



AFRICA ACADEMY BRIBERY AND CORRUPTION (SPECIALITY) PILOT PROGRAMME **CORRUPTION CASE STUDIES**

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14 NOVEMBER 2023

TOPIC OUTLINE

- DEFINING CORRUPTION
- CATEGORIES / TYPES OF CORRUPTION
- MOTIVATIONS FOR, AND MANIFESTATIONS OF, THE CRIME OF CORRUPTION
- INHERENT RISKS AND CHALLENGES IN INVESTIGATIONS AND PROSECUTIONS
- WHY IT IS IMPORTANT TO COMBAT CORRUPTION / CASE STUDIES
- IMPACTS OF CORRUPTION, TAX & OTHER FINANCIAL CRIMES
- HOW CORRUPTION MONEY IS LAUNDERED
- RED FLAGS / RISK INDICATORS
- INVESTIGATIVE TOOLS

CORRUPTION DEFINED

- Dishonest or illegal conduct - by those in positions of power or influence - for personal gain, typically involving bribery or other forms of gratification
- Mis-use of public office or the abuse of position for personal gain
- Corruption has the following elements:
 - someone giving (offering to give) / someone accepting (agreeing to receive)
 - someone in a position of power or influence
 - use of their position / power / influence unlawfully or unfairly
 - bribe or other form of gratification



GRATIFICATION
UNDER PRECCA INCLUDES:
MONEY; A DONATION; A FEE;
A REWARD; PROPERTY; THE
AVOIDANCE OF LOSS; THE
DISCHARGE OF A LOAN; A
PRIVILEGE; A DISCOUNT ETC.

CORRUPTION DEFINED – IN CLASS DISCUSSION

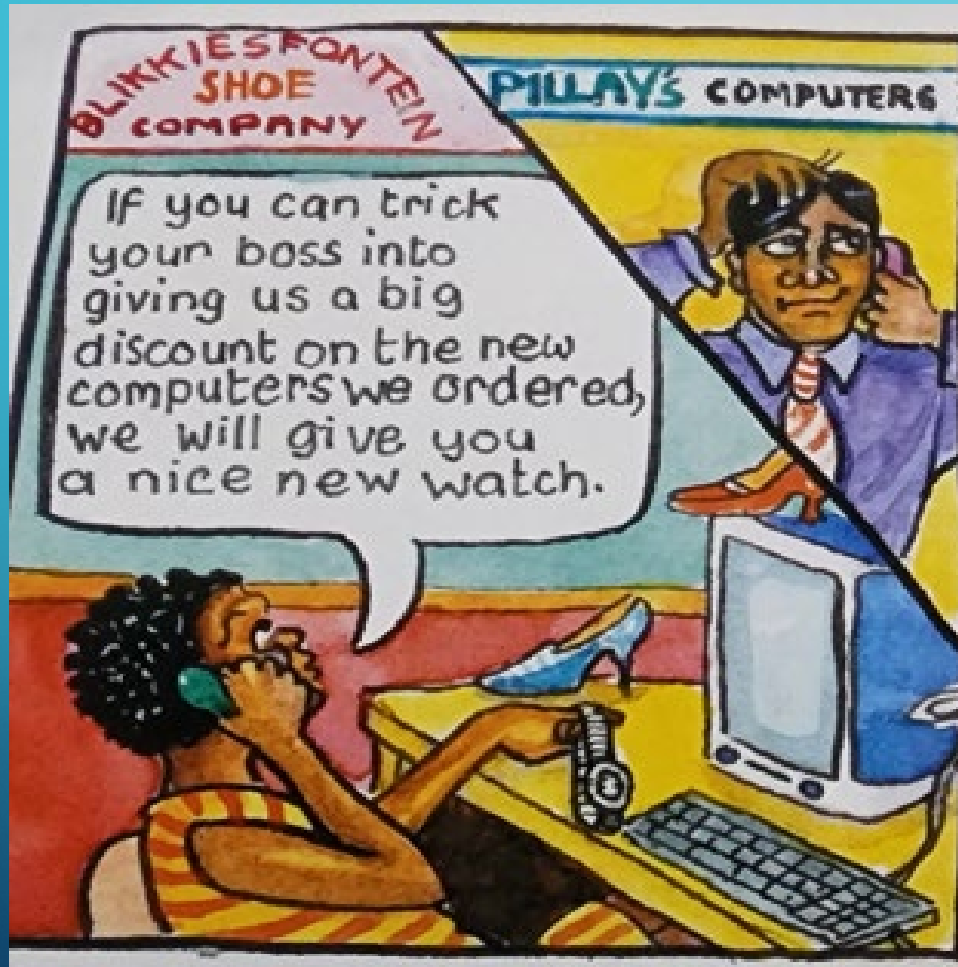


- 1) An employee who steals money from the Govt Dept for which she works
- 2) The financial director of the Govt Dept and creates false records claiming the money was used to defray business expenses
- 3) The financial director of the Govt Dept and causes a subordinate to create false entries in the accounting records to conceal the theft

CORRUPTION DEFINED – IN CLASS DISCUSSION



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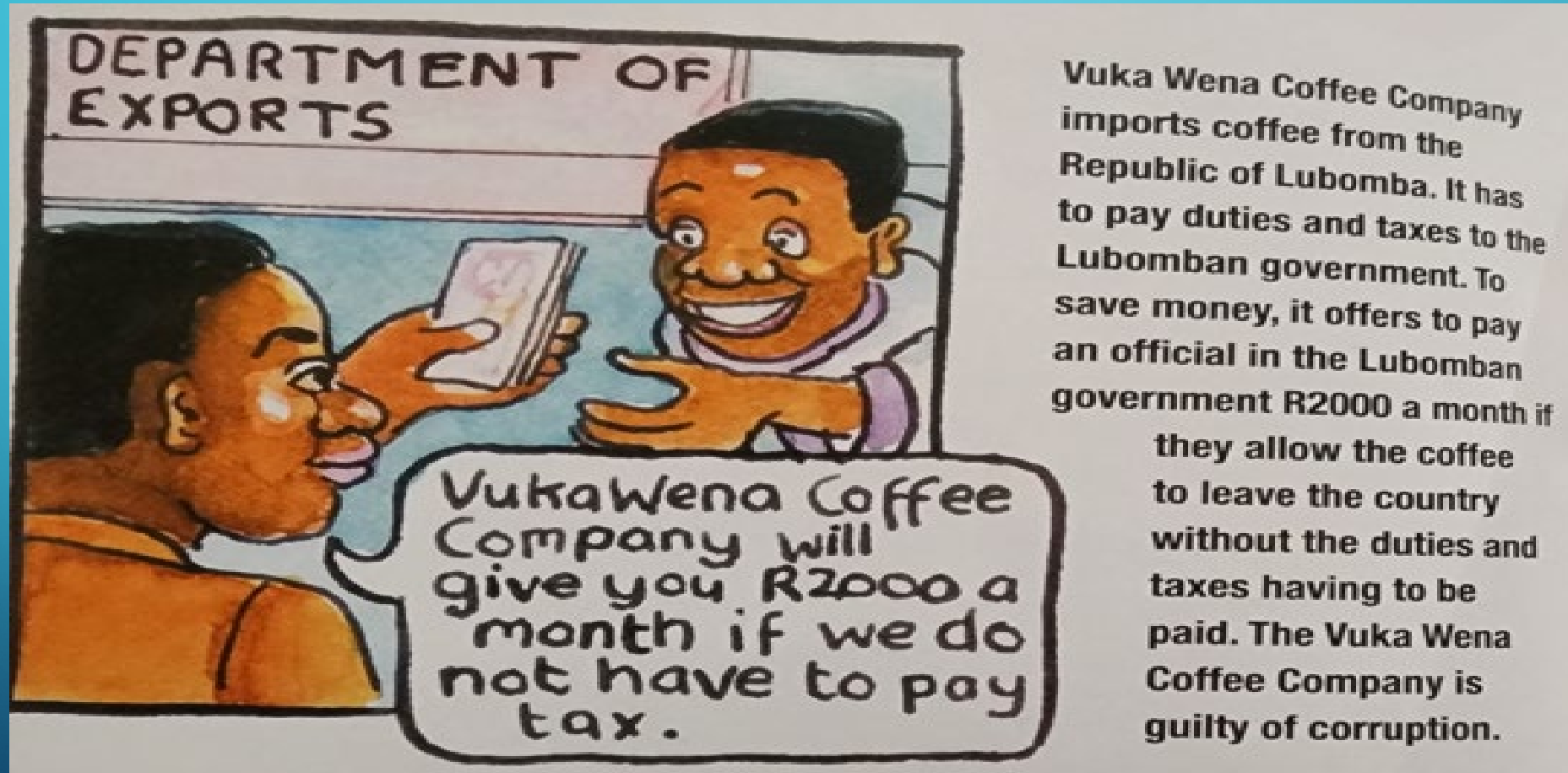


CORRUPTION DEFINED – IN CLASS DISCUSSION

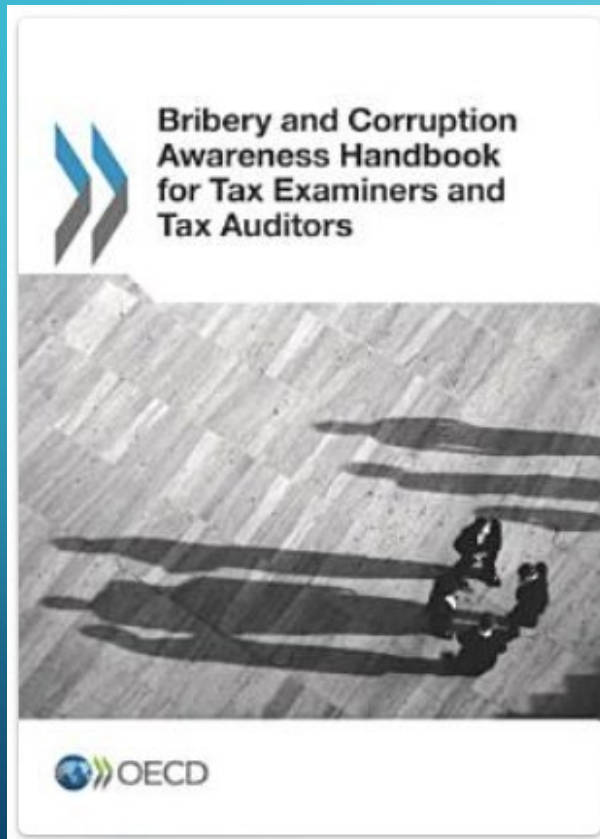


- 1) Involved in the decision made to award the contract and does not disclose his (conflict of) interest
- 2) Recuses himself from participating in the decision, but then uses his position / influence to get the decision-makers to award the contract in favour of his company
- 3) Uses information obtained through his office / official duties to win the award
- 4) To circumvent a Code of Conduct that prohibits a Govt official from doing business with the State, he registers the company using nominee directors and participates in / influences the award of the contract to his company

CORRUPTION DEFINED – IN CLASS DISCUSSION



REFERENCE MATERIAL



- 1) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)
- 2) Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials in International Business Transactions
- 3) Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions
- 4) Bribery and Corruption Awareness Handbook/s for Tax Examiners and Tax Auditors
- 5) Recommendation to Facilitate Co-operation Between Tax and Other Law Enforcement Authorities to Combat Serious Crimes
- 6) Oslo Dialogue (2011)
- 7) Other: UN Convention Against Corruption (2003); AU Convention on Preventing and Combating Corruption (2003); SADC Protocol Against Corruption (2001); FATF Recommendations; etc.

CATEGORIES OF CORRUPTION



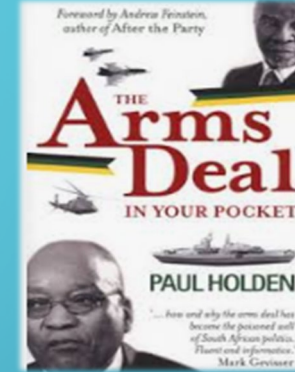
PETTY / BUREAUCRATIC

- everyday corruption where public administration officials meet private citizens
- exchange of small amounts of money



PROCUREMENT FRAUD

- unlawful manipulation of the procurement process, or the obtaining of an unfair advantage during the procurement process



GRAND CORRUPTION

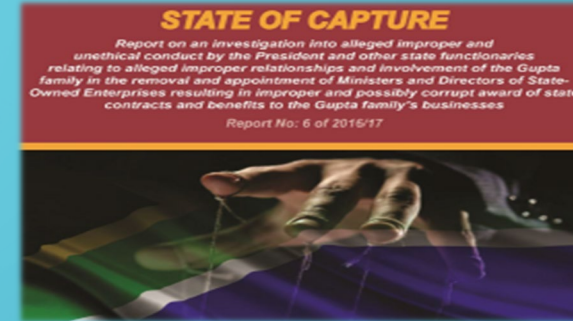
- involves high-level officials, is carried out on a large scale, and causes serious and widespread suffering in societies.
- where high-level officials control the state and work with powerful elites to illicitly abuse state power.

CATEGORIES OF CORRUPTION



REGULATORY CAPTURE

- under-regulation and under-performance of regulatory agencies
- regulators are so influenced by the sectors they regulate as to be effectively controlled by them
- regulators are funded by the sectors they regulate as to be conflicted
- “revolving door” – sector consults to govt



STATE CAPTURE

where “...powerful individuals, institutions, companies, or groups within or outside a country **use corruption** to shape a nation’s policies, legal environment and economy to benefit their own private interests”

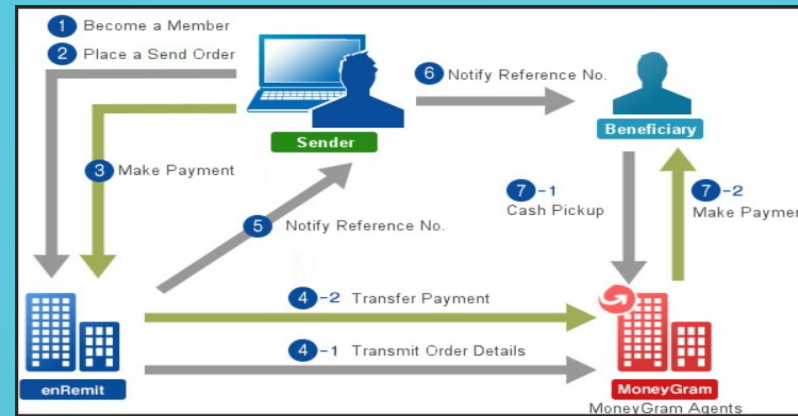
Transparency International

CATEGORIES OF CORRUPTION

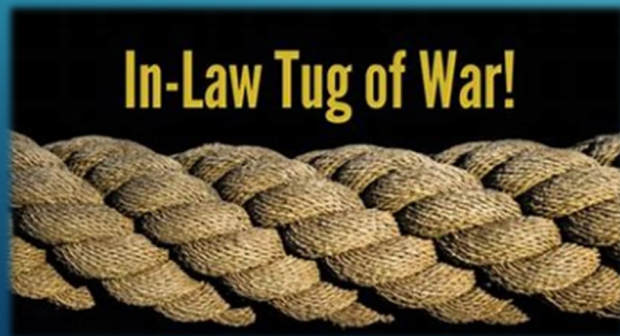
- Petty vs Grand
- Public vs Private sector
- Supply vs Demand
- Isolated vs Systemic
- Commission vs Omission

MOTIVATIONS AND MANIFESTATIONS OF THE CRIME OF CORRUPTION

- Profits
- Greed for Wealth
- High life
- Display of Power
- Monetisation of Influence
- Bribery
- Extortion
- Collusion / Insider trading
- Embezzlement
- Procurement fraud
- Tender irregularities
- Trade mis-pricing / Transfer pricing
- Agent/Intermediary Fees and Commissions beyond industry standard
- Kickbacks
- On-hand-washes-the-other deals
- Nepotism / Cronyism / Clientelism
- Discharge of debt / loans paid for
- Use / ownership of assets paid for
- Discounts – assets below MV
- Gifts & hospitality
- Donations & sponsorships
- Political donations / Patronage
- Electoral fraud

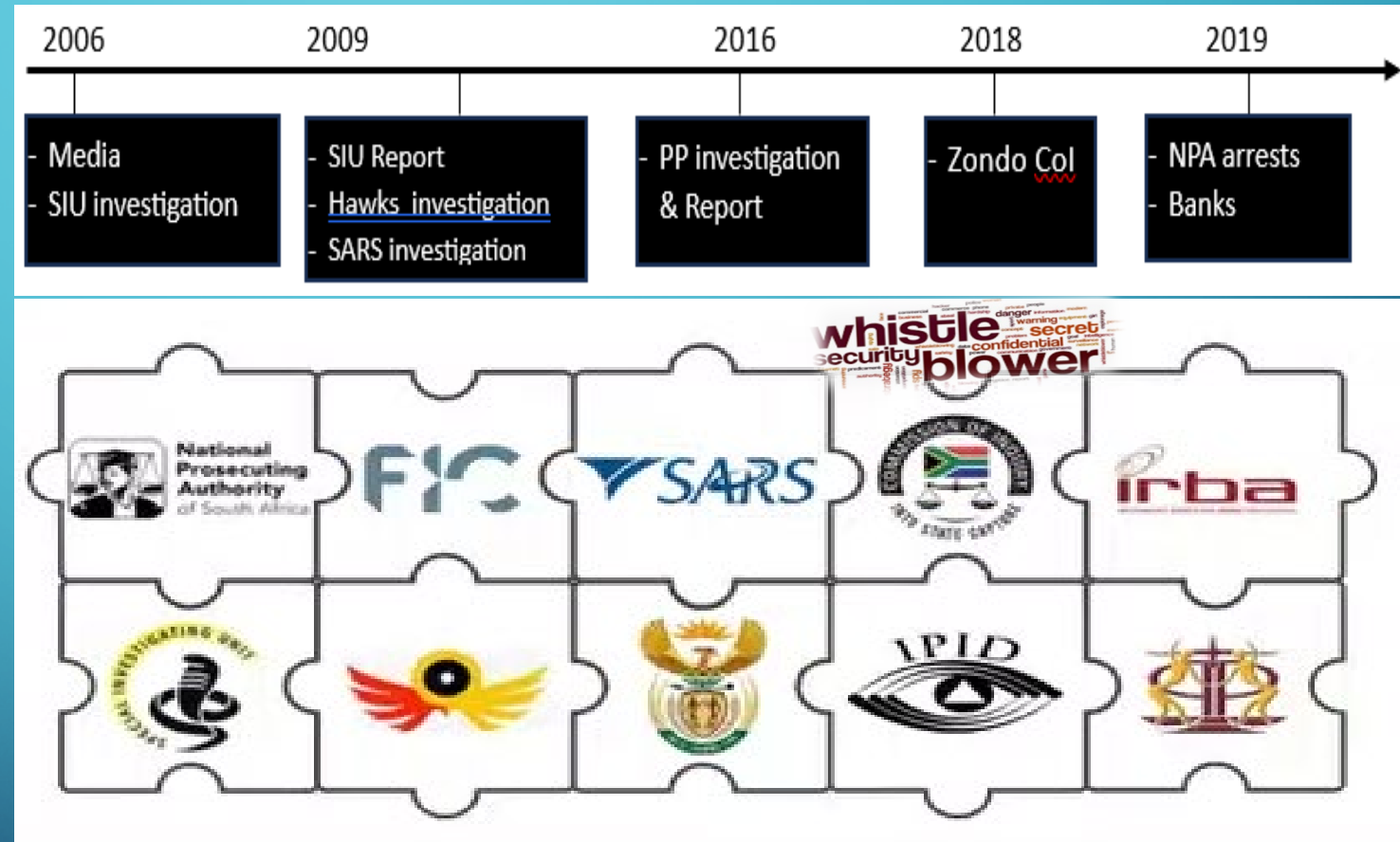
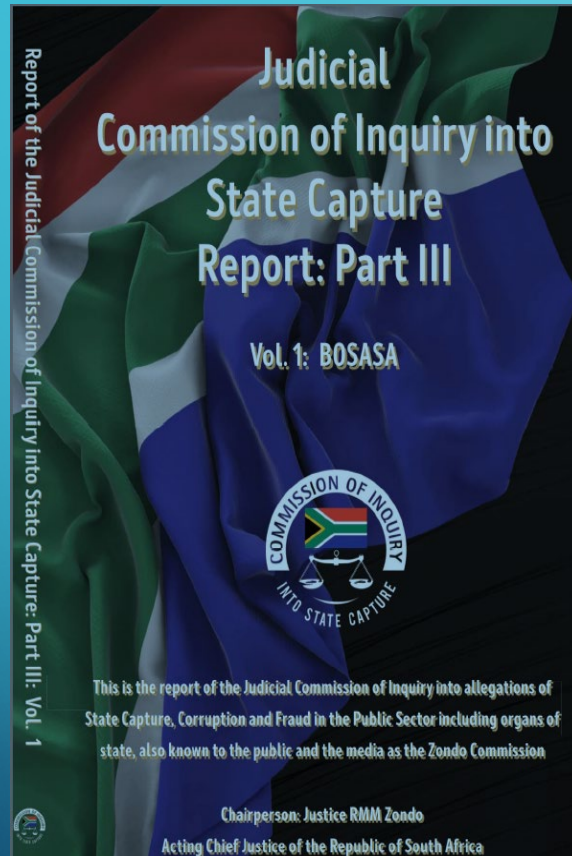


WHAT DO YOU FORESEE AS SOME OF THE INHERENT RISKS OR CHALLENGES THAT YOU AS AN INVESTIGATOR OR PROSECUTOR MIGHT FACE?

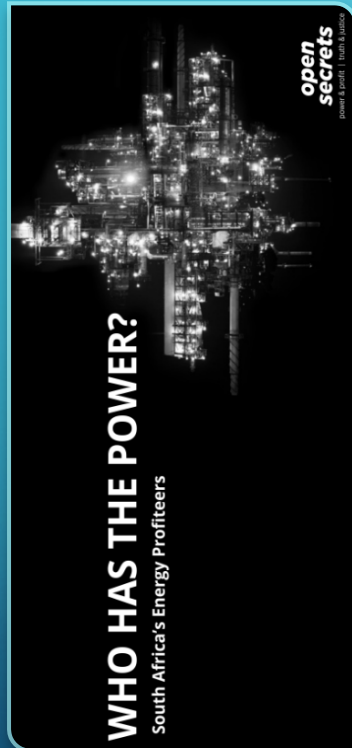


CASE STUDY:

WHY IT IS IMPORTANT TO COMBAT CORRUPTION



CASE STUDY: WHY IT IS IMPORTANT TO COMBAT CORRUPTION



<https://youtu.be/6gF2dYQ-NdM>

ESKOM INTELLIGENCE FILES EXPLAINER

Filthy seam of sabotage – how thieving cartels are plunging South Africa into darkness



Poor-quality coal and rocks delivered to an Eskom power station (Photo: Supplied)



By Ethan van Diemen

Follow

04 Mar 2023 26

Intelligence reports obtained by Daily Maverick link two senior members of President Cyril Ramaphosa's Cabinet to four criminal cartels operating inside Eskom. This is the story of how they steal from and destroy the infrastructure meant to be keeping your lights on.

Soldiers ordered to keep safeguarding Eskom power stations from saboteurs into 2024



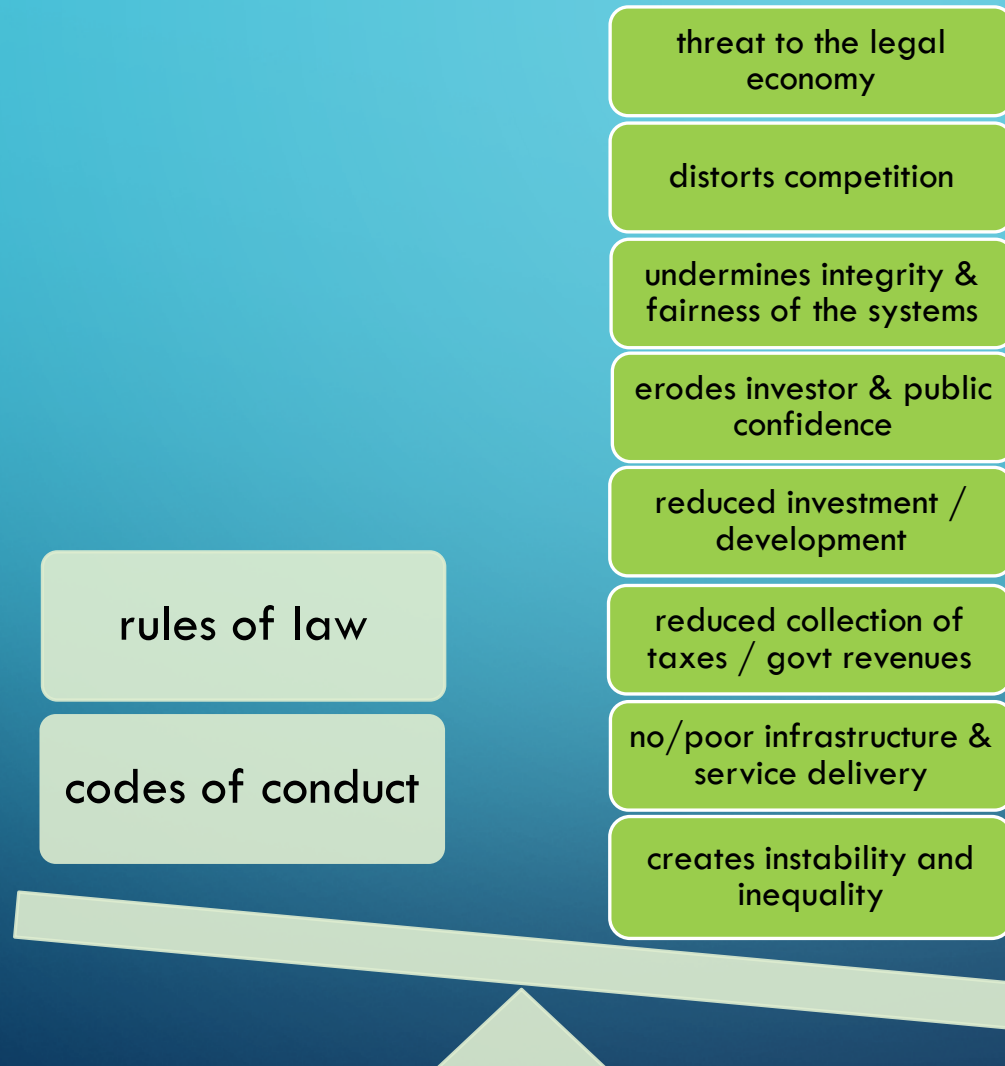
'More than 850,000 jobs will be lost as a result of load-shedding', says Ramokgopa

12 May 2023 - 11:55

Sars Commissioner Edward Kieswetter said at a media briefing in Pretoria on Monday that the loss to the tax system as a result of load shedding was estimated to be at least **R60 billion** for the 2022/23 financial year.

- Eskom has had **10 CEOs** in the last 10 years - Some of them held the position for as little as five months -

IMPACTS OF CORRUPTION, AND OTHER FINANCIAL CRIMES



Daily Investor • 16 January 2023

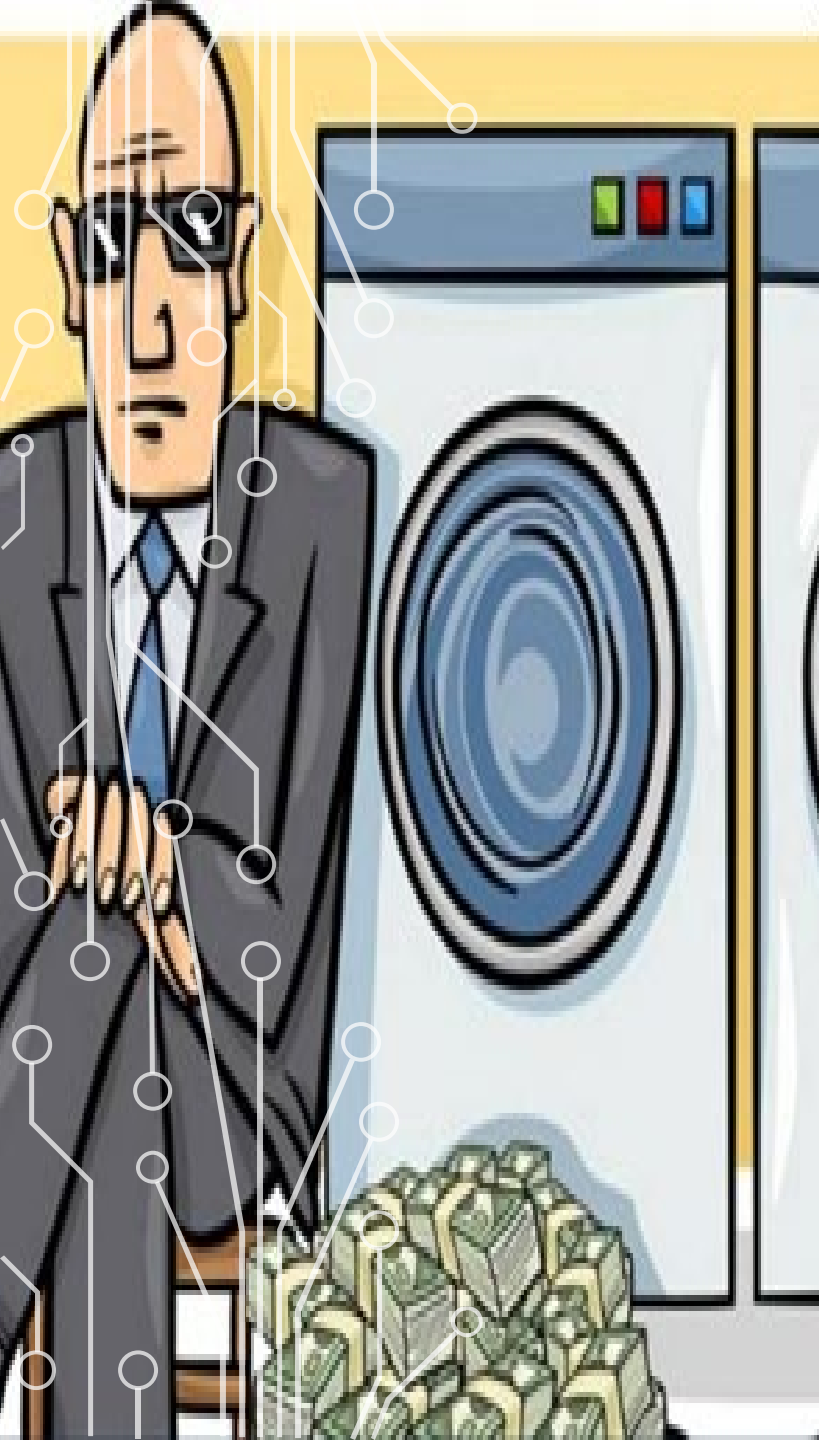


Since 2020, it has been forced to retrench more than 30% of its workforce.

IOL

“Indenand...
Sars said the illicit trade robbed the government of much-needed revenue and destroyed industries, exacerbating unemployment, poverty, and inequality. cal... the number was R14bn.

a source of funds for criminal organisations in South Africa,” it said.



HOW CORRUPTION MONEY IS LAUNDERED

- Cash
- Assets, including art / obscure gratifications
- Property / Investments / Financial instruments
- Lifestyle benefits
- Front companies / shell companies / nominee directors – hiding beneficial ownerships
- Offshore jurisdictions
- Secrecy jurisdictions and tax havens
- Enablers – Lawyers' client accounts
- Not for Profit Organisations (NPO's, religious organs, foundations)
- Trade mispricing / Transfer Pricing Abuse

BREAK OUT: CLASS EXERCISE

- Multi-national company in South Africa (call it MNE-SA) is awarded a \$1bn tender by SteelCo to supply widgets to its steel plant in Kenya. MNE-SA sub-contracts the work to ABC Co, a company in Kenya for \$600m; even though ABC-Kenya did not meet the requisite specifications to do the work. Three (3) other companies also placed bid for the sub-contract. SteelCo-Kenya referred ABC-Kenya to MNE-SA. ABC-Kenya is given the contract following a procurement exceptions process. MNE-SA subsequently secures a further 4 contracts from SteelCo-Kenya.
- \$50m is paid by ABC-Kenya to XYZ-Kenya. ABC-Kenya and XYZ-Kenya have a common shareholder (Mr X), who is also the son of the CEO of SteelCo-Kenya. According to the documents leaked to the media, the CEO of SteelCo-Kenya liaised with an MNE-SA executive to arrange for kickbacks. The documents include emails between the two (2). The documents also show that the CEO and his family allegedly spent part of the kickbacks on holidays and property upgrades.
- **Break up into groups and discuss the following. Select a spokesperson who will present your group to provide the feedback**
 1. What data/information/evidence is all needed for this investigation?
 2. What tools would you use during this investigation of bribery and corruption?

RED FLAGS

- Unusual financial activity
- Lifestyle changes / beyond means
- No expenditure on the financial records
- Ambition ... Influential
- Socialite in Govt / business circles
- Lack of transparency in procurement process
- Contracts that are awarded on an exceptions basis
- Complaints about biased bidding
- Same vendors consistently win bids
- Facilitators / intermediaries are involved
- Exorbitant facilitator fees / commissions
- Deal prices appear inflated / far below market rates
- Transactions that lack commercial sense
- Contracts that are not honoured
- Documents lack detail - non-descript expenses on invoices / AFS
- Nature and amount of expenses



INVESTIGATIVE TOOLBOX

- Readily available information e.g. internal sources
- Investigations plan
- Operational / Execution plans
- Joint action plan/s - multiple agencies, multiple jurisdictions, specialised units
- Laws & regulations
- Cooperation instruments – Model Tax Conventions, MAA, MLA, TEIA, AEOI, MOU, etc.
- Financial analysis / forensic investigations
- Data analytics / digital forensic & technology assisted tools
- Interviews
- Inquiries – tax & liquidation
- Search warrants & seizures
- Detention notices, seizure, freeze and forfeiture / confiscation orders
- Consensual monitoring of conversations & wire tapping
- Undercover operations / physical surveillance
- Intelligence briefs e.g. FIC reports
- Open-source information



WHY FOLLOW THE MONEY

- Secure the evidence required to resolve the allegation of corruption
- Punish the offence → confiscate the proceeds of crime
- Take the profit out of crime → taxes
- Return of money to victims
- Deter would-be criminals
- Increase citizen's confidence in the legal, financial and tax system
- Protect the integrity of the worlds' economies

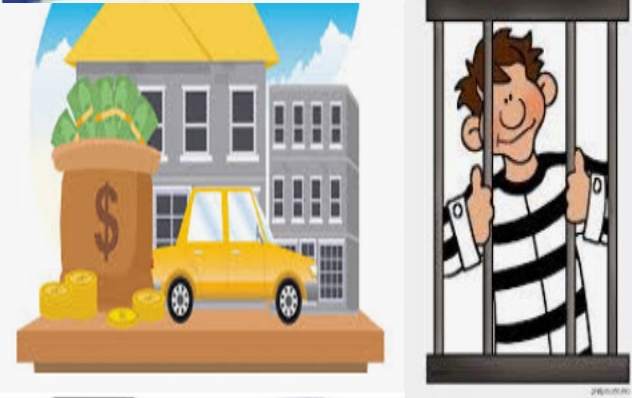
CORRUPTION AND TEN GLOBAL PRINCIPLES



1. Ensure acts of corruption are criminalised
2. Devise an effective strategy for addressing corruption
3. Have adequate powers to investigate corruption
4. Have effective powers to freeze, seize and confiscate the proceeds of corruption
5. Put in place an organisational structure with defined responsibilities for preventing, detecting and investigating corruption
6. Provide adequate resources to investigate corruption
7. Make corruption a predicate offence to money laundering
8. Put in place an effective framework for domestic inter-agency collaboration
9. Ensure effective international co-operation mechanisms are in place
10. Protect suspect rights

ANTI-CORRUPTION MECHANISMS

- Rules of law
- Codes of Conduct
- Good governance
- Independent institutions – media, anti-corruption bodies, public protector, etc.
- Effective enforcement machinery
- AML measures
- Anti-corruption hotlines
- Registers of Defaulter
- Whistle-blower protection framework
- Legislation regulating private funding of political parties



REFERENCE MATERIAL



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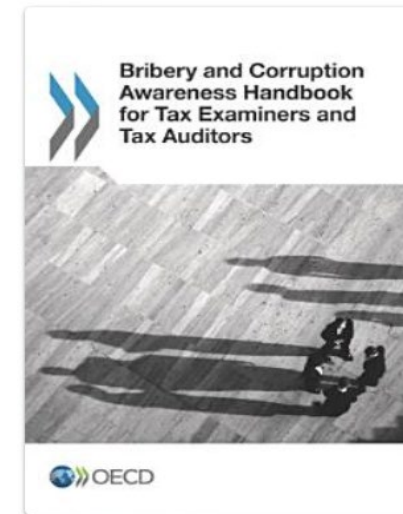


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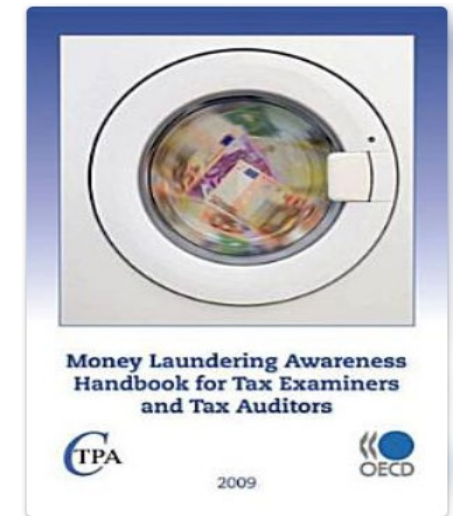


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THANK YOU

QUESTIONS AND FEEDBACK



AFRICA ACADEMY BRIBERY AND CORRUPTION (SPECIALITY) PILOT PROGRAMME

RAHEEMA ISMAIL

14 NOVEMBER 2023



LEGAL & INSTITUTIONAL FRAMEWORK IN SOUTH AFRICA

INTERNATIONAL AND REGIONAL CONVENTIONS

The United Nations Convention Against Corruption
The African Union Convention Against Corruption
The OECD Anti-Bribery Convention
The SADC Protocol Against Corruption

DOMESTIC LEGISLATION

The Constitution
The Competition Act
PRECCA
POCA
The Criminal Procedure Act
The Protected Disclosures Act
The Promotion of Access to Information Act
The Promotion of Administrative Justice Act
The Public Finance Management Act and Regulations
The Municipal Finance Management Act and Regulations
The Companies Act and Regulations
The Public Service Act
The Executive Members Ethics' Act
The Witness Protection Act

STATE CORRUPTION FIGHTING BODIES

The National Prosecuting Authority
The Public Protector
The DPCI
The Asset Forfeiture Unit
The Special Investigations Unit
The Financial Intelligence Centre
The Auditor General
The Public Service Commission
The Independent Police Investigative Directorate

SARS Strategy for addressing tax crimes

- SARS Strategic Intent – to develop a tax and customs system based on voluntary compliance



- Annual Compliance Programme
- Annual Performance Plan