowledge to make recommendations on: institutional arrangements in procurement; preferential procurement; creation of a procurement officer's profession; whistleblowing and supplemental information disclosure to the state and transparency (procurement methods and open data standards).

NACAC recommended that the Public Procurement Bill be amended to: enable the establishment of an independent Public Procurement Regulatory Authority; simplify and clarify the clauses on preferential procurement and exclusions; establish a Procurement Professional Body and accreditation system; align the beneficial ownership provisions with recent amendments to the Companies Act; limit 'confidential information' to what is non-disclosable under PAIA and the Constitution; conform to public participation legislation process for major changes in the Public Procurement Bill; refer to disclosure of corruption and procurement fraud; encourage procurement information disclosures as a countenance to procurement corruption; and introduce e-procurement which integrates vetting of tendering entities.

The Public Procurement Bill was signed into law on 18 July 2024.

## Advisory 7: Electoral Matters Amendment Bill (EMAB) (Appendix D.7)

This Advisory recognised that sufficient financial support for political parties is essential for maintaining and enhancing the vitality of South Africa's democracy. NACAC also expressed the view that adequate public funding is essential and that political parties should be able to raise funds from private sources. However, it noted the risk that unregulated influence of money in South African politics presents to our constitutional democracy and our ability to end state capture and undue influence by private actors in policy making process, regulatory bodies and procurement systems.

Following the adoption of the EMAB by the National Assembly and National Council of Provinces, NACAC remained concerned that a legal gap would mean that political parties and independent candidates would not be legally obligated to reveal their funding sources, nor would there be any imposed upper limits on the donations they can receive. The Advisory also identified grounds on which the EMAB could be challenged, including that:

- Information on the private funding of political parties and independent candidates is essential for the effective exercise of the right to make political choices and participate in elections;
- Information on private funding of political parties and independent candidates must be recorded, preserved, and made reasonably accessible;
- The detection of corruption in political processes requires transparency; and
- The prevention of undue influence of private actors and corruption in political processes requires upper limits.

The President was advised to assent the EMAB passing into law, but to specify an alternative commencement date for the sections of the Bill concerning disclosure thresholds and donation limits. To avoid a lacuna, protect the integrity of our electoral process, and mitigate risks of corruption, NACAC recommended that the sections of the Bill addressing disclosure thresholds and donation limits become effective at a later date (on 1 July 2024). This approach would have ensured a seamless transition and reinforces the legal framework governing political financing in the interim period.

*Figure 10: NACAC members meet with President Cyril Ramaphosa and Minister of Justice and Constitutional Development Ronald Lamola. Cape Town. 2023*

## NACAC monitoring of NACS implementation

A key part of NACAC's mandate was to advise the President on the effective implementation of the NACS by government, civil society and the private sector.

NACAC has done the groundwork for the future implementation of the NACS. Much of this work has been done in collaboration with partners from all sectors, whose contributions have demonstrated the whole-of-society approach in action. The support of development partners and technical assistance providers has made in-depth research to ensure evidence-based policy making possible.

NACAC observed that, while the NACS is being implemented at a slow pace, many significant steps have already been taken, including the following legislative amendments:

- The Judicial Matters Amendment Act (Act 15 of 2023) makes technical and practical amendments to various laws administered by the DOJ&CD;
- The Electoral Matters Amendment Act (Act 14 of 2024) incorporates changes to the PPFA;
- The National Prosecuting Authority Amendment Act (Act 10 of 2024) creates a permanent IDAC and empowers this statutory body to undertake search and seizures and effect arrests.
- The General Intelligence Laws Amendment Bill, disestablishes the State Security Agency to address the abuse of intelligence services in processes of state capture.
- Amendments to PRECCA – including a new offense of failure by companies to prevent corruption, along with an affirmative defence that the company had put adequate preventive measures in place.

A comprehensive NACS implementation progress report is attached as Appendix E.

## NACAC monitoring of Zondo recommendations

Another important component of NACAC's mandate was to advise the President on the implementation of the recommendations of the Zondo Commission from a strategic and systemic perspective.

President Cyril Ramaphosa submitted a comprehensive 60-point action plan to Parliament in October 2022, outlining the government's response to the recommendations made by the Zondo Commission. The Presidency provided detailed reporting on implementation in reports published in 2023 and 2025.

NACAC commissioned a research report from the PARI assessing government's progress in implementing the President's 60 commitments. The research report contrasts the Zondo Recommendations against the President's 60 commitments and assesses government's progress towards implementation. The full report can be found in Appendix S and some of its key findings are summarised below.

## Individual accountability

Investigations and prosecutions are ongoing, but the justice system is facing significant challenges related to capacity, independence and institutional architecture. The President has other mechanisms available to hold implicated members of the Executive accountable, such as those set out in provisions of the Constitution and the Executive Members Ethics Act and Code. It is both inappropriate and unnecessary to await the outcome of protracted investigations and prosecutions. Monitoring and communicating effectively with the public about state capture-related cases is critical for building trust in government and democratic legitimacy.

## Law enforcement

*A permanent IDAC:* The establishment of IDAC as a permanent unit with investigative powers within the NPA was an important step towards properly capacitating the NPA. It is now essential that this key piece of legislation is supported by adequate resources.

*NDPP appointment process:* There has been an extended delay by the government in effecting an amendment of the NPA Act to clarify the requirements for a 'transparent and open' process for the selection of the NDPP. Government's undertaking has apparently changed to now afford the President the discretion to include a relatively informal practice in 'guidelines' rather than the promised binding legislative amendment.

*Progress towards NPA independence:* It has long been recognised as deeply problematic that the DOJ&CD exercises control over the NPA to an extent which compromises the NPA's independence. The government has not set out a timeframe within which urgent reform of the NPA will be undertaken.

PARI reports that the DOJ&CD stands out as having been especially slow to respond to the pressing needs for institutional and legislative reform. It has also failed to provide the NPA with appropriate practical operational support by facilitating unhindered access to the SCC database.

*Capacity and performance:* The NPA's budget is controlled by the DOJ&CD. Despite some improvements, recent austerity measures resulted in negative personnel growth. The IDAC is severely under-capacitated, contributing to the slow progress of state capture investigations and the absence to date of successful high-profile prosecutions. Dependency on unduly slow-moving executive and legislative branches of the state exacerbates the pressures facing LEAs.

## Anti-corruption architecture

Government's slow response to NACAC's mid-term report, and failure to release it, has left unresolved issues of coordination regarding the allocation of cases between the NPA, the DPCI and the wider SAPS, as well as the SIU. While the National Priority Committee on Organised Crime exists to, amongst other things, coordinate this work, there is no higher-level strategic oversight of that structure.

There is also an urgent need (as with public procurement and personnel practices) for an integrated digital case management system. The Integrated Justice System, under development for over two decades, has not yet been established, which has major implications for efficiency and oversight of the CJS.

## Money laundering and financial crime

Significant progress has been made to strengthen South Africa's anti-money laundering regulatory environment and to re-align with FATF standards. The creation of the beneficial ownership register is an especially important step forward.

## Reform of appointment processes

The evidence uncovered by the Zondo Commission clearly demonstrates the importance and urgency of the reform of appointment processes for senior leaders. It is unclear what progress has been made since 2022 and why the government has missed its promised deadline to introduce legislation in mid-2023 – a delay of over two years.

## Procurement system reforms

The Public Procurement Bill has been enacted, though regulations to bring the legislation into effect are still being developed. The Act implements several of the Zondo Commission's recommendations but does not adequately address the fragmentation in the public procurement regulatory framework and defers important policy decisions, best embodied in statute law, to yet unpublished regulations.

## Intelligence services reforms

The Zondo Commission found that the security and intelligence services were politicised and compromised at the highest level so that those involved in the state capture project could proceed with their illicit activities with impunity. The Zondo Commission made many recommendations concerning, inter alia, improving financial controls and accountability, and improving oversight.

The General Intelligence Laws Amendment Act was enacted in March 2025, fulfilling the President's commitment to disestablish the State Security Agency (SSA) and establish two separate entities responsible for foreign and domestic intelligence. The Act contains a number of provisions to improve oversight.

The Act has not yet commenced and the restructuring is still in progress; the SSA is still in operation as a single intelligence agency. In the interim the President has reported that the SSA has implemented many of the recommendations concerning various controls and internal processes.

The Act improves oversight of the intelligence function, but critical weaknesses in the legislative and regulatory framework remain. Some provisions in the Act are overly broad and could enable abuse, and civil society has raised important concerns about the powers and reach of intelligence agencies.

## Whistleblower protection measures

The draft Whistleblower Protections Bill is yet to be published for public comment, so it is unclear whether its provisions will adequately strengthen the whistleblower protection regime. The extended delay in finalising this vital legislation is a matter for profound concern. No reasons have been put forward for the failure to finalise these reforms to date, and any draft bill still has to undergo lengthy public consultation and legislative processes. Reform of the whistleblower protection regime has been a consistent demand from civil society organisations and has been highlighted by NACAC as a top priority.

## Professionalisation of the public administration

The Zondo Commission found that the ability to 'strategically position' political associates in key posts within the public administration was the 'essential mechanism' of state capture. The President positioned the 'National Framework towards the Implementation of Professionalisation of the Public Sector' (adopted in 2022) as an important instrument to address the Commission's concerns. The framework contains various reforms to ensure a clearer regulation of the respective roles of politicians and administrators.

The Public Service Amendment Bill takes steps towards separating the political and administrative spheres and is a much-needed step in the journey towards a depoliticised public service. The Public Service Commission Bill is another positive development in the professionalisation of the public administration, in that it strengthens the independence of the PSC and extends oversight of the PSC to the local government sphere.

The legislation currently under deliberation in Parliament represents a partial or incomplete implementation of the promised reforms aimed at depoliticising the public administration. The commencement of lifestyle audits for members of the Executive constitutes welcome progress.

It is vital that integrated digital infrastructures and data collection standards are developed for the whole of the public administration (including in local government and public entities) to support enhanced oversight of personnel practices by the policy holders and Parliament. Further, it will be important to ensure that the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit in the Department of Public Services and Administration has the necessary resources and legal authority to effectively implement its mandate.

## State-owned entities

Government has positioned the National State Enterprises Bill as the significant instrument to address governance challenges in SOEs. The Bill takes the important step of establishing a shareholding company into which the large SOEs will be transferred. The extent to which the Bill will in fact address the challenges is unclear. It includes some robust corporate governance provisions but does not satisfy the urgent need for far-reaching reform.

## Private sector accountability

The Zondo Commission exposed the central role played by private sector actors in corruption and state capture, through direct involvement in corrupt deals and as 'professional enablers'. To enhance accountability, the Commission recommended: amending PRECCA to criminalise the failure of persons or entities to prevent bribery; and introducing legislation for Deferred Prosecution Agreements (DPAs) to tackle economic crimes.

Both the Companies Act and PRECCA have been duly amended but official guidance/policy on how the new provision in PRECCA is to be applied in practice needs to be developed and adopted. The South African Law Reform Commission (SALRC) has published a discussion paper on 'non-trial resolution' (NTR) – of which DPAs are a subset. The SALRC review on NTRs should be finalised without delay, and the development of a principled NTR framework promulgated in legislation should be a priority. In the interim, in order to uphold the rule of law, the NPA developed and published a Corporate Alternative Dispute Resolution Directive, which provides for a simple, but lawful form of NTR for corporate corruption.

## Parliamentary oversight

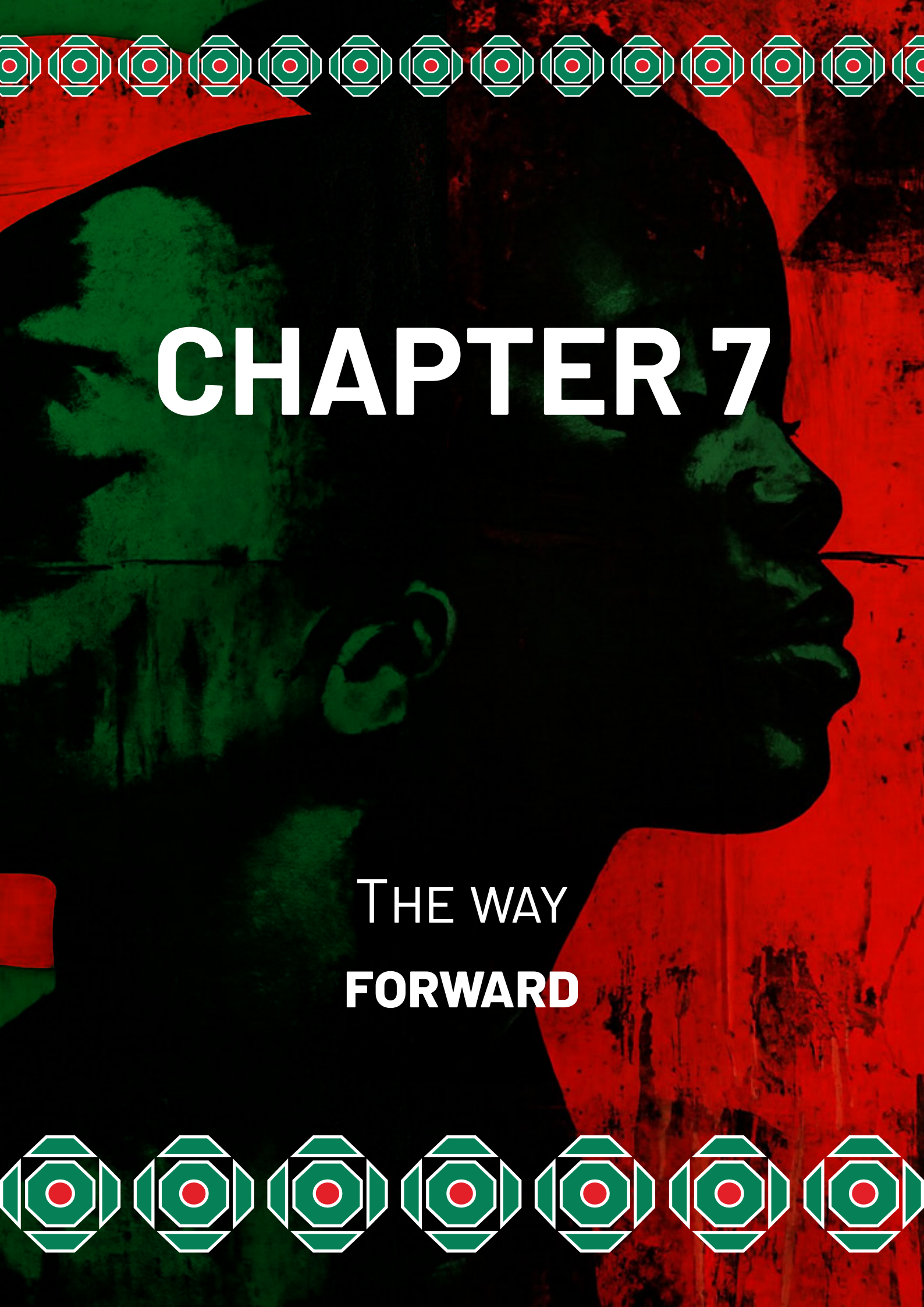
The Zondo Commission found that Parliament had failed to fulfil its oversight mandate due to the lack of political will from the (then) majority party. The report found that Parliament's oversight powers and the tools available to it were generally sufficient, but that these were not used effectively. The report made specific recommendations on improving oversight, including reforms to mitigate the negative impact of the political environment.

The President limited his commitments to recommendations concerning the interface between Parliament and the Executive, acknowledging the need to determine whether the existing processes of reporting and accountability through the Leader of Government Business are 'sufficient and appropriate'. The 2025 progress report noted that engagements on these issues have taken place. Parliament developed its own response and implementation plan. It has adopted some of the Zondo recommendations but decided against adopting many others, finding that it has sufficient powers and further intervention was unnecessary.

*Figure 11 Councilor Sekoatlane Phamodi*

## Conclusion

In summary, the Presidency's efforts to monitor the implementation of the Zondo recommendations are a positive initiative by government. While progress has been made in some areas, civil society should remain vigilant to ensure that the achievements of the Zondo Commission are not forgotten, but remain a landmark on the road towards institutionalising integrity in our young democracy.



# CHAPTER 7

## The way **FORWARD**

## NACS implementation

Section 8.2 of the NACS requires a "review of this strategy, which encompasses its supporting implementation plan, will be undertaken under the auspices of the overarching body". This means that a comprehensive multi-stakeholder review at the NACS five-year mark is currently due.

Due to time and resource constraints, NACAC was unable to undertake this important task, which would highlight work to be urgently undertaken and present the opportunity to mainstream gender and youth aspects more strongly into the strategy.

Going forward, the role of civil society organisations, traditional leadership, academia and the media in awareness-raising, creating an active and informed citizenry and driving improved accountability will be important. The private sector should invest in the institutionalisation of the NACS, which will contribute to ethical governance and improvements in the procurement system. The protection of vulnerable sectors will continue to be important. Other priorities for the future should be ensuring the professionalisation of the public sector, demonstrable consequence management, and strengthening our LEAs.

## Who will champion the NACS?

This does, however, bring us back to the question of who will take responsibility for the overall implementation of the NACS and be assigned the task to champion, drive and coordinate the actions of all these role-players. As indicated, the DOJ&CD had been requested to assist the NACAC to advance the OPI recommendations through government's clusters. The challenge is that the focus of the DOJ&CD is the JCPS Cluster, while the NACS pillars include activities across all the governance clusters and sectors.

To date, the Department of Planning, Monitoring and Evaluation (DPME) has served as a NACS nodal structure, working closely with NACAC to develop the NACS Implementation Plan and monitoring the implementation of the NACS within government. It would therefore be expedient for the DPME to continue the work on the monitoring of the implementation of the NACS. However, NACAC recommends that the Minister of Justice and Constitutional Development be given the mandate to drive the implementation of the NACS and the establishment of the OPI.

Proposals for critical additional work to be undertaken, together with the duty bearers, are contained in the NACS progress report, Appendix E.

### Gender and corruption

The OPI should also approach its work with an understanding of the gendered nature of corruption. In this regard, the OPI must raise awareness of aspects of corruption not recognised in the NACS, including sexual corruption.[38] Simply put, sexual corruption occurs when a person with entrusted authority abuses this authority to obtain a sexual favour. It is rife in South Africa. In the interim, it is important for the Department of Justice and Constitutional Development to pick up on these critical gender issues.

NACAC has considered extensive research on gender and corruption, including whether anti-corruption legislation is adequate to address sexual corruption (see Appendices H and J). With a sound evidence base now in place, mainstreaming gender into anti-corruption programming should follow to ensure improved responses to and outcomes of these programmes.

## The way forward

The NACAC's recommendation for an OPI will not be realised overnight and while the discussions for the planning and operationalisation of this structure are underway, the task of comprehensively addressing systemic corruption and driving corruption prevention work must gather pace.

Losing momentum would send a signal to citizens that the threat corruption poses to our democracy has not been prioritised. The President may therefore need to consider keeping the NACAC in place until the OPI is set up or for the remainder of the NACS lifecycle. Should the NACAC be kept in place to continue work already begun, it will require a dedicated budget for the remuneration of NACAC members and a properly resourced secretariat.

The NACAC engagement with the Portfolio Committee on Justice and Constitutional Development surfaced the idea of integrating elements of the 21st Constitutional Amendment Bill and NACAC's proposals for the development of the OPI. The DOJ&CD should be assigned to explore and consult on this idea.

NACAC urges the nation to move forward with the proposed course of action as set out in this document as quickly as possible, while there is still time and hope for our young democracy to escape the scourge of corruption and capture.

[38] Defined by the International Association of Women Judges as "a form of corruption occurring when sexual acts are demanded or required from women, men and gender non-conforming people in order to obtain a public (or private) service or benefit".

## Table of immediate and short-term actions

| Focus area | Recommendations | Process owner(s) | Timeline |
|---|---|---|---|
| 1. Establish the **OPI** | 1. Conclude the OPI consultation process, draft enabling legislation and advance it through parliament. | DOJ&CD | Immediate |
| | 2. Develop business case including the organisational design and budget. | DOJ&CD | Immediate |
| | 3. Ensure approval of the OPI budget. | DOJ&CD | Short-term |
| | 4. Undertake the process to equip the OPI to carry out an expanded SIU mandate including whistleblower protection, public enquiries, strategic corruption prevention functions, and strategic communication campaign. | DOJ&CD | Short-term |
| | 5. Establish a NCP to advocate for public participation in collective action. | SIU/OPI | Short-term |
| 2. Strengthen **LEAs** | 1. Share NACAC's research reports and recommendations with the Madlanga Commission, highlighting the urgent need for the Commission to inquire into the operations of SAPS Crime Intelligence. | Presidency | Short-term |
| | 2. Undertake the process to rationalise and reorganise the mandates of the LEAs. | SAPS/DPCI/ NPA/IDAC | Immediate |
| | 3. Establish a CMC to coordinate the investigation and prosecution of corruption. | IDAC | Immediate |
| | 4. Overhaul the legislative framework of the NPA and allow the NPA operational control over its budget. | DOJ&CD | Immediate |
| | 5. Develop and implement a plan to provide increased security to protect law enforcement staff and witnesses. | SAPS/DPCI/ NPA/IDAC | Short-term |
| | 6. Develop a strategy to integrate AI and advanced analytics into law enforcement institutions and develop an anti-corruption data sharing framework. | Justice, Crime Prevention and Security Cluster | Immediate |
| | 7. Establish appropriate procedures for improving ethics and accountability in SAPS as per the recommendations of this report | Minister of Police | Immediate |

| Focus area | Recommendations | Process owner(s) | Timeline |
|---|---|---|---|
| 3. **Whistle- blower protection and support** | 1. The SIU should be empowered and resourced to provide interim protection and support to whistleblowers on an urgent basis.<br>2. Finalise amendments to strengthen the Protected Disclosures Act and expedite its processing through Parliament.<br>3. Publicly recognise whistleblowers and award national orders of merit to them. | SIU<br><br>DOJ&CD<br><br>Presidency | Immediate<br><br>Immediate |
| 4. Strengthen anti-corruption elements of **public procurement** | 1. Ensure all reports of procurement corruption and fraud are referred to the relevant law enforcement bodies.<br>2. Establish a procurement professional body and accreditation system.<br>3. Clarify principles and approach to guide open data and transparency requirements. | Public Procurement Office (PPO)<br>PPO<br><br>PPO | Immediate<br><br>Short-term<br><br>Immediate |
| 5. Embed **NACS implementation** within departments | 1. Take the lead in assigning responsibility for cluster-level cooperation, coordination and performance management of NACS programmes and allocate sufficient capacity and resources to perform this function.<br>2. Champion the NACS and the development and implementation of anticorruption and integrity-building programmes.<br>3. Ensure alignment of organisational anti corruption and integritybuilding activities with the NACS and ensure that NACS-related reporting on identified outputs are embedded in the annual performance plans. | DOJ&CD<br><br>DOJ&CD<br><br>Executive authorities | Immediate<br><br>Immediate<br><br>Immediate |
| 6. **Legislative amendments** | 1. Commence the process of amending legislation to strengthen the Public Procurement Act, Political Party Funding Act and Electoral Amendment Act, as per NACAC advisories and recommendations. | DOJ&CD | Short-term |

# APPENDICES


Appendix A Final Recommendations on the Establishment and Implementation of the Office of Public Integrity

Appendix B Establishing the Office of Public Integrity and Anti-Corruption

Appendix C Strengthening Law Enforcement Agencies in Combatting Corruption: Mandates and Resourcing

Appendix D NACAC Advisories

Appendix E NACS Progress Report

Appendix F National Dialogue on Anti-Corruption

Appendix G NACAC Mid-term Report

Appendix H The Future of Gender and Trust in Governance in 2040: Futures Literacy Laboratory Report

Appendix I Legal Framework on Sextortion / Sexual Corruption in South Africa

Appendix J Sextortion: Gendered Corruption Key Findings

Appendix K Sexual Corruption in South Africa

Appendix L Youth Anti-Corruption Dialogue

Appendix M Whistleblower Protection Conference

Appendix N Anti-Corruption Social Norms & Behaviour Change

Appendix O Communication, Prevention & Public Education: Supporting the Establishment of the Office of Public Integrity & a National Anti-Corruption Movement

Appendix P Learning Journey 2023 Kenya Report

Appendix Q NACAC GIZ Hong Kong Report

Appendix R Report: Eastern Europe Learning Journey

Appendix S Independent Assessment for the National Anti-Corruption Advisory Council of the 60 Presidential Commitments to implement the State Capture Commission Recommendations

Appendix T The NACAC's Work

Appendix U Acknowledgements

Appendix V Enhancing Corruption Investigation and Prosecution in South Africa

Appendix W Enhancing Corruption Investigation Institutions in South Africa

Appendix X Review of the Implementation Plan and M&E Framework of the National Anti-Corruption Strategy - recommendations to strengthen reporting and accountability

NACAC

National
Anti-Corruption
Advisory Council

# NATIONAL ANTI-CORRUPTION ADVISORY COUNCIL

## Final Report
## To the President, the Cabinet, and the Country

**AUGUST 2025**

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA
NACS National Anti-Corruption Strategy
PSC
german cooperation
DEUTSCHE ZUSAMMENARBEIT
Implemented by: giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra
State Secretariat for Economic Affairs SECO
UNODC United Nations Office on Drugs and Crime