ARTICLE

Addressing corruption in South Africa

The COVID-19 pandemic has exposed a multitude of governance failures around the world and led to increased calls for fundamental changes to our global political, economic and social systems. Against the backdrop of a looming global recession, addressing corruption and the misappropriation of state resources remains as important as ever.

South Africa's governance structures need an overhaul to address the corruption challenge.

South Africa needs to take firm action to protect limited state resources and ensure good governance of public finances if it is to deliver to its people the basic rights enshrined in its constitution and to attract the necessary investment needed to fuel future economic growth.

Despite the widespread negative economic impacts wrought by the pandemic, the current political climate provides a unique opportunity to reinvigorate the country's fight against corruption.

To deal with corruption, cabinet and the governing party have proposed various measures ranging from criminal prosecution to requiring officials to step down from public office if charged. While it is encouraging to hear more robust anti-corruption rhetoric from the senior leadership in both government and the ANC, many initiatives and proposals remain statements of intent and it remains to be seen whether subsequent action will demonstrate whether "a line in the sand" has been drawn.

The positive momentum by the South African government in addressing the high levels of corruption exposed during the era of state capture under former President Jacob Zuma must be welcomed, but it will require far more than political will to effectively address the high levels of systemic corruption. If President Cyril Ramaphosa's government is to deliver on his promises of a "New Dawn", an overhaul of South Africa's key governance structures is required, underpinned by supportive mechanisms to ensure effective governance, transparency, accountability and scrutiny over the probity of public officials and related persons.

In this article we explore three areas of reform that government should focus on to better tackle corruption namely:

1. Changes to the public procurement system;
2. Re-establishing South Africa's investigative and prosecution capability;
3. Using civil law and administrative sanction to fight corruption.

A change in rhetoric or real change?

It is encouraging to see the change in rhetoric of the senior leadership in both government and the ANC towards tackling corruption. On 2 August 2020 the ANC NEC issued a statement:

> *"… the ANC needs to draw a clear line in the sand between the organisation and those who steal from the people. It agreed on decisive action to tackle corruption within the ANC and across society."*

This was followed by the statement from Government following the cabinet meeting of 26 August 2020 that:

> *"The scourge of corruption, which manifests itself in the blatant theft and looting of state resources, is the biggest societal cancer that hasthe potential to erode public trust in government's concerted efforts to improve the lives of the people. Cabinet condemns in the strongest possible terms all acts of corruption and is confident that all wrongdoers will eventually be prosecuted, without fear or favour."*

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While it is encouraging to hear more robust anti-corruption rhetoric of the senior leadership in both government and the ANC, many initiatives and proposals remain statements of intent and it remains to be seen whether subsequent action will demonstrate that "a line in the sand" has been drawn.

The revelations at the Zondo Commission have laid bare the details of weaknesses in government's decision-making structures and spurred a range of amendments to the country's governance frameworks. Like many of the other commissions and inquiries instituted since President Ramaphosa was appointed, the Zondo Commission demonstrates government's commitment to improving transparency and governance but there is continued frustration amongst many South Africans that such evidence has not resulted in real accountability or criminal prosecution.

1. CHANGES TO THE PUBLIC PROCUREMENT SYSTEM

It has become clear that the existing public procurement system simply cannot regulate transparent, fair, efficient and sustainable public procurement in South Africa as required by the Constitution.

Auditor General, Kimi Makwetu said at the release of the results:

> *"Municipalities have a poor track record of dealing with irregular expenditure and ensuring accountability…The material irregularities we identified and reported are not complex accounting or procurement issues and could have been prevented through basic controls."* [1]

R967bn

Non-adherence to the Public Finance Management Act, 1999 (Act 1 of 1999) and the Municipal Finance Management Act, 2003 (Act 56 of 2003) has created widespread opportunities for corruption along the supply chain. Given the scale of South Africa's public procurement - in 2017, based on South African Reserve Bank statistics, R967 billion or almost a fifth of the South African economy was channelled through public procurement contracts[2] – this is an area where government could make major improvements to governance through regulatory reform.

Municipal audit results for 2018-2019, for example, show irregular expenditure increased to R32.06 billion from the R25.2 billion reported the previous year.

[1] *https://businesstech.co.za/news/finance/412443/irregular-spending-at-south-african-municipalities-hits-r32-billion-heres-what-theyre-wasting-money-on/*

[2] *Brunette, R., Klaaren, J., & Nqaba, P. (2019). Reform in the contract state: Embedded directions in public procurement regulation in South Africa. Development Southern Africa, 36(4), 537-554. See https://pdfs.semanticscholar.org/86b5/f274722ec8afeb-18d389a3725630504fcfce.pdf*

Regular public procurement processes are lengthy, involving open tenders and multiple decision makers. A shortage of capacity in procuring entities, a fragmented legal framework, the desire to pursue other social goals such as black economic empowerment, political interference and a lack of transparency continue to plague the system.

Quick fixes that work around the complicated state procurement system are not a long-term solution as demonstrated by emergency procurement of medical supplies during the COVID-19 pandemic by the state.

Given the urgency of the pandemic and the need to procure medical supplies quickly, National Treasury invoked an emergency procurement system which did away with the need for open tendering and allowed for deviations from existing processes. The emergency procurement was lawful and in line with international best practice, but failed spectacularly when vital COVID-19 funds were channeled to politically connected businesspeople.

In the months under lockdown public anger about the abuses of state resources by politically-connected individuals and the apparent inability of the state to take action against them was palpable.

As described by Professor of Law, Omphemetse S Sibanda in a Daily Maverick opinion piece on 2 August 2020:

"Allegations abound of the abuse of power for private gain, and public loss resulting from suboptimal decisions in procurement choices or nefarious overspending on project implementation. The truth is that South Africa is in the belly of the beast of corruption, and our leaders are falling to corrupt activities like dominoes instead of being at the forefront of taming the beast. Government officials, politicians and high-ranking members of the African National Congress (ANC) are said to be wallowing in the benefits of the sea of COVID-19 corruption." [3]

[3] *https://www.dailymaverick.co.za/opinionista/2020-08-02-we-must-purge-corruption-from-the-belly-of-the-covid-19-beast/*

Addressing the weaknesses in the Draft Procurement Bill

Fortunately, there is recognition of these failings and processes are under way to revamp South Africa's public procurement system.

Earlier this year, Parliament published the draft Public Procurement Bill, and called for public comments.

While it is encouraging that the Bill consolidates and standardises the existing legal framework around public procurement, there are a number of key weaknesses within the Bill:

Independent review of tender advertisements

There is a clear need for a succinct and independent review process of tender advertisements, awards and implementations and the Bill attempts to create this. However, the Bill establishes a Procurement Regulator but places this office within National Treasury, which jeopardises its independence.

Challenging of tender awards and monetary compensation

There is a lengthy review process set out in the Bill, which involves recourse to the procuring entity itself, the provincial treasury or regulator, the Procurement Tribunal and then the courts. As important as thoroughness is to review processes, accessibility is just as important, and the process should be streamlined and simplified in future versions of the Bill to ensure that dissatisfied bidders are able to quickly and cheaply challenge the award of a tender they believe to be irregular.

One persistent problem in reviewing irregular tenders is that it is often impractical to invalidate a tender as this may cause disruption to the provision of government services. This could be solved by awarding monetary compensation to a bidder who was unlawfully deprived of the tender, to be paid as a fine by the procuring entity and/or the successful bidder. This would serve as a potential deterrent and would change the existing system of impunity experienced by procuring entities. A monetary fine system should be included in future versions of the Bill.

Addressing the lack of transparency

No meaningful change in the procurement system can be achieved without a full commitment to transparency. At present, the Bill does not make a commitment to transparency, and various provisions limit access to information on tenders to public bodies. It also does not require publication of information through the tender process.

Due to its decentralised nature, a more transparent procurement system that published all information in an accessible manner would be far easier for government's accountability mechanisms, civil society and the media to monitor and increases competition between companies bidding for tenders as they are more easily able to access all relevant information.

However, legislative reform is not the only way for the procurement process to be made more transparent, and National Treasury and the Office of the Chief Procurement Officer (OCPO) need not wait for the new Bill to be enacted into law to implement changes. Internal policies and procedures can be strengthened and adopting the Open Contracting Data Standard (OCDS) – an international standard for the publication of planning, procurement and implementation information - would be a very good place for the South African government to start.

Better protection for whistle blowers

The opaque nature of the existing procurement system also results in a heavy reliance on whistle-blowers with inside information on irregular tenders bringing the wrongdoing to light. South Africa's legislative protection of whistle-blowers extends only to protection from workplace detriment, and any physical safety protections require involvement from the under-capacitated South African Police Service. It is therefore important that any measures adopted to improve accountability for procurement corruption must include whistle-blower protection.

Publishing the ultimate beneficial ownership of companies

One final element that could, indirectly, prevent procurement corruption would be to make beneficial ownership information publicly accessible. At present, the Companies and Intellectual Property Commission (CIPC) publishes only the details of directors of companies. This enables monitoring mechanisms to identify conflicts of interest in government tenders being awarded to companies with politically-connected directors.

However, many companies are ultimately not controlled by the directors, and other individuals stand to benefit from the company's profits.

Requirements that beneficial ownership data be published recognises this and requires all companies to provide information on natural and juristic persons who own or control the company.

There is currently a process to amend the Companies Act, and there has been a big push by civil society and business representatives to include a requirement in the amendment that beneficial ownership information be collected and published publicly. Like the Procurement Bill, this legislative reform has the potential to have a significant impact by making it harder for corrupt tenders to slip through the cracks.

2. RE-ESTABLISHING SOUTH AFRICA'S INVESTIGATIVE AND PROSECUTION CAPABILITY

The ultimate objective of investigations into corruption is successful prosecution and it therefore makes sense for those investigations to be prosecution-led. Prosecutors, investigators and intelligence specialists need to work hand-in-hand to secure convictions.

One of the key components in the fight against corruption is the re-establishment of investigative and prosecutorial capability commensurate to the corruption challenge.

There is precedent for having prosecutor-led investigations in South Africa - namely the now disbanded Directorate of Special Operations (known as the Scorpions).

From its establishment in 1999, the DSO pioneered a new approach, combining intelligence, investigation and prosecution to convict financial directors of fraud, tackle major international corporate raiding in conjunction with the UK and USA and register money-laundering and racketeering convictions.

The unit had a conviction rate of between 82% and 94%. In 2002, 66 people were arrested and by 2006 this number had climbed to 617 before the unit was controversially dissolved in 2008[4].

[4] *https://www.corruptionwatch.org.za/switching-scorpions-cases-to-hawks/*

Twelve years later...

We find ourselves with a deeply flawed governance structure. State investigation and prosecution skills have been hollowed out and the Directorate for Priority Crime Investigations lacks the necessary skills to investigate highly complex corruption cases.

In addition, the lack of a formalised investigative unit within the National Prosecuting Authority (NPA) itself hampers its ability to contribute meaningfully to a multi-pronged approach to anti-corruption.

Although the current Investigating Directorate, under Hermoine Cronje, is a welcome addition to the NPA's arsenal, its focus on only a small portion of corruption cases limits its effectiveness.

There is an emerging recognition that the criminal justice system and the current structures of the investigation and prosecution authorities are no longer adequate.

As much was conceded by the ANC NEC after its meeting in August 2020 which called on national cabinet to urgently:

> ***"…establish a permanent multi-disciplinary agency to deal with all cases of white-collar crime, organised crime and corruption. Furthermore, the NEC called upon all law enforcement agencies to carry out their duties without fear, favour or prejudice."***

Cabinet's response can be seen in their statement of 26 August 2020:

The Fusion Centre, which coordinates the work of all law-enforcement agencies, remains on track to present its first six weekly report in the first week of September 2020 to President Cyril Ramaphosa.

Cabinet will give the necessary support to all law-enforcement agencies. This will include giving them the resources they need to function optimally, independently without fear, favour and prejudice in facilitating the investigation and prosecution of corruption-related cases without any further delay.

The President described this Fusion Centre in his newsletter as a special centre that has:

> ***"been established that brings together the Financial Intelligence Centre, the Independent Police Investigative Directorate, National Prosecuting Authority, the Hawks, Crime Intelligence and the SAPS Detective Service, South African Revenue Service, Special Investigating Unit and the State Security Agency."***

These 'work-arounds' of the existing structures speak to the fact that the structures in their current forms and siloes are no longer optimal and that there needs to be a move towards establishing a carefully constructed single, multifaceted investigative and prosecutorial capability to deal with corruption, including incorporating prevention and detection strategies under such an entity.

An investigative directorate housed in the NPA?

Following a Commission of Inquiry appointed to investigate the mandate and location of the Scorpions, Judge Sisi Khampepe made it clear that it was both rational and constitutional to have an investigative unit within the NPA.

It is our assessment a successful investigative directorate and prosecution authority needs to be a single unit under with leadership with security of tenure protections; a specialised unit with sufficient, properly trained staff having security of tenure; have the ability to contract specialist expertise; and be independent from executive influence, control or interference.

Crucial factors to consider include establishing the investigative component within the NPA since this will require the recruitment of investigators and intelligence specialists. The ability to draw on the existing infrastructure and body of experienced prosecutors from other arms of the justice system should also be factored into planning.

To achieve the desired independence, definitive legislative and constitutional amendments will be required.

The Fusion Centre, established during the COVID-19 pandemic, brings together the Financial Intelligence Centre, the Indepedent Police Investigative Directorate, National Prosecuting Authority, the Hawks, Crime Intelligence and the SAPS Detective Service, South African Revenue Service, Special Investigating Unit (SIU) and the State Security Agency. This has proven to be a successful model for inter-agency, inter-departmental and inter-personal cooperation, but does not currently have the necessary legisltive protection or permanence. This multi-stakeholder approach would need to be formalised through legislative amendments.

So as not to undermine the existing work of the Investigative Directorate and NPA in respect of current corruption cases, it is of critical importance that re-structuring be based on a more permanent solution.

While the NPA is being structurally re-capacitated, a parallel stream must be pursued to strengthen the NPA's existing anti-corruption efforts by facilitating the recruitment of specialist services, including best-in-class data and cyber analytic specialists in cooperation with other entities such as the SIU.

What is clear is that as part of the systemic reforms proposed, there is a need for a guarantee of real independence.

Whatever end state we arrive at – whether it be a different NPA or a new anti-corruption agency it must have greater independence guarantees than what currently exist.

The authority for such propositions should always be the Constitution.

Using technology to support information sharing

Technology to enable the sharing of financial crime intelligence within financial services and investigative agencies can be used to bridge the gap between jurisdictions, business lines and departments, whilst saving time on investigations, driving down costs and identifying financial crime typologies should also be considered.

Centralised intelligence sharing platforms that autonomously identify potential commonalities between existing open and closed investigations already exist in the market.

Such platforms are designed to be system-agnostic, with the ability to synthesise multiple data sources and formats, making it accessible to all departments and lines of business.

This eliminates the need for financial institutions to instigate a costly IT infrastructure overhaul.

Managing data privacy remains an important issue, but one that can be solved by technology solutions that ensure that full control over data sharing is retained by the investigation owner.

3. USING CIVIL LAW AND ADMINISTRATIVE SANCTION TO STRENGTHEN THE FIGHT AGAINST CORRUPTION

Given the magnitude of existing corruption, law enforcement efforts need to incorporate the full complements of South Africa's criminal, civil and administrative legal framework to ensure accountability. While criminal prosecutions remain an important aim, they are lengthy, resource-intensive and costly. Criminal prosecutions in a constitutional democracy are naturally a lengthy process because the prosecution must prove the accused's guilt beyond reasonable doubt. To meet this standard of proof, the state needs to ensure that criminal matters are investigated thoroughly, failing which the accused walk scot-free.

Deputy Director of Public Prosecutions, Adv Billy W Downer SC, in an interview with FTI Consulting said:

> *"The experience generally internationally is that criminal prosecutions take a long time."*

Notwithstanding this, the length of time to conclude criminal prosecutions in South Africa is extremely slow following the devastation on capacity, even of the judiciary, wrought by state capture in recent years.

Under the previous administration, those who were charged with the responsibility to provide clear and convincing evidence in criminal prosecutions in order to secure convictions, were busy fighting factional battles in the ruling party, bowing down to political pressure and in the process, persecuting those who were investigating corruption by introducing bogus criminal and disciplinary charges against them and ultimately hounding them out of their positions[5].

Downer stated:

> *"The NPA has experienced problems with its resources because of state capture. There was deliberate intention on the part of whoever the role players were, to frustrate the proper investigative agencies, the oversight role of parliament and government ministries."*

[5] *https://www.news24.com/news24/southafrica/news/npa-boss-drops-racketeering-charges-against-johan-booysen-co-20190709 and https://www.iol.co.za/news/politics/da-welcomes-long-overdue-reinstating-of-charges-against-nomgcobo-jiba-840007a7-85e5-486b-abaa-bad95d672b67*

The National Director of Public Prosecutions, Shamila Batohi, told Parliament's Justice committee in July 2020 that:

The NPA and the Hawks has been stripped of the ability to investigate highly complex corruption cases" and that she wanted to make use of the expertise developed by the Zondo Commission.[6]

As the NPA management is scrambling to rebuild the institution and at the same time is seized with the enormous task of prosecuting a volume of high-profile cases that were archived during and prior to the years of state capture, it is going to take time before these cases are ready for prosecution.

Furthermore, by the time the NPA is able to initiate processes to recover the proceeds of crime, these would have long been squandered or hidden.

While successful criminal prosecutions are key, South Africa needs to use the civil law effectively to recover the proceeds of crime and explore possible additional mechanisms that make punitive sanction administratively possible.

Civil and administrative sanctions have the benefit of being less legally onerous as the standard of proof is a "balance of probabilities" rather than the criminal standard of "beyond reasonable doubt", but they also lead directly to a recovery of proceeds of crime.

Although criminal convictions can lead to forfeiture of criminally-obtained assets, South Africa also has a system of non-conviction-based asset forfeiture which does not require a prior criminal process or applies if an accused has been acquitted of criminal charges.

This allows the state to institute proceedings to recover proceeds of unlawful activities and a court can order the forfeiture of those assets if it believes that, on a balance of probabilities, the assets were obtained through unlawful activities.

The benefits of criminal and civil processes: The Special Investigating Unit and Special Tribunal

The benefits of utilising both criminal and civil processes to ensuring accountability and recovery of assets are demonstrated in the achievements in the achievements of the SIU's Special Tribunal in making progress in cases related to state capture and COVID-19-related corruption including the use of non-conviction based orders for asset seizure.

The SIU is a statutory body, created through the Special Investigating Units and Special Tribunals Act of 1996.

This Act gives the President the power to create Special Investigating Units to investigate "malpractices or maladministration in connection with the administration of State institutions, State assets and public money as well as any conduct which may seriously harm the interests of the public".[7]

The existing SIU was established through presidential proclamation in 2001, and investigates matters referred to it by the president.

The SIU has the powers to institute and conduct civil proceedings in any court of law or a Special Tribunal in its own name or on behalf of State institutions. Evidence relating to the commission of a crime is referred to the relevant prosecuting authority.[8]

The SIU has until recently been instituting civil recovery proceedings with the courts, the results of which have not been encouraging.

President Cyril Ramaphosa established the Special Tribunal by in terms of the SIU and Special Tribunals Act 74 of 1996 in February 2019, to expedite hearings for SIU cases designed to recover public funds syphoned from the fiscus through corruption, fraud and illicit money flows. The establishment of the Special Tribunal has thus far proven to be effective in recovering state assets as compared to the cases the SIU enrolled with the courts.

Special Tribunals only have jurisdiction over civil matters and make awards as to civil recoveries, and can adjudicate on civil proceedings brought before it by issuing any one of a range of enforceable orders.

It also has subpoena powers to cause any person to appear before it and to recover evidence.

[6] *https://ewn.co.za/2020/07/09/prosecution-skills-have-been-hollowed-out-batohi-laments-npa-s-budget*

[7] *Preamble, Special Investigating Units and Special Tribunals Act, 74 of 1996.*

[8] *Annual-Report-2016-2017, Page 12.*

Since the establishment of a Special Tribunal, the SIU has thus far been able achieve, amongst others, the following:

- Issuing of summons (jointly with Eskom) intended to recover funds from former Eskom executives, former board members and members of the Gupta family;
- Court process to recover more that R400 million from the German software firm, SAP;
- Interdicted the Government Employee Pension Fund from paying out employees who have resigned from their positions and
- An order to freeze the accounts of 40 entities linked to COVID-19 tender irregularities at the Gauteng health department.

The spokesperson for the Special Tribunal, Selby Makgatho, stated in a News24 opinion piece on 26 July 2020 that:

> ***"Before the Special Tribunal, the SIU had enrolled its cases with the different divisions across the country. However, given the lengthy period it takes to finalise the proceedings, Ramaphosa established the Special Tribunal and committed it to recover an estimated amount of R15 billion stolen from public coffers over the years. Some of the cases that were enrolled before the courts since 2013 have not been finalised. The Special Tribunal is expected to give expeditious litigation and assist the public to recover the money."*** [9]

To strengthen the SIU and immunise it from potential political interference, we suggest a number of key legislative amendments.

- Firstly, incorporating the SIU into an all-purpose independent anti-corruption agency with constitutional status would enable it to initiate investigations without the need for presidential proclamations.
- Secondly, a permanent Special Tribunal should be established to enable the continued prosecution of civil matters and extend the Tribunal's powers to include the power to impose punitive, administrative penalties which will have the effect of a civil judgement.
- Furthermore, as the current SIU's mandate only focuses on malpractices and maladministration state institutions, a joint investigative body in the form of the SIU and the NPA's Investigative Directorate would be suitable to consider matters both in the public and public sectors.

Punitive sanctions: SARS and the Competition Tribunal

Although the South African legal framework does not empower law enforcement agencies to punish individuals and firms that engage in malpractices and maladministration by imposing administrative penalties, administrative fines do have the potential to deter individuals or firms from engaging in illegal conduct/activities. One only need look to the successes of the South African Revenue Service and Competition Tribunal for evidence of this. This is not a concept that is alien to the South African legal system.

A recent example of the Competition Commission and Competition Tribunal illustrates the effectiveness of punitive sanctions, especially in a time of crisis such as the one presented by the COVID-19 pandemic; as well as how punitive sanctions could be used to punish perpetrators of corruption punished by way of a civil judgement.

The Competition Commission investigated Dis-Chem for alleged anticompetitive conduct relating to the hiking of prices of face masks during the COVID-19 pandemic.

Following the investigation, the Competition Tribunal found Dis-Chem guilty of contravening the Competition Act by selling surgical face masks at excessive prices during the COVID-19 pandemic.[10]

In the interest of expediency to deal with the large number of pending and unresolved corruption cases, the imposition of similar punitive sanctions by the Special Tribunal, should be considered.

The power of the Competition Tribunal to impose fines derives from the Competition Act. The Tribunal may 'make an appropriate order in relation to a prohibited practice' and such order may include the imposition of 'an administrative penalty'.

[9] *https://www.news24.com/news24/columnists/guestcolumn/opinion-the-special-tribunal-will-deliver-20200726*

[10] *https://ewn.co.za/2020/07/07/dis-chem-found-guilty-of-contravening-competition-act-over-face-mask-prices*

Another state institution that has the powers impose punitive sanction and whose success can to a large extent be attributable this, is the South African Revenue Service (SARS). SARS has extensive powers in terms of the Tax legislation to act against people and firms that violate tax legislation. SARS is by far the most effective entity in the country in terms of ensuring that punitive actions are taken where possible.

If a firm is found to have violated the Customs and Excise Act by importing counterfeit goods, SARS has the powers in terms of the Customs and Excise Act not only to confiscate the goods, but to impose a penalty of up to 300% the value the goods.

Thus, in the interest of expediency to deal with the large number of pending and unresolved corruption cases, the ability to impose administrative sanctions should be considered for the Special Tribunal.

Consideration should also be given to allowing offenders to self-disclose and subject themselves to an administrative penalty to avoid criminal prosecution. This can be coupled to Deferred Prosecutions Agreements (DPA), as used in other jurisdictions, which require the impugned organisation to agree to certain terms often including, but not limited to, co-operation with investigations, admission of certain facts, imposition of penalties, fines, restitutions and (or) other remedial actions.

CONCLUSION

To address corruption effectively, changes to South Africa's governance structures require structural and systematic reforms, rather than an ad-hoc approach that seeks to work around the system's current weaknesses. A comprehensive approach against corruption using civil and criminal law would far better ensure accountability and transparency.

This strategy includes reforming the public procurement system; re-capacitating an independent prosecution-led investigative authority within the NPA; and enabling punitive administrative justice through regulatory reform

The Draft Procurement Bill seeks to address weaknesses in the current public procurement system, but should go further in terms of ensuring transparency, protecting whistle blowers and amending the Companies Act to ensure publication of the ultimate beneficial ownership of companies.

Public procurement can also be reformed by non-legislative means by strengthening internal policies and procedures to ensure better accountability and monitoring.

President Ramaphosa's establishment of the emergency Fusion Centre during COVID-19 - a one-stop-shop to encourage inter-agency, inter-departmental and inter-personal cooperation is a step in the right direction, but it lacks the necessary legislative protection or permanence.

We should look to formalise this multi-stakeholder approach through legislative amendments.

While the NPA is re-capacitated, there is also recognition that the current case load of corruption cases can't be put on hold. Instead, interim solutions that improve the existing functioning of the NPA should be implemented in parallel, including the recruitment of specialist services, cooperation with other units, upskilling and equipping resources.

Finally, by following the successful examples of SARS and the Competition Tribunal, enabling the SIU to impose punitive sanctions should be considered.

The establishment of the SIU as an independent entity would also enable the unit to initiate investigations without the need for presidential proclamations.

In addition, the establishment of a permanent Special Tribunal would enable the continued prosecution of civil matters, and an extension of the Tribunal's powers would include the power to impose punitive, administrative penalties would go a long way in stemming corruption and protecting valuable state resources.

"By seizing the opportunity to reform these key governance structures South Africa will be able to take firm action to address corruption and hold those responsible of depriving millions of South Africans of their constitutional and human rights to account."

PETRUS MARAIS
Senior Managing Director
FTI Consulting South Africa
petrus.marais@fticonsulting.com

JACQUI WILMOT
Senior Director
FTI Consulting South Africa
jacqui.wilmot@fticonsulting.com

LLOYED RAKGOALE
Consultant
FTI Consulting South Africa
lloyed.rakgoale@fticonsulting.com

KARAM SINGH
Head of Legal and Investigations
Corruption Watch
karams@corruptionwatch.org.za