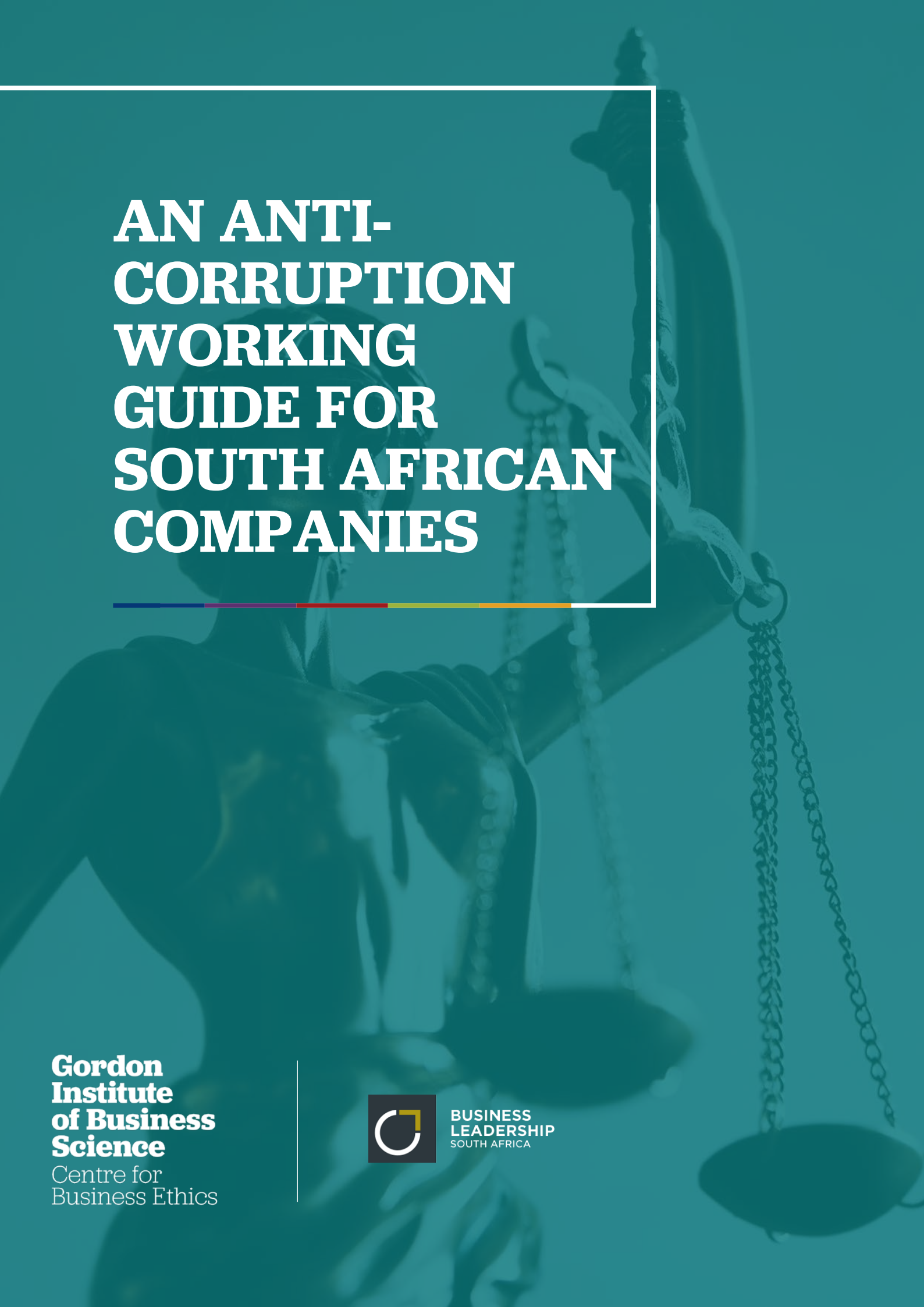
AN ANTI-CORRUPTION WORKING GUIDE FOR SOUTH AFRICAN COMPANIES



Gordon Institute of Business Science
Centre for Business Ethics

BUSINESS LEADERSHIP SOUTH AFRICA

CONTENTS

ACKNOWLEDGEMENTS

Business has a natural responsibility to play a leading role in combatting the corruption that threatens South Africa's future. Inspired by this responsibility and in the spirit of active citizenship, the GIBS Centre for Business Ethics, in partnership with Business Leadership South Africa (BLSA), is publishing this Anti-Corruption Working Guide for South African Companies.

In embarking on this project, we were mindful of the widespread public cynicism about anti-corruption discussions and declarations, which do not seem to deliver enough practical change. Many people are understandably dismissive of what they regard as 'meaningless talk shops'. It is *action* against corruption that is crucial. Only action that produces tangible results can help to turn the tide and lift South Africa's gloomy national mood.

If this is to be achieved, however, the focus of anti-corruption conversations must shift from the *'why' to* the *'what'* and, even more importantly, to the '*how*'. This working guide, drawing on extensive engagements with business and civil society leaders, is our contribution to providing the '*how*'. Our hope is that the guide will be widely disseminated and used, and that it will help corporate executives, board members and managers to more effectively combat corruption in their organisations and broader society, thereby demonstrating their commitment to the country's future.

We express our deep thanks to those who contributed to the guide's development:

- Rob Rose, editor of the *Financial Mail* and veteran corruption reporter, who wrote the guide;
- Brian Isaacson, GIBS faculty, who co-led the project;
- Prof Philip Nichols, Professor of Legal Studies & Business Ethics at the University of Pennsylvania's Wharton School of Business, whom we hosted as a scholar in residence and who provided numerous valuable inputs;
- Tsakani Maluleke, the Auditor-General of South Africa, who wrote the Foreword;
- Cas Coovadia (CEO of Business Unity SA), Busisiwe Mavuso (CEO of Business Leadership South Africa), Edward Kieswetter (Commissioner of the South African Revenue Service), Dr Wendy Dobson (Senior Managing Director, Financial Services, FTI Consulting) and Berenice Francis (Group Executive, Corporate Affairs, Risk and Sustainability, Motus Holdings), who contributed essays;
- Prof Morris Mthombeni, the Dean of GIBS, who wrote the Call to Action;
- Nicky Newton-King (former CEO of the Johannesburg Stock Exchange), Prof Nicola Kleyn (former Dean of GIBS), Busisiwe Mavuso (CEO of Business Leadership South Africa), and Stephen van Coller (CEO of EOH Holdings), who reviewed the draft text;
- The business and civil society leaders who took part in the roundtable discussions that informed the guide, and whose names are listed later; and
- Gill Cross, of Abundance Solutions, who curated those discussions.

Rabbi Gideon Pogrund
Founding Director, GIBS Centre for Business Ethics

ABOUT THE GIBS CENTRE FOR BUSINESS ETHICS

The Centre for Business Ethics (CfBE) aims to improve the ethical standing of South African business, build trust and secure a successful, sustainable future for the business community and the country as a whole. The CfBE connects academia, business and society, both locally and internationally, enabling them to co-create ethical solutions to challenging business problems.

Scholarship and practice
Operating at the intersection between scholarship and business practice, the Centre develops rigorous, impactful and influential thought leadership.

Business and broader society
The Centre convenes robust conversations between business, civil society and government leaders to promote understanding, trust and collective action.

Local and global
The Centre works to build reciprocal relationships with leading international scholars and institutions to access cutting-edge thinking from across the globe. This benefits the South African business community while also ensuring that the innovative work performed within the country is disseminated beyond its borders.

Should you wish to work with the CfBE, don't hesitate to get in touch with the director of the Centre: CFBE@gibs.co.za.

FOREWORD
A VITAL STEP TO REBUILDING ETHICS

By Tsakani Maluleke
Auditor-General of South Africa

The publication of the final report by the State Capture Commission (SCC) was a watershed moment, both in the fight against corruption and in identifying the key governance weaknesses in the public and private sectors. The insights in those reports are invaluable, not only for institutions such as the Auditor-General's office but also for business at large, as well as organisations like GIBS and the country's citizens.

Chief Justice Raymond Zondo's findings heavily influenced the auditor-general's new, long-term strategy, #cultureshift2030, which is our plan to shift the current public sector culture to one of performance, accountability, transparency and institutional integrity. This plan hinges not only on my office's ability to fulfil its mandate as the national audit office, but also on the extent to which we can mobilise the collective inputs of the entire accountability ecosystem in the public sector.

What we've seen is that corruption is becoming more sophisticated, involving multiple role players in related institutions. So, to improve our contribution to the fight against corruption, we must continuously revisit our audit strategies, invest in ongoing training, use sophisticated fraud data analytics and collaborate with other institutions that play distinct roles in the accountability ecosystem — including the judiciary, civil society, law enforcement agencies and higher education institutions.

In this context, I'm delighted to be associated with this guide for businesses, launched by the Centre for Business Ethics at the Gordon Institute of Business Science (GIBS). It's a practical guide that comprehensively deals with some of the common forms of corruption, with practical recommendations for business and other role players on how to prevent a repeat of state capture.

Fittingly, GIBS has turned the spotlight on all role players in the business community, including private sector auditors, reconfirming the imperative to prioritise ethical conduct. It echoes what we believe at the Auditor-General's office, which is that an improvement in service delivery, free from fraud and corruption, can only be enabled by stable, capable, cooperative, accountable and responsive institutions.

It's clear that service delivery failures are happening because of failures in behaviour — and the behaviour of institutions flows entirely from the prevailing culture.

On this score, the Practice Guide on Auditing Conduct Risk of the Institute of Internal Auditors is enlightening. It says: "Organisational culture — and how an organisation comports itself with regard to conduct — drives how business is done. It also underlies the effectiveness of the control environment, which supports the achievement of an organisation's objectives. Poor culture and ineffective management of employee conduct has contributed to numerous business failures and has been identified as a root cause of a number of serious issues."

One common theme in Zondo's findings is that there was a clear violation of ethics and integrity in dealing with the affairs of state. This underscores exactly how vital it is to have a system of ethics management in the state, as well as in business.

Meaningfully reversing the trend of failures in accountability and institutional integrity is vital and fundamental to an improvement in the lives of ordinary South Africans. It will lead to improvements in South African citizens' access to quality education, healthcare, safety, housing, energy, water and livelihoods, amongst other rights enshrined in the Constitution.

In Chapter 4 of the Practice Guide, it says that "the systemic nature of corruption can only be addressed through the active collaboration of all sectors". This is a sentiment that I wish to endorse. I applaud GIBS for taking up this baton and handing it to business leaders so that they can play their part in advancing ethical conduct and building ethical organisational cultures across our society.

EXECUTIVE SUMMARY

What you're reading here is the first attempt to craft guidelines that will assist South Africa's business sector counter the epidemic of corruption and crime, which has given companies like EOH a starring role in the Zondo Commission of Inquiry into State Capture and thrust firms like Steinhoff and Tongaat Hulett into the headlines.

The genesis of this was a series of discussions held at the Centre for Business Ethics at the Gordon Institute of Business Science (GIBS), led by Rabbi Gideon Pogrund. What we're attempting here may be ambitious, but it's necessary. As Prof Philip Nichols put it, "South Africa is at a crossroads when it comes to corruption." But if the past decade has shown anything, it's that in the absence of concrete policies designed to arrest the slide, this trajectory will continue.

As we detail in Chapter 2, the business case for doing this now is unarguable, and pressing. As one study found, companies with dedicated anti-corruption programmes and strong ethical guidelines — as we suggest here — are found to suffer up to 50% fewer incidents of corruption than those *without* such programmes.

The questions we sought to answer were: What should such a dedicated anti-corruption programme look like? How far should it go? Who should have oversight responsibility? How would it incorporate existing compliance functions, such as internal audit and whistleblowing programmes?

To answer these questions, we examined a number of policies throughout the world, of which the ISO 37001 anti-bribery was the most useful. Ultimately, we incorporated key elements of that standard, along with specific lessons from CEOs like Stephen van Coller, the views of experts and the experiences of those who've been affected by the runaway corruption of the past decade, into the guidelines we propose in Chapter 4.

In the end, we proposed 38 central principles of an anti-corruption guide, grouped into eight categories:

1. The tone from the top and the role of the board;
2. The adoption and publishing of an anti-corruption policy;
3. The formation and structure of the anti-compliance function;
4. The substance of the anti-corruption policy;
5. The role of regular risk assessments;
6. The role of whistleblowers;
7. The role of reparations; and
8. Guidelines for ethical lobbying.

While we believe these proposals provide a solid framework from which companies can tackle, and be *seen* to tackle, corruption within their ranks and within the wider business environment, this imperative will result in only pockets of individualised success in the absence of a concerted effort by the corporate sector to cooperate in addressing this scourge holistically.

This is why we have dedicated an entire chapter to the importance of business taking **collective action**. Quite how this could be conceived and implemented is elaborated upon in Chapter 5. As Rabbi Pogrund argues: "Companies must move beyond their immediate and narrow self-interests and instead focus on the bigger picture, thereby helping to ensure the longer-term conditions for their success."

To provide instructive context, there are a number of essays contained in this document, which provide rich context and a strong narrative explanation of why all of this is necessary and what's at stake for the country.

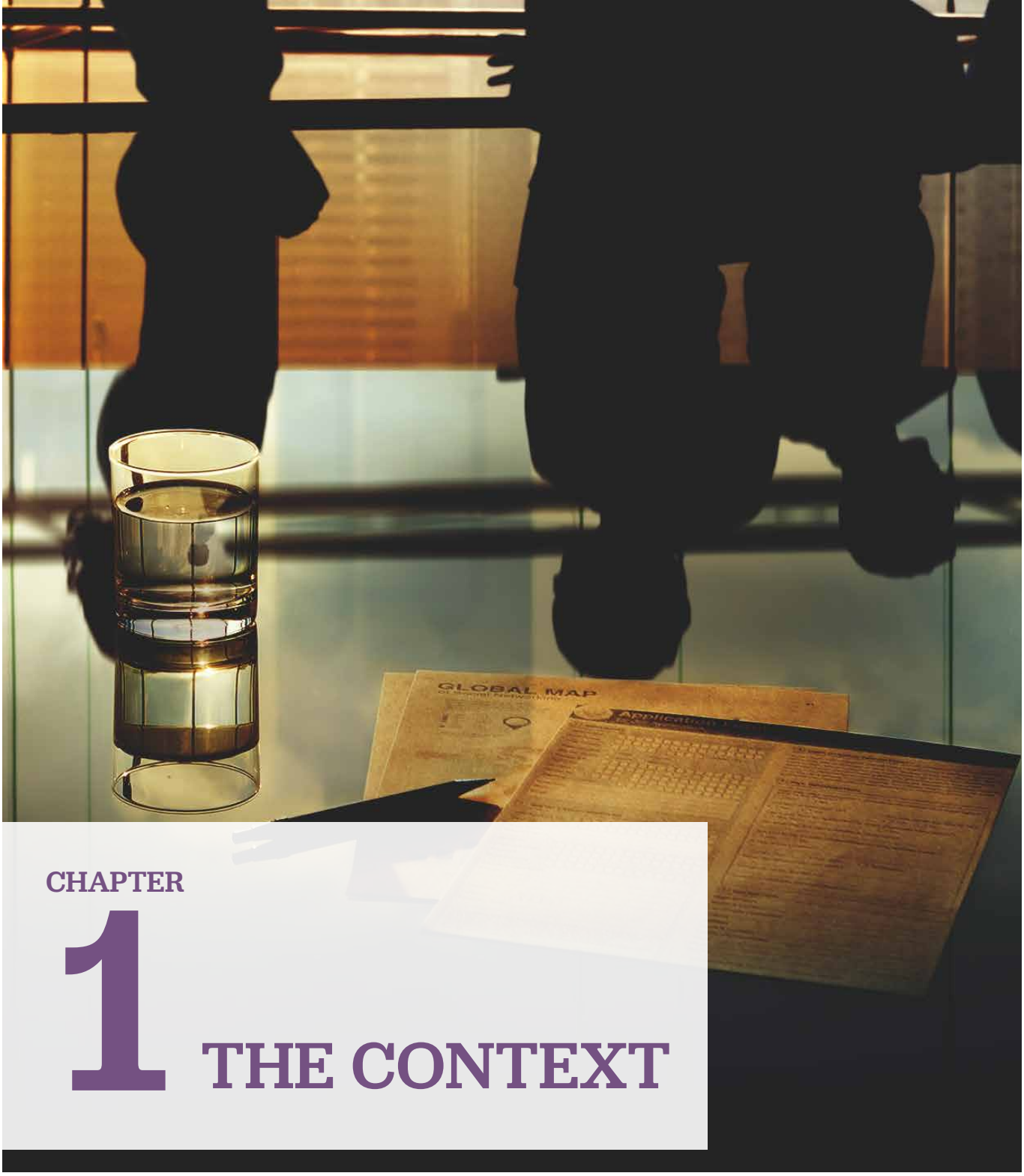
For example, SA Revenue Service commissioner Edward Kieswetter writes about how to structure a reparations process for organisations affected by corruption; Prof Mollie Painter provides an invaluable and practical guide on how to build a corruption-resistant corporate culture; and Dr Wendy Dobson writes about how to ensure 'responsible lobbying' within companies.

Finally, it was noticeable how, in some of the discussions with corporate and political leaders in those roundtables at GIBS, there was a tangible sense of despair — a sense that corruption had somehow become 'endemic' and there was little that could be done to turn the tide.

And yet, despite this, it was encouraging that there were far more voices coming from people who care deeply about ensuring this *isn't* true and who believe strongly that the current predicament can be reversed. Critically, in their favour, there is evidence of countries and cities that have been able to pull off just such a U-turn in the past, in the face of people who said it couldn't be done — such as Singapore.

This guide, we hope, will be the launchpad not just for a much-needed discussion on how to create a corruption-resistant business sector but also, more ambitiously, for a blueprint on how to return South African society to the apex of the global socio-political order when it comes to ethical practices.

As Busisiwe Mavuso, CEO of Business Leadership South Africa, writes in this publication, this guide is a crucial piece of the puzzle in the fight against corruption. "It bolsters the corporate governance framework and gives companies a comprehensive, workable plan to tackle corruption. But it will only work if we act collectively in making these proposals a reality across the business landscape."



CHAPTER

1 THE CONTEXT

Towards the end of 2022, the Centre for Business Ethics at the Gordon Institute of Business Science (GIBS) hosted a series of high-level roundtables with a number of CEOs, chairs and experts in the field of corruption.

Many of them had personally been affected by the era of state capture leading up to 2017 or by other incidents of wrongdoing which had taken place since. Here, we are not talking about corruption in the narrow sense (involving the payment of bribes from the private sector to state officials), but rather in the widest sense (which extends to corporate fraud, collusion between auditors and executives, theft and other creative attempts to deceive the public).

Participants in the panels included: Prof Itumeleng Mosala (secretary of the Zondo Commission of Inquiry into State Capture); Prof John Lamola (South African Airways executive chair); Tsakani Maluleke (South Africa's auditor-general); Prof Wiseman Nkuhlu (KPMG chair); Louis du Preez (Steinhoff CEO); Nicky Newton-King (former CEO of the Johannesburg Stock Exchange); Martin Kingston (Rothschild & Co. executive chair and Business for South Africa chair); Prof Michael Katz (Edward Nathan Sonnenbergs Africa chair); Dr Claudelle von Eck (former CEO of the Institute of Internal Auditors South Africa); Dion Shango (PwC Africa senior partner); Busisiwe Mavuso (CEO of Business Leadership South Africa); Thandi Orleyn (BP Southern Africa chair);

Rob Aitken (CFO of Tongaat Hulett); Wayne Duvenage (CEO of OUTA); Berenice Francis (Executive: Corporate Affairs, Risk and Sustainability at Motus Holdings); Ansie Ramalho (King IV project lead); Andile Sangqu (former executive head of Anglo American South Africa); and Khangi Khoza (CEO of Swissport SA).

These roundtables were addressed by Prof Philip Nichols, a pre-eminent global expert on corruption from the University of Pennsylvania's Wharton School of Business, who was invited to participate by the Centre for Business Ethics. Nichols provided extensive input at these sessions, the goal of which was to gather the experiences and insights of a range of individuals, assess what lessons could be learnt, and create a set of proposals that, it was hoped, would form the basis of an anti-corruption framework for South African companies.

A central point that Nichols made, and reiterated consistently, was that while corruption could be defeated in South Africa, this is by no means inevitable.

As he put it: "SA is at a crossroads when it comes to corruption. Fifty years from now, the Zondo Commission will either have been this immensely important pivotal point [in reversing corruption], or it will be just a footnote that few people know about. I hope it's an inflection point."

Critically, Nichols cited examples of other countries where political will, combined with action from the business sector and civil society, led to a reversal in the trajectory of what seemed like runaway corruption — in particular, Singapore and Hong Kong in the 1970s. "The world is littered with success stories of places that were worse — a lot worse — and are now clean," he said.

However, this requires specific interventions. In South Africa, the experience to date, many of the participants agreed, is that the corporate sector has been generally apathetic about addressing corruption within its ranks. Despite a rash of incidents in the past decade — including a R106bn fraud at retailer Steinhoff, kickbacks paid by technology company EOH, a R12bn fraud at sugar producer Tongaat Hulett, wholesale bribery by prisons company Bosasa, and theft from VBS Mutual Bank — the private sector has yet to table any kind of collaborative plan to address their own behaviour.

This has created reputational risk for the entire corporate sector, eroding its social licence and prompting deeply unhelpful questions about the legitimacy of capital, at a precarious moment for an economy struggling to break the 1% GDP growth level.

As Newton-King said: "When issues like Steinhoff happen, it is important for business to clamour for, and to support, accountability. Otherwise, it creates the perception that business doesn't want to be accountable when it transgresses."

The question then arises: How should the corporate sector proactively and pre-emptively seek to counter corruption? That is the pivotal point that this guide sets out to address.

It became clear from the interactions that South Africa's business leaders have had very little guidance on this subject. In particular, there has been no wholesale guide or set of practices tabled on how to counter corruption.

What follows is an attempt to create exactly that: a workable 'Anti-Corruption Working Guide' which could serve as a template to be used by companies, either as a form of best practice or as the basis for crafting their own policies.

This is obviously the first set of proposals, some of which will no doubt prove impractical or will need to be refined further to make them more useful. But it is an important initial step in sketching a framework that hasn't existed before.

CHAPTER 2

THE BUSINESS CASE FOR AN ANTI-CORRUPTION POLICY

Corruption is bad for business. At an aggregate level, it erodes the quality of a country's institutions, thwarts competitiveness and harms investor sentiment. This is self-evident, but it has been corroborated by a number of studies.

In particular, a 2017 research paper compiled by U4 — a team of anti-corruption advisers working at the Chr. Michelsen Institute (CMI) in Norway — spelt this out. "Companies with anti-corruption programmes and strong ethical guidelines are found to suffer up to 50% fewer incidents of corruption than those without such programmes, indicating integrity programmes are an effective means of minimising losses which can be incurred as a result of corruption," it said.[1]

U4 referred to a 2007 study of 243 Ugandan firms, conducted by Prof Raymond Fisman from Harvard University and Prof Jakob Svensson from Stockholm University, which concluded that higher corruption at firm level is strongly correlated with lower firm growth, even in the short term. Here, a 1% increase in the bribery rate was associated with a reduction of firm growth of more than 3%, while paying bribes was three times more detrimental to firm growth than paying the equivalent amount in taxation.[2]

This is an important finding, given the perception in many circles in South Africa that some companies see possible fines for being caught as simply a 'business cost'. Or, as Nichols put it in a 2012 research paper,

[1] 'The relationship between business integrity and commercial success', U4 Helpdesk Answer 2017:14, Chr. Michelsen Institute.

[2] Raymond Fisman and Jakob Svensson, 'Are corruption and taxation really harmful to growth?', 2007, Journal of Development Economics, accessible at https://econpapers.repec.org/article/eeedeveco/v_3a83_3ay_3a2007_3ai_3a1_3ap_3a63-75.htm

there is the notion that "corruption allowed business firms to bypass bureaucracy and therefore lowered costs for those firms".[3]

This is a perception that has been fuelled by the long-running Glencore bribery case. In that case, the commodities trading giant paid more than $28m in bribes in five African countries between 2011 and 2016 to secure preferential access to oil deals and even, in one instance, paid off a judge.

When the company was finally forced to admit culpability in May 2022, Damian Williams, the US attorney for the southern district of New York, said that "bribery was built into the corporate culture. The tone from the top was clear: whatever it takes".[4]

The UK's Serious Fraud Office (SFO) noted that Glencore did have anti-bribery policies, but these were "largely ignored because corruption was condoned at a very senior level within the company".[5]

In the end, Glencore ended up paying more than $1.5bn in fines, including £276m levied by the SFO and $1.1bn in the US and Brazil. However, experts questioned whether these fines represented a significant enough disincentive, given that $1.5bn is less money than Glencore makes in revenue in two days.

However, what is often overlooked in weighing up this equation is that the fines weren't the only cost that Glencore paid: its share price and equity value had been trading, and continues to trade, at a steep discount to its global peers, given the longstanding doubts about the company's integrity and the risk of further legal action.

Furthermore, academic studies show that firms that pay bribes end up paying higher — rather than lower — costs, undermining the 'efficient grease' theory.

In particular, a 1999 World Bank policy research paper by Dr Daniel Kaufmann and Prof Shang-Jin Wie, examining data from three worldwide firm-level surveys, concluded: "Firms that pay more bribes are also likely to spend more, not less, management time with bureaucrats negotiating regulations and face higher, not lower, cost of capital."[6]

This conclusion was underscored by Nichols' research, which also found that firms that pay bribes experience lower rates of growth and productivity. "The payment of bribes renders a firm less competitive … the payment of a bribe leads to more interference and more demands for bribes, igniting a vicious circle in which the payment of more bribes leads to demands for more bribes, rather than to bureaucratic transparency and facilitation," he wrote.[7]

This illustrates a demonstrable risk for companies that don't pre-emptively insulate themselves against corrupt or illicit activities. Not only does it take a company many years to recover from such an incident, but it typically leads to a higher cost of capital, greater friction in accessing capital in the first place, and lower growth.

[3] Philip Nichols, 'The Business Case for Complying with Bribery Laws', 2012, American Business Law Journal, Vol 49 issue 2, accessible at https://repository.upenn.edu/cgi/viewcontent.cgi?article=1045&context=lgst_papers

[4] Harry Dempsey and David Sheppard, 'Bribery built into the corporate culture — can Glencore rescue its reputation?', Financial Times, 25 May 2022.

[5] Matt Oliver, 'Glencore flew millions in bribe money to Africa on private jets, court hears', The Daily Telegraph, 2 November 2022.

[6] Daniel Kaufmann and Shang-Jin Wei, 'Does "Grease Money" Speed Up the Wheels of Commerce?', 1999, World Bank Policy Research, Working Paper No. 2254, 1999, accessible at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=629191

[7] Nichols, Ibid.

CHAPTER

3 SPECIFIC CONSIDERATIONS IN THE WAKE OF ZONDO AND STEINHOFF

The forums convened at GIBS to debate this issue ultimately yielded a number of possible interventions that could address the substantive areas of friction that lead to corporate corruption. This underscored the recommendations made earlier in the year by Chief Justice Raymond Zondo, stemming from the Commission of Inquiry into State Capture.

For instance, the Zondo Commission highlighted that a much better regime is needed when it comes to disclosure and transparency surrounding lobbying and donations. Lobbying is a universally accepted practice involving direct and indirect engagements between the state and private parties with the aim of influencing legislation, policy or administrative decisions. But what is relevant here is the fine line between lobbying for legitimate commercial gain and lobbying to gain an unlawful advantage.

EOH, for example, made 'donations' to the ANC evidently as a *quid pro quo* for contracts it hoped to get. It subsequently won two large contracts from the City of Joburg, worth R109m and R404m, in dubious circumstances.

Yet companies in South Africa are not compelled to disclose details of donations in their annual financial statements (unlike in the UK). In the absence of such an obligation in the Companies Act, companies should commit, in their anti-corruption policy, to disclosing these, along with details of commercial dealings with politically exposed people.

Equally, the use of consultants has provided fertile ground for much corporate corruption in South Africa. For instance, Zondo reported that there had been "rampant corruption" in Eskom's awarding of contracts to McKinsey and its black empowerment partner Trillian. Ultimately, Eskom "unlawfully and irregularly" paid R1.6bn to McKinsey and Trillian.

On this score, the anti-corruption policy should provide guidance on how companies could interact with consultants to mitigate their risk. While there's nothing inherently wrong with using consultants, we need to guard against the risk of hollowing out capacity or using consultants accused of illicit behaviour.

There are other recommendations flowing from Zondo in relation to procurement, boards of directors and auditors. Where this has prompted proposals relevant to an anti-corruption policy, they are contained in the next chapter. The chapter incorporates proposals from a number of sources, including executives or CEOs who have been ensnared in corruption, such as Stephen van Coller, CEO of EOH (see Box 1).

BOX 1

Stephen van Coller's recipe for companies implicated in corruption

The CEO of EOH provided a handy 'recipe' for how companies ought to act when they are caught up in corruption. It's a lesson worth heeding, since Chief Justice Raymond Zondo praised EOH for the "unique" way it dealt with allegations against it, at the state capture inquiry.

Van Coller says it starts with being entirely transparent. This, he argued, is why EOH was able to retain its "social licence" to keep doing business, whereas others who were less open have struggled. "They have not gone and done a transparent investigation and told the world exactly what went wrong and how they're going to fix it, and here are the people we're actually going to prosecute," he said.

Instead, they still "half denied" that they did anything wrong, paid some money and tried to sweep it under the carpet.

So, EOH first had to find out what went wrong; second, it had to be transparent about what went wrong; third, it had to put in place measures to make sure it's unlikely to happen again; and fourth, it had to criminally prosecute those responsible.

This last element is a vital ingredient in that recipe. "It isn't good enough to just fire people for bribery and corruption. You do that if you think they've done a bad job, not if they've done something criminally wrong," he said.

This is particularly important since, without those sorts of consequences, people will then simply pop up in another job, where they'll repeat the same behaviour.

The success of Van Coller's approach can be seen in the market's response to a R500m rights offer which EOH launched in late 2022. The offer was heavily oversubscribed by investors, with the total demand valued at R1.03bn far outstripping the R500m required. This support probably wouldn't have been possible had EOH not rebuilt trust by going the extra mile to eradicate corruption within its ranks.

The next chapter contains 38 proposals, grouped into eight categories, which we believe is a good starting point for an anti-corruption policy that a company could adopt.

As mentioned earlier, there is a surprising dearth of workable anti-corruption guidelines governing private sector behaviour globally. To a large extent, this is probably due to the rules governing criminal behaviour being codified in statutes — a domain into which the private sector is understandably loathe to step.

Nor are the corporate governance frameworks globally — such as the UK's Combined Codes and the four incarnations of the King Code in South Africa — of much help, since they provide a flexible system of principles governing ethical behaviour as a whole, such as how to structure boards of directors and systems for ensuring optimal governance. Yet these codes are largely mute on how to tackle corruption.

South Africa's private sector, however, cannot afford to ignore this. There has been scant accountability following the mammoth fraud exposed at Steinhoff and elsewhere. This is in part due to steepling capacity constraints in the crime-fighting apparatus, notably the police and the National Prosecuting Authority (NPA). Waiting for criminal action is no longer viable, and companies need to proactively adopt standards that insulate themselves, as best they can, against corrupt practices.

Several principles from existing sets of rules have been scrutinised and included in these proposals, where they are relevant. The OECD's anti-bribery convention, for example, is useful, and elements from it have been incorporated into our guide in the next chapter. Another is the **US's Federal Sentencing Guidelines**, whose seven steps constitute an excellent model of an ethics management programme. These principles have been incorporated into the guide in the next chapter. The seven steps are:

1

Formulating compliance standards and procedures, such as a code of ethics;

2

Assigning high-level personnel to provide oversight (such as a compliance officer);

3

Taking care when delegating authority;

4

Installing effective communication standards and procedures (such as training);

5

Installing monitoring and reporting mechanisms, and a whistleblowing procedure;

6

Enforcing disciplinary mechanisms; and

7

Providing an appropriate response after detection.

Perhaps the most relevant set of principles governing corruption was developed by the International Organization for Standardization (ISO), an independent, non-government organisation founded in 1947 and based in Geneva, Switzerland, with a membership of 168 national standards bodies.

The ISO's mission is to develop "voluntary, consensus-based market-relevant International Standards that support innovation and provide solutions to global challenges". Locally, the South African Bureau of Standards (SABS), which was established by an Act of Parliament, is one of the 168 members.

For our purposes, we believe an anti-corruption guide that leans strongly on **ISO 37001** (which was published in October 2016) but with local adaptations presents the best possible model for corporations and even small companies to, in the words of the ISO, "prevent, detect and address bribery". (See Box 2 for a summary of the standard.)

While that standard was obviously invaluable, all of those sources mentioned above — such as Van Coller's recipe for tackling corruption — were used in compiling the guidelines for an anti-corruption policy for the specific South African context, detailed in the next chapter.

Fundamentally, the bias is towards substantive implementation of these provisions rather than a checklist approach, and that is why it is preferred that a short narrative discussion accompanies any reporting to stakeholders.

BOX
2 So, what is ISO 37001?

In essence, ISO 37001 is one of the organisation's 24,676 standards, but the only one specifically addressing bribery. It is designed to assist companies establish, implement, maintain and run an anti-bribery compliance programme.

It is an extensive document, and anyone interested in the minutiae ought to download it and read it in its entirety. However, we have incorporated key elements from ISO 37001 in the South African guidelines proposed in the next chapter. In summary, the elements of ISO 37001 include:

1

Understanding the organisation and its context

This is concerned with why it is important to conduct regular 'bribery risk assessments', and how to establish an 'anti-bribery management system'.

2

Leadership

This speaks to the tone from the top, and how the governing body must integrate the corporate strategy and anti-bribery policy and ensure resources are provided to implement the policy. It also discusses how the policy should encourage the raising of concerns and why there is a need for an 'anti-bribery compliance function' in the company which implements the policy and management system.

3

Planning

This details how the organisation should implement the policy and management systems, and how it should deal with the risks and ensure continual improvement. It also emphasises that information should be documented and retained.

4

Support

This addresses the need for proper resources to be allocated to the anti-bribery management system and for competent individuals to oversee it. It also details the human resources implications for those reporting corrupt behaviour, the training required, the way information should be documented, and the communication strategies needed.

5

Operation

This discusses the specifics surrounding due diligence on transactions, people and corporate relationships, the controls that should be implemented, the procedure for dealing with corporate gifts and the procedure for raising concerns.

6

Performance evaluation

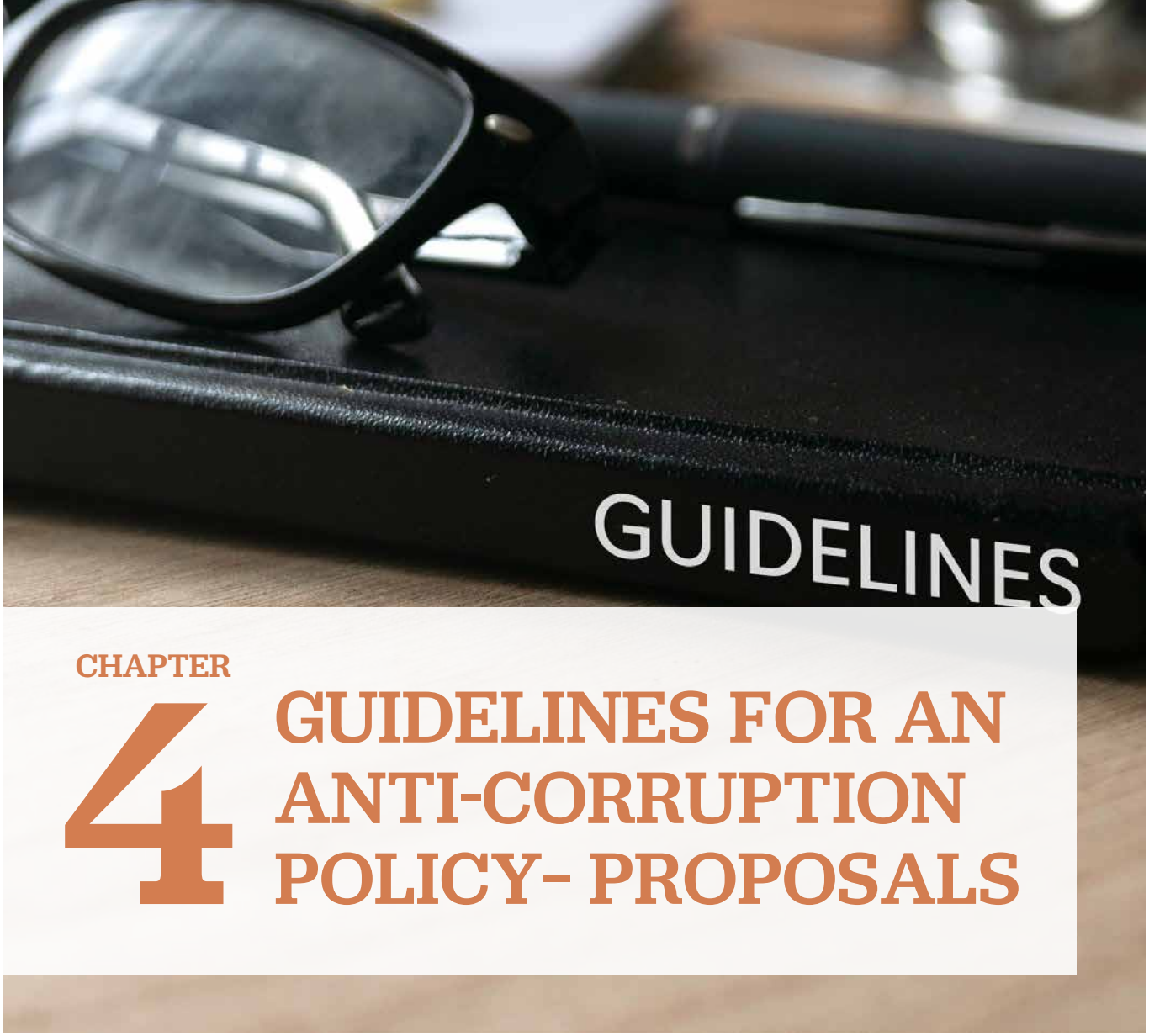
This details how to put measurement systems in place, including an internal audit system, and in what circumstances management, the board and compliance department should review the systems to assess their utility.

7

Improvement

This focuses on how a company should respond when there is non-conformity and stresses the obligation to continually improve the anti-bribery management system.

Though it is far too long to elaborate on here, the annexure to the standard, which provides 'guidance' on the use of ISO 37001, has extremely helpful elements relating to issues like corporate gifts, ethical standards and interactions with the state. It is recommended that anyone in an anti-corruption compliance function in South Africa should read this annexure in depth.



CHAPTER

4 GUIDELINES FOR AN ANTI-CORRUPTION POLICY– PROPOSALS

What follows are a number of principles that could be incorporated into an anti-corruption policy, which South African companies could then adopt.

1

The tone from the top or the role of the board

First, it is self-evident from South Africa's experience of corporate corruption that leadership from the executives and the board of directors is fundamental in setting the corporate culture. High-profile cases, like that of Glencore, illustrate how this is ignored at a company's peril.

Measures to ensure that the anti-corruption message is derived from the top of the organisation and filtered downwards are:

1.1. The board of directors would ultimately be responsible for establishing the anti-corruption compliance function at the company. The board would be responsible for ensuring that this department is independently and competently constituted, insulated from executive pressure and able to effectively enforce the anti-corruption policy.

1.2. The board would be responsible for monitoring reports (and reporting back to stakeholders in the annual financial statements) made to the compliance department, which have been substantively corroborated, as well as the actions taken in response to these reports.

1.3. The board should also report on efforts made to ensure that the compliance function remains abreast of developments in this arena and that the policy remains fit-for-purpose, given the wider socio-economic system in which it operates.

2

The adoption and publishing of an anti-corruption policy

2.1. A company should, on its website, publish an anti-corruption policy, thereby demonstrating its commitment to following a zero-tolerance approach to illicit behaviour and to reporting any violations to the relevant criminal authorities (such as the Directorate for Priority Crime Investigation), to Business Leadership South Africa and to stakeholders in their annual financial statements. While we recognise that self-reporting in this sense has the potential to tarnish a company's reputation, the literature suggests that the benefits of transparency will outweigh the negative consequences.

2.2. Such a policy should explain the structure and workings of the anti-corruption function at the company as well as the independence and credentials of the officials tasked with overseeing it.

2.3. Such a policy should stipulate the anti-corruption codes that are applicable in the countries in which they operate and clearly set out the framework for action in instances where these are breached. It should stipulate the format in which information will be published, detailing instances where there have been breaches, the positions of the employees involved, the consequence of the action for the company, the internal sanction taken and any other consequences.

2.4. The policy should provide a narrative discussion, as opposed to a checklist, of actions taken to demonstrate substantive compliance with the policy. This should be updated once a year to reflect relevant developments.

2.5. Whistleblowers are fundamental to the success of anti-corruption measures. In this policy, companies should encourage whistleblowers to come forward, in good faith and on a confidential basis. The policy should outline the process involved in handling whistleblower reports and provide an assurance that there will be no unjustified reprisals on the basis of good-faith whistleblower reports (See section 6 in this chapter).

2.6. As the policy would form part of a company's induction process, each employee must be specifically informed about its purpose and contents and asked to sign an agreement (signalling their acceptance of the policy) upon joining the company.

3

The formation and structure of an anti-corruption function

3.1. The anti-corruption compliance department would retain overall responsibility for implementing and reporting on this policy as well as for managing anti-corruption activities. It would also retain responsibility for training employees to ensure that they comply with the policy. The anti-corruption function could be located within the risk or internal audit department.

3.2. The lines of reporting are crucial. The experience from South Africa suggests that, unlike other anti-corruption guidelines, an optimal structure would be for the anti-corruption compliance department to *not* report directly to the executive management, but rather to report directly to the independent, non-executive directors on the board. The reason for this is that instances of corporate corruption in South Africa have taken place under the auspices of the executives at companies like Steinhoff, Tongaat Hulett and EOH. It would therefore heighten the risk if the anti-corruption compliance department reported directly to the executives or the corporate affairs department.

3.3. Regarding the above, an optimal solution may be for the compliance department to report directly to the ethics committee of the board, on a quarterly basis at least, thereby clearing the way for any risk issues raised to be tabled before the main board.

3.4. While the compliance department would have a direct line to the board, the managers of each of the company's units would still be responsible for implementing the anti-corruption policy. Such implementation should be codified in the key performance indicators (KPIs) of managers who should provide regular narrative reports on concrete actions taken to implement the policy.

3.5. The anti-corruption compliance department should have a direct line of contact with the company's internal and external auditors. The mechanics of this interaction could be negotiated with the Independent Regulatory Board for Auditors (Irba), but we foresee a situation in which the auditors would welcome this innovation as an additional risk-mitigation measure.

3.6. In some instances, whistleblowing hotlines are already operational, and reports are sent directly to the external auditors. In this regard, it would be helpful for the anti-corruption function to have access to these whistleblower reports as well, to prevent duplication of work. A mechanism to allow the anti-corruption compliance team to interact with the auditors on this issue needs to be established, which could take the form of a quarterly meeting, in addition to the above measures.

4

The substance of an anti-corruption policy

4.1. The anti-corruption policy should include the company's policy on lobbying and corporate donations. In particular, companies should commit to publishing details of all material donations made during the year, as well as any donations made to people or companies considered 'politically exposed'.

4.2. The anti-corruption policy should outline the procedures followed in awarding large consultancy contracts. In particular, boards should require a comprehensive, needs-based analysis for large consultancy deals to ensure that there is a genuine purchase of skills. Furthermore, boards should remain sceptical when consultants are hired to perform work for which there is already internal capacity. Ideally, companies should commit to providing full disclosure in their annual financial statements of large consulting contracts.

4.3. Many of the corrupt transactions in South Africa in recent years involved dealings with state-owned companies. As EOH CEO Van Coller said, corrupt contracts approved by EOH were the result of "opaque delegations of authority, with significant responsibilities granted to a few executives", where some people were given a free hand, with no oversight. To address this, the anti-corruption policy should stipulate that material contracts with the state should be put to the entire board for approval. Moreover, the policy should commit the company to providing details of all material contracts with the state, either in an appendix to their financial statements or on their website.

4.4. Internal auditors are often the first significant barrier to corporate corruption, so it is vital that this function works properly. One of the issues flagged by audit specialists is that the lack of capacity and weaknesses in internal audits need to remain a focus area for the board's ethics committee. Given the areas of weakness exposed in recent cases — such as that of SAA — internal audit teams should ensure that they have the proper skills, particularly when it comes to procurement.

4.5. In line with global trends in relation to auditors, the anti-corruption policy should emphasise and reiterate the role of the audit committee and external auditors in taking a robust view of high-risk transactions, thereby improving the prospects of exposing fraudulent or corrupt transactions. For example, it helps if audit committees, finance officials and audit committee members do a 'preliminary scan' or 'prima facie sanity check', as they are obliged to do. Here, Irba (Independent Regulatory Board for Auditors) would be able to provide additional assistance regarding the specific wording and procedures that could be used.

4.6. An anti-corruption policy should clearly spell out the actions that a company would take if there are infringements of the policy. In particular, it should commit the board of directors to clawing back bonuses and salaries paid to errant officials and spell out the legal steps taken to have directors declared delinquent.

4.7. An anti-corruption policy should include the company's procedures for conducting annual refresher courses in conflicts of interest, while comprehensive disclosure of all conflicts in financial statements should be obligatory.

4.8. One of the gaps identified by, amongst others, Lord Peter Hain is that there is no compulsion to publish the beneficial ownership of companies. The use of proxies and trusts to hide beneficial ownership has facilitated much corruption. Therefore, anti-corruption policies should commit to determining the beneficial shareholding of any significant contractual counterparts over a certain value threshold and, where possible, provide beneficial ownership details of the company's material shareholders. This is fundamental to our obligations in terms of the Financial Action Task Force recommendations.

5

The role of regular risk assessments

5.1. Global anti-corruption principles stress the need for regular 'risk assessments' to assess whether there has been any fundamental shift in the risk of exposure to illicit activity. ISO 37001, for example, speaks of how a regular risk assessment is necessary to "identify the bribery risk the organisation might reasonably anticipate" given the business model, locations, sectors and business associates.

5.2. The anti-corruption compliance department would be the body responsible for conducting these 'risk assessments', which should ideally be performed annually or more regularly if there is a substantive change in the business — such as a large foreign acquisition or large contracts signed with government departments.

5.3. Where a company operates in a risky sector, the anti-corruption compliance department should have the additional responsibility of performing due diligence investigations when it comes to material acquisitions and the hiring or promotion of key individuals.

5.4. Much corruption in South Africa has occurred at the nexus between state contracts and the private sector. In light of this, the anti-corruption compliance department should undertake an annual review of any material contracts involving any of the company's subsidiaries and the state. In particular, it should flag any 'success fees', intermediary payments or unusual incentives.

6

The role of whistleblowers

6.1. Whistleblowers have proven vital in exposing corruption, both in terms of state capture and in the corporate sector. It was, for instance, a whistleblower who alerted the auditor, Deloitte, to problems with Steinhoff's financial accounts, which led to the company's unravelling. However, the existing regime — codified in the **Protected Disclosures Act of 2000** — has proven inadequate. This is because whistleblowers have often been targeted and because there are many instances where nothing happens, underscoring the feeling of impotence. Anti-corruption policies must explicitly encourage whistleblowers to come forward, in good faith and on a confidential basis.

6.2. Anti-corruption policies should be clear about the process involved in handling whistleblower reports and should provide an assurance that there will be no unjustified reprisals based on good-faith whistleblower reports. Given that there is no such 'code of good practice' for whistleblowers (as recommended by the Open Democracy Advice Centre), this would set an example for other companies regarding the practices that could be followed. A company should disclose if any whistleblower complains to any board committees that they have been targeted.

6.3. The Zondo Commission spoke of how greater protection is needed for whistleblowers. To this end, companies should consider contributing to a new fund to finance the protection of whistleblowers — a tangible indicator of a company's commitment to the practice. As Zondo spoke of the need to properly remunerate whistleblowers, such a donation would be a good start. In the US, the Securities and Exchange Commission (SEC) provides whistleblowers who "voluntarily provide the SEC with original, timely and credible information that leads to a successful enforcement action" with between 10% and 30% of the money collected, where the sanction exceeds $1m. Such a model could be investigated here, although the possibility that it would create perverse incentives would obviously need to be borne in mind.

7

The role of reparations

7.1. As Van Coller put it: "Obviously corporate entities must pay reparations." It's a sentiment that Edward Kieswetter, the commissioner of the South African Revenue Service (SARS) has written about in this guide (see Essay 3, page 27), based on his experience of putting in place a reparations process for current and former employees in the wake of SARS' experience of state capture. It is worth reading his essay in its entirety.

7.2. Kieswetter's experience suggests that the reparations process should be designed with the specific organisational structure in mind. In the case of SARS, two advisory groups (for current and former staff respectively) were established to make non-binding recommendations to the commissioner. These recommendations must obviously be made, bearing in mind the fiduciary duty of directors to ensure the reputation and financial best interests of the company.

7.3. In the case of a company, such recommendations could be made either to the board as a whole or to the social and ethics committee of the board.

7.4. Kieswetter outlined four key lessons from the process that SARS followed: first, remember the imperative to do the right thing; second, build trust by avoiding legalistic processes and an adversarial approach; third, be transparent and realistic within the confines of the law; and fourth, stay the course, since there are no shortcuts. These are important principles when designing any reparations process.

8

Guidelines for ethical lobbying

8.1. Much of the corporate corruption in evidence in South Africa has taken place because of vague or absent guidelines governing political action taken within companies — from providing donations to lobbying.

8.2. Dr Wendy Dobson, a Senior Managing Director of FTI Consulting, suggests 10 specific steps that companies should take in relation to lobbying. Adoption of these steps would go a long way towards addressing the problem of corporate corruption. (Her full analysis appears on page 32.)

8.3. These proposed steps should form part of a company's anti-corruption policy. Dobson goes further by recommending that these steps either be legislated or, at the minimum, incorporated into the next iteration of the King Code on Corporate Governance and the JSE listing rules. This should be seriously considered.

8.4. These 10 steps are:

8.4.1. Have a publicly available, board-approved policy governing corporate political activities.

8.4.2. Disclose all material corporate political activities in the annual report.

8.4.3. Implement governance of the company's participation in trade associations.

8.4.4. Implement governance to navigate the impact of their lobbying on multiple stakeholders, taking conscious and well-considered decisions about the trade-offs generated by their policy positions.

8.4.5. Ensure consistency in the company's lobbying activities and sustainability-related commitments, as well as in its espoused values and the nature of its government engagements.

8.4.6. Avoid covert forms of political action, such as misusing corporate hospitality and making donations to politicians' charities.

8.4.7. Provide specific training on the ethics of lobbying for corporate teams involved in government relations, compliance, and regulatory and public affairs.

8.4.8. Adopt a position of political neutrality: advocate for policies and principles rather than personalities and people.

8.4.9. Advocate for fair and balanced laws and a regulatory framework that is appropriate and enforceable.

8.4.10. Do not exaggerate or overstate the costs of compliance, the predicted consequences for jobs and investment, or the economic impact of policies and regulation.

CHAPTER

5 THE IMPERATIVE FOR COLLECTIVE ACTION

If we want the proposals outlined in the previous chapter to have any chance of making a difference, the necessary ingredient — the prism through which these aspirations must be refracted — is the principle of collective action.

The participants in the GIBS roundtables on curbing corruption spoke frequently and movingly of the need for the private sector to demonstrate '*collective action*': essentially, where companies create a platform to collaborate and cooperate in a sustained way. In this context, 'collective action' is aimed at fostering an environment of fair competition within a corrupt environment.

Encouragingly, executives cited examples of how collective action in South Africa in the private sector has radically altered an otherwise dismal trajectory.

Martin Kingston, Rothschild & Co. executive chair and B4SA chair, cited the establishment of Business for South Africa (B4SA) in 2020 as a convening body for the private sector to mitigate the impact of Covid on the economy. This provided a platform for corporate donations to be filtered towards struggling industries and for lenders to put in place concessions for borrowers struggling to repay debts during the pandemic.

The question is: How can business collaborate in this way, in a practical sense?

When it comes to corruption, a collective action agreement would only work if all the stakeholders commit to 'stepping out', should the pact be broken. In other words, the companies that are part of this would agree to a certain code of behaviour, as well as sanctions, should they fail to comply with the agreement. This works, since all participants are 'watching out' to ensure everyone else complies too.

In a practical sense, South African firms could agree to a formal **'corruption compliance pact'**, with the consequence of a breach being exclusion from that group. These pacts could either be at a top level, encompassing all firms, or designed for individual industries, which would then allow those agreements to be adapted in a more detailed way to allow for contingencies specific to those industries.

Collective action is, at its heart, a business strategy. Being proactive, with a commitment to a specified course of action, builds trust with customers, staff, regulators and suppliers. For the broader society, collaboration can strengthen institutions and bolster investor confidence, particularly in the most fragile industries, such as energy, infrastructure and logistics.

Prof Nichols speaks of 'collective action' as providing assurance — it is about "making your relationships right," he says, by building trust. Nichols is something of an expert in this regard, having authored documents on this subject for the World Bank, amongst other authorities.

Kingston makes another valid point, which is that "collective action tends to be more successful when there are clear tasks and goals".

One possible outcome of this view is that companies could agree to formalise a '**National Ethical Charter**', reflecting their shared aspirational value, and committing to a specific course of action if this is violated.

Extrapolating this, the business sector could, at a collective level, appoint a credible figurehead as a 'champion' to be the face of the private sector in its fight against corruption. This would lay the foundation for the fight against corruption to be treated as a 'business problem', with clearly achievable goals.

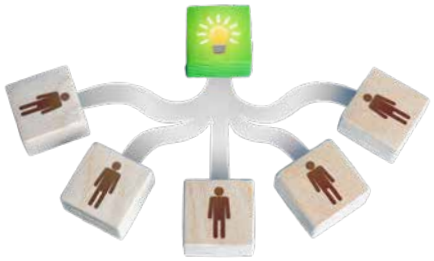
There are different ways in which this could be done. But one option would be to use B4SA's 'crime and corruption project' as the primary vehicle for this 'collective action'. That crime and corruption project, until now, has largely focused on capacitating the state's law enforcement structure, given the skills crisis in the National Prosecuting Authority (NPA).

Such a forum could then develop clear goals with timelines. For example, it could investigate the propriety of private sector companies financing the prosecution of company officials — as has happened at Steinhoff, which is financing the criminal investigation being conducted by the Hawks into its former executives, including former CEO Markus Jooste.

Collective action is vital to creating the right culture in the corporate sector, which is a key component of efforts to neutralise corruption.

Regarding his recipe for rooting out corruption (excerpted earlier in this document), Van Coller says it must start with the public deciding that "it's not alright to be corrupt — so if you're corrupt, you're an outcast. This is why, if we really want to fight corruption, we have to do it openly and systematically."

Culture can, of course, be a nebulous concept, which necessarily implies that changing that culture can be tricky. Yet Prof Mollie Painter (see Essay 7, page 35) provides an invaluable blueprint for creating a 'corruption-resistant' corporate culture. It includes conducting regular 'culture surveys', putting in place an 'ethics management programme', rigorously monitoring what's going on in that organisation and enforcing disciplinary mechanisms.



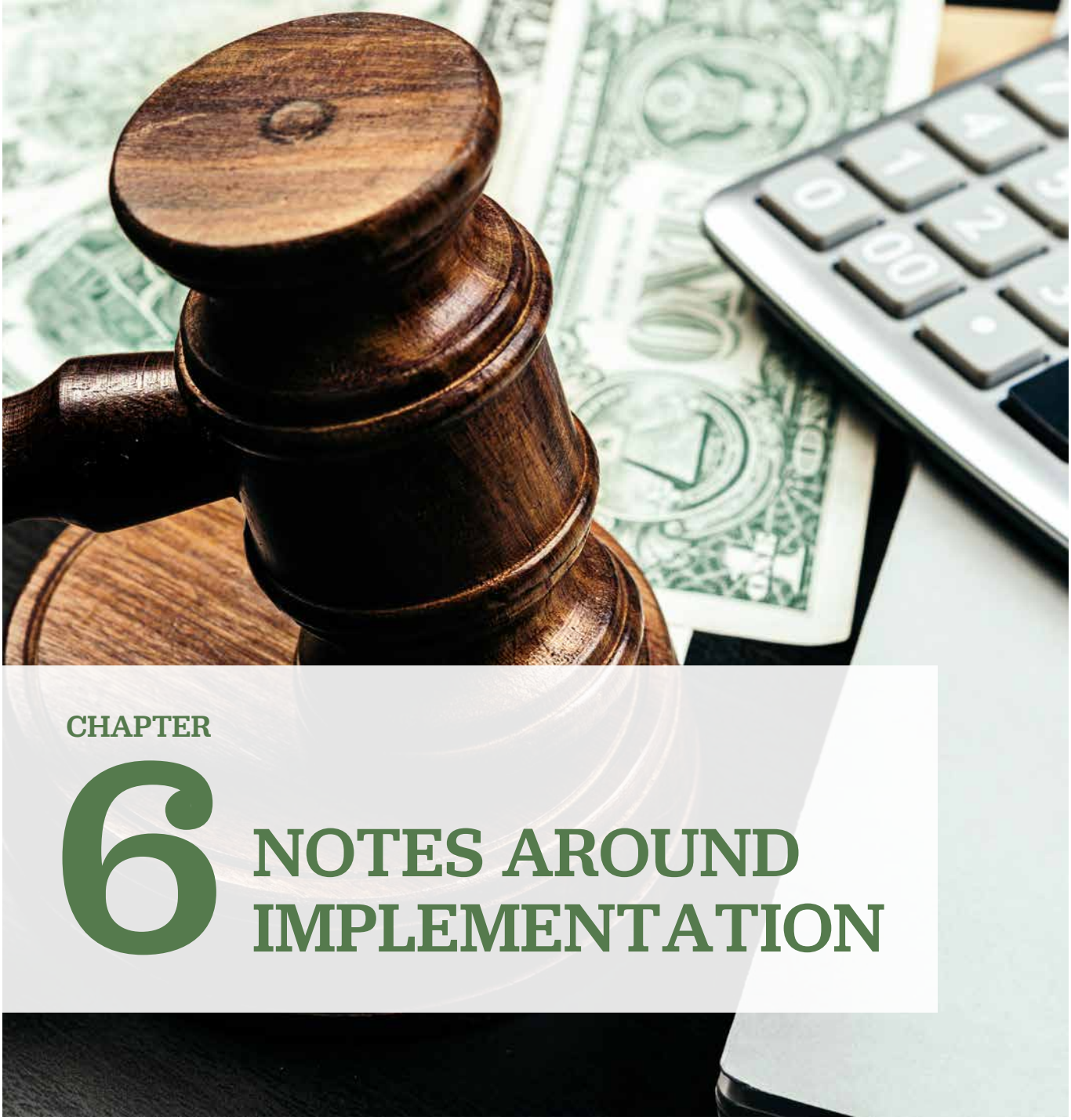
However its goals are framed, this new **'collective action forum'** would likely have tremendous, coercive powers to steer companies towards compliance, with the help of this Anti-Corruption Working Guide. And where corruption has been flagged at a specific company, but no action has been taken (such as declaring directors delinquent), this new body could be responsible for ensuring that legal action is taken.

Wessel Badenhorst, a partner at Hogan Lovells (a law firm over which questions were raised regarding certain actions taken during state capture), highlighted another possible action for such a 'collective action forum', which would be to use court action as a strategic tool to address corruption. For example, when it comes to suspicious state tenders over which questions have been raised, this forum could take responsibility for ensuring that the matter is scrutinised by the courts.

"We can use business forums and foundations to fund or support claims for judicial review, and then litigate in the name of the loser to obtain the successful outcome," he said. "By doing this in conjunction with other initiatives, we can create the momentum we need to restore this country as an investment destination and [drive] our economy forward."

Essentially, this forum would become the primary 'anti-corruption' organisation for the private sector.

As such, it would play a role not just in monitoring and litigating where there is corrupt or illicit conduct, but also in being the originator of thought leadership on this issue. For example, it could be the body with which all members of Business Leadership South Africa (BLSA) or Business Unity South Africa (BUSA) lodge anti-corruption reports, which could then be collated and published annually as a barometer of progress in tackling corruption.



CHAPTER

6 NOTES AROUND IMPLEMENTATION

An article in the Global Trade & Customs Journal in 2017, written by Swiss lawyers Jean-Pierre Méan and Holger Gehring, flagged three reasons why it would be important for a company to adopt an anti-corruption code.

First, it can be used "as a reference for the establishment or improvement of an anti-bribery management system"; second, it can be used "as a benchmark to evaluate where an organisation stands in relation to global best practices used by other organisations"; and third, it can serve "as a tool to minimise the risks associated with potential violations of anti-bribery laws and their severe consequences".

This last reason is perhaps the most important.

Méan and Gehring point out that when it comes to the UK Bribery Act, for example, implementation of the ISO 37001 code (though this would obviously also apply to the sort of anti-corruption policy mentioned here) would provide a legal defence against criminal liability, since it is evidence of 'adequate measures' having been taken to prevent bribery. This is similar to the US's Federal Sentencing Guidelines, which allow for a reduced sentence where an effective ethics and compliance programme is in place.

This would help address one of the key issues raised by South African business leaders in the series of roundtables hosted by GIBS: How do companies implicated in corruption "rehabilitate themselves"? As Business Unity South Africa (BUSA) CEO Cas Coovadia put it: "Under what circumstances are those businesses accepted back into the fold?"

This Anti-Corruption Working Guide, and the substantive implementation thereof, would be evidence of a commitment to reform and the eradication of wrongdoing. It would be the first step in scrubbing away the stain and rekindling an organisation's reputation.

ESSAY

1 WHY COLLECTIVE ACTION MATTERS

By Rabbi Gideon Pogrund
Founding Director, GIBS Centre for Business Ethics

Key to the struggle against corruption is the principle of *collective action*, which is defined by the World Bank Institute as a "collaborative and sustained process of cooperation between stakeholders".[8] The imperative seems obvious: while individual actions by single companies are of course important, their impact may be limited — but acting together will be much more effective.

There are many ways this can happen. For instance, companies can collaborate with each other by establishing common standards and principles. These agreements can be underpinned by stakeholder integrity pacts, requiring companies who are in breach of those agreements to 'step out' of the tender process.

In the shorter term, this creates a level playing field upon which companies can compete on their merits. In the longer term, it supports companies' broader interests by preserving the rule of law and alleviating the disruptions that threaten the foundations of capitalism. The former general counsel of General Electric referred to this as "to level up, not level down" in dealing with corruption — in other words, raising rather than lowering standards.[9]

Companies can also collaborate with other stakeholders, such as in assisting to rebuild capacity in the corruption-busting bodies that were badly undermined during the years of Jacob Zuma's presidency. Last year, for example, Business Leadership South Africa (BLSA) and the National Prosecuting Authority (NPA) signed a memorandum of understanding in which BLSA agreed to mobilise private sector skills to assist the NPA in analysing evidence and building cases.

The law firm Werksmans has in turn entered into a public–private partnership with the Directorate for Priority Crime Investigation (popularly known as the Hawks) to help investigate and prosecute the criminals responsible for the collapse of VBS Mutual Bank and several municipalities which illegally placed money with the bank. That investigation is being funded by the South African Reserve Bank and National Treasury to ensure that the banking system is never again compromised to such an extent.

These examples suggest what is possible. But it also illustrates how far we have to go, and how we must significantly increase the scale of collective action if we are to reverse the scale of corruption that we've witnessed in recent years.

To pursue collective action, companies must move beyond their immediate and narrow self-interests and instead focus on the bigger picture, thereby helping to ensure the longer-term conditions for their success. This is what the political philosopher Alexis de Tocqueville termed "self-interest rightly understood",[10] or, as the writer Margaret Wheatley put it: "Collaboration is the process that creates an ecosystem; greed destroys it."[11]

Our success in building such an ecosystem depends on whether our business leaders can strike a balance between competition and collaboration, and between individualism and collectivism.

If this *can* be achieved, however, the potential rewards for our society are immense. This is evidenced by the experience of a number of countries, like Indonesia, Rwanda and Singapore, whose economies were all, at one point, on their knees. Today, however, the GDP growth rates of all three countries outstrip that of South Africa, while their unemployment rates are lower too. If there was a common thread running through each of those stories, it would be the determination of their individual leaders to fight corruption.

Now, those countries are far from perfect — their human rights records are questionable, to put it mildly. But their economic successes are remarkable. And for South Africa, currently mired in gloom and despondency, they show us what is possible.

[8] World Bank Institute, 'Fighting Corruption through Collective Action – A Guide for Business', 2008, World Bank, Washington DC, accessible at https://baselgovernance.org/sites/default/files/2019-02/fighting_corruption_through_collective_action-15.pdf

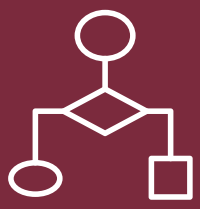
[9] Joseph Bower, Herman Leonard and Lynn Paine, Capitalism at risk: Rethinking the role of business, 2011, Boston: Harvard Business Press, 170.

[10] Alexis de Tocqueville, Democracy in America, 1966, (eds.) J.P. Mayer and Max Lerner, (trans.) George Lawrence, New York: Harper & Row, 497–499.

[11] Margaret J. Wheatley, Who do we choose to be? Facing reality, claiming leadership, restoring sanity. 2017, Oakland, CA: Berrett-Koehler Publishers, 213.

ESSAY

2 CORRUPTION IS A SYSTEMIC PROBLEM THAT REQUIRES A SYSTEMIC SOLUTION



By Busisiwe Mavuso

CEO, Business Leadership South Africa

Before the Zondo Commission released its findings, the government was seen as primarily responsible for the epidemic of corruption in South Africa. Instead, the commission's findings shone the spotlight on the private sector's significant contribution to the problem too.

Technology firm EOH got special mention for how its business practices contributed to state capture. But the massive, R106bn fraud at retailer Steinhoff and the R12bn fraud at sugar company Tongaat Hulett revealed the extent of corruption at some of South Africa's other big businesses.

There's no doubt that corruption has become a systemic problem across both the public and the private sectors, and to eradicate it we need to address it holistically. In particular, it must be attacked on two fronts: in partnership with government and by mobilising business leaders to take corruption seriously.

Tackling serious corruption — and showing the world we are doing so — is a prerequisite for developing an efficient, fast-growing economy that can lower our unemployment rate and start addressing poverty and inequality in a meaningful way.

We all know that corruption imposes a considerable cost on the economy and broader society, and this Anti-Corruption Working Guide highlights the extent of these costs. It was noted that Harvard University's Prof Raymond Fisman and Stockholm University's Prof Jakob Svensson found that a 1% increase in the bribery rate saw company growth decline by more than 3% and that paying bribes was three times more harmful to the company's growth than the same amount of money paid in taxes.[12]

Business Leadership South Africa (BLSA) is committed to creating a conducive environment for business to thrive and deliver inclusive economic growth. Since corruption imposes such heavy costs on the economy and society, combatting crime and corruption is one of our organisation's top four priorities. We do this by mobilising our members to commit to combatting crime and partnering with government in anti-corruption initiatives.

The businesses we represent have committed to the BLSA Business Integrity Pledge, which acknowledges that the perpetrators of corruption, be they public officials or private parties, almost always require business counterparts. The Pledge binds signatories to actively combat corrupt practices, adopt a zero-tolerance stance towards corruption and protect whistleblowers.

We are partnering with government and associations to end corruption. In June, we joined the President's Joint Initiative to Fight Crime and Corruption and will represent big business on the Crime and Corruption steering committee.

The partnership between government and the private sector is being overseen by Business for South Africa (B4SA), the implementation arm of Business Unity South Africa which will be the main vehicle for public sector engagement. CEOs of some of the biggest companies in the country will engage with officials from different government departments, Operation Vulindlela and, in the crime workstream, the National Joint Operational and Intelligence Structure.

Last year, BLSA signed a Memorandum of Understanding with the National Prosecuting Authority (NPA) to build on the Zondo Commission's proposals. The MoU enables the prosecuting authority to implement one category of the commission's recommendations — the prosecution of those implicated in corruption.

It allows organised business to mobilise funds for much-needed forensic and prosecutorial skills in the NPA. South Africa's inability to secure high-profile prosecutions is one of the country's biggest challenges and contributed materially to the Financial Advisory Task Force's decision to grey-list South Africa.

Since signing the memorandum, we have appointed a project manager and financial manager for the NPA and procured the services of PwC to help the NPA review the Zondo report for further cases to institute. BLSA is also working on another of Zondo's recommendations — to establish structures to combat future corruption.

[12] Raymond Fisman and Jakob Svensson, 'Are corruption and taxation really harmful to growth?', 2007, Journal of Development Economics, accessible at https://econpapers.repec.org/article/eeedeveco/v_3a83_3ay_3a2007_3ai_3a1_3ap_3a63-75.htm

This Anti-Corruption Guide is another crucial piece of the puzzle in our fight against corruption. It bolsters the corporate governance framework and gives companies a comprehensive, workable plan to tackle corruption. But it will only work if we act collectively in making these proposals a reality across the business landscape.

The fight against corruption is gaining the momentum it needs. But its success depends on government and the business sector taking it seriously and acting collectively to thwart corruption across the business landscape. Effective government–private sector partnerships will play a crucial role in providing the systemic solution we need to solve this systemic problem.

ESSAY

3 WHITHER BUSINESS ORGANISATIONS POST-ZONDO?

By Cas Coovadia

CEO, Business Unity South Africa

The Zondo Commission reports laid bare disturbing allegations of corruption and state capture, which started under Jacob Zuma's administration and continue to this day. The reports detail complicity of government departments, ministers and officials, state-owned enterprises and elements of the private sector. They leave no doubt that corruption and state capture are wide-ranging and deep, with the public sector, business and other parts of civil society complicit.

Business Unity South Africa (BUSA) has been discussing the ramifications of these reports, which mark a seminal moment in the history of our democracy.

Specifically, the allegations of complicity on the part of certain companies raise a critical question: What is the role of organisations like BUSA in ensuring ethical practice by businesses, and what tools do these organisations have to hold members to account for corrupt practices?

As a starting point, business organisations are voluntary bodies, with membership based on companies deciding whether or not to join. Often, these organisations strive to include as many firms as possible in their membership so that they can coordinate business's role in attracting investments, expanding the economy and contributing to the national interest. This makes it complicated to hold members to account and to act against corrupt behaviour. Organisations can, of course, develop codes of ethics to hold individual members to account if they violate the code. Business Leadership South Africa (BLSA) has done that successfully with some of its members.

However, an organisation like BUSA — whose members include other associations and chambers, such as the Minerals Council South Africa — might find the process cumbersome and might not even be able to hold companies to account. For example, if it's the responsibility of the Minerals Council South Africa to develop mechanisms to encourage ethical behaviour amongst mines, what should the role of BUSA then be? Should BUSA aim to hold the Minerals Council to account if it doesn't act against its members who behave unethically? And if so, how does it do that? Or should BUSA play a broad advocacy role, promoting ethical behaviour and calling out businesses if they behave unethically?

We need to discuss this, since BUSA is serious about taking Zondo's recommendations to heart, enabling ethical conduct and promoting accountability.

Along the way, of course, we need to recognise degrees of culpability, instead of treating all businesses involved in unethical practices in the same way. Codes of ethics should differentiate between specific behaviours and contexts, and the sanctions must be informed by this too. For instance, we have seen culpability ranging from a company being drawn into a corrupt relationship because a government department insisted that it work with a specified firm, to businesses actively aiding and abetting unethical behaviour.

Another issue germane to this debate is that of rehabilitation of businesses cited in the Zondo reports: under what circumstances should they be accepted 'back into the fold'?

I believe we need to develop criteria, perhaps with advice from those who worked with the Zondo Commission, to assess whether a business has paid its dues and ought to be allowed to operate normally again. Those criteria need to be transparent and clear, with little ambiguity, so that the public sector, the public and broader civil society can understand them and relate to them.

ESSAY

4 THE ROLE OF REPARATIONS

By Edward Kieswetter

Commissioner, South African Revenue Service

I joined SARS as commissioner on 1 May 2019, five months after the Nugent Commission of Inquiry into Tax Administration and Governance by SARS had submitted its final report, and nine months after the Zondo Commission of Inquiry had started its work.

The Nugent Commission of Inquiry had found that there had been a massive failure of integrity and governance at SARS during the era of my predecessor, Tom Moyane. Judge Robert Nugent said that what occurred at SARS was inevitable the moment Moyane set foot in the organisation. "He arrived without integrity and then dismantled the elements of governance one by one. This was more than mere mismanagement. It was seizing control of SARS as if it was his to have."[13]

Nugent described it as a "premeditated offensive against SARS, strategised by the local office of Bain & Company, located in Boston, for Mr Moyane to seize SARS, each in pursuit of their own interests that were symbiotic, but not altogether the same. Mr Moyane's interest was to take control of SARS. Bain's interest was to make money."[14]

He cited the evidence provided by a senior SARS staffer of the impact on staff: "I think what we see is typical post-traumatic effects of a severely traumatic event that SARS had gone through, that even those people that were appointed subsequently in the new structure, even we felt like we suffered from survivor syndrome and that the people that we used to work with that were not appointed, the relationships were strained."

Nugent's findings were endorsed by Chief Justice Raymond Zondo in his final report, which dedicated 87 hard-hitting pages to the capture of SARS. Zondo said SARS became a target of state capture because its "investigatory and enforcement capacity was a hurdle to people involved in organised crime. SARS was systemically and deliberately weakened to incapacitate its efficiency".[15]

He found that both President Jacob Zuma and Moyane had met with Bain & Company to strategise over how SARS would be brought to heel long before Moyane was appointed commissioner.

Zondo confirmed that an underhanded tactic was to use the narrative of a 'rogue unit' to make sweeping changes at SARS, with Moyane using a litany of allegations reported in the media and the flawed KPMG and Sikhakhane reports to disband the SARS executive, hound out senior managers and threaten others with spurious disciplinary action. This further negatively impacted the rights of employees.

Recommendations to rebuild SARS and make reparations

Nugent recommended the dismissal of Moyane as the necessary first step towards rehabilitating SARS, which involved 16 wide-ranging recommendations on how to improve the institution's governance. Significantly, he recommended making reparations, though not necessarily in pecuniary terms, for employees who had been adversely affected.

He also recommended that SARS evaluate employees "in supernumerary (excessive) posts" and consider their placement "in positions in which they are able to add most value". All posts at SARS should be evaluated and "where appropriate, active steps [should] be taken to recruit former employees to those posts".

Nugent also recommended that SARS take steps "to restore the cordial relations that formerly existed with other state institutions, including the National Prosecuting Authority, the Financial Intelligence Centre, the Auditor-General and the National Treasury, and develop protocols for interaction with the National Treasury".[16]

Implicit in the Zondo and Nugent recommendations was that reparations should also be made to SARS itself by the entities that had enabled its capture, including Bain & Company, KPMG, Gartner, Hogan Lovells, Grant Thornton, and Mashiane Moodley Monama.

The cabinet endorsed the findings of both commissions, and SARS created dedicated capacity to monitor the implementation of those findings. There has been significant progress in this regard.

[13] Commission of Inquiry into Tax Administration and Governance by SARS – Final Report of the Nugent Inquiry, 18 December 2018, accessible at https://www.politicsweb.co.za/documents/sars-before-and-after-tom-moyane-i

[14] Nugent Inquiry, Ibid.

[15] Judicial Commission of Inquiry into State Capture Report – Part I, January 2022, accessible at https://www.scribd.com/document/550966842/Judicial-Commission-of-Inquiry-Into-State-Capture-Report-Part-1#

[16] Nugent Inquiry, Ibid.

Taking stock of the harm caused to SARS, the institution, and its people

Before I rejoined SARS, I listened with great pain to excerpts from the Nugent Commission of Inquiry and read with sadness the media reports of the capture of SARS and how many people with whom I had previously worked had been traumatised. I regarded these people as competent, 'salt of the earth' professionals who could have worked anywhere, but who had committed themselves to serving our democracy.

I saw the collapse of an institution I had come to love. During my earlier term as the founding executive of the SARS Large Business Centre, its first chief operating officer and subsequently deputy commissioner, I had helped build and transform SARS. Having seen that, it moved me to walk away from retirement and put up my hand and say: "Send me — I will once more offer my help to free SARS from the grasp of state capture and restore the institution from its sad decline."

Upon joining as commissioner, I immediately 'went to the ground' and heard first hand from employees their experiences and 'felt their pain' for myself. I conducted an enterprise-wide listening campaign and found that the harm suffered by SARS and its staff in the state capture period was more extensive and deeper than that reported by Nugent.

Rebuilding this crucial institution, which is fundamental to our democracy, would entail a comprehensive and systemic approach covering many aspects, ranging from setting an inspirational vision and strategic direction, to addressing organisational weaknesses and the loss of skills, as well as hastening its modernisation through investments in data science and technology. The strategic narrative had to change quickly from change in response to a 'burning platform' to change inspired by a 'blazing torch'.

Ahead of all that, though, a key imperative was winning the hearts and minds of the thousands of men and women who had remained committed throughout this dark period. Restoring trust in SARS — amongst its employees, other stakeholders and the wider public — was central to change; such trust had to be earned.

An important first step, therefore, was for SARS to acknowledge the damage caused and to strive to repair it. *It was important to do the right thing and to be seen to be doing so.* To this end, SARS implemented a range of measures recommended by Nugent aimed at rebuilding the institution, one of which was the introduction of a reparations process for employees.

Conceptualising reparations

It was clear that the harm experienced by those who had remained at SARS was different from that experienced by those who had left. For strategic and logistical reasons, and on the basis of legal advice, SARS decided to separate the processes for affected staff who had remained at the organisation and those who had left. So, we established two advisory panels to deal with both sets of employees separately. The panels were required to consider the merits of each matter and make recommendations, to which the commissioner could apply his mind. The internal panel, comprising the special advisor to the commissioner on people matters and three senior executives, was tasked with engaging with affected current employees and recommending remedial action.

The external panel dealing with former employees had to consider the following:

1

SARS itself had, through the actions of the former leadership, become a victim of state capture and suffered adverse and significant harm.

2

It would be to the benefit of all affected people, as well as to SARS, to follow a 'good-faith', amicable process rather than a lengthy, litigious one. The process must be based on equity and fairness to all concerned and must aim to bring closure to employees as well as to SARS, thus allowing the organisation to focus on the important work of restoring institutional integrity and public confidence.

3

The independence and credibility of the process would be best assured by the establishment of an independent panel that would also serve to mitigate the legal, financial and reputational risks to SARS.

4

The participation of the affected individuals in the process would be voluntary and the process would be confidential.

5

Although legal advice could be sought by the participants if they wished, legal representation would not be permitted in the process.

6

The purpose of the reparations panel process was to make *non-binding* but implementable, fair and equitable recommendations to the commissioner for reparations broadly and, to the extent possible, just and equitable pecuniary reparations within the constraints of SARS' public law obligations as an organ of state bound by the Public Finance Management Act.

7

There is a fiduciary duty on the commissioner to secure the reputation of SARS and take appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with SARS' operational policies. So, SARS had to ensure that any pecuniary reparations would be justified as not fruitless or wasteful. We had to satisfy the requirement that reasonable care would be taken in assessing all claims for pecuniary reparations. In striking that balance, SARS would be guided by its public law obligations, including the duty to make administrative decisions in a manner that is lawful, rational and procedurally fair.

8

The panel's investigative powers are limited, but it has the power to determine its own processes within the confines of its terms of reference. And SARS would make resources available to the panel as needed.

9

Having received the panel's non-binding recommendations, it was then at the commissioner's sole discretion whether or not to agree to the reparations identified, to implement the reparations to a greater or lesser extent, or to reject the recommendations.

10

Where the panel recommended pecuniary reparations to anyone on the closed list, it should recommend, to the commissioner, a single amount of 'pecuniary reparations' per claimant, with an explanation supporting such recommendation.

11

The panel process would be entirely confidential, and its ultimate report would be made available to the commissioner directly, and not to anyone else. It would be a prerequisite for participation by the individuals that they agree in advance to such terms.

The internal process and outcomes

The internal panel considered the cases of 33 affected staff. After considering the facts and hearing their representations, the panel recommended appropriate and meaningful remedial action in each case. The reparations offered included the lifting of suspensions, the clearing of disciplinary records, the reinstatement of annual leave forfeited, the approval of extended study leave, the payment of medical expenses, the payment of legal expenses (both after validation), engagement with line management about career management, and secondment to the State Attorney's office.

At various stages of the process, I met with the affected employees to ensure that engagement took place both on an emotional and rational level. It was important to provide ongoing assurance of the sincerity of intent as well as the integrity of the process. The aim was to ensure a fair and credible outcome, while balancing the interests of the organisation.

The external process and outcomes

An advisory panel, comprising previous public protector Thuli Madonsela and retired Constitutional Court judge Johan Froneman, was established to conduct a reparations process for 15 affected former employees.

The panel invited the participants to submit affidavits detailing their experiences and to make their case for reparations. SARS submitted responding affidavits to the panel through a general affidavit dealing with issues common to all the participants and individual affidavits dealing with matters specific to each individual. The participants were allowed to submit a response to the SARS affidavits, which they did as a collective.

The panel issued a final report to SARS, in which it found that there was a case to be made for reparations, which included making a public and individual apology to each participant and their families.

I accepted the panel's recommendations and instructed a SARS team to prepare a proposal for reparations for each individual, including pecuniary amounts for personal harm and loss of income, where applicable. Each individual was engaged in the reparations process, and all agreed to the offers made in full and final settlement, thus finally drawing a line under what had been a painful period for everyone.

Insights and lessons learnt from the reparations process

1

Do the right thing:

Legal advisors counselled SARS through the process, but the approach we chose caused them some trepidation because of the risk that it could open SARS up to further litigation. They were not used to a process that, from a narrow technical perspective, may have carried legal risk. However, I had the conviction that, guided by a pure intent yet mindful of the legal risks, doing the right thing would serve the best interests of all concerned. The approach was that, by acknowledging and understanding the harm suffered and the causes thereof, we were morally bound to do the right thing, and that this need not be in conflict with any legal precepts. Our view, confirmed by the panel, was that all aspects of our law must conform to the objective values or norms contained in the Constitution and the Bill of Rights.

2

Build trust by avoiding legalistic processes and an adversarial approach:

SARS was very clear that we didn't want to go the litigious route as this was not conducive to fostering healing and reconciliation. Opting for a good-faith process, it was imperative to build trust early on. Given the negative experiences of the employees and the lengthy period of time that had passed, there was some scepticism surrounding SARS' bona fides. This was overcome by adopting an empathetic approach and ensuring consistent and open communication throughout the process. Keeping the process confidential and avoiding the risk of negotiations through the media also contributed to this trust. I personally engaged with the individuals at the start and at various intervals thereafter. At no stage were any of the individuals coerced to join or stay in the process.

3

Be transparent and realistic within the confines of the law:

We were open and transparent upfront about the fact that the reparations that SARS offered would have to be within the confines of the law, would have to consider the interests of all parties and would take into account our fiduciary duty, as required by legislation.

4

Stay the course, there are no shortcuts:

We were committed to making genuine and meaningful reparations and achieving a fair and just settlement, and we were committed to staying the course until this was achieved; there were no shortcuts. An important element in the success of the reparations process was that it was driven with conviction from the top. The process took nearly 18 months, but I can say that we achieved the best outcome for everyone. Where it made sense, the door remained opened for some of the former staff to return to SARS.

Reparations to SARS by enablers of state capture

SARS' example of doing the right thing by its employees unfortunately has not been followed by entities that facilitated its capture. The organisation suffered enormous damage that will take years to reverse, at a great cost to itself and the country. While some of those involved, like Bain and KPMG, have paid back to SARS the fees earned for their flawed work, this is not sufficient to address the cost of the damage inflicted.

I believe they still have a case to answer for. Bain has paid back R216m of the money they earned from SARS. They've made a public and private apology, but they haven't fully disclosed the extent and nature of their involvement. There are too many unanswered questions which can only be answered if Bain is prepared to make a full disclosure, which goes significantly beyond making a public apology.

Only after Bain makes such a full disclosure will South Africa know the extent of their involvement in state capture, what case they have to answer for, and whether or not they should be permitted to again do business with the state.

I have begun engaging with some of the private sector entities that participated in the capture of SARS. These are complex and sensitive negotiations in uncharted territory. A non-negotiable starting point, and the most important ingredient, is for them to have the moral courage to own up to the harm they caused, to act to repair the damage and to contribute to the rebuilding of the organisation, be it through monetary compensation or other means.

If SARS' efforts bear fruit, it could be used as a basis for a larger, national reparations campaign which would bring pressure to bear on the private sector to hold themselves accountable for their role in state capture.

State capture was facilitated by a number of local and international corporations, but their role has been overshadowed by a focus on the political actors. These include global banks, audit firms such as KPMG and PwC, consulting firms such as McKinsey, Bain, the German IT company SAP, Japan's Hitachi, the US's General Electric, mining companies such as Glencore, a number of law firms and other business enterprises.

Such a reparations project must be structured with a view to achieving a fair and transparent outcome:

1

The private sector enablers must disclose the nature of their involvement and the full extent of public resources looted, so that the scale of reparations can be determined.

2

They must disclose the details of political and public sector collaborators, partners and co-criminals.

3

Businesses must commit to a new Ethical Charter, which includes the pledge to pay their fair share of taxes. This will inform codes of conduct and help avert tax evasion. The Ethical Charter must have 'teeth' and provide for punitive financial and non-financial penalties for firms, their implicated executives and boards of directors, where malfeasance and corruption are detected.

Zero corruption and ethical behaviour across the public and private sectors are an absolute imperative for reviving economic growth and for the health of South Africa's democracy. This should be a non-negotiable as we strive to regain the trust of our citizens.

ESSAY

5

RESPONSIBLE LOBBYING: HOW FIRMS CAN AVOID CORRUPT POLITICAL ACTIVITIES

By Dr Wendy Dobson

Senior Managing Director: Financial Services, FTI Consulting

Many South African companies meet with government officials and politicians with the aim of influencing policy, legislation and regulatory decisions. These meetings take place bilaterally as well as through trade associations like the Minerals Council and organised business groups like Business Unity South Africa (BUSA).

Companies regularly make submissions on proposed policies in response to calls for comment from government departments, and they make public representations on draft legislation in Parliament. They also communicate their positions on policy directly through meetings with public officials and indirectly through the media. In addition, some companies make financial donations to political parties or sponsor fundraising events held by politicians.

Various questions arise: Are these activities ethical? How do stakeholders distinguish responsible lobbying activities from bribery and corruption? What are the differences between ethically legitimate representation of a company's interests and undue influence over policy and government decision-making?

It is perhaps surprising that more attention has not been given to these questions in South Africa. In this country, corporate lobbying is not regulated, except for the recently enacted Political Party Funding Act. There are no requirements on companies to disclose their lobbying activities, their membership of trade associations, or their funding of think tanks or policy research.

This regulatory gap extends to voluntary frameworks and standards too; there is little evidence of codes of practice issued by trade associations or company policies on lobbying and political activities.

Equally, South Africa's pre-eminent code on corporate governance — the King Code — is silent on the issue. Moreover, the subject of corporate lobbying has received remarkably little attention in the public debates on corporate conduct in the aftermath of the Zondo Commission.

This is problematic. For one thing, corporate lobbying can generate both costs and benefits, for the company itself and for society more widely.

An extensive body of academic research conducted in other parts of the world shows that while lobbying can benefit those companies that engage in the practice, it can also have negative effects for them through higher debt costs and reputational damage.

For society, *responsible* corporate lobbying can contribute to better-designed regulations, but *irresponsible* lobbying can become corruption, leading to regulatory capture and the erosion of democracy.

Responsible corporate political action has two core elements: it is conducted with integrity, and it promotes outcomes that benefit society rather than just narrow corporate or sectoral interests.

So, what does this look like? At a minimum, corporates should do 10 things.

1

Have a publicly available, board-approved policy governing corporate political activities, including membership of trade associations and organised business groups; participation in, and funding of, think tanks and similar bodies; donations and sponsorships of political parties and politicians; and participation in the fundraising activities of political parties and politicians, such as golf days and gala dinners.

2

Disclose all material corporate political activities in their annual report, including:

- All membership fees of trade associations and similar organisations;
- All funding of think tanks and similar bodies;
- All funding of policy-related research;
- All financial and non-financial support given to political parties and politicians;
- All financial and non-financial support given to government — either paid directly or via initiatives such as *Business 4 South Africa*, *Business Leadership South Africa* or the *National Business Initiative*.
- All submissions made to regulators, government departments and Parliament on regulation, policy and legislation; and
- Outlines of the substantive positions advocated in these submissions.

3

Implement governance in respect of their own participation in trade associations. This would include ensuring that relevant staff members are properly mandated to represent the company and introducing processes to manage differences in the company's positions on policy versus those of the trade association, especially in relation to umbrella business organisations.

4

Implement governance to navigate the impact of their lobbying on multiple stakeholders and to take conscious and considered decisions in relation to the trade-offs accompanying their policy positions.

5

Ensure consistency in the company's lobbying activities and sustainability-related commitments, as well as between a company's espoused values and the manner and tone of its government engagements.

6

Avoid indirect and covert forms of political action, such as making donations to the charities of politicians, misusing corporate hospitality or funding fake grassroots campaigns (astroturfing).

7

Invest in the teams involved in government relations, compliance, regulatory and public affairs, including providing specific training on the ethics of lobbying.

8

Adopt a position of political neutrality, advocating for policies and principles rather than personalities and people.

9

Advocate for fair and balanced laws and a regulatory framework that is appropriate and enforceable, not for the erosion of regulatory standards that undermine consumer and investor protection, for example.

10

Do not exaggerate or overstate the costs of compliance, the predicted consequences for jobs and investment or the economic impact of policies and regulation. Over time, this approach erodes trust and undermines constructive engagement with policymakers and legislators, especially when it is not backed by credible evidence.

Ideally, these prescriptions would be enacted as legislation, or at least codified in the next iteration of the King Code on Corporate Governance or the JSE listing requirements. This would provide much-needed guidance on this often-overlooked area of potential corruption. In the absence of this, responsible companies should voluntarily adopt their own codes of conduct to govern their political activities.

A maturing of corporate South Africa's approach to their political activities is long overdue.

> *Note: Dr Dobson's observations and recommendations are based on research conducted for a Doctor of Philosophy degree awarded by GIBS in April 2023.*

ESSAY

6 LEADING WITH VIGILANCE

By Berenice Francis

Group Executive: Corporate Affairs, Risk and Sustainability, Motus Holdings

During my first years as a student, one of the biggest financial scandals was the collapse of Barings Bank, where a lone trader who failed to cover up a domino of compromised trades created a spiral of doom.

In my first year of corporate life, I was on an audit where both the finance director and managing director of the auditee company were fired after being found to have manipulated the financials to improve bonus incentives. Four years later, the 89-year-old global auditing and advisory firm that I had been so proud to be a part of collapsed after being found guilty of dubious and unethical audit practices.

Not all fraud, or efforts to cover it up, will have such spectacularly implosive consequences. And while not all fraud is uncovered swiftly, experience teaches us that most financial fraud does, in the end, come to light. Despite my experience, I remain baffled by senior leaders who risk their careers and reputation for such seemingly low rewards or pay-offs.

The life and career you follow are the consequences of the incremental and everyday choices you make along your journey.

As a manager, whether directly or through a team, your key duty is to oversee the implementation of decisions designed to meet the goals of the organisation. While these decisions come from the application of skills and experience on the basis of available information, the decisions you make are still framed by your context — such as the culture of the organisation you work for or the peers you're surrounded by.

In building our careers, we spend a lot of time gaining skills, but not enough time on building buffers to prevent us from compromising our context. If I had access to a DeLorean, I would tell my 22-year-old self that it is important to keep the following three things in perspective:

1

Be clear about your personal non-negotiables. A career is built on sacrifices and compromises, and your non-negotiables allow you to decide what you are willing to compromise on.

2

Always ensure you are investing in options. A sustainable career is built on pacing. Being emotionally and financially able to absorb the consequences of making the wrong decisions gives you options. And this is preferable to making decisions filtered by professional dead ends or overwhelming self-interest.

3

Lastly, always keep the end goal in mind. To have a truly fulfilling career, your personal and professional personas must be integrated. All professional careers have a sell-by date, so understand what position you want to be in and the person you have become.

Ultimately, we are the product of the choices and decisions we allow ourselves to make.

Building a leadership career is a painstaking but rewarding privilege. However, once you cross the line between ethical and fraudulent practices, it is extremely hard to reverse course and not cross the line again. Eventually those practices, no matter how innocuous or acceptable they may seem at first, will lead to self-destruction.

ESSAY

7

HOW TO BUILD A CORRUPTION-RESISTANT CORPORATE CULTURE

By Prof Mollie Painter

Professor of Ethics and Organisation, Nottingham Trent University's business school, and Academic Director, GIBS Centre for Business Ethics

It is said that "culture eats strategy for breakfast". When it comes to corruption prevention, this is even more profoundly true.

The most well-intentioned corruption prevention programmes will fail if one does not attend to the emergence of corrupt organisational cultures. Ultimately, it is the organisational culture that signals the boundaries between what is legitimate and what is unacceptable in a given situation.

However, making sure that an organisational culture signals the importance of ethical behaviour isn't so easy … in part because 'culture' is hard to define and even harder to influence, let alone 'manage'.

Both scholars and practitioners struggle to offer a precise definition of organisational culture, since it is described as a 'soft' construct related to anthropological concepts; it is holistic, socially constructed, historically determined and as such, difficult to change.

Some scholars like Edgar Schein perceive culture to include:

1

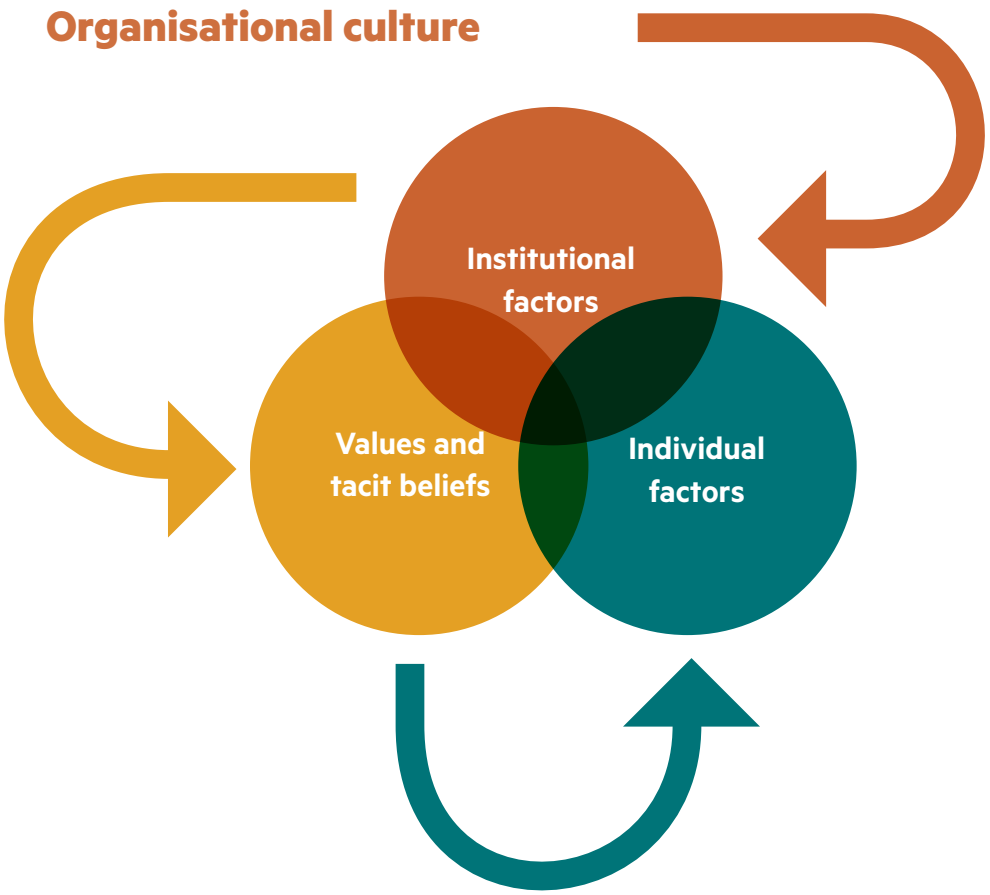
Overt behaviours and physical artifacts, which could include rituals and practices such as how people treat each other in informal spaces, like the canteen, or objects and privileges that signal seniority or esteem; and

2

More tacit values and assumptions regarding how to behave in the organisational environment.

Others, like Linda Trevino, describe it as the interplay between formal and informal elements in the organisation.

From our perspective, organisational culture is best visualised as follows:



Rotten apples or rotten barrels?

There is a persistent debate as to whether ethical failure in organisations is attributable to a few bad apples (individuals) corrupting their organisation or whether the barrel (the culture and the organisation's institutional structure) corrupts the apples within it.

In reality, it's a combination of the two. So, one must make sure that unethical individuals don't enter or do not remain active in the organisation or amongst its stakeholders. More formal, institutional systems, as well as the tacit belief systems of the organisation, require attention too.

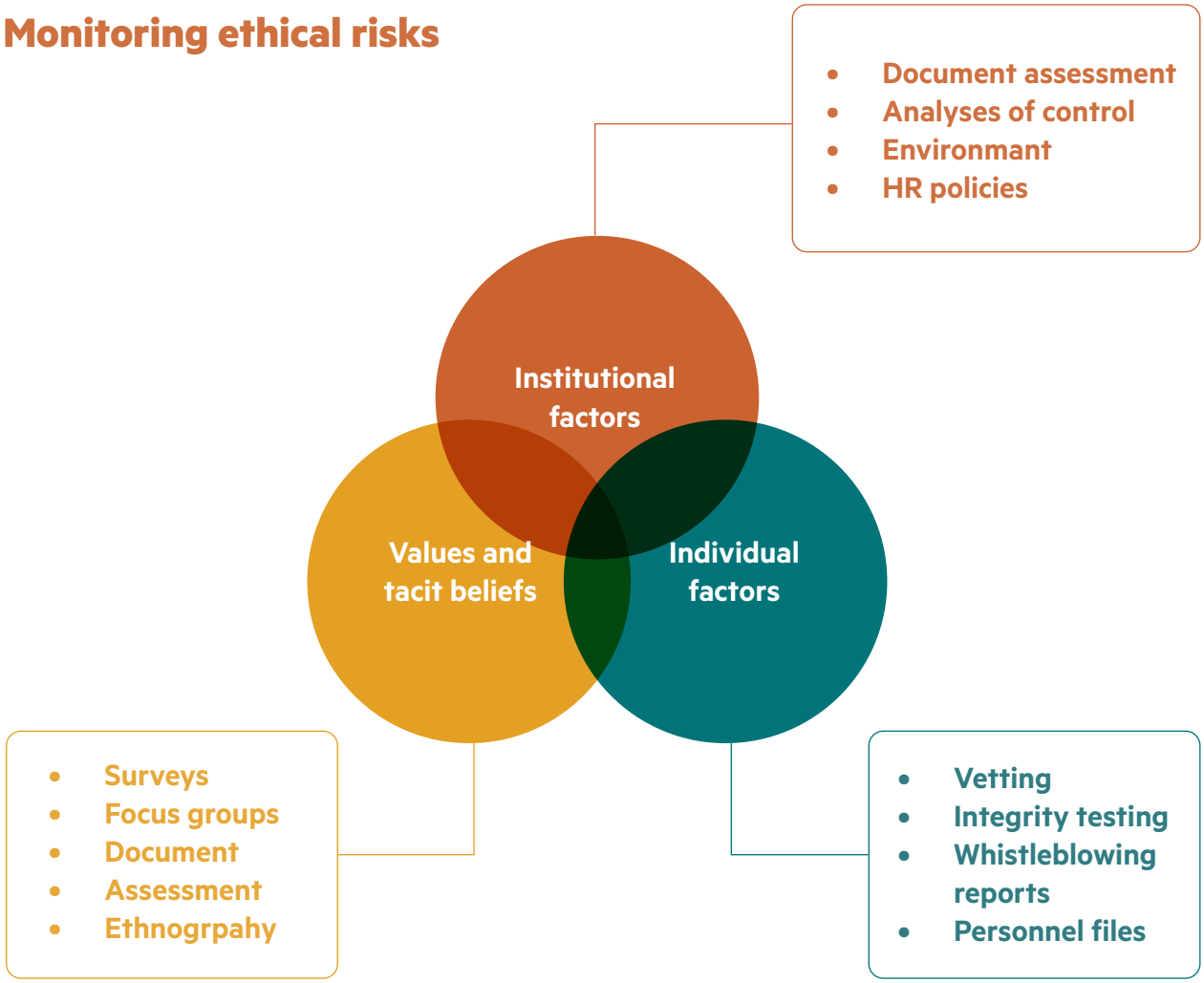
However, there are techniques to avoid the presence of rotten apples.

These include rigorous vetting of CVs, ensuring you have a values-driven recruitment process, making use of psychometric instruments to test integrity, and supporting the practice of speaking out in various ways across the organisation.

And there are techniques to prevent 'rotten barrels' from developing.

These include conducting ongoing climate assessments to track shifts in perceptions, conducting culture surveys and focus groups to assess cultural elements, and implementing stringent policies — especially in the areas of gifts and gratuities, conflicts of interest, consultancy practices and procurement.

Monitoring ethical risks



So, is there a difference between 'culture' and 'climate'?

Yes and no — since they are related terms. While some organisations frequently measure their climate, managing culture often falls by the wayside.

Organisational *climate* encompasses all the qualities and conditions that may affect individuals' *feelings and perceptions* about the system in which they participate.

The concept of organisational *culture*, on the other hand, is associated with the *rules, rewards, codes, leadership, rituals and stories* within an organisational system. Though linked to individual perception, it goes beyond and can influence it.

Since the idea of a 'culture' characterises an organisation more clearly in terms of its formal and informal structures, Trevino argues that '*organisational culture*' is likely to have a more pronounced effect on behaviour than '*organisational climate*'.

Keeping your finger on the pulse of organisational culture

What complicates the study and management of culture is that people invariably know more than they can tell, and they're likely to tell more than they can write down. The kind of tacit knowledge that informs beliefs and behaviours may not lend itself to objective, clear and concise formulation which can easily be assessed through surveys. But you can keep your finger on the 'organisational pulse' and continuously assess the processes and practices that are key to the culture. So, it is important to be creative in attempts to assess and manage organisational culture.

Examples of meaningful assessments of an organisation's culture

Organisational ethnographies:

Just as anthropologists study community cultures, so you can study the culture within an organisation by participating in its rituals and practices, and reflecting on this by taking notes, engaging in conversations and asking pertinent questions as to why certain practices exist.

Studying the emotions elicited in the organisation can be helpful because values are ultimately beliefs about 'good' ways to live. If they are violated, this elicits strong emotions. Through a technique called the 'Happy–Angry exercise', I've developed a strategy to reveal the values of the organisation.

BOX 3

The Happy-Angry Exercise

In a focus group session, members of an organisation are asked to share one experience that made them angry and one that made them happy. The angry experiences always reveal which values were violated, whereas the happy experiences show which values were protected. For example, if a person is angry about a team member not pulling his or her weight in a project, it is because the value of 'fairness' was violated. If a person reports being happy about having a wonderful holiday, it signals the importance of the values of 'freedom' and 'autonomy'. By allowing team members to share their values in this indirect way, realistic value maps may emerge which could allow the assessment of tacit beliefs.

Storytelling:

One of the most efficient ways to reveal an organisational culture's values is to analyse the stories circulating within its internal system of relations. Why?

Stories reveal tacit knowledge — those beliefs that people won't easily self-report or are not even aware of.

Stories signal what elicits strong emotions amongst organisational members; as such, they display what people care about most.

Stories use poetic tropes, such as the attribution of motive, causal connections, responsibility, blame and credit.

Stories offer scope for a wide range of rationalisations or even self-deceptions, which could help reveal corruption risks or the causes of moral failures within an organisation.

Promoting an ethical organisational culture through 'ethics management':

Managing organisational cultures is by no means easy, since it has to do with both formal and informal elements within the organisation and encompasses both the explicit and visible dimensions of how organisations are structured, organised and directed, as well as the more informal and tacit elements of 'how we do things around here'.

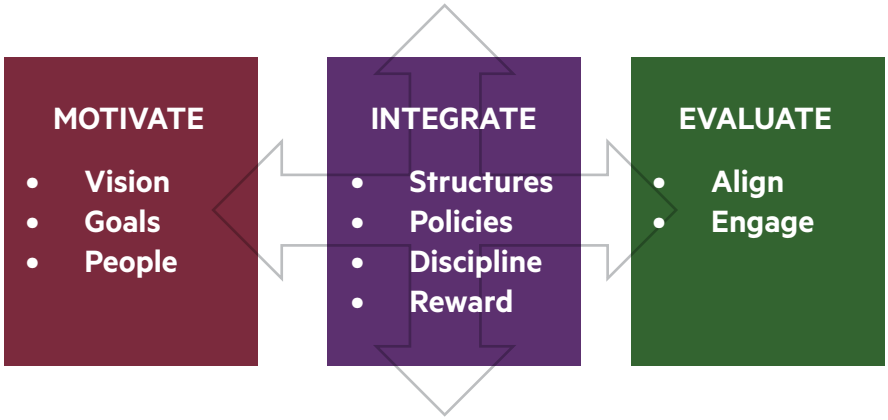
Best practice in managing towards ethical cultures:

The US's Federal Sentencing Guidelines have emerged as one of the best models of what an ethics management programme should include. Its seven steps are:

1. Formulating compliance standards and procedures, such as a code of conduct;
2. Assigning high-level personnel to provide oversight, such as a compliance or ethics officer;
3. Taking care when delegating authority;
4. Ensuring effective communication of standards and procedure, such as training;
5. Implementing auditing and monitoring systems, including reporting mechanisms, and whistleblowing procedures;
6. Enforcing disciplinary mechanisms; and
7. Taking appropriate action after detection.

International best practice shows that, for the purpose of our discussion here, the elements that are typical of most ethics programmes can be meaningfully divided into three basic phases: motivation, integration and evaluation. This can be illustrated as follows:

Steps in creating an ethics management programme



1

The formulation phase of an ethics programme typically includes the establishment of some source of normative orientation. This is mostly done by adopting an organisational code of conduct or code of ethics.

Formulation of an ethics programme – what *not* to do

- Pull a generic value statement or code from a website and announce it, from the top down, throughout the organisation.
- Put up pretty posters with values that are clearly inconsistent with the practices and rituals that exist in the organisation..

Formulation of an ethics programme – what *to* do

- Engage in focus group discussions about the risks and opportunities in the organisation, while tapping into people's tacit beliefs — for instance, by employing the Happy–Angry exercise described above.
- Study the results of surveys conducted in the organisation to establish its specific risks, especially those highlighted through assessments of the culture.
- Train a broad group of '*ethics champions*' in organisational ethnography.

2

The integration phase of an ethics programme is a multifaceted process that includes the appointment of an ethics officer, the rollout of a training and communication programme, the establishment of reporting channels, the enforcement of rules and regulations through the implementation of disciplinary procedures against offenders, and the conducting of regular audits.

Integration of an ethics programme – what *not* to do

- Allow inconsistencies in the application of policies and procedures.
- Have different policies sending out contradictory messages.
- Retaliate against those reporting misconduct or asking difficult questions.

Integration of an ethics programme – what *to* do

- Get rid of unnecessary red tape that may lead to institutionalised rule-breaking.
- Align all policies clearly with the values identified as central to the organisation.
- Protect whistleblowers and actively support speaking out.

3

Ethics programmes also typically include a third element — namely, 'evaluation'. This entails the ongoing monitoring and assessment of the programme and links into the organisation's reporting processes. It includes assessing the ethical risks present in an organisational environment. The process of assessing organisational culture on an ongoing basis, as explained above, is key here.

So, in a sense, managing ethical organisational cultures requires designing ongoing feedback loops and using a wide range of 'ethics champions' in ongoing culture assessments, role modelling and calls to speak out.

A CALL TO ACTION

By Prof Morris Mthombeni
GIBS Dean

The endemic nature of corruption in almost every facet of South African society reflects very poorly on leaders and leadership in general. The *raison d'être* of GIBS and other business schools is to develop responsible business managers and leaders through scholarly research, teaching and external engagements. While our methods and efforts are laudable, as evidenced by the many accolades we receive from both local and international sources, the impact of our work has been slow to materialise.

It is for this reason that we are investing in institutions like the GIBS Centre for Business Ethics (CfBE) which operates at the intersection between academia and business, allowing us to deliver practical, relevant solutions that also reflect rigorous, high-quality research. The result of a collaborative effort between local and international academics, on the one hand, and local business, civil society and government representatives, on the other, this 'Anti-Corruption Working Guide for South African Companies' seeks to expand the role of business

schools from providers of research-led education to innovators of evidence-based tools to be used in tackling ongoing challenges and opportunities.

In a 2022 academic paper titled 'Explaining the performance of South African firms' published in the International Journal of Emerging Markets,[17] which I co-authored with Prof Robert Grosse from Arizona State University and Prof Albert Wöcke from GIBS, we point out that South Africa has more internationally competitive companies than any other country in Sub-Saharan Africa – 58 out of 100, as measured by market capitalisation. This fact alone reinforces why it is crucial for the South African business sector to 'clean up its act' by putting ethical leadership and management at the core of its competitive aspirations. Therefore, besides the normative reasons for supporting anti-corruption efforts, doing so is simply good for business.

In their efforts to ensure the sustainability of their businesses, leaders and managers must make countless decisions, often involving trade-offs and trade-ins. It is hard to build and run a business under normal competitive conditions, both locally and internationally. But it is nearly impossible to do so, at least in a sustainable manner, in a corrupt operating environment. Corruption is expensive for business and society at large, a view that is ably conveyed in Chapter 2 of this guide (titled 'The business case for an anti-corruption policy'). Executives who have an anti-corruption portfolio are urged to incorporate the insights shared in Chapter 2 into their own company policies and guidelines. In doing so, they will be contributing to the anti-corruption collective action by business leaders, which is aimed at reducing the cost of doing business in South Africa. This collective action taken by business leaders is not simply encouraged; it *is essential* for the necessary momentum to be gained and maintained in rooting out corruption in South African business circles.

Chapter 3 (titled 'Specific considerations in the wake of Zondo and Steinhoff') puts the spotlight on the role of disclosure and transparency in relation to issues such as lobbying and donations. The chapter encourages businesses, as a starting point, to make use of international best practice instruments like ISO 37001 (pertaining to anti-bribery management systems). Moreover, Essay 6 in this guide (titled 'Leading with vigilance') provides narrative examples of anti-corruption activism and presents the interesting case of EOH which owned up to various corrupt activities, while displaying unusual levels of transparency and vulnerability. The EOH story is covered in great detail in an academic case study titled 'EOH Holdings Ltd: From blacklist to market confidence through corporate restructure and governance', which I co-authored in 2021 with my GIBS colleagues Prof Mike Ward and Amy Moore.[18] The case study provides many nuanced prescriptions for managers and leaders in South Africa who are looking for an antidote to the ongoing scourge of corruption.

By far the most practical chapter in this guide is Chapter 4 (titled 'Guidelines for an anti-corruption policy – proposals'), which sets out eight categories of principles designed to ensure that an anti-corruption message permeates an organisation. The first category ('The tone from the top or the role of the board') focuses on governance practices. The second category ('Adoption and publishing of an anti-corruption policy') and the third category ('The formation and structure of anti-corruption function') speak to the intersection between governance and the operationalisation of an anti-corruption strategy in an organisation. The fourth category ('The substance of an anti-corruption policy') and the fifth category ('The role of regular risk assessments') should be of interest to everyone in an organisation. The seventh category ('The role of reparations') and the eighth category ('Guidelines for ethical lobbying') are new and emerging in South Africa, with the latter being the subject of a doctoral thesis by Dr Wendy Dobson (see Essay 5). Clearly, we have much to learn about how other jurisdictions address the different aspects of an anti-corruption strategy, but we also have much to contribute to the global discourse.

Finally, you might have noticed that I omitted to mention the sixth category in the above paragraph. This was intentional as I believe it deserves special attention. It is now common cause that the Protected Disclosures Act of 2000 does not provide the necessary assurances to encourage whistleblowing. In a 2021 white paper titled 'South African Whistleblowers: Tribulations and Triumphs', authored by GIBS colleagues Prof Nicola Kleyn, Prof Mollie Painter, Dr Theresa Onaji-Benson, Dr Elmé Vivier and Rabbi Gideon Pogrund,[19] it is painfully illustrated that the few who are courageous enough to blow the whistle on corrupt practices in their organisations do so at great personal cost.

Corporate South Africa has been found wanting in its lack of support for whistleblowers. If there was one thing that business leaders should be called upon to do as part of their collective action, it is to strengthen the whistleblower regime – especially through the funding of civil society organisations that do an exceptional job of fighting corruption, with whistleblowers acting as crucial partners. Initiatives inspired by Chapter 5 in this guide titled 'The imperative for collective action' should begin with the creation of a safe environment for whistleblowers in South Africa.

[17] Robert Grosse, Albert Wöcke and Morris Mthombeni, 'Explaining the performance of South African firms', International Journal of Emerging Markets, 2022, accessible at https://www.researchgate.net/publication/364152695_Explaining_the_performance_of_South_African_firms

[18] Morris Mthombeni, Amy Moore and Mike Ward, 'EOH Holdings Ltd: From blacklist to market confidence through corporate structure and governance', 2021, accessible at https://store.hbr.org/product/eoh-holdings-ltd-from-blacklist-to-market-confidence-through-corporate-structure-and-governance/W25094

[19] Nicola Kleyn, Gideon Pogrund, Elmé Vivier, Theresa Onaji-Benson and Mollie Painter, 'South African Whistleblowers: Tribulations and Triumphs', Gordon Institute of Business Science, University of Pretoria, 2021, accessible at https://www.gibs.co.za/about-us/faculty/documents/whitepapers/kleyn_south%20african%20whistleblowers.pdf

REFERENCES

ANC. (1994). The Reconstruction and Development Programme [Online]. Available: https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv02039/04lv02103/05lv02120/06lv02126.htm [2021, June 8].

Ball, P. (2015a). ***Cape Gauge - From Ox-wagon to Iron Horse*** [Online]. Available: https://www.theheritageportal.co.za/article/cape-gauge-ox-wagon-ironhorse [2022, October 25].

Ball, P. (2015b). ***Interlude on the Narrow Gauge*** [Online]. Available: https://www.theheritageportal.co.za/article/interlude-narrow-gauge [2022, October 25].

Bichou, K. (2021). ***Development of a strategic plan for port performance improvement in South African container terminals***. Helsinki: United Nations University World Institute for Development Economics Research (UNU-WIDER). Available: https://sa-tied.wider.unu.edu/sites/default/files/SA-TIED-BichouReport_0.pdf [2022, October 28].

BusinessTech. (2022a). ***Fresh delays at Medupi and Kusile amid eyewatering costs***. https://businesstech.co.za/news/energy/635989/fresh-delays-atmedupi-and-kusile-amid-eye-watering-costs/

BusinessTech. (2022b). ***Kusile Unit 4 enters commercial operation***. https://businesstech.co.za/news/energy/592356/kusile-unit-4-enterscommercial-operation/

Calitz, J., and Wright, J. (2021). ***Statistics of utility-scale power generation in South Africa***. CSIR.

Charnes, A., Cooper, W. W., and Rhodes, E. (1978). Measuring the efficiency of decision making units. ***European Journal of Operational Research***, 2(6): 429-444, https://doi.org/10.1016/0377-2217(78)90138-8

Chasomeris, M. (2006). South Africa's Maritime Policy and Transformation of the Shipping Industry. ***Journal of Interdisciplinary Economics***, 17(3), https://doi.org/10.1177/02601079X06001700302

Chasomeris, M., and Gumede, S. (2022). Regulation, Governance and Infrastructure Pricing in South Africa's Ports Sector, in C. Ferrari, H. Haralambides, S. Prete, and A. Tei (eds.), ***Regulation and Finance in the Port Industry. Palgrave Studies in Maritime Economics.*** Cham: Palgrave Macmillan, https://doi.org/10.1007/978-3-030-83985-7_4

Chen, C. H. (2016). Solving the Puzzle of Corporate Governance of Stateowned Enterprises: The Path of the Temasek Model in Singapore and Lessons for China. ***Northwestern Journal of International Finance***, 36(2): 303-370.

Cheng Han, T. (2016). ***The Beijing Consensus and Possible Lessons from the "Singapore Model"?*** National University of Singapore Working Paper 2016/001.

Congress of the United States Congressional Budget Office. (2001). ***Causes and Lessons of the California Electricity Crisis***. Congress of the United States Congressional Budget Office.

Creamer, T. (2019). ***Technical defects at Medupi and Kusile resulting in serious underperformance.*** https://www.engineeringnews.co.za/article/technical-defects-at-medupiand-kusile-resulting-serious-underperformance-2019-02-01-1

Creamer, T. (2022). ***DMRE details fresh electricity procurement delays in briefing of lawmakers***. https://www.engineeringnews.co.za/article/dmre-detailsfresh-electricity-procurement-delays-in-briefing-of-lawmakers-2022-05-03

Cronje, J. (2021). ***Medupi explosion: 'Extensive damage' caused, Eskom staff suspended***. https://www.news24.com/fin24/economy/eskom-confirmsexplosion-at-medupi-no-injuries-reported-20210809

Cronje, J. (2022). ***New delay in emergency power plan as state extends financial close yet again***. https://www.news24.com/fin24/economy/just-innew-delay-in-emergency-power-plan-as-state-extends-financial-close-yetagain-20220131

Department of National Treasury (South Africa). (2021). ***Operation Vulindlela – Summary Booklet***. Pretoria: Department of National Treasury.

Department of Public Works and Infrastructure (South Africa). (2021). Section 4 (a) of the Infrastructure Development Act (23/2014): National Infrastructure Plan 2050 ("NIP 2050") for comments. (Notice 674). ***Government Gazette***, 44951: 22-28, 10 August.

Department of Transport (South Africa). (1996). ***White Paper on National Transport Policy***. Pretoria: Department of Transport.

Department of Transport (South Africa). (1998). ***Moving South Africa: A Transport Strategy for 2020 — Report and Strategy Recommendations***. Pretoria: Department of Transport.

Department of Transport (South Africa). (2005). ***National Freight Logistics Strategy***. Pretoria: Department of Transport.

Department of Transport (South Africa). (2009). ***NATMAP Phase 2: Consolidated Analysis (inclusive of Provincial Reports)***. Pretoria: Department of Transport.

Department of Transport (South Africa). (2015). ***National Land Transport Strategic Framework – Final Draft – March 2015***. Pretoria: Department of Transport.

Department of Transport (South Africa). (2022a). ***White Paper of the National Rail Policy***. Pretoria: Department of Transport.

Department of Transport (South Africa). (2022b). ***White Paper on National Transport Policy***. Pretoria: Department of Transport.

De Villiers, W. J. (1986). ***Strategic planning, management practices and systems of the South African Transport Services***. Pretoria: South African Transport Services.

Eberhard, A. (2009). The political economy of power sector reform in South Africa, in D. G. Victor, T. C. Heller (eds.), ***The Political Economy of Power Sector Reform: The experiences of five major developing countries***. Cambridge University Press.

Eberhard, A., and Mtepa, M. (2003). Rationale for restructuring and regulation of 'low-priced' public utility: a case study of Eskom in South Africa. ***International Journal of Regulation and Governance***, 3(2): 77-102.

Eskom. (2015). ***Annual Financial Statements: 31 March 2015***.

Eskom. (2021a). ***Annual Financial Statements: 31 March 2021***.

Eskom. (2021b). ***Group annual results for the year ended 31 March 2021*** (presentation).

Eskom. (2021c). ***System status and outlook briefing***. https://poweroptimal.com/2021-update-eskom-tariff-increases-vs-inflationsince-1988/

European Parliamentary Research Service of the European Parliament. (2011). ***Weights and dimensions of road vehicles in the EU*** [Online]. Available: https://epthinktank.eu/2014/04/10/weights-and-dimensions-of-road-vehicles-inthe-eu/ [2022, October 25].

GIZ Energy Support Programme. (2015). ***Overview of the Vietnamese Power Market – A Renewable Energy Perspective***. GIZ.

Gumede, S., and Chasomeris, M. (2015). Maritime port pricing and governance in South Africa: trends and stakeholder comments. ***Journal of Economic and Financial Sciences***, 8(1): 47-62, https://doi.org/10.4102/jef.v8i1.83

Harris, R. G. (1977). Economies of Traffic Density in the Rail Freight Industry. ***The Bell Journal of Economics***, 8(2): 556-64, https://doi.org/10.2307/3003304

Hattingh, C. (2021). ***Ports Reform: Devil in the Details*** [Online]. Available: https://www.freemarketfoundation.com/article-view/ports-reform-devil-in-thedetails [2022, October 25].

Havenga, J. H., De Bod, A., Simpson, Z. P., Swarts, S., and Witthöft, I. E. (2021). ***A proposed freight and passenger road-to-rail strategy for South Africa***. Helsinki: United Nations University World Institute for Development Economics Research (UNU-WIDER). Available: https://sa-tied.wider.unu.edu/ sites/default/files/SA-TIED-Havenga-Report.pdf [2022, October 25].

Havenga J. H., and Pienaar W. J. (2012). Quantifying freight transport volumes in developing regions: Lessons learnt from South Africa's experience during the 20th century. ***Economic History of Developing Regions***, 27(2): 87-113, https://doi.org/10.1080/ 20780389.2012.745666

Havenga, J. H., Simpson, Z. P., and Goedhals-Gerber, L. (2017). International trade logistics costs in South Africa: Informing the port reform agenda. ***Research in Transportation Business and Management***, 22(1): 263–275, https://doi.org/10.1016/j.rtbm.2016.08.006

Hayuth, Y., and Roll, Y. (1993). Port performance comparison applying data envelopment analysis (DEA). ***Maritime Policy and Management***, 20(2): 153-161, https://doi.org/10.1080/03088839300000025

Janic, M. (2007). Modelling the full costs of an intermodal and road freight transport network. ***Transportation Research Part D***, 12(1): 33-44, https://doi.org/10.1016/j.trd.2006.10.004

Jones, S., and Inggs, J. (2003). The South African economy in the 1990s. ***Economic History of Developing Regions***, 18(1-2): 1-15, https://doi.org/10.1080/10113430309511151

Lee, A. D., and Gerner, F. (2020). ***Learning from Power Sector Reform Experiences: The Case of Vietnam***. World Bank Policy Research Working Paper 9169.

Meyiwa, A., and Chasomeris, M. (2016). Restructuring Port Governance in South Africa. ***Journal of Economic and Financial Sciences***, 9(3): 854-873, https://doi.org/10.4102/jef.v9i3.74

Meyiwa, A., and Chasomeris, M. (2020). South Africa's port doctrine: dilemmas and the way forward. ***Maritime Studies***, 19: 179–191, https://doi.org/10.1007/s40152-020-00166-2

Mitchell, M. (2009). ***A Critical Analysis of Selected Aspects of South African Transportation Policy***. Johannesburg: University of Johannesburg.

Mitchell, M. (2014a). ***A brief history of transport infrastructure in South Africa up to the end of the 20th century, Chapter 1: Setting the scene, Civil Engineering***, January/February. Available: https://sarf.org.za/wp-content/uploads/2016/08/MalcolmSeries1.pdf [2022, October 24].

Mitchell, M. (2014b). ***A brief history of transport infrastructure in South Africa up to the end of the 20th century, Chapter 2: Early days of railways and harbours, Civil Engineering***, January/February. Available: https://sarf.org.za/wpcontent/uploads/2016/08/MalcolmSeries2.pdf [2022, October 24].

Mitchell, M. (2014c). ***A brief history of transport infrastructure in South Africa up to the end of the 20th century, Chapter 4: The rise and fall of rail – fluctuating fortunes for modern rail infrastructure up to the 21st century, Civil Engineering***, January/February. Available: https://sarf.org.za/wp-content/uploads/2016/08/MalcolmSeries4.pdf [2022, October 24].

Moolman, S. (2022). ***2022 update: Eskom tariff increases versus inflation since 1988 (with projections to 2024)***. Power optimal.

National Treasury. (2022). Medium Term Budget Policy Statement. www.treasury.gov.za

News24. (2009). ***Unions want Eskom explanation***. https://www.news24.com/fin24/unions-want-eskom-explanation-20090525

Ng, W. J. N. (2018). Comparative Corporate Governance: Why Singapore's Temasek Model is not Replicable in China. ***International Law and Politics***, 51: 211-249.

Pittman, R. (2007). Options for restructuring the state-owned monopoly railway. ***Research in Transportation Economics***, 20: 179-198, https://doi.org/10.1016/S0739-8859(07)20007-1

Reichardt, M., and Duncan, D. (1990). Rail transport and the political economy of Southern Africa 1965-1980. ***Africa Insight***, 20(2): 100-110, https://hdl.handle.net/10520/AJA02562804_1187

Ryan, C. (2022). ***Despite jobs growth, employment still 5% below pre-pandemic levels – PwC*** [Online]. Available: https://www.moneyweb.co.za/news/south-africa/despite-jobs-growth-employment-still-5-below-prepandemic-levels-pwc/ [2022, October 22].

SANRAL. (2022). ***Company presentation 2021 Integrated Report*** [Online]. Available: https://static.pmg.org.za/220316NCOP_ Integrated_Report_2021_Presentation_NCOP_16_March_2022.pdf [2022, October 27].

Shuster, B. (2015). ***Compilation of Existing State Truck Size and Weight Limit Laws***. Washington, D.C.: US Department of Transportation, Committee on Transportation and Infrastructure, U.S. House of Representatives.

Sim, I., Thomson, S., and Yeong, G. (2014). ***The state as shareholder: the case of Singapore***. Chartered Institute of Management Accountants (CIMA) & Centre for Governance, Institutions and Organisations (CGIO).

StatsSA, Quarterly Labour Force Survey, Q4. (2021).

Stern, M., and Ramkolowan, Y. (2021). ***Understanding South Africa's Trade Policy and Performance***. South African Reserve Bank Working Paper Series WP/20/17. Available: https://www.resbank.co.za/content/dam/sarb/publications/working-papers/2021/WP%202117.pdf [2022, October 26].

Steyn, G. (2006). ***Investment and Uncertainty: Historical experience with power sector investment in South Africa and its implications for current challenges***. Working Paper prepared for the Management Programme in Infrastructure Reform and Regulation at the Graduate School of Business, University of Cape Town.

Stratton, S. (2003). Industrial relations in the Port of Durban: The implementation of the National Dock Labour Scheme, PhD dissertation, University of Adelaide. Available: https://digital.library.adelaide.edu.au/dspace/bitstream/2440/22063/2/02whole.pdf [2022, October 25].

Sweeney, J. L. (2002). ***The California Electricity Crisis***.

The World Bank. (2021). ***The Container Port Performance Index 2020 - A Comparable Assessment of Container Port Performance***. Washington, D.C.: The World Bank and IHS Markit.

Thompson, J. (2022). ***NSW Ports outlines plans expanding freight by rail*** [Online]. Available: https://infrastructuremagazine.com.au/2022/10/24/nsw-ports-outlines-plans-expanding-freight-by-rail/ [2022, October 24].

Trade and Industrial Policy Strategies (TIPS). (2014). ***Review of Regulation in the Ports Sector***. Johannesburg: Centre for Competition, Regulation and Economic Development, University of Johannesburg.

Transnet. (2022). ***Transnet Integrated Report 2022***. Johannesburg: Transnet.

Union of South Africa. (1909). ***South Africa Act***. Available: https://media.law.wisc.edu/s/c_8/jzhy2/cbsa1.pdf [2022, October 25].

Van der Merwe, J. L. (2022). ***A high-level long-term plan for the sequenced, phased, and feasibility-based development of a modern standard gauge national rail backbone in South Africa with connectivity to passenger and freight terminals***. Helsinki: United Nations University World Institute for Development Economics Research (UNU-WIDER). Available: https://sa-tied.wider.unu.edu/sites/default/files/SA-TIED-VanderMerweReport.pdf [2022, October 27].

Van Niekerk, H. C. (2004). ***Class notes (Port Economics)***. Stellenbosch: University of Stellenbosch.

Weare, C. (2003). ***The California Electricity Crisis: Causes and Policy Options***. Public Policy Institute of California.

Wilkinson, K. (2018). ***Eskom and the viral infographic: do the numbers add up***. https://africacheck.org/fact-checks/reports/eskom-and-viralinfographic-do-numbers-add

World Bank. (2011). ***Railway reform: Toolkit for improving rail sector performance.*** Washington, D.C.: The World Bank, Public-Private Infrastructure Advisory Facility. Available: https://www.ppiaf.org/ppiaf/sites/ppiaf.org/files/documents/toolkits/railways_toolkit/PDFs/RR%20Toolkit%20EN%20New%202017%2012%2027%20CH3.pdf [2022, October 25].

pwc

sasfin
beyond a bank

Hogan Lovells

LIBERTY

Standard Bank

FIRSTRAND

SIEMENS
Ingenuity for life

Discovery

Motus

Gordon Institute of Business Science
Centre for Business Ethics

Thank you to the corporate supporters of the GIBS Centre for Business Ethics