

CORRUPTION: STRONG GOVERNMENTS AND ETHICAL LEADERS BRING SUSTAINABILITY

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Irrespective of where you may live -- and no matter what your line of business and language may be -- universal thoughts most often expressed by people regarding corruption is obscured in darkness and negativity. Corruption is by no means something new; it has followed mankind throughout the ages and it continues to exist in various forms to include *grand corruption*, *political corruption*, *corporate* and *administrative corruption*, as well as *petty* and *systemic corruption*.

The United Nations Convention Against Corruption in New York stated in October 2003 that “*corruption is an insidious plague that has a wide range of corrosive effects on societies and it undermines democracy and the rule of law.*” But while leaders across the world eloquently continue to (re)define corruption, markets are being distorted and human rights are being seriously violated through its abhorrent practices. In its simplest of term, corruption is any illegal act performed between two or more parties with the objective of producing results which would otherwise not have been possible. Considering the broadness of such an act, it is quite plausible to suggest that many so-called ‘innocent’ transactions between engaging parties falling within this loose definition may in effect be corrupt and therefore illegal. Acts of corruption have become so widespread and are deeply rooted in the fabric of society, to the point that it is deceptively harder to detect and unravel. As compared to a by-gone era where corruption was an act of abusive and selfish power enjoyed by a handful of the political and or business elite, today a far bigger group of individuals have the means and motive to participate in its sordid affairs, causing immeasurable damage to businesses and civil society. Corruption is a problem that affects every country and it occurs in nearly every workplace.

Expectedly, governments are appointed by its citizens on the basis that they will protect the people of their country through the proper establishment of legal and social structures. In this respect, it is critical that a society is assured by its government that it will institute and maintain the necessary frameworks to effectively manage and deal with all forms of corruption. That being said, given the knowledge and assurances that such frameworks exist -- and that they are driven by fair and legal processes -- it is equally important for the civilians of a country to know that all perpetrators of corruption, irrespective of their standing, will be treated in the harshest of terms. Anything less of a hefty sanction against the perpetrators of corruption simply makes a mockery of the structures which are supposed to govern a society.



SA's ranking in the Corruption Perceptions Index has steadily worsened over the last two decades

There are a number of international and regional conventions aimed at fighting corruption, and these include the United Nations Anti-Corruption Convention, the African Union Convention on Preventing and Combatting Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the Southern African Development Community Protocol against Corruption.

Allied to these conventions, there are also a number of business initiatives aimed at eliminating corruption, including the United Nations Global Compact which is a voluntary initiative that seeks to align business operations and strategies with ten principles, including the principle that “*businesses should work against corruption in all its forms, including extortion and bribery*”. But although South Africa is a stakeholder to these conventions, and in spite of our own world-class legal and regulatory frameworks to fight corruption, our country continues to demonstrate ineptitude in combatting and effectively managing this terrible scourge.

Transparency International (TI) is a well-recognised international non-governmental organisation and is devoted to combating corruption across the world. As part of their work, each year they produce a *Corruption Perceptions Index* (CPI) Report on the perceptions attached to *public corruption* for a number of participating countries, and South Africa is included in this report. The index ranks countries based on how corrupt their public sector is perceived to be. The score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean) and a country's rank indicates its position relative to other countries in the index. To this extent, given the recent spate of corruption allegations brought against various prominent government and business leaders in South Africa, it is hardly surprising that South Africa's CPI score in 2014 was 44 (a score below 50 indicates a significant corruption problem). Even more damaging to the brand of South Africa, is the fact that our TI ranking stands at 67th out of 174 countries and this position has become worse over the years. Understanding that the best ranking is 1, which is currently held by Denmark with a score of 92, South Africa is placed in 67th position and in the same league as Kuwait, Brazil and Bulgaria. Perceptions of public sector corruption in South Africa have certainly deteriorated over the past years, and our country has been a regular contender within TI's bottom league players. This is hardly surprising, considering the former head of the Special Investigation Unit -- Willie Hofmeyer -- who reported before parliament in 2011 that between R25 billion and R30 billion was lost to the government procurement budget each year due to corruption. Furthermore in 2012, the Institute for Accountability estimated that the South African economy may have lost approximately R675 billion as a result of corruption since 1994.

Transparency International also produce a *Bribe Payer's Index* (BPI) Report where *business executives* across the globe are surveyed regarding their respective views on the extent to which companies engage in bribery when conducting business abroad. Again a score is used where a maximum score of 10 corresponds with the view that companies from that country *will never pay a bribe*. Conversely, a score of zero indicates that the country in which the company operates *will always pay a bribe*. According to the most recent BPI Report, South African companies appear to be doing reasonably well with a score of 7.6; and while our ranking of 15 out of 28 countries is fair, there certainly is room for improvement.



Following Transparency International's reports on corruption and bribery, a South African anti-corruption non-profit organisation called *Corruption Watch* produces an annual report detailing corruption complaints. In its 2014 *Corruption Watch Annual Report*, 2,714 complaints were received where 56% of these complaints were confirmed to be corruption. Prior to 2014, reports of alleged corruption increased by 40% from 2,262 incidents of reporting in 2012, to 5,485 in 2013. The number of cases representing actual corruption -- which Corruption Watch defines as the abuse of public power and resources for personal gain -- increased from 38% to 58% over this period. Indeed all these figures are -- irrespective of whether they are perceived or factual -- alarmingly high and it is for this reason that it is imperative that legislative and regulatory frameworks are in place (and applied) to insure the integrity of a country, as well as doing business in that country.

In South Africa, we have an extensive anti-corruption legislative framework consisting of various laws which, amongst other, are aimed to fight corruption. Some of the more commonly known pieces of South African anti-corruption legislation include the Prevention and Combatting of Corrupt Activities Act (12 of 2004), the Prevention of Organised Crime Act (121 of 1998), the Criminal Procedure Act (51 of 1977), the Financial Intelligence Centre Act (38 of 2001) and the Promotion of Access to Information Act (2 of 2002). Besides the rough estimate of twenty pieces of South African legislation that serves within an intricate framework to detect and combat corruption, one should not forget the other international legislation South African organisations must acknowledge and adhere to, notwithstanding whether or not the organisation has overseas representation. In the event that a South African organisation has any government and or a foreign company or foreign person doing business within the organisation's supply chain, then legislation such as the United States' Foreign Corrupt Practices Act of 1977 and the UK Bribery Act of 2010 also has bearing.

Whilst the South African government has implemented a number of frameworks, which include the National Development Plan, the Medium Term Strategic Framework and the Public Sector Integrity Management Framework; the government has made a firm commitment to combat corruption no matter the cost. With the recently announced Multi Agency Working Group, together with other South African anti-corruption agencies such as the SIU (Special Investigating Unit), the Asset Forfeiture Unit, the Anti-Corruption Task Team and the Special Anti-Corruption Unit in the Department of Public Service and Administration, one should expect South Africa's corruption and bribery ratings to improve. Of course one should not forget the critical role played by non-profit organisations such as Corruption Watch, Lead SA and T.F.A.C. (The Fight Against Corruption) who each fulfil a key role in civil society.

"This evil phenomenon is found in all countries big and small, rich and poor but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid. Corruption is a key element in economic under-performance, and a major obstacle to poverty alleviation and development."

The United Nations Convention Against Corruption

New York, 31 October 2003

Indeed if we are serious about combatting corruption in South Africa, we will all need to play an active role in arresting its damaging effects, and the axiom that it takes "two to tango" rings very loudly, and is quite true. Needless to say it takes at least two parties to participate in any act of corruption; there must be a *Briber and a Bribee* ('Giver' and 'Taker') for the transaction to work.



In the context of business, all persons but especially directors, trustees and prescribed officers act as fiduciaries and they are expected by common law and statute to uphold the highest values of integrity and ethical behaviour. In this vein, and as people who are placed within positions of trust, they must serve and protect the organisation against corruption and its associated behaviour. For this to happen, not only must these leaders be beyond reproach themselves, they must be fully cognisant and compliant with the necessary anti-corruption legislation as well as ensure they have implemented robust systems to mitigate corruption.

Of course, there are many good reasons why countries should apply themselves seriously to deal harshly with corrupt people. But besides the more obvious reasons, one also needs to consider and witness the devastation this evil phenomenon has in the developing world where its impact -- particularly on social structures -- is the most destructive. The United Nations Convention Against Corruption aptly stated that *“corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discourage[es] foreign investment and aid.”* To this end, if corruption continues to rise notwithstanding the grand legislation and anti-corruption frameworks, then people will continue to suffer and especially so in poorer countries.

The recently launched *Social Progress Index* (SPI) attempts to determine what it means to be a good society and makes use of three dimensions, namely Basic Human Needs; Foundations of Wellbeing; and Opportunity. Within these three dimensions, there are twelve components which form the *Social Progress Framework*. Interestingly, as one considers the extent to which a country is measured in terms of its GDP (Gross Domestic Product) and then compares this to its SPI, then it is hardly surprising to see the correlation of a ‘healthy society’ and a ‘healthy economy’. Such is the case with developed countries such as Norway who were ranked 1st in the world out of 133 countries in 2015, followed by Sweden (2nd), Switzerland (3rd), Iceland (4th) and New Zealand (5th). South Africa was rated a poor 63rd in this index, and we were beaten handsomely by Slovenia (19th), Slovakia (25th), Lithuania (35th), Mauritius (36th), Croatia (37th) and Brazil (42nd).

Considering an index of this nature, including those such as the aforementioned, they most certainly support the rationale found in the King Reports for Good Governance that for a society and an economy to be healthy -- in other words balanced -- a country needs to have proper systems and structures in place which protect all forms of abuse against people, the planet and indeed profits. For this to occur, and where people and economies can operate for the benefit of all its stakeholders, corruption needs to be addressed in a far more meaningful and decisive way.

It is clear that the heart of the corruption problem lies within the perceived lack of accountability for maladministration which leaders -- and government -- seem to be evading. And whilst there may be anti-corruption architectural structures in place to tackle corruption in South Africa; these are meaningless if there is no political leadership that prevents continual impunity for the perpetrators fuelling corruption. Finally, having regular access to trends and detailed corruption statistics, which are not hidden under the guise of ‘commercial crime’, will go a long way to address the core issues, not least being able to craft suitable mechanisms to tackle this problem once and for all.

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