

# UPHOLDING DEMOCRACY



THE ONGOING FIGHT FOR HUMAN RIGHTS  
ANNUAL REPORT 2018

corruption  
watch 



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# #RE: BOOT

**OUR DEMOCRACY**

Reflecting on  
25 years of freedom

Mavuso Msimang  
Corruption Watch Chairperson



**“It demands – especially here and now because we are here and now – a vast amount of passion and some courage to attack the forces which menace everybody’s life. The life of everybody on this planet is menaced by, to put it too simply, the extraordinary and even wilful ignorance of people in high places. If the democratic notion has led us to where we now find ourselves, some kind of radical revision of the democratic notion is needed.”**  
– James Baldwin: A rap on race<sup>1</sup>



One might mistakenly attribute this quote to any number of recent articles in respected newspapers and journals highlighting the flaws in the current global state of democracy in 2019, and the alarming rise of populist and anti-democratic movements springing up around the world.

In fact, we must circle back to 1970, when American novelist, playwright and activist James Arthur Baldwin was sharing his views with co-author Margaret Mead, in an extraordinary seven-and-a-half-hour discussion about race and society, collected in a unique volume called *Rap on Race*<sup>2</sup>. His quote about the state of democracy is as fitting today as it was then, and perhaps if we had heeded his words, we would see better versions of democracy at work today.

In South Africa, as we head towards our own democratic elections in a couple of months, we cannot ignore the volume of headlines from around the world about the decline of democracy. This applies as much to flagrantly undemocratic states, some on our own continent, as it does to countries in Europe, North America, and Latin America – in particular Brazil – where previously democratic states seem to be failing to reflect the needs, desires and rights of the people living within their borders, or even those trying to cross those borders.

In its 2019 *Freedom in the World* Report, civil society organisation Freedom House documents the 13-year decline in global freedom, concluding that democracy is in retreat globally<sup>3</sup>. It attributes this trend to, among other things, the rise of authoritarian powers, populist movements and forces that disregard “the separation of powers and target minorities for discriminatory treatment<sup>4</sup>.”

They are not alone in this conclusion. Take Transparency International’s Corruption Perceptions Index (CPI), released on 29 January this year, and highlighted elsewhere in this report. A common denominator in what it calls the crisis in democracy, is

the continued failure of most countries to significantly control corruption, coupled with the erosion of the independence of key institutions, and so of human rights. Both organisations, however, also place much value on the role of civil society and dynamic social movements that have increased their efforts to lobby for justice and inclusion to fulfil the expectations and rights that citizens have in the countries where they live. “The promise of democracy remains real and powerful. Not only defending it but broadening its reach is one of the great causes of our time<sup>5</sup>”.

The health of the South African democratic state must be viewed through the prism of 25 years of democracy, and what has been won and lost in that time. Some might argue that corruption has won, as over the past decade or so we have seen corruption become endemic in key government institutions, while those with the power to improve people’s lives have become increasingly insensitive to those very people’s needs. In this sense, the people have lost. I have frequently alluded to how democracy was conceptualised in Ancient Greece, with the emphasis on power belonging to the common people rather than the nobility. The word itself makes it clear: “Demos” stands for **common people** and “kratos” for **strength or power**.

In the South African context, it is impossible to separate the disillusionment that many people feel from the stories of gross abuse of resources, tales of personal enrichment, and disregard for the basic needs of the populace. That the perpetrators have remained largely unpunished for destroying the systems meant to protect citizens, has added to the frustration and sense of powerlessness. How could a country freed from a violent, iniquitous past through an inspiring and victorious revolutionary process find itself here? How have we witnessed the Marikanas, the police violence against foreign nationals, the degradation of socio-economic rights, not to mention the lack of safety for women, often at the hands of those same police sworn to defend the population, in a country with a Constitution that is admired the world over? Why is it that people are still not assured access to a decent education, healthcare, housing, safety and protection of their environmental rights? There was a time when our political parties were commended for their spirit of cooperation and collaboration, in the interests of the project to “build a democratic state” – in the spirit of Ubuntu, dare we even mention that word?

It is interesting that this decline of faith in our democratic leaders, or perhaps we should just call them politicians, is happening here when at the same time across the world there seems to be a growing loss of faith in the ability of democracy to govern in an inclusive, egalitarian and practical way. Do the institutions themselves need to be overhauled, and do we need to press the re-set button to engender a new, more relevant, version of democracy that truly does have the interests of ordinary people at heart?

This is perhaps a question we need to put to our political parties, as they lobby for position and favour in a year of both national and provincial elections. South Africans have the right to answers about policies that will improve their lives, about what will be done to raise the level of education for their children, to improve their job prospects, protect the environment, provide adequate healthcare services and address gender inequality. Not to mention policies to address economic inequality – South Africa still has the world’s highest Gini coefficient, which measures economic inequality - land distribution and expropriation, the rights of communities when it comes to minerals, the environmental impact of mining, and the beneficiaries of that extraction.

The sheer prevalence of corruption in our country, as the various commissions of inquiry into state capture, the PIC, the NPA and SARS have played such an important part in revealing, has become a weapon used by some politicians to score points against each other. As evidence continues to emerge, it is perhaps now irrefutable that the problem has cut across party political lines, across business sectors, and has implicated individuals as diverse as this nation. We will only see an end to corruption when people start to pay for their actions, and the citizens of this country begin to see offenders facing real jail time, and making restitution to those who suffered the most as resources for the public good were plundered. There must be serious interrogation of anti-corruption policies across the political party landscape, but also acknowledgement that it is our collective problem, in need of a collective will to expose and charge those guilty of corrupt behaviour, whoever they are and wherever they have been operating.

We remain a country of contradictions. While there are those who have been able to get away with some of the most audacious acts of corruption under the guise of public office and patronage, there have been positive advancements in our democracy brought about by brave whistle-blowers, civil society activists, the media, judges and those committed to justice and the rule of law in our country. I include here the individuals who exposed the rot at our state-owned enterprises, who have highlighted corruption in schools, fingered private sector culprits, and uncovered the Gupta leaks.



Equally important have been the court cases resulting in landmark judgments, such as the ruling<sup>6</sup> on the rights of the Xolobeni community in the Eastern Cape to oppose consent to the proposed titanium mining on their communal land, sending a strong message of support to other communities facing similar mineral exploration interests. As Judge Annali Basson cited in her conclusion, while the law had previously not protected the informal land rights of customary communities, the community now had the right to decide what happens to their land.

Linked to this is the Constitutional Court Maledu judgment<sup>7</sup> in October 2018, which ruled that the consent of the owners of affected informal land rights is required before decisions affecting their land rights can be taken.

Conversely, we have seen worrying attempts to undermine these landmark rulings in the form of amendments to the Traditional and Khoisan Leadership Bill. The recognition that this bill gives to the Khoisan people and their leaders is welcomed, but there are other aspects of the proposed bill that are cause for grave concern, as they empower traditional leaders to sign deals without the consent of those whose land rights are undermined or dispossessed by such deals. These include deals signed by mining companies, property developers, tourism and agriculture ventures and the like. In essence, this takes us back to the time of Bantustans.

This only heightens the need for vigilance in upholding the pillars of our democracy, and ensuring that ordinary people have a say in the rules of our land and the practices of those entrusted to manage our democracy. It is therefore imperative that we, the public, exercise our right to be represented by those who have our best interests at heart.

There is a piece of graffiti that states:

**“We have the best government money can buy.”**

It is time to usher in a new order that gives us the government and democracy that we deserve, and of which we can be proud.

1. Quote: James Baldwin: A rap on race, Authors: Margaret Mead; James Baldwin | 2. Ibid | 3. Democracy In Retreat #FreedomInTheWorld report (<http://freedomintheworld.org>) | 4. Ibid | 5. Ibid

6. Baleni and Others v Minister of Mineral Resources and Others (73768/2016) [2018] ZAGPPHC 829; [2019] 1 All SA 358 (GP) (22 November 2018) | 7. Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another (CCT265/17) [2018] ZACC 41; 2019 (1) BCLR 53 (CC) (25 October 2018)



# SAFEGUARDING OUR SOCIETY

Supporting the institutions  
that protect democracy

David Lewis  
Corruption Watch Executive Director



**A central theme of Transparency International's 2018 Corruption Perceptions Index is the relationship between democracy and corruption. Certainly, one can't deny the threats to democracy in very diverse countries across the globe. Nor can one deny increasing levels of corruption or the fact that in many countries attacks on the democracy coincide with increasing levels of corruption – think about the US, Turkey, India, Hungary, Brazil, to name a few. And think about our country – does our experience evidence a relationship between our democracy and corruption?**

On the one hand, to sustain corruption on the scale that characterised the state capture era, key institutions of the democracy had themselves to be captured. This is particularly true of the institutions of accountability – those institutions that are charged with oversight of the executive.

We saw how, to ensure that former president Jacob Zuma's conduct in the arms deal was protected from law enforcement, the Scorpions had to be destroyed. We saw then how, largely through abuse of the president's powers of appointment, the Hawks, successor to the Scorpions, Crime Intelligence and the National Prosecuting Authority had to be bent and twisted to ensure that they too protected Zuma and his cronies from accountability and from bearing the consequences of their conduct. We saw the same thing happen to the South African Revenue Service (Sars). We saw Parliament turned into a toy telephone through which the executive barked its orders but which didn't take calls from those who elected it.

On the other hand, we saw how other institutions of our democracy led the fight back against state capture. Robust and independent civil society, media and judiciary are key indicators of a functioning democracy and in our country, these are widely acknowledged for their leading role in confronting state capture.

And who can forget the role that the Public Protector under Thuli Madonsela played in holding the executive to account? And so, while corruption has compromised key institutions of our democracy, other key democratic institutions have confronted corruption and state capture.

There can be little doubt that the fight back against state capture has borne fruit. In 2018 we have seen new boards appointed at previously captured state-owned enterprises (SOEs) like Eskom, Transnet, Denel and South African Airways. We have seen these boards begin to sweep the dirt out of the executive suites of these SOEs. We have seen Tom Moyane driven out of Sars and Shaun Abrahams removed from the National Prosecuting Authority (NPA). We have all been engrossed in the proceedings of commissions of enquiry into state capture, Sars and the Public Investment Corporation. We have seen the rot at the NPA laid bare in the enquiry into the destructive conduct of leading officials in that critically important institution. We have seen corrupt cabinet ministers like Zwane, Van Rooyen and Gigaba put out to pasture.

But we are only at the foothills of a very high mountain. Not only do we have to remain vigilant in exposing continuing acts of corruption – and there are plenty of those – but we have to contribute positively to rebuilding those vital institutions that were crushed in the state capture era.

A prime lesson from the bitter experience of the state capture era is that corruption undermines democracy and, conversely, that democracy is the best antidote to corruption. Therefore, the key task for opponents of corruption is to support the institutions and culture of democracy. In order to do so we must aggressively defend ourselves against attacks from those who seek to undermine independent civil society organisations. We must also remain vigilant in defending the independence of the judiciary and press freedom.

But it is as important that we contribute to strengthening the formal institutions of the democracy. We must demand access to the deliberations of parliamentary committee hearings.

We must demonstrate by the quality of our submissions that we are a valuable resource in the making of policy and legislation. We must ensure the effective enforcement of those laws intended to support democracy, such as the law regulating party political funding. We must protect vital institutions of accountability such as the NPA and the Auditor-General.

**W**e must expose the conduct of those who, like the present public protector, have let democracy down. And we must help build and capacitate those community-based institutions of democracy such as school governing bodies.

The narrative of state capture centres around the capture of institutions like Eskom, Transnet and other state-owned enterprises. But even more damaging has been the capture of institutions, such as Parliament, that are charged with holding accountable those and other public institutions.

A prime task of organisations like Corruption Watch is challenging and assisting those institutions and their members to take their rightful place as representatives of the people who have elected them.

This will determine whether or not the powerful executive institutions serve the people of South Africa or whether they once again become feeding troughs for those who prey on ordinary South Africans in order to advance their own greedy interests.

**We are only at the foothills of a very high mountain. Not only do we have to remain vigilant in exposing continuing acts of corruption – and there are plenty of those – but we have to contribute positively to rebuilding those vital institutions**



# WHO WE ARE

Sustaining the fight against corruption: 2018 in review

**THIS YEAR CORRUPTION WATCH TURNED SEVEN YEARS OLD, AND SOUTH AFRICA CELEBRATES 25 YEARS OF DEMOCRACY.**

It seems a fitting opportunity to look at our own journey of fighting corruption and defending the pillars of democracy in our country, and to revisit who we are, and what we hope to achieve with our work.

We have learned a few things since our inception in 2012. We have learned that anti-corruption work goes hand in hand with upholding and, where necessary, restoring democracy; we have also learned that even with a change of leadership

and a more positive commitment to tackling corruption, we cannot take our collective feet off the pedal.

If anything, we must be more vigilant than ever to avoid slipping back to the past that we are only just emerging from, where corruption seemed the order of the day and those implicated in widespread looting of public coffers seemed protected by impunity.

**Now, 25 years into our democracy, we must address the damage wrought by sustained corruption, and continue the work, together with civil society, government and business, to undo the erosion of systems and structures put in place to safeguard the delivery of goods and services to all people living in this country.**

**ALUTA CONTINUA!**



**corruption watch**  **is:**

**FOR HUMANITY!**

**1** An independent civil society organisation launched in 2012 in response to the spiralling corruption in South Africa.

**2** The local chapter of Transparency International, a global movement with one vision: a world free of corruption.

**3** An organisation with the overriding goal of encouraging and enabling public participation and activism to prevent, expose, report and combat corruption.

**4** Not influenced by business, government or any other sector in our operations; we hold both government and private sector to account.

**5** Funded primarily by philanthropic institutions in the social justice sector.

**6** An organisation committed to a human rights approach to the impact of corruption on society.



Corruption Watch is proud to boast a dynamic and youthful group of staff – at least half of our staff members are 30 years or under. In this 25<sup>th</sup> year of our democracy, we capture voices of young people within our organisation, who have their own particular take on what democracy in South Africa means at this point in our history. Their voices and opinions can be heard scattered within these pages, amongst the sections profiling CW's work. We hope they will inspire you, as they inspire us each day, and give us hope for the future!

## HOW WE WORK

### OUR ACTIVITIES FALL WITHIN THE FOLLOWING WORK STREAMS:

1

#### CAMPAIGNS



Our campaigns emerge out of the number of reports received in relation to a particular sector or type of corruption, and focus on a specific theme as a result. Our current campaigns include corruption in schools (our longest-running campaign), the public healthcare service, the police service, and the mining sector. Our choice of sectoral focus for 2019 is ideally suited to advancing human rights orientation in our work.

2

#### REPORTS



The reports received from whistleblowers and members of the public remain at the core of our work. They assist us in identifying patterns and hotspots of corruption in the country, in identifying campaigns, and in guiding investigations and policy advocacy. In short, they enable us to speak with and amplify the voice of the public.

3

#### POLICY ADVOCACY:



The reports that we receive help us to identify loopholes and gaps in public policy that allow corruption to manifest and weaken our state institutions.

4

#### LEGISLATION / POLICY SUBMISSIONS:



We take seriously our commitment to participate in the processes that result in fair, effective laws that benefit all South African residents. Our work focuses on creating a buffer against corruption, such as the Prevention and Combating of Corrupt Activities Amendment Bill 2017, the Protected Disclosures Act, ensuring community rights in the Traditional and Khoi-San Leadership Bill, and the Draft Regulations to the Refugees Act.

5

#### LITIGATION



We choose our battles by considering our resources and the potential impact of our participation. If our participation in the case would be in the public interest as far as the fight against corruption is concerned, we will contribute to it.

6

#### OUTREACH / EVENTS:



Part of our public education work involves engaging on a one-on-one basis with communities, students, scholars, school governing bodies and others. Through these activities, we inform people of their rights and responsibilities, listen to their concerns, and encourage individuals to obey the rule of law at all times.

7

#### INVESTIGATIONS



We only investigate a strategically selected number of the reports that we receive due to our limited resources and capacity, both of which are necessary when pursuing forensic investigations;

8

#### GOVERNANCE



Good governance is a major point of focus in our work. To this end, we are helping to build good governance in other organisations, companies and the government by providing assistance in the form of workshops, capacity-building sessions, discussions, anti-corruption programmes and other events.

9

#### RAISING AWARENESS



We believe that people will feel empowered to tackle corruption if they have a better understanding of what forms it takes, who commits it, and how it affects them. Whether employees, state officials or citizens, they will be able to take a stand if better informed.

10

#### PUBLICATIONS / RESEARCH:



We release many publications throughout the year, including our annual report, specialised research reports, online stories targeted at the youth and a range of e-books and website series that provide insight and guidance on fighting corruption in daily life. This is our seventh annual report to date.

11

#### PUBLIC COMMUNICATION



Above all, we communicate all that we do to the public, the better to encourage informed public participation in combating corruption.







# YOUNG VOICES: ENOUGH IS ENOUGH

Young, female and vulnerable in democratic South Africa

BY SABEEHAH MOTALA



Born on 27 April 1994, age-mate of South African democracy, it would be dishonest to say things are as I expected them to be at age 25. As a patriotic South African, I cannot ignore the legacy of inequality apartheid left us with. Though I never had to live through the trauma of racial segregation, the effects of it have trickled down even to the society that I live in today.

Growing up, my parents taught me integrity, compassion and the value of contributing to the development of South Africa. South Africa's parents were politicians, lawyers, activists, judges and others, helping figure out how it should grow. Both South Africa and I are guided by the Constitution and are expected to contribute to the realisation of human rights by being accountable, ethical, and subject to the law.

We are soon to be a quarter of a century old. I think I'm doing alright, contributing positively to South Africa through my work, and being a responsible citizen by paying my taxes, voting, by trying to keep my environment clean, and uplifting others. But the country doesn't seem to be doing entirely the same for me and for others my age. Yes, we have rights guaranteed in the Constitution but their realisation for most people seems blocked by a thick storm of corruption, looting and greed. Public funds that could have gone to providing school toilets, medical supplies, and employment opportunities line the pockets of those entrusted with their management. It is an arrogant display of selfishness in the faces of people who are desperately dependent on those resources.

Growing up in this country as a female has also impacted me and opened my eyes to the increasingly problematic gender inequality. As an almost 25-year-old woman navigating the patriarchy in society, I feel that our democracy has not yet sufficiently grappled with social, political and economic gender dynamics. The most recent data measures female representation in Parliament at 43%, yet serious issues such as the high rates of rape, women abuse and femicide have only recently taken the spotlight. What remains to be explored is that the infection of corruption worsens the situation for women in South Africa. Research shows that women, as primary caregivers to their families, are more likely to be hindered by corruption in accessing healthcare services, schooling and social grants. Where women may come into contact with public officials but have less contact with political or social structures enabling them to demand accountability, they become more vulnerable to corruption. With less awareness of their rights and more fear of consequences of reporting, women may also be less likely to report corruption, especially if it could lead to shame or victim-blaming.



**The plight of women is one that affects us all, regardless of gender.**

In addition, women generally have less financial bargaining power and are therefore extremely vulnerable to sextortion, where sex or sexual favours are demanded instead of money. At a community engagement in Diepsloot, we met a single mother of two who told us about a housing official who came to her informal dwelling, told her she was next in line to receive a RDP house, but refused to process the paperwork if she did not have sex with him. She refused, and was forced to continue living in the shack with children.

At a community engagement in Manenberg, women told us how the police abused the power of their uniform in order to sexually assault them. They told us of a young woman who took her own life, after being gang-raped by police officers in a holding cell and then intimidated into silence. We hear stories of how women open cases of abuse against their partners, only for police officers to inform the abuser or make the dockets disappear, further endangering women's lives.

It is a stark reminder that the currency of corruption is not always money. Women have paid for corruption with their bodies, their dignity and their lives.

Anti-corruption work in South Africa has not yet fully recognised this disproportionate effect on women. In light of the #TotalShutdown movement, women's issues are finally on the table, and the exacerbating effect of corruption on these issues is a conversation that must be included. Power dynamics dictate how corruption works and women have always had less power - less agency, less financial freedom and less physical safety - leaving them more exposed to corruption.

Hope is dissolving into anger, complacency and resignation. Twenty-five years on from Freedom Day, we are not necessarily where we expected to be as a country, and this situation is especially bad for women.

Three important messages need to be heard from this. Firstly, 25 is the age where adulthood should finally be taken seriously. The media's increasing exposure of corruption is crucial at this time, so we can face the mistakes that have been made and fix them - fix the legal loopholes, fix our institutions and restore trust and integrity in our government.

Secondly, the atmosphere is ripe for a renewed call to all citizens to put pressure on government to fix itself up. Our civic responsibility does not end at the polling station.

Thirdly, the plight of women is one that affects us all, regardless of gender. Our mothers, grandmothers, sisters, daughters, aunts and cousins are already battling every day to make a better life in a man's world, and corruption hardly makes that easier. We all need to be aware of the ripple effects of our actions on the lives of others, and to be conscious of how women everywhere are vulnerable to corruption every day.

**Let us use our platforms, whether it be in civil society, the arts or business, to make our concerns heard. Uplift others, raise awareness of corruption and its effects and how to report it. Let it be heard from office building to university lecture rooms and queues at the taxi rank that we are taking back our democracy.**

**ENOUGH IS ENOUGH!**



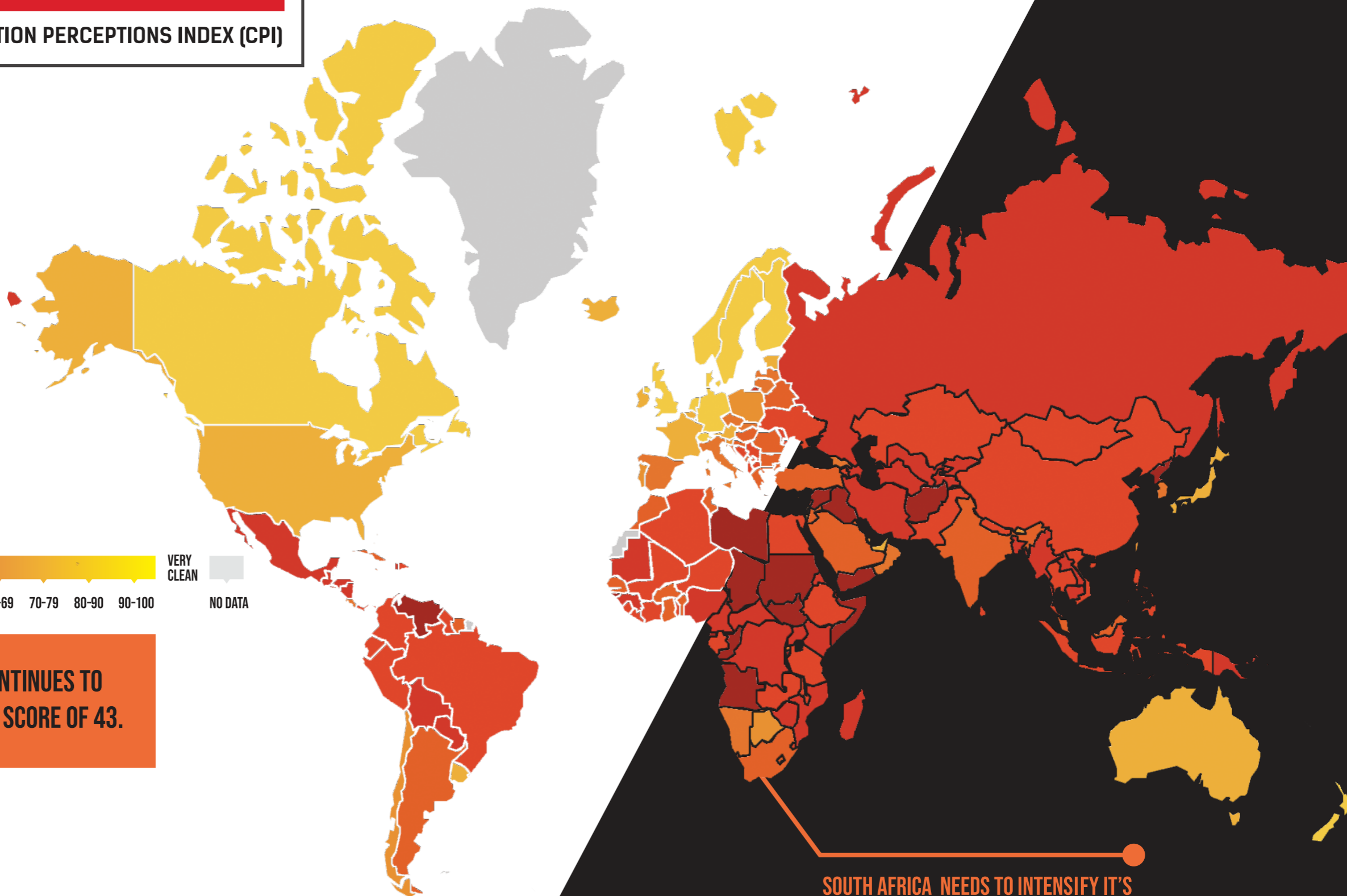
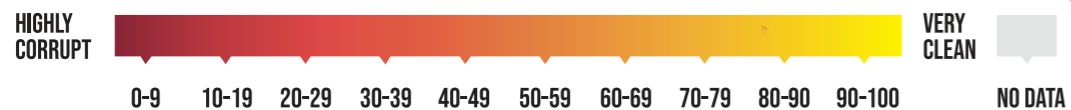
# WHAT DO THE NUMBERS SAY?

## CORRUPTION PERCEPTIONS INDEX (CPI)

The annual Corruption Perceptions Index (CPI) released by Transparency International, the global coalition against corruption, is viewed as the leading global indicator of public sector corruption.

**Released in late January 2019, the 2018 CPI focuses on how corruption contributes to a global crisis of democracy, providing evidence of a world that has not come to grips with burgeoning corruption.**

This is as true of South Africa, which continues to languish with a score of 43, the same as the previous year, suggesting that perceptions of corruption remain high. Remaining in the group of countries falling below the 50 mark, South Africa clearly needs to intensify its efforts to make serious inroads against corruption.




**SOUTH AFRICA CONTINUES TO LANGUISH WITH A SCORE OF 43.**

Transparency International's 2018 Corruption Perceptions Index (CPI) ranks 180 countries and territories by their perceived levels of corruption in the public sector according to experts and business people. It uses a scale of zero to 100, where zero is highly corrupt and 100 is very clean.

**SOUTH AFRICA NEEDS TO INTENSIFY IT'S EFFORTS AGAINST CORRUPTION.**



# THE NUMBERS REVEALED

## DATA ANALYSIS

Since our inception in 2012, Corruption Watch (CW) has received over 24 500 whistle-blower reports.

With almost 4 200 reports of corruption in 2018 alone, CW has recorded its third highest number of reports collected in a year, following 2017 and 2016, in which the highest and second-highest tally of reports was recorded, respectively.

These three years count for 57% of the overall number of reports that the organisation has received from 2012 until the end of 2018.

During these years, CW embarked on several advocacy campaigns, including the appointment of the new public protector, a number of significant litigation cases either as the main applicant or as a friend of the court, and the continuation of the schools campaign – a sector that still draws the most reports of corruption to date.

2018



24 500

WHISTLE-BLOWER REPORTS



4 200

REPORTS OF CORRUPTION

! 3rd highest number of reports collected in a year.

2012 - 2018

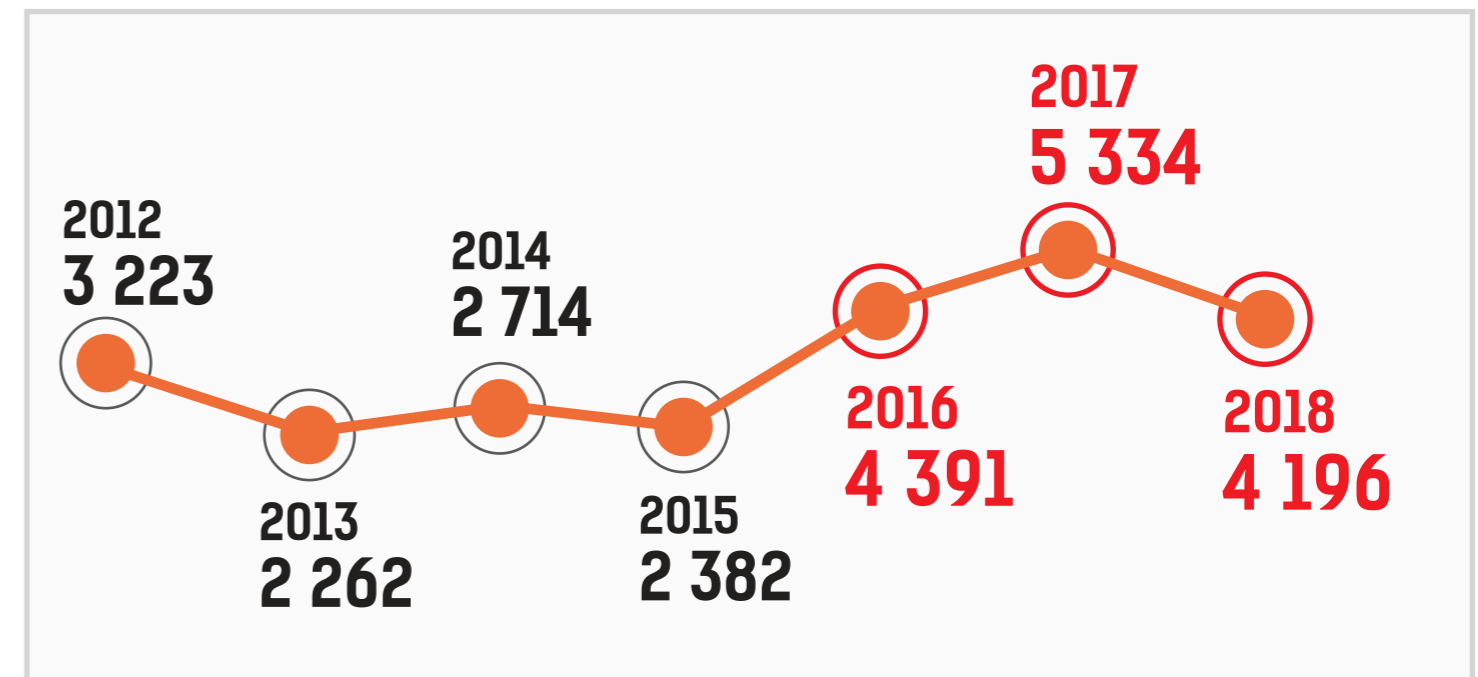
57%

OF REPORTS RECEIVED ARE FROM 2016 TO 2018



Gauteng is still the province generating the highest number of reports of corruption, with 45% of cases in 2018.

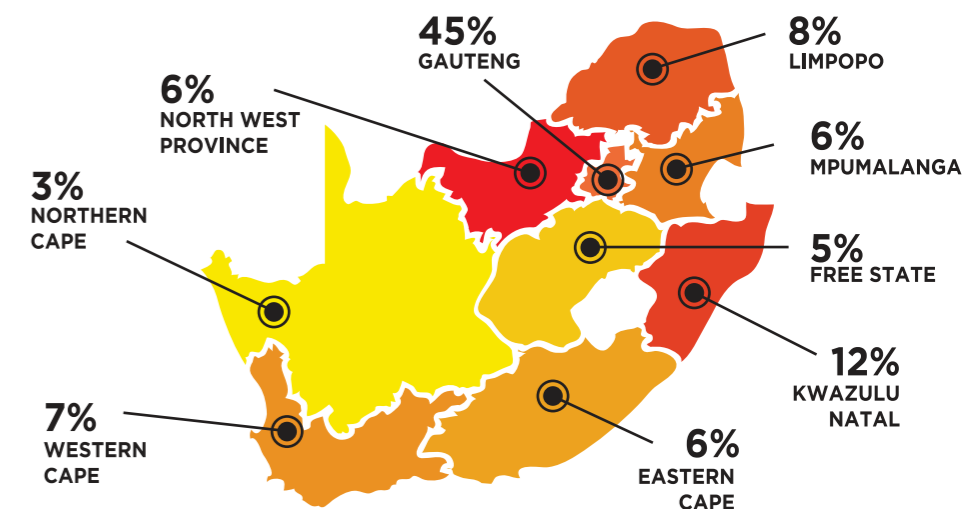
## REPORTS SINCE INCEPTION



## REPORTS BY PROVINCE | 2018

Gauteng is still the province generating the highest number of reports of corruption, with 45% of cases in 2018. KwaZulu-Natal features for the second consecutive year as the province from which the second highest number of reports of corruption are received. It also has the second largest population in South Africa, and has consistently placed among the top three provinces in terms of number of reports.

For the first time, Limpopo completes the top tier, with 8% of reports in 2018. This could be a result of the provincial roadshow that Corruption Watch undertook in late 2017.





# THE NUMBERS REVEALED

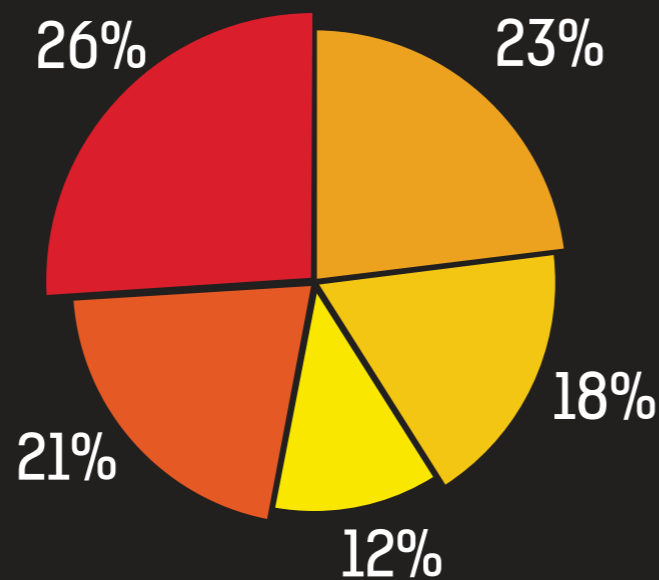
Whistle-blowers still report mostly about education, with almost 22% of corruption reports received in 2018.



## TYPES OF CORRUPTION

With respect to the types of corruption reported, abuse of power, bribery and procurement corruption were trending issues in 2018.

- ABUSE OF POWER
- BRIBERY
- EMPLOYMENT CORRUPTION
- PROCUREMENT CORRUPTION
- OTHER



## SECTORS

In relation to sectors, whistle-blowers still report mostly about education, with almost 22% of corruption reports in 2018 attesting to this fact.

As in previous years, corruption in schools tops the list with just under 20% of reports speaking to this fact. Coming in at second place, reports of corruption in the South African Police Service have increased from 6% in 2017 to 9% in 2018 – the highest percentage of reports of corruption received in this sector over the seven-year period.

Third on the list are reports of corruption and illegal activities occurring at licensing centres throughout the country. In the awarding of licences, the figures remain at 5% as in the two preceding years.



4%

HEALTH



4%

TRAFFIC



5%

LICENSING



9%

POLICING

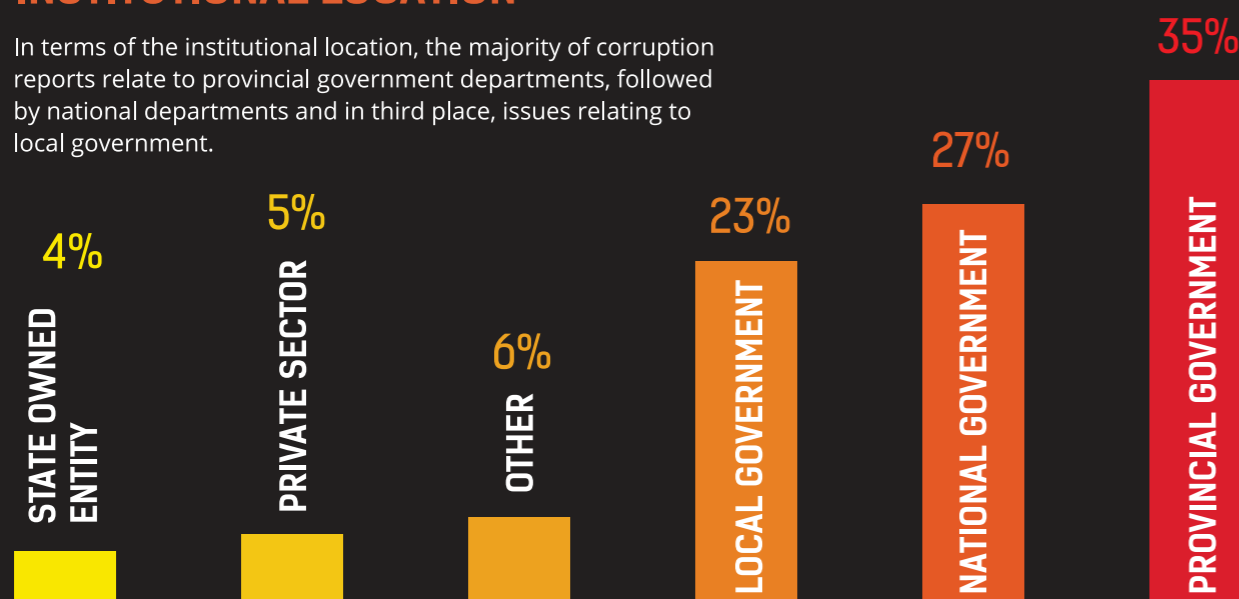


22%

SCHOOLS

## INSTITUTIONAL LOCATION

In terms of the institutional location, the majority of corruption reports relate to provincial government departments, followed by national departments and in third place, issues relating to local government.





# YOUNG VOICES: BEATING CORRUPTION TO ADVANCE HUMAN RIGHTS

The devastating effects  
of corruption on ordinary lives

BY KAVISHA PILLAY AND  
DEBORAH MUTEMWA-TUMBO



Those working in the  
anti-corruption space  
understand that corruption's  
real cost has been on the  
lives of ordinary people

"[Corruption] fuels maladministration and public fraudulence and imperils the capacity of the state to fulfil its obligations to respect, protect, promote and fulfil all the rights enshrined in the Bill of Rights. When corruption and organised crime flourish, sustainable development and economic growth are stunted. And in turn, the stability and security of society is put at risk"

- former Deputy Chief Justice Dikgang Moseneke, 2011

e live in a society where corruption has become a culture, a normalised act, a sickness of our being. Presidents, politicians, businessmen, false prophets and the like have tried to rope our nation into a state of submission, one that will tolerate the decay of democratic principles and at the same time give the finger to our Constitution.

We have heard of the many bribes that were paid, the kickbacks that were received, and the billions that have been laundered to offshore accounts. But corruption does not only affect economic or material issues – those working in the anti-corruption space understand that corruption's real cost has been on the lives of ordinary people, the communities that it has broken, and the serious threat that it poses towards meeting our constitutional obligations towards human dignity, the achievement of equality, and the advancement of human rights.

The differentiation between “petty” and “grand” corruption has led us to believe that grand corruption, such as state capture, affects the country more because of its economic implications and the erosion of public trust in our leadership and state institutions. Whilst this is undoubtedly true, petty corruption poses a similar threat to our nation's wellbeing. Although petty corruption involves smaller amounts of money and is usually engaged in to either avoid consequence, make quick money or fast-track a public service, it often occurs in important areas of service delivery that have been established to advance human rights and dignities such as the education system, healthcare infrastructure, social development and justice sectors. This has resulted in a growing sense of injustice and inequality in many communities across South Africa.

Since our establishment in January 2012, Corruption Watch's teams have come face to face with the devastating threat of corruption, and have watched it destroy the livelihoods and potential of ordinary people, communities and society at large. Over the years, we have travelled to many different communities across the country to conduct field work. Our trips gave us a first-hand experience of how corruption impinges on human dignity and prevents various groups of people from accessing their basic human rights. In the rural villages of Limpopo, children are being holed up in schools that are not conducive for growth, forced to learn in uninspiring environments that have already set them up for failure due to a lack of school infrastructure, little or no sanitation, and not enough learning materials. There is no running water and school feeding schemes are repeatedly abused by those in positions of power.

Pupils are learning on empty stomachs and the majority are likely to fall back into cycles of poverty and inequality that has choked the generations before them into oppression. Meanwhile in the dusty township of Ritchie in the Northern Cape, schools are a breeding ground for violence and drug dealing. Young boys have been indoctrinated into a lifestyle of gangsterism because it seems to be the only solution to surviving the desolate surroundings. The idea that education has the power to break systems of inequality, unfortunately, does not hold true in Ritchie and many similar communities across the country.

In Gauteng, we were exposed to an ailing health system that cannot serve large parts of the population with dignity and provide adequate treatment. Patients sleep on floors, medicines are stolen and sold to sponsor drug epidemics in communities, doctors moonlight during public working hours, foreign nationals are denied access

to health facilities and people have to bribe just to get treatment. At the same time, those responsible, such as former Gauteng MECs for Health Brian Hlongwa and Qedani Mahlangu, have yet to be held accountable and criminally sanctioned for their roles in crippling the health system. Since our democratic dispensation, access to adequate healthcare and treatment has been a hotspot for civil society mobilisation – but it was difficult to predict that in 2019, corruption would be considered as a public health risk that prevents millions from accessing healthcare in South Africa.

Over in the Western Cape, we were exposed to the shocking lived reality for communities in the Cape Flats. Manenberg, a community that once inspired Dollar Brand to honour its activism in the famous struggle anthem of the same name, is an oozing infected wound that has been left untreated for far too long. Entire generations of people have been subject to violent criminality, addiction, classism, unemployment and continued oppression. And corruption? Well it has weaved into the fabric of this community, strengthening the grip of injustice and whipping anyone who attempts to fight it, back into surrender. In these dreary streets, corruption is not discreet. It screams in your face and does not masquerade as a silent or victimless crime. It walks around in official blue uniforms, it stares at you as you look down the barrel of a contraband firearm, and it proudly puts a price tag on our law.

During our visit, it became increasingly apparent that in a room of close to 100 people, almost everyone had some form of experience with abuse of police power.

**In a room of close to 100 people, almost everyone had some form of experience with abuse of police power.**



We were told about how the police serve as the private security detail for gangsters and how they are in cahoots with local drug syndicates. An elderly woman bravely recounted her experience of being gang raped by police officers while she was walking home, because she “looked like she had just had sex”. Another spoke of her repeated rape by police officers in the holding cells of the local police station. A young mother told us about her twin daughters who were sexually abused by a family member but were denied help by the police because the mother was an addict and deemed unfit.

In one of our recent visits to a mine-affected community in the North West, that cannot develop because hundreds of millions of rands of its mining royalties have been lost to corruption, an elderly community member endeavoured to paint a picture of the impact of corruption on his life and on the lives of those around him. Describing what it feels like to live above vast reserves of mineral riches and yet to suffer from abject poverty with a lack of access to basic services, he said: “It is like standing in the middle of a river and dying of thirst”.

These are the stories, the everyday experiences, and the lived realities of many people in South Africa, who are dying of thirst. Our Constitution, through its robust and progressive Bill of Rights, promises fountains of living water to a people devastated by a painful history – but corruption is destroying the dream and has created generational webs of inequality, poverty and injustice. When we talk about the effects of corruption, let's not forget about the people whose dreams it has broken and how it has become a loud and systemic part of our national identity.

Our engagements with these communities were difficult and on most days, we were left feeling defeated. However, we also encountered small groups of people who are actively working towards rooting out corruption from their communities. These brave activists are hardly ever recognised for their determination and commitment to values of human dignity, equality and freedom. After listening to the traumatic experiences in Manenberg, a brave woman stood up and said “But people, there's hope!”

And there is hope, so we cannot lament. Whilst we hold onto the Constitution, the Bill of Rights, and the few pillars of democracy that were not eroded completely by state capture, we have 25 years of liberation to reflect on, centuries of oppression to contemplate, and the recognition that collective people's power is the only solution to fight the scourge of corruption in South Africa.



# CAMPAIGNS AGAINST CORRUPTION

Since its inception, CW has mounted campaigns that address corruption in specific sectors where reports from the public have highlighted a disturbing trend of corruption. These sectors have ranged from schools, the immigration system, and mining, to the traffic department and the police and healthcare sectors.

Our campaigns provide an opportunity for us to refine and focus our messaging on a targeted group of people who share a common interest in eliminating the corruption that affects them directly, and the impetus for mobilising a social movement driven by whistle-blowers. They also allow us to focus our efforts on the systemic dysfunction within a particular sector, and to identify key stakeholders to lobby, hold accountable, or indeed collaborate with if the shared commitment is there.

**DURING 2018 & CONTINUING INTO 2019, WE ARE INCREASINGLY VIEWING OUR CAMPAIGNS AS AN OPPORTUNITY TO ADVANCE ONE OR SEVERAL OF THE FOLLOWING: SOCIAL JUSTICE AND HUMAN RIGHTS, STRENGTHENING DEMOCRACY, & PROMOTING ACCOUNTABILITY.**







# CAMPAIGNS AGAINST CORRUPTION: SCHOOL CAMPAIGN



Our longest-running campaign was first conceptualised in 2013 when we began to highlight corruption in South Africa's public schools as a serious problem. The growing number of reports described conditions of poor infrastructure, while learners were denied access to proper sanitation, textbooks, and quality food, to name a few of the issues reported.

In the majority of cases, principals emerged as the main culprits of corruption, frequently with the help of family members, friends or leading members of school governing bodies (SGBs), due to their access to funds and decisions about expenditure. It became clear that our work needed to expand beyond creating awareness of the prevalence and impact of corruption in education.

Our work in training and building capacity of SGB members grew out of the realisation that parents can only hold principals and other school leaders to account if they are directly involved and equipped with knowledge of systems and processes, particularly in the disbursement of funds intended to improve learners' educational experience. This will also empower parents to play a role in the education of their children.

The schools campaign has now broadened into two sets of activities: those targeting SGBs and those targeting learners.

# CAMPAIGNS AGAINST CORRUPTION: SGB ELECTION CAMPAIGN

The 2018 SGB elections took place during March, running for the full month across the country in some 25 000 public schools. The SGB elections are considered the third largest voting process in the country, after the national and local government elections. In the run-up to the SGB elections, we mounted various efforts to increase public participation and transparency in the process. Back in 2017, the Department of Basic Education (DBE) invited CW to participate in the national SGB

elections task team, which resulted in attendance at numerous strategy discussions with the DBE and the forging of partnerships with different provincial departments.

Our work continued into the post-election period where we worked with targeted clusters of schools to ensure well-informed, accountable SGBs as bulwarks against corruption.

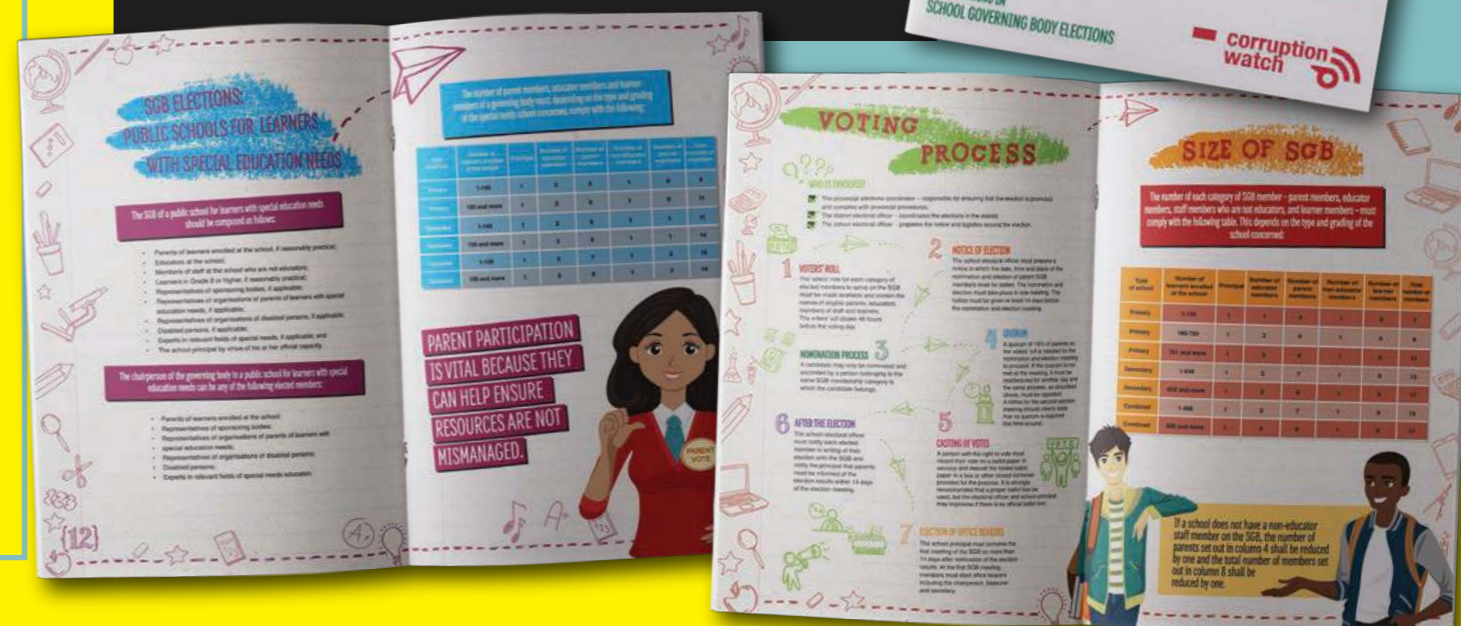
CW sought to increase public participation and transparency in the election process through the following mechanisms:

## 1

**Development and distribution of a public education election toolkit. We distributed 140 000 copies to all nine provinces, with a further 200 000 copies placed as an insert in the Daily Sun and distributed nationally.**

**FIND IT HERE:**

[www.corruptionwatch.org.za](http://www.corruptionwatch.org.za) > publications > e-books > **School Governing Body Toolkit 2018**



# 2

Development of three online animated videos to encourage the public to donate to the CW SGB campaign & Production of a video in the Bra Tjo Tjo series on YouTube:

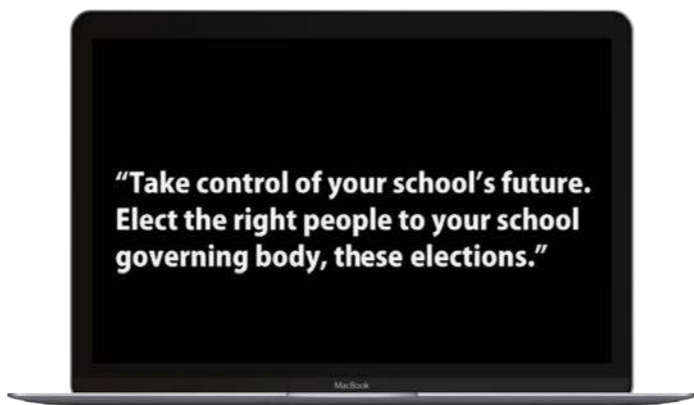
**FIND THEM HERE:**  
 YouTube > Corruption Watch Channel > Videos > **Why is school governance important?**  
 YouTube > Corruption Watch Channel > Videos > **Bra Tjotjo - School Governing Body Elections 2018**




Why is school governance important?



Bra Tjotjo - School Governing Body Elections 2018



# 3

Participation in the Gauteng launch of the SGB elections in Midrand, with a speaking slot alongside MEC Panyaza Lesufi.

# 5

Meeting with the provincial head in the Northern Cape Department of Education, and planning of the post-elections workshops with newly elected SGBs.

# 4

Capacity-training workshops on the 2018 SGB elections with Better Education for All (BEFA) in Limpopo.

# 6

Participation in over 15 interviews with both community and commercial media.

During the elections, Corruption Watch heard some of the concerns of parents, guardians and the public. These were incorporated into a report submitted to the DBE and to provincial offices where CW is active.



Some of the key issues raised by parents and guardians included:

- ❏ School electoral officers' (SEOs) apparent lack of understanding of the election process, or inadequate training in running SGB elections, as outlined in the election guidelines;
- ❏ In some schools, the failure of SEOs to communicate election dates to parents and guardians in time, so that there was no quorum as prescribed in the guidelines. Some considered this deliberate, as the second meeting does not need to be quorate, so those considered friends of the principal would attend and automatically be elected onto the SGB. This also happened when some principals abandoned the process half-way, and did not communicate the second meeting to parents;
- ❏ Parents were discouraged from voting for various reasons, such as victimisation by members of SGB associations, or the tendency of some officers to prematurely view candidates with the highest nominations as already being SGB members;
- ❏ Allegations of interference by principals and some staff of host schools, to ensure the election of preferred candidates.

CW's external partnerships have provided access to other invaluable materials, such as the GIZ toolkit to assist newly elected SGBs understand their roles and responsibilities, Ensuring Greater Integrity in the Management of Schools Funds and Assets. Other materials used for the sessions include the South African Schools Act and a basic education rights handbook developed by Section 27.

At the end of the workshop cycle, we will submit a report to the DBE and districts on learnings and findings from these sessions, also including recommendations on accountability issues raised in the sessions by SGB members. As CW participates in the national task team for SGBs, this information will also be shared with the task team and SGB associations.

The relationship between CW and the Gauteng Department of Education (GDE) has been significantly strengthened through this work with SGBs. This is evidenced by GDE's invitation for CW to attend internal planning meetings with officials from the provincial office, requests to address newly elected SGBs in different Gauteng districts, and CW's participation at the SGB Summit at Rhema Church, where approximately 7000 newly elected SGBs were addressed by the MEC for education.

From September 2018 to September 2019, CW, in partnership with the DBE, is conducting capacity-building workshops with newly elected SGBs in four districts in Gauteng and Northern Cape, at 10 schools per district. Clusters of schools in Ekurhuleni North, Johannesburg East, and the Kimberly area will soon follow.

Workshops focus on topics such as managing funds allocated to schools, how to identify corruption and how and where to report it, ethics and conduct of SGBs, and roles and responsibilities of SGBs. There are eight modules presented over 12 months. The principal, chairperson and treasurer represent each school, and district officials also attend.

### SCHOOLS DEBATES

As part of our learner-focused activities, CW hosted a round of schools debates between August and September with the aim of heightening awareness of corruption among young learners from four schools in the Gauteng area. The motion was *This house believes that teaching public ethics in all secondary schools will combat corruption.*



CAMPAIGNS AGAINST CORRUPTION:

# POLICE CAMPAIGN

Our focus on policing kicked off in 2017 when CW and the Institute for Security Studies (ISS) launched their Top Cops campaign that focused on the leadership appointments to the South African Police Service (Saps) and the Directorate for Priority Crime Investigations (DPCI or Hawks). We believe that ethical and accountable leadership is vital in ensuring an effective public policing service. Since then, we have broadened our campaign to focus on corruption within the police ranks by encouraging the public to report these incidents to us. Our campaign includes research, community consultations, rights-based training, investigations and legal interventions. We believe that our work around policing is vital because we will not be successful in tackling corruption in the broader sectors of society if the very institutions mandated to combat corruption are themselves corrupt.

Since 2012, we have received 1 463 police corruption reports. For 2018, we received 298 reports, with the majority stemming from Gauteng (55%), KwaZulu-Natal (13%), and Western Cape (10%). In terms of metropolitan areas, the City of Johannesburg (30%), City of Tshwane (13%) and the City of Cape Town (9%) emerge as hotspots for police corruption.

The majority of police corruption cases for 2018 (33%) involve abuse of power by SAPS officials. Whistle-blowers claim that police tend to be violent or aggressive towards both suspects and those who lodge criminal cases. Our reports and engagements with communities continue to highlight wrongful arrests, sexual harassment, and physical abuse of women. Bribery (27%) is the second highest type of corruption experienced by the public in relation to policing. Our reporters have told us about officers who accept bribes to avoid applying criminal sanction on perpetrators. For example, SAPS officials accept bribes from suspects who wish to have a docket tampered with or destroyed.

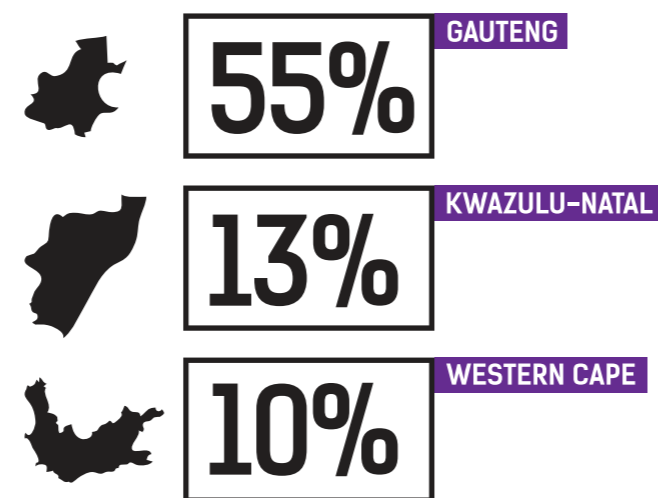
## SINCE 2012



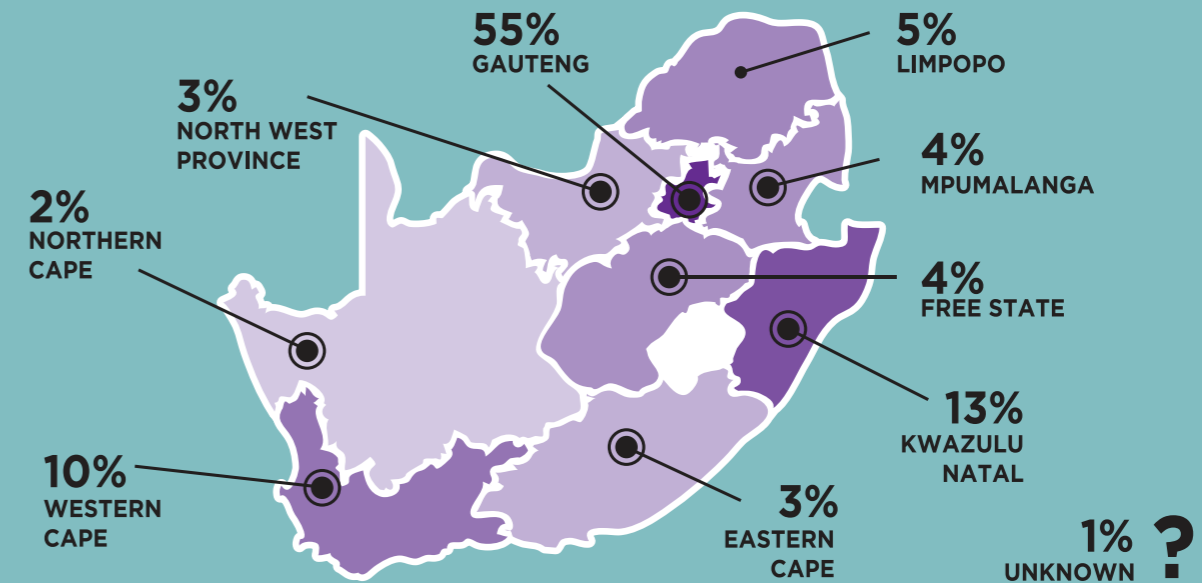
## IN 2018



## TOP 3 PROVINCES



## PROVINCIAL DISTRIBUTION



In other cases, perpetrators pay police officials to look the other way when there is drug dealing, burglaries or car theft. The third most reported type of corruption for 2018 is dereliction of duty or the failure to act (19%). Police officials often do not act when crimes are reported to them. We have often heard of scenarios in domestic abuse or gender-based violence cases where the victim reports the suspect and instead of allowing the victim to open a case, the police would instead call the suspect to come to the police station and fetch the victim so that the matter can be resolved privately without police intervention.

In 2018, the Corruption Watch team conducted community consultations in Khayelitsha, Manenberg, Alexandra and Diepsloot. We were told about the abuse of power by police officials and how this violates human rights such as the right to safety, the right to dignity, and in extreme cases, the right to life. Corruption Watch realised that police corruption poses a major threat to our communities and instead of invoking feelings of safety and security, Saps generates fear and distrust from the public.

As a result, we developed an idea called **Know Your Police Station**, which is an open data tool that would facilitate greater transparency and trust within the police service.

The tool will allow the public to:

- 📶 Report cases of police corruption and misconduct;
- 📶 Display live data analytics that highlight trends and hotspots of corruption in the country;
- 📶 Provide information pertaining to an individual's rights when encountering the police;
- 📶 Provide information pertaining to all 1 100 police stations across the country;
- 📶 Provide information pertaining to community policing forums;
- 📶 Allow the public to nominate an ethical cop based on a personal experience;
- 📶 Allow the public to rate and review their police stations based on personal experience.

We pitched our idea at the Google Impact Challenge and were selected as one of the top four applicants, out of almost 1 300 entrants, and received a grant of \$250 000 to execute our project.

**"The police are murderers themselves, some even rapists – but they are protected by the uniform. The blue uniform and shiny badges. They can walk all over with their black safety boots and silence me from speaking out with their rubber bullets. They try to hold me back with painful handcuffs, but I am not scared. I no longer fear them because they are nothing but well dressed and connected gangsters." – Corruption Watch whistle-blower, 2018**



CAMPAIGNS AGAINST CORRUPTION:

# HEALTH CAMPAIGN

The principles of transparency and accountability in the public healthcare sector play a fundamental role in the realisation of the human right to healthcare. South Africa's Constitution stipulates that everyone has the right to have access to healthcare services and that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.

South Africa spends 13.5% on health programmes as a share of total government expenditure, with over 80% of the population relying on the public healthcare system. However, media reports, government investigations and audit outcomes reveal that the health sector is on the verge of collapse owing to high levels of corruption, irregular expenditure and financial misconduct.

Since 2012, Corruption Watch has received 586 reports of corruption in public healthcare. In 2018, we received 108 cases, the majority (40%) from Gauteng. Limpopo and the Eastern Cape were tied in second place (11%), and KwaZulu-Natal was close behind in third place (10%). Most of these allegations (70%) are located within the provincial departments of health, with 28% of reports directed at the national Department of Health.

Our whistle-blowers have highlighted employment irregularities (29%) as the most common form of corruption experienced, followed by procurement irregularities (23%). Abuse of power by government officials (16%) and abuse of state resources (13%) are also trending issues that prevent the public from accessing adequate health services. Corruption in the public healthcare system has cost South Africa heavily in monetary terms, but, more devastatingly, in the loss of human life. The ailing health system clearly demonstrates that corruption is not merely a silent economic crime, but instead threatens and violates the fundamental human right to health in South Africa.

## SINCE 2012



586

HEALTHCARE CORRUPTION REPORTS HAVE BEEN RECEIVED

## IN 2018



108

HEALTHCARE CORRUPTION REPORTS HAVE BEEN RECEIVED

## TOP 3 PROVINCES



40%

GAUTENG



11%

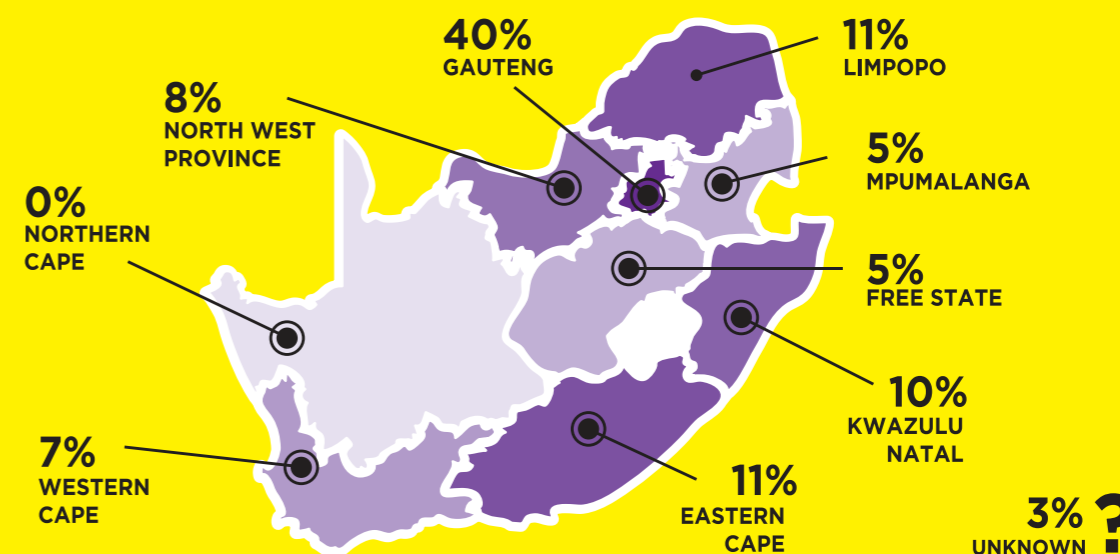
LIMPOPO & EASTERN CAPE



10%

KWAZULU-NATAL

## PROVINCIAL DISTRIBUTION



### Enforcing Accountability

In June 2018, Corruption Watch joined forces with fellow activist organisations SECTION27 and the Treatment Action Campaign (TAC) to expose high levels of corruption in the Gauteng Department of Health (GDH). Following a Promotion of Access to Information request by SECTION27, the Office of the Presidency released a report to the organisation in May 2018, which highlighted serious maladministration, irregularities, unlawful expenditure of public money and improper conduct by GDH officials. On 21 June, the civil society organisations released the report to the public via a media briefing.

The report, compiled by the Special Investigating Unit, implicates Brian Hlongwa, former MEC for health in Gauteng and former ANC chief whip in the Gauteng Provincial Legislature, for his instrumental role in facilitating and abetting corrupt activity at the GDH, which ultimately led to the capture of the department by private firm 3P Consulting. The current crisis in Gauteng's health system can be traced back to the gross financial irregularities that occurred during Hlongwa's tenure as health MEC.

Corruption Watch, SECTION27 and TAC wrote letters to the National Prosecuting Authority, the Gauteng Provincial Legislature, and the ANC Ethics Board. The organisations also held a public march to the Gauteng Provincial Legislature demanding that Hlongwa be removed and face justice for his actions.

In November 2018, Hlongwa formally resigned from the provincial legislature and an internal report by the ANC has recommended that he not be allowed to serve on the provincial executive committee.

### Partnerships

In June 2018, the Special Investigating Unit (SIU) convened various stakeholders working in both the public and private health system to launch the National Health Anti-Corruption Forum (NHACF). The forum is comprised of public sector bodies (Department of Health, SIU, the Hawks, Saps, Anti-Corruption Task Team, Financial Intelligence Centre and the National Prosecuting Authority), private sector bodies (Board of Healthcare Funders of Southern Africa, Health Funders Association, Council for Medical Schemes, Health Professions Council of South Africa) and civil society organisations (Corruption Watch and SECTION27).

The purpose of the forum is to build relationships of collaboration, consultation, mutual support and cooperation between the listed parties in order to address corruption within the health sector.

Corruption Watch currently serves on the steering committee of the NHACF and has referred health corruption reports to the body for investigation that could lead to criminal prosecution and civil litigation.



## CAMPAIGNS AGAINST CORRUPTION:

# NACS CAMPAIGN

At the 2016 UK Anti-Corruption Summit, the South African government made a commitment to reduce increasing levels of corruption in the public and private sectors by developing a national anti-corruption strategy (NACS) and a supporting implementation plan. The draft NACS was publicly released in October 2017 and is built around nine strategic pillars, which are mutually supportive. In June 2018, Corruption Watch launched a public awareness and participatory campaign around the draft NACS in order to contribute towards the process of developing a sound anti-corruption strategy.

Our approach involved:

- 📶 Developing an online public survey around the NACS;
- 📶 Conducting public consultations in three provinces;
- 📶 Hosting sectoral consultations with civil society organisations and the private sector;
- 📶 Soliciting input from anti-corruption experts at a local and international level;
- 📶 Making a written submission to the anti-corruption inter-ministerial committee (ACIMC) on key findings from our consultative process, as well as recommendations that should be considered when finalising the NACS.

Of the 510 respondents to our online public survey, the majority (77%) did not know about or engage with the draft NACS. The same sentiment was expressed at Corruption Watch's community consultations in Alexandra (Gauteng), Mogwase (North West) and Khayelitsha (Western Cape), as well as the sectoral consultations held with civil society organisations and the private sector – the majority of participants were unaware of the existence of the NACS.

The participants noted the importance of having a national strategy; however, they were pessimistic about its impact and implementation. Many expressed frustration towards the South African government that, given the importance of the strategy and the state of corruption in the country, very little was being done to engage the public in a meaningful manner.

**The impact of CW's activities is highlighted in our written submission to the ACIMC, in which we extensively detail the feedback that was received through our various consultative processes.**

We also provided the ACIMC with a list of recommendations that should be considered for inclusion in the final NACS.

Our recommendations were structured around the following themes:

- 📶 Ownership of the NACS;
- 📶 Whistle-blowing;
- 📶 Professional associations;
- 📶 Abuse of professional ethics and of confidentiality;
- 📶 Appointment processes to heads of constitutional bodies, anti-corruption and law enforcement agencies;
- 📶 Corruption in the mining industry;
- 📶 Petty corruption;
- 📶 State-owned enterprises;
- 📶 Political party funding;
- 📶 Communication of the NACS.



## CAMPAIGNS AGAINST CORRUPTION:

# AWARENESS CAMPAIGN

In 2018, Corruption Watch continued with its strategy to conduct provincial roadshows in order to engage communities on issues of corruption and to encourage a culture of anti-corruption activism and active citizenry.

As in the previous year, these face-to-face engagements brought to light the grim conditions that people are forced to live in, deprived of access to basic goods and services amid crumbling or non-existent infrastructure, thereby stripping them of dignity and the human rights that are their due.

It is in these communities that the devastating effect of corruption can be witnessed first-hand, in the evident failure of state funding to provide adequate schools, hospitals, police services or decent amenities.

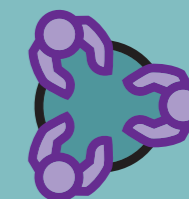
This failure only serves to ensure that people remain locked in a cycle of poverty and ill health, and vulnerable to violence and crime.

We took our outreach activities to three provinces, including the Eastern Cape, Western Cape and Gauteng, conducting brand awareness activations at provincial hospitals, local clinics, busy taxi ranks and strip malls.

**3** PROVINCES  
GAUTENG  
EASTERN CAPE  
WESTERN CAPE



**57** ACTIVATIONS



**52 400**  
PEOPLE REACHED





**Corruption deprives people of dignity, access to basic goods and services, and human rights; it forces people to live in grim conditions amid crumbling or non-existent infrastructure.**





YOUNG VOICES:

# A GENERATION OF DEMOCRACY

A lifetime and the blink of an eye

BY MELUSI NCALA

**A period of 25 years is a considerable amount of time in an individual's life. In a family, and perhaps a community, it represents a generation.**

History would suggest that a quarter of a century is a brief moment – one that can be easily counted as part of other, perhaps greater, moments. It is the events that coincide with a moment that marks its importance. Think of the USA's 25 years following the declaration of independence in 1776 – an event that occurred amidst a war between the colonialists and their British authorities. Nigeria's Biafran war of 1967 occurred within the 25-year period after the country attained independence in 1960. Zimbabwe is said to have experienced several economic ups and downs in its initial two and a half decades of democratic rule. In South Africa 25 years is significant for varying reasons.

I often feel that there is an effort in some social quarters of South Africa to mark 1994 as the start of history for this country. The intention may not be all sinister and though highly inaccurate, it is not simply wrong. That year was one of political, economic and social renewal. The world was rapidly changing and South Africa had to adjust to the global agenda whilst initiating a programme of social rejuvenation. For rugby and soccer lovers this proved to be an attainable feat with national teams winning the 1995 IRB World Cup and the 1996 African Nations Cup respectively.



**B**

ut the questions lingered. Had the momentary euphoria been sufficient for re-energised nation-building, following a violent and divisive past? Had we neglected more urgent problems that needed our collective approach in resolving them? What about our conscience – was it purged of past demons and strong enough to apply itself ethically, morally and in a principled way at all times?

I reflect upon the past years as a person descended from a working-class, spiritual, elderly couple. Their humble beginnings were marred by land dispossession, poverty and years of child labour at a farm. I am a son to their granddaughter who, as the renewal project of 1994 began, was hopeful, energetic and eager to participate in a democratic South Africa. My mother, Johanna Ncala, lived her life by this hope, and her legacy as a person living with HIV, an activist and, towards the end of her vibrant life, a social entrepreneur, attests to this claim – regardless of the challenges, big and small, along the way.

If there are major events that dominated the period under review on a personal and public level, it would have to be the HIV denialism era and corruption. Sadly, the consequences for both have been, and continue to be, adverse in my life as well as the lives of countless other South Africans.

Though today's government advanced the provision of antiretroviral drugs, the process that led to this healthcare provision was long, arduous, painstaking and very costly. I recall the days of my mother's activism when she would weep inconsolably at the deaths of her friends, comrades and other PWAs (persons with AIDS) whom she met as an activist in civil society. These were the days when her own health was so fragile that doctors gave her months to live – but she held her head up and was adamant that she would not stop until what some politicians were denying to be a reality was accepted as such, that it was no longer stigma, and that the public health sector would care for people living with HIV. No amount of water cannon shots, rubber bullets and police whippings would deter her.

At that time, a person risked losing their employment, and they had no protection, for being a PWA. When it happened to my mother, it resulted in days of absenteeism from school for me and long periods of skipped meals and no electricity for the family. When that darkness eventually lifted, I had to confront another bleak reality. I came to understand the true meaning of corruption and the futility of seeking to hold a wrongdoer to account. My mother sought to fend for us and our impoverished community by applying for a tender to service the local municipality's roads and storm water drains. As many start-up entities in that position have come to know so well, her bid was rejected.

Being the tenacious woman that she was, she took on the big dog, the municipality, by voicing her displeasure at losing the bid to what would later be revealed as a somewhat dodgy business from outside the Lesedi region, where the project was to be based. She highlighted that the municipality had overlooked key submissions from her company's bid. The municipality eventually relented and an arrangement was made where her company became part of a joint venture with a white-owned business that had a decade-long history of scoring multimillion-rand contracts from the municipality.

Thus began a very hard lesson and a bitter pill to swallow regarding justice (or lack thereof) for my mother and the hardworking people she sought to employ. The joint venture partner often grumbled about the municipality's insistence on the two companies collaborating. According to him, there was scant chance that a woman-run operation could cope in this field. More importantly, he feared that his profits would take a significant dive for he had a reputation for not paying labourers their due – the industry standard at the time as prescribed by the Department of Labour. However, my mother was intent on making a success of the roadworks project by employing, and fairly remunerating, local men and women.

As soon as funds were deposited into the joint bank account, money meant for the tender project was withdrawn. Despite a clear requirement for both signatories to approve any withdrawals, there was no consent sought from my mother. Stunned by this brazen misconduct, she – with my help – brought the deceitful act to the bank's attention. When we got no joy at branch level, we escalated our complaint to the bank's head office, and eventually filed a case with the South African Police Service.

Alas, the documented proof and audio recordings in our arsenal, wherein the business partner was belligerent and confessed to withdrawing the funds, did little to move the bigger players: the bank – whose employee was complicit in this crime – or the police's Commercial Crimes Unit.

I look at the past 25 years as a time when lines had to be drawn. However, where those lines were previously based mainly on racial differences and economic disparities, the new lines were to portray justice, fairness and equality in a society with clearly demarcated socio-political differences. But also, it was a period in time when we inscribed virtues of transparency and accountability in our social fabric, guided by our humanity, morals and ethics – etched by the activists of civil society into the canvas of this 25-year old history. It is an important story to remember, for it charts the beginnings of a period upon which we will have to reflect and account for.



# TRANSPARENCY INTERNATIONAL

Towards Enforcement of Africa's Commitments against Corruption

## African Union – 2018 African Year of Anti-Corruption

The African Union (AU) Assembly of Heads of State declared 2018 as the 'African Year of Anti-Corruption' with the theme *Winning the Fight against Corruption: A Sustainable Path to Africa's Transformation*. This declaration, and the actions stemming from it, provided a rallying point for all state and non-state actors to help consolidate gains made over the years and ensure greater progress in the fight against corruption in Africa. One of the AU's weapons in its anti-corruption arsenal is the African Union Convention on Preventing and Combating Corruption (AUCPCC).

Transparency International (TI) considered the timing of this declaration as a unique opportunity for a focused civil society engagement with AU leaders, and provided funding for a multi-country project to rally civil society efforts behind this call through an engagement with the continent's primary anti-corruption treaty, the AUCPCC.

Corruption Watch, as one of TI's African chapters, participated in this project, for which specific activities were finalised at the TI African chapter meeting in Kinshasa on 22-22 June 2018. The overarching theme for the project is *Towards Enforcement of Africa's Commitments against Corruption (TEA-CAC)*.

The AUCPCC serves as the shared roadmap for states to implement governance and anticorruption policies and systems domestically and jointly at continental level. It contains strong provisions that can go a long way towards resolving the corruption challenges on the continent. This is however only feasible if African states sign, ratify, domesticate and implement the convention. Currently, the AUCPCC has yielded poor results owing to insufficient commitment and implementation. Failure to adopt continental norms on governance translates into difficulty to engage national level actors on the same values and principles at national level.

### South African focus of the TEA-CAC project

Corruption Watch recognised the importance of being part of this project, which calls for research into South Africa's compliance with the AUCPCC. Having previously looked at the government's compliance with local legislation, and often taking departments and senior officials to task, this project provided an exciting opportunity for CW to probe government compliance with an important regional instrument to which the state is a party. This enabled us to examine where, as a country, we were falling short of meeting our regional commitments in terms of combating corruption.

CW teamed up with long-standing partner, the ISS, given our shared commitment to addressing corruption and abuse of major criminal justice agencies. The two organisations made a joint contribution to this report, drawing on their collective expertise to unravel the various causes of the manipulation of the criminal justice system and ultimately to South Africa's failure to effectively implement the AUCPCC.

South Africa signed the AUCPCC on 16 March 2004, and ratified the convention on 11 November 2005. For the purposes of this project, Corruption Watch decided to focus on Article 5 of the AUCPCC, Legislative and other Measures, more specifically clause three which deals with the need to "Establish, maintain and strengthen national anti-corruption authorities and agencies." Since 2016, the concept of 'state capture' has become part of everyday language in South Africa. The term may be understood to refer to a situation 'where small corrupt groups used their influence over government officials to appropriate government decision-making in order to strengthen their own economic positions'.

In South Africa, the term has been defined as referring to 'the political project of a well-organised network that strives to manage...

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he symbiotic relationship between the constitutional state and the shadow state.' The same report goes on to argue that '[T]he evidence suggests that our state institutions are being repurposed to serve the private accumulation interests of a small powerful elite.' Although the process of state capture in South Africa is equated with the dominance of the 'Zuma-centred power elite', the process of aggressive state capture may be said to date back to approximately 2012. However, in South Africa state capture has a symbiotic and reciprocal relationship with another process, one that predates it. This is the process of capture of South Africa's criminal justice institutions. Criminal justice system (CJS) capture is typically effected by the executive and serves as a means of ensuring that the law is enforced selectively to protect members of the executive, their key political allies, and patrons. It may also be a means of using criminal justice institutions to target political or other opponents (something that was alleged by supporters of Jacob Zuma during the years when Thabo Mbeki was president) and for other purposes (intimidation of political opponents, or other coercion or manipulation).

Corruption Watch procured the services of an independent researcher to write the report, which focused on the criminal justice system and the domestic institutions that have been established to tackle corruption, as well as on measures that have been put in place to maintain and strengthen these institutions. The final paper emphasised the nature of the independence of these institutions, whilst shedding light on the extent to which they were captured.

The paper is in two parts:

- Part I provides a perspective on the regional and international anti-corruption instruments to which South Africa is a signatory, with a particular focus on the AUCPCC. It also provides insight into the various agencies that form South Africa's criminal justice system, and of the legislative and other measures in place to combat corruption in light of the convention.
- Part II is an in-depth discussion of the manipulation of South Africa's criminal justice agencies, followed by an analysis of how, over the years, certain developments within the criminal justice system have ultimately led to state capture. It looks at the reasons behind the political manipulation of criminal justice institutions and how this influence has led to irregular appointments of corrupt and incompetent senior leadership in strategic positions, abuse of power, and the sometimes-unwarranted removal from office of effective senior leaders.

Various institutions and bodies are examined in the research report, including Saps (and its intelligence arm), the National Prosecuting Authority (NPA), and the Independent Police Investigative Directorate. The paper also gives emphasis to what it terms 'the premier national investigation agency' (previously the Directorate of Special Operations or Scorpions, which was part of the NPA, but now the DPCI/Hawks, which is part of Saps). It also identifies the South African Revenue Services and the Special Investigating Unit as complementary arms of the CJS apparatus in that they perform an investigative function though they do not themselves have powers such as those of arrest or the power to institute prosecutions.

The paper covers:

- The powers vested in the CJS – including the powers to use force, to investigate and prosecute, and powers of surveillance.
- The context of criminal justice capture, comparing CJS capture within particular timeframes, for example in the later period of the Mbeki administration, during Zuma's ascendance and, to an increasing extent, throughout his administration.
- Identifies processes through which CJS capture takes place (e.g.: appointment of compromised individuals; protection of favoured individuals against accountability; informal pressure; leaks, often followed by suspensions, boards of inquiry and dismissals or packages; interference with oversight institutions.)
- Official institutions and processes that have been mobilised to resist, or perpetuate CJS capture, including the appointment of commissions of enquiry and key institutions of oversight.
- The relationship between state capture and CJS capture.
- Civil society, parliamentary oversight and the politics of criminal justice capture.
- In its conclusion, the paper recommends a range of measures designed to reduce the vulnerability of the CJS to capture.

The paper prepared for this project has been adapted as a joint CW/ISS submission to the Zondo Commission into state capture. The hearing will take place in 2019. In other activities associated with the project, Corruption Watch hosted a roundtable on the capture of the criminal justice system at a conference convened by the Public Affairs Research Institute on State Capture and its Aftermath: Building responsiveness through state reform.





# CORRUPTION IN THE MINING SECTOR

The mining sector in South Africa is undergoing a tumultuous period; low commodity prices, policy and legislative uncertainty, political power struggles and mine-community discontentment are driving a general sense of disillusionment in the sector.

We emphasise the importance of transparency and availability of information in the administration of mine-affected community benefits

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s these events unfold the state's response is being driven by a transformative agenda, yet communities are still without tangible and meaningful benefits.

We echoed these concerns in our policy submissions on the Draft Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018 (Mining Charter) and the Traditional Leadership and Khoi-San Bill. In these submissions, we emphasise the importance of transparency and availability of information in administration of mine-affected community benefits and, importantly, the availability of avenues for recourse and remedial action. CW's body of work has been focused on ensuring that the mine-affected community benefits encapsulated in the Mining Charter and Mineral Petroleum Resources Development Act are fully realised and that policy frameworks are established to facilitate their realisation.

In 2018, supported by the Open Society Foundation of South Africa, we continued with our research and advocacy initiatives into the management and administration of mining royalties or community funds/benefits. The aim of this research was to evaluate the main challenges facing mine-affected communities who are looking for transparency and accountability in the administration of community royalties, and the problems around access to key information such as resolutions and financial documents. The ultimate goal is to improve transparency and accountability in South Africa's mining royalties system and provide an evidence-based approach

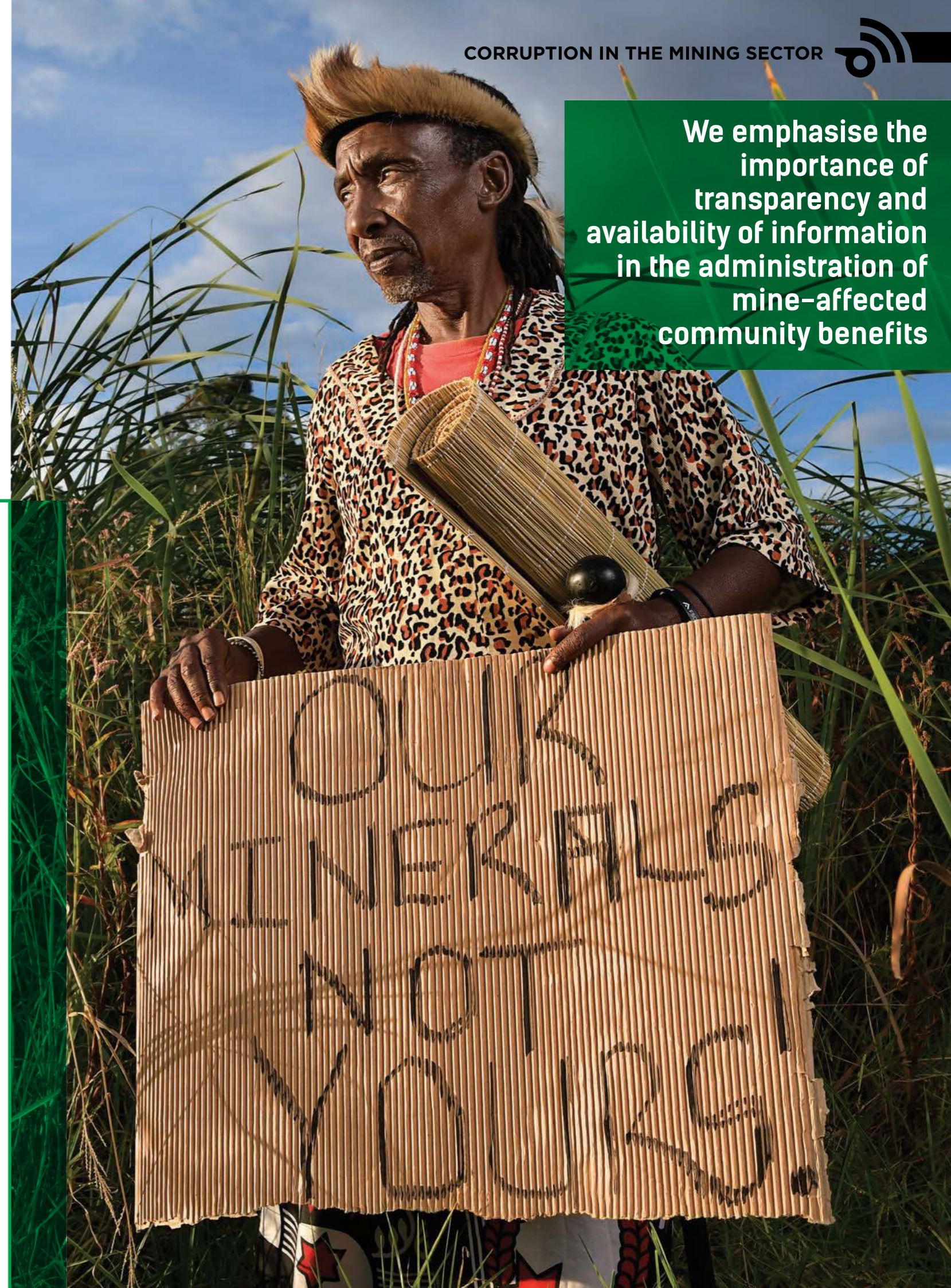
towards reforming current policy and legislation that would mitigate against corruption, which ultimately disadvantages mine-affected communities.

In order to accurately translate our investigative findings into tangible and practical solutions, we focused on engaging with all key stakeholders in the administration and governance of mining royalties. First, we continued our community engagements in the Bakwena ba Mogopa community in the North West, ensuring that we understood the different forms of royalties administration at play.

Once we were made aware of the unique system at work in the Bakwena ba Mogopa's Ventersdorp community, we held a series of engagements in the village, after which we hosted a roundtable at the Alternative Mining Indaba (AMI) in Cape Town to raise some of these issues. The AMI platform advocates for transparent practices in the management and governance of mineral resources in South Africa by providing a space in which mining communities and civil society are part of legislative, policy and corporate reform.

We invited expert mining lawyers, researchers, government representatives, mining company officials and community members to the roundtable.

This event created great dialogue and allowed us to form strategic partnerships that will enable us to initiate our advocacy aims effectively in 2019.

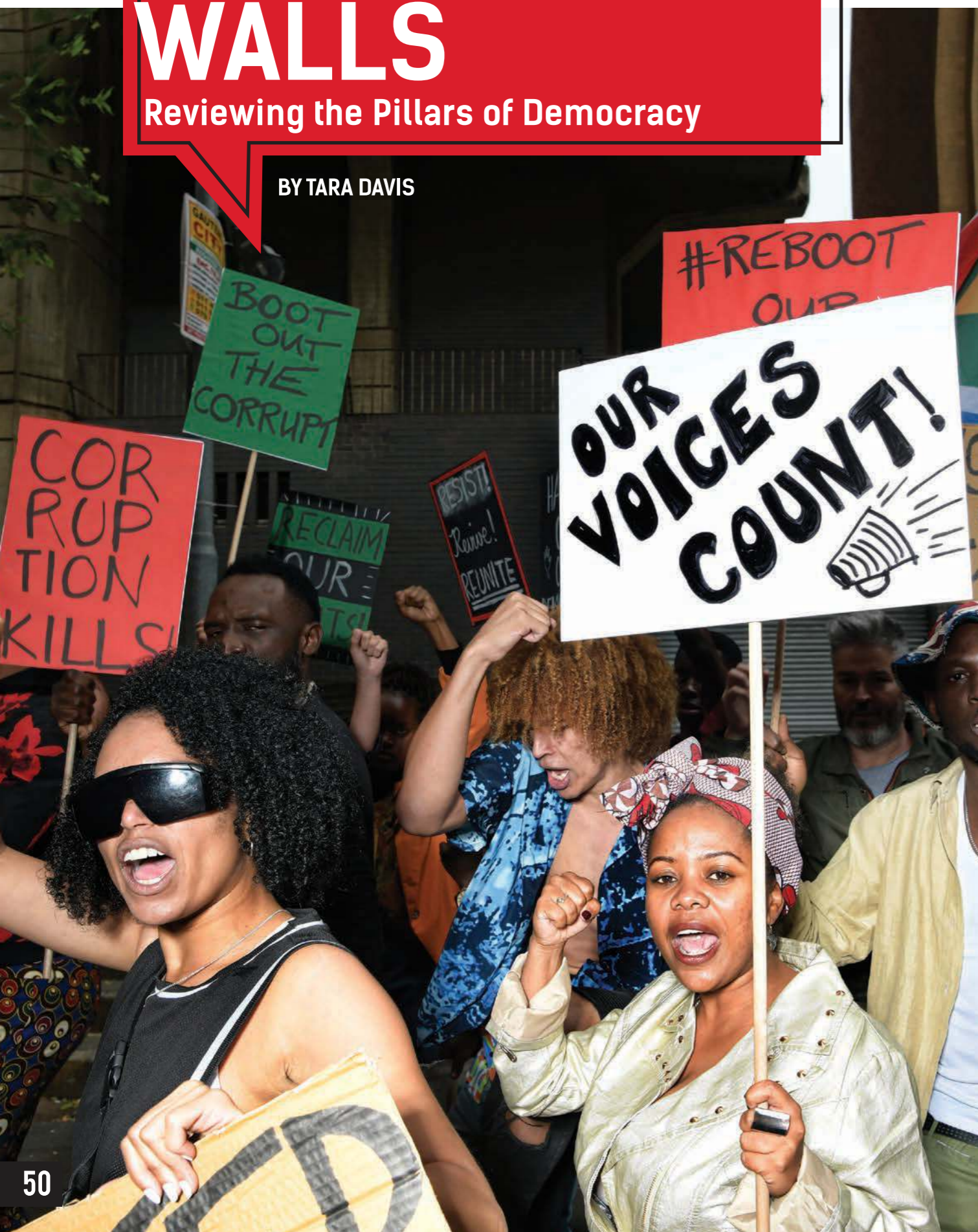




# WALKING INTO WALLS

Reviewing the Pillars of Democracy

BY TARA DAVIS



I had a conversation recently about apathy in South Africa; about the trend of disengaging from the politics around us. This was on the back of trying to understand why why Kim Kardashian's new bob received more attention than the mismanagement of Eskom, amongst other things. Why are we not engaging with matters of consequence? It seems incongruent with our reputation as a vibrant citizenry, and perhaps is the mental equivalent of moving to Australia. My learned friend disagreed, and quite vehemently so. He wasn't kicking and screaming, but he made the point that his apathy stems from perpetual frustration. It is discouraging to participate in a system that seems to favour impunity over accountability and greed over growth. People are tired of stagnation, and political engagement requires consistently confronting it. He has a point – is this all we have done after 25 years of democracy? The conversation culminated in my attempt to encourage a sense of hope, and thankfully – a cup of tea.

Admittedly, there are days when it feels like all we do at Corruption Watch is walk into walls. It can be discouraging and immobilising, but instead, we get up every day to walk into the same walls. The decision to do so is premised on South Africa's capacity to self-regulate; a silent confidence in the principles and institutions which work to ensure the proper functioning of our constitutional democracy – the so-called pillars of democracy. There is no consensus on what these pillars are – some people recognise 11 pillars while others argue that three are sufficient. But what is required to make South Africa function as an effective democracy?

The supremacy of our Constitution requires that all law and conduct be consistent with it. This ensures compliance with the founding principles which include, amongst other things, human dignity, the achievement of equality, the advancement of human rights and freedoms, the rule of law and a democratic system which ensures accountability, responsiveness and openness. The Constitution further entrenches the right to just administrative action and ensures a separation of powers. Such a separation, which divides governmental power into three branches: the Executive, the Legislature and the independent Judiciary, provides a system of checks and balances which ensures oversight and accountability. These three pillars need to act in concert with the principles contained in our Constitution. In theory then, we have constructed a system based on sound principles and built-in mechanisms which curb power and ensure compliance with the Constitution.

Why then are we seeing a constant break-down in governance and a lack of accountability? Well, politics involves people and people sometimes fail to do the right thing. State capture was a scheme orchestrated to disempower these institutions in order to facilitate the wide-spread plunder of state resources. You cannot be held accountable if the institution responsible for doing so is powerless. These pillars crumbled.

This is why democracy further requires the existence and involvement of non-state actors. The media, independent bodies and civil society organisations are vital pillars of democracy. The media, tasked with the duty to expose and disseminate information, plays a vital role in keeping the citizenry informed and advancing accountability. The Gupta Leaks is testament to the powerful oversight role the media plays. Independent bodies such as the Public Protector, the Auditor-General and IPID support and defend democracy by, amongst other things, investigating maladministration and misconduct of government officials. The state capture report and the arrest of corrupt police generals is evidence of the impact these bodies have.

Civil society tirelessly represents the people of South Africa in ensuring the accountability and effective functioning of institutions. Evidence of this important watchdog role has been seen throughout the year – the work of The Black Sash and Freedom Under Law in untangling the SASSA debacle, R2K's efforts to have the Moerane Commission transcripts released, and our continuing efforts in reviewing the findings on the arms deal by the Seriti Commission. Non-state actors have been pivotal in addressing the wrongs of the state – this was abundantly clear during apartheid and has continued throughout our 25 years of democracy.

It is wrong to say that our system can self-regulate – we cannot rely on a theoretically good system. Effective functioning requires the relentless efforts of various entities and individuals who work every day to ensure institutions execute their mandate, in line with our constitutional principles.

**Working in civil society has made it easy for me to place hope in our theoretical underpinnings because I work with the people who wake up every day to walk into these very walls.**



# LEGAL AND INVESTIGATIONS

## INVESTIGATIONS

Our investigations during 2018 have centred on matters related to mining royalties, procurement, and corruption in the management of schools, the completed investigations of which will be included in a second schools report.

Reports about mining royalty issues from the Bakwena ba Mogopa community in Uitvalgrond in the North West have been incorporated into the Mining Royalties report released in March 2019.

Some of our reports under investigation involve:

- Exposing corruption at the Construction Education & Training Authority (CETA), a matter which is being investigated by the Parliamentary Education Committee;
- Exposing corruption at Municipal Infrastructure Support Agency; a letter of enquiry has been sent to Cogta and the parliamentary committee, and we are awaiting a formal response;
- Sixteen completed procurement investigations that will form part of our submission to the Zondo Commission;

- Eight completed schools investigations that will form part of the second schools report to be published in mid-2019.

There have been some developments in cases involving the Department of Home Affairs: one reporter, finally received his passport after having had his documents confiscated and money extorted by security officials claiming to work with Home Affairs. He reported the matter to CW, and we wrote a letter to Home Affairs. After CW's intervention, the department assisted him with receiving his passport.

Six other complaints involving Home Affairs have been referred to the Hawks in Cape Town, and it has been confirmed that several officials were arrested.

In the matter regarding the learner subjected to sexual abuse by the principal at Siphesihle Primary School, the case was withdrawn procedurally, but has been sent back for review.



## IMPACT LITIGATION: CREATING IMPACT THROUGH THE COURTS

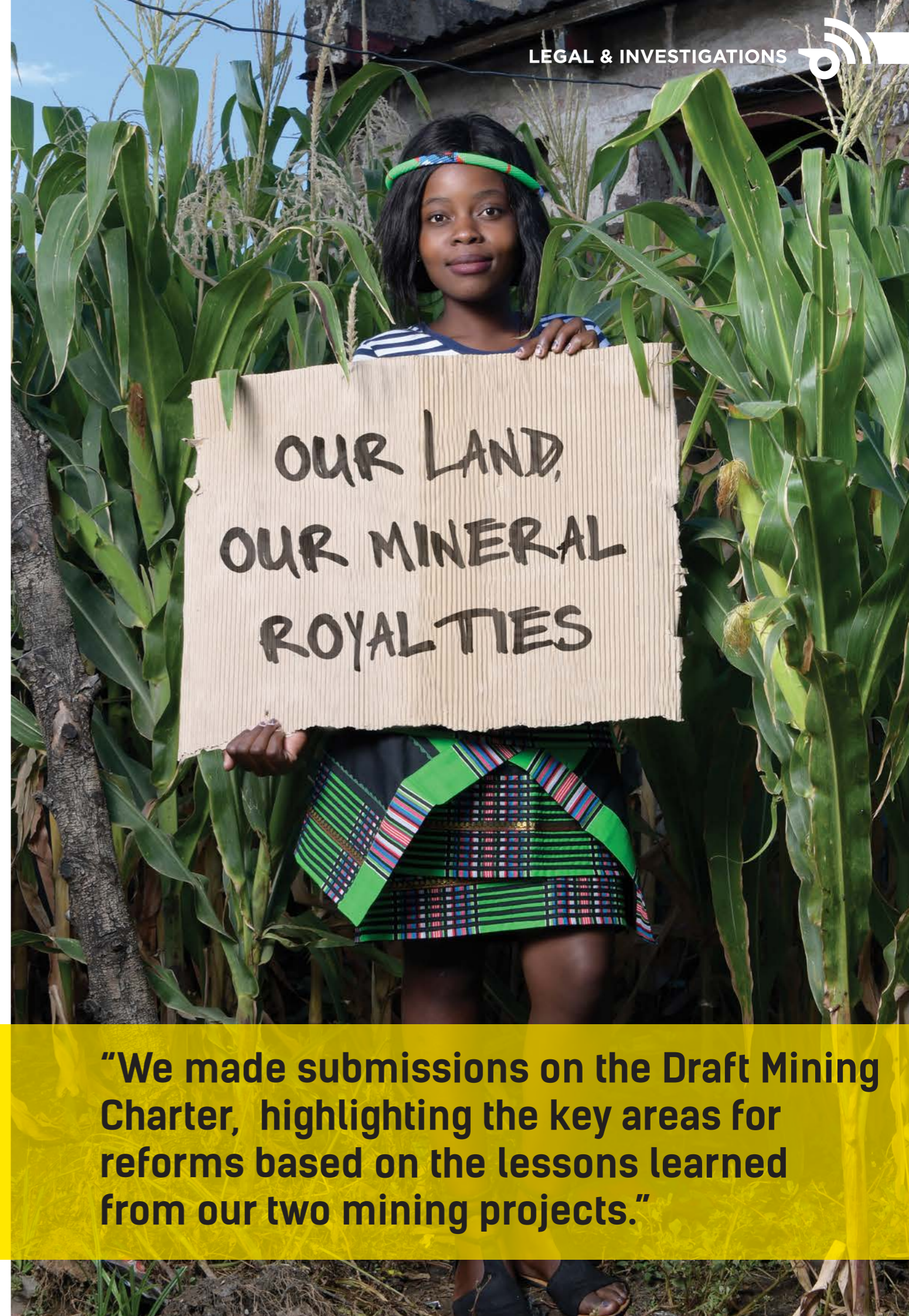
The Corruption Watch legal team has continued during 2018 to weigh in on high-profile legal cases that are within the public interest, and which highlight the effects of corrupt activities or abuse of power.

We have also contributed extensively to policy and legislative developments, making submissions that advocate for stronger anti-corruption measures that provide greater protection for the public.

### Ongoing vigilance of our grants system

Since 2015 Corruption Watch has not only kept a close watch over the grants system managed by the South African Social Security Agency (SASSA), but has taken decisive legal action by way of calling for accountability via the courts for the irregular tender process which appointed Cash Paymaster Services (CPS) as the company to distribute grants to 17-million South Africans. The matter has continued in our courts over 2018.

**"We made submissions on the Draft Mining Charter, highlighting the key areas for reforms based on the lessons learned from our two mining projects."**





### **Corruption Watch / CEO, South African Social Security Agency and Others (Case No. 21904/15) - Finalised, awaiting judgment on leave to appeal:**

On 23 March 2018, pursuant to an application filed by Corruption Watch, a North Gauteng High Court judgment declared the decision of the CEO of Sassa to pay CPS R317-million in terms of a variation to the main agreement, to be invalid and set it aside. Judge Tsoka also ordered CPS to pay back the amount with interest.

The SCA granted leave to appeal against this judgment. The appeal record was due by the appellants on 17 January 2019, and CW will file heads of argument at the end of March 2019.

### **Corruption Watch & Others / President of the Republic of South Africa & Others [2017] SAGPPHC 743; Case No. CCT 13/18 and CCT 333/17 - Ongoing:**

This matter relates to the judgment delivered on 8 December 2017 in which the court:

- 🔊 Set aside the settlement agreement between the president, the minister of justice and Mxolisi Nxasana, that provided for Nxasana to be paid R17-million to terminate his appointment as national director of public prosecutions (NDPP), and ordered that the amount be repaid;
- 🔊 Declared the termination of Nxasana's appointment unconstitutional and invalid and the subsequent appointment of Shaun Abrahams as invalid;
- 🔊 Declared that the president may not appoint, suspend or remove the NDPP and that for as long as former president Zuma was in office, the deputy president would be responsible for the appointment, suspension or removal of the NDPP;
- 🔊 Declared sections 12(4) and 12(6) of the NPA Act as unconstitutional and invalid in that it permits the president to suspend the NDPP unilaterally, indefinitely and without pay.

Corruption Watch applied to the Constitutional Court, together with Freedom Under Law and the Council for Advancement of the South African Constitution, for confirmation of the orders insofar as they relate to the president's powers and legislative amendments.

The confirmation hearing took place on 28 February 2018 and judgment was delivered on 13 August. The judgment largely confirmed the order of the High Court and is a positive move towards ensuring the independence of the prosecuting authority as a key agent in the fight against corruption.

### **Corruption Watch and Right to Know v The Arms Procurement Commission and Others (Case No. 81368/16) - Ongoing:**

This is an application to review and set aside the findings and recommendations that emerged from the Seriti Commission. Although the application has been long and drawn out, having been filed in 2016, we have persisted with the matter in the belief that it sheds light on the way in which commissions of inquiry are conducted, particularly where apparent white-washing has taken place. We filed our supplementary affidavit during the course of 2018. In February 2019 the respondents sent a notice of withdrawal of their opposition of the application. We have subsequently requested an expedited date for default judgment from Judge President Mlambo's office.

### **Corruption Watch (RF) NPC v Eskom Holdings SOC Limited and 6 others - Ongoing:**

In November 2018, CW lodged an application against five former board members of Eskom implicated in the state capture report, in terms of the Companies Act and the Public Finance Management Act. The Companies Act provides that serious breaches of fiduciary duties allow any person to lodge an application for the removal of directors and applications may be brought by specified individuals for directors to be declared delinquent. The matter continues into 2019.

## **STRATEGIC INTERVENTIONS**

### **McKinsey complaint**

A complaint was prepared in relation to a criminal charge against McKinsey, a US based and listed consultancy company implicated in the Gupta emails as benefiting unlawfully from an Eskom deal involving a Trillian company. The head of CW's legal unit met with the US Department of Justice (DOJ) in January 2018 together with our US attorneys. The meeting was positive and the DOJ asked CW to assist them with the investigation going forward by providing documents and arranging for key witnesses to meet with them. The complaint dossier filed with the DOJ has been submitted to the Commission of Inquiry into State Capture.

### **People's Tribunal on Economic Crime**

Corruption Watch was a member of the committee convened by Open Secrets to organise a People's Tribunal on Economic Crime. Hearings took place from 3 to 5 February 2018. CW made its own submissions during the session on the arms deal, which was presented by an evidence leader to the panel of adjudicators. The tribunal panel published an interim report halfway through the year, requesting responses from implicated parties, and released its final report and findings at a media briefing on 20 September 2018.

## **SUBMISSIONS**

### **Submissions on the Draft Public Audit Bill, 2017**

Corruption Watch made written submissions on the amendments to the Public Audit Bill on 23 February and oral submissions on 6 March 2018.

### **Submissions on the amendments to PRECCA**

Corruption Watch made written submissions on the amendments to the Prevention and Combating of Corrupt Activities Amendment Bill, 2017 on 20 February 2018.

### **Public Administration Management Act (signed but not yet commenced)**

Corruption Watch is following up on the implementation of the regulations as well as the long overdue declaration by the president of the commencement date of the Public Administration Management Act.

In response to a letter from CW to the presidency, we were notified that the regulations are being finalised and that urgent steps are being taken to ensure that the Act comes into operation as soon as possible.

### **Submissions on the Draft Supply Chain Management Bill**

Corruption Watch is working with National Treasury and a small group of NGOs to provide input on the Supply Chain Management Bill and its regulations, which was supposed to be tabled in Parliament back in 2017. As a key stakeholder in this process, we continued to provide technical assistance during 2018.

### **Submissions on the Public Funding of Represented Political Parties Act**

Following the submissions to the National Council of Provinces on 5 June 2018, and the oral hearings on 20 June 2018, our team continued to follow up on the implementation of the amendments and attended a workshop during which the IEC commissioner explained the elections time frames as well as the challenges on implementation of the amendments.

### **Submissions on the Traditional and Khoi-San Leadership Bill**

Corruption Watch made submissions on this Bill on 15 June 2018, as it relates to both of our mining projects insofar as community consultation on royalties and mining applications are impeded by traditional leaders and traditional structures, which do not represent community interests.

### **Submissions on the Protected Disclosures Act, Regulations**

CW made submissions on the regulations to the PDA on 21 May 2018, concerning the expansion of institutions to which protected disclosures may be made.

### **Submissions on the Public Investment Corporation Amendment Bill**

The PIC Amendment Bill aims to amend the PIC Act in order to promote transparency and good governance at the PIC. We made submissions on 15 July 2018, which would enhance this aim and relate to the appointment of board members, the role of sub-committees particularly as they relate to delegations of authority, as well as the broader international framework and best practices that should be used to guide the amendments.

### **Submissions on the Draft Refugees Regulations, 2018**

In light of the work done on Project Lokisa, which focused on corruption facing refugees and asylum seekers, we took the opportunity to comment on the draft regulations to the Refugees Act. Our submissions which were made on 17 July 2018, and aimed at highlighting how any amendments to the procedures for application for asylum or refugee status cannot be considered without due regard for the corruption and maladministration which plagues those processes and which ultimately leads to South Africa's inability to meet international and local obligations around the protection of refugees.

### **Submissions on the Draft Immigration Amendment Bill, 2018**

On 23 July 2018, our team made submissions on the Draft Immigration Amendment Bill that dealt primarily with changes to processes around the detention and deportation of foreign nationals. We submitted that any amendment to detention and deportation processes in line with constitutional values and the principle of non-refoulement cannot be considered without due regard for the high levels of corruption and maladministration which undermine such processes and, in many instances, render both the process and the protection it aims to achieve, meaningless.

### **Submissions on the Draft Mining Charter, 2018**

On 31 August 2018, we made submissions on the Draft Mining Charter, highlighting the key areas for reform, based on the lessons learned from our two mining projects.



# ADVOCATING FOR DEMOCRACY

CW brings the Zondo Commission to more South Africans

BY VALENCIA TALANE



Former deputy finance minister Mcebisi Jonas recently appealed to the commission of inquiry into state capture to beware of “Zumarising” state capture and thinking it was only and always about former president Jacob Zuma. The machinations of it, he said, owe their existence to the fundamental issue of how we South Africans elect our public representatives. Whoever gets power of institution in government departments determines where and how the organs of the state are captured, if at all, and in whose interest this is done.

For the ordinary South African following the public hearings on TV or radio, or reading newspaper updates, the important task is to note what evidence is brought before Deputy Chief Justice Raymond Zondo, how the commission will undertake to investigate and test evidence, and eventually, what its findings and recommendations will mean for the country going forward. Of course, its fate depends largely on how many people wish to publicly disclose what they know and help close the loops, as Zondo needs their participation to recommend an effective way forward. For those who are not privy to the day-to-day developments at the hearings, the lack of information robs them of the ability to contextualise South Africa’s politics and how they shape the state project.

Enter Corruption Watch (CW), which took the opportunity at the beginning of the hearings to be the eyes and ears of South Africans who would not otherwise have access to mainstream media and are therefore not likely to get up-to-the-minute updates on the proceedings. By generating regular content that highlights important points raised, we help form a picture for the public. Corruption Watch’s interest in the commission and its work stems from its advocacy agenda in the space of public procurement and governance.

From the first day of the public hearings, Corruption Watch has followed the inquiry proceedings and delivered content to over 450 community and regional media outlets in both the print and broadcast spheres.

The idea is to give access to platforms that would not necessarily be able to have a presence at the hearings’ venue in Parktown, Johannesburg.

This does not exclude some mainstream media outlet – some receive our daily updates; in particular, Independent Newspapers has taken a special interest in receiving our articles, as has Media24 and some SABC African language stations. In addition, CW distributes content to 45 civil society organisations that also receive the updates, and the number continues to grow as partners refer other organisations in their network to CW.

**“Thanks for very useful updates for those of us who cannot attend the actual hearing. In many ways this is historic”**

– Sharon S Ekambaram, Manager: Refugee and Migrant Rights Programme, Lawyers for Human Rights

**“Thank you for adding me to the list, this is a brilliant resource”**

– Adi Mistry Frost, ED, Civicus

**“Wonderful reporting – thank you!”**

– Gaile Fullard, ED, Parliamentary Monitoring Group

**“Many thanks for this”**

– Sheilan Clarke, My Vote Counts

The rationale for this project is that these target audiences will benefit from our curation, analysis, and interpretation of information to help to keep their communities and networks abreast of developments at the Zondo Commission, in a way that breaks down the subject matter into a more easily digestible and accessible form.

Further demonstrating their interest in our content, the Independent Newspaper stable of English weekend papers has commissioned weekly analyses on the commission, to give a broad perspective on the evidence so far submitted.

As expected, the news value of the information that has been revealed at the inquiry, through witness testimonies, has been such that public interest in government work and executive decisions taken around government projects has risen. Both former and sitting ministers and directors-general have revealed insightful evidence that has gotten South Africans talking on social and mainstream media about how the country is governed. The inquiry’s insistence on transparency and due judiciousness – led by Zondo himself – has also given ordinary South Africans a look at how our judiciary functions.

As the commission continues its work in 2019, Corruption Watch too will continue to advocate for the same responses as Zondo: those who know what happened and when, come forward with your evidence.

From a civil society perspective, the work of the commission and whatever results the inquiry will deliver, should be testimony to all South Africans that the state cannot allow its pillars to crack and suffer under the weight of corruption or abuse of authority and power, ever. Citizens should also hold the state accountable at all times, and they can only succeed in this if they are well informed.



# RECLAIMING OUR DEMOCRACY

Public Participation and Democracy in 2018

BY JANINE ERASMUS



Fighting corruption is no single entity's responsibility - it is neither the government's task to go it alone, nor is it solely the domain of the civil society or private sectors, or the ordinary person in the street.

As a busy civil society organisation working in the social justice sphere, Corruption Watch (CW) is focused on ensuring that democracy works for all people, not only those who govern. Our work takes us all over the country and while we are perceived by many as an investigative agency, in truth that makes up a small portion of our work. As an advocacy agency, we are primarily concerned with equipping the public with the skills to fight against corruption where they find it - in their communities, schools, police stations, clinics and hospitals, local government offices, or on our roads.

Our work is not just about our own efforts, but it's also about creating opportunities and channels for everyone to take a stand. We raise awareness of corruption by meeting with government representatives, distributing educational material to communities, or training young corruption fighters to be more effective in their own communities, among others.

## In 2018 we did all of this, and then some.

### PEOPLE'S TRIBUNAL

The key to success, as in so many other endeavours, is active participation, whether publicly or privately, to ensure that your voice is heard and your opinion is registered with the relevant powers.

Our year started off with participation, as a co-organiser, in the hearings of the People's Tribunal on Economic Crime in South Africa, in early February. This important event tied in with our 2016 application to review and set aside the findings of the Seriti Commission into allegations of corruption in the controversial 1999 arms deal. The tribunal had three focus areas - the arms deal, the apartheid years, and state capture - through which the veins of corruption have flowed continuously over the years. Former lawyer for French arms company Thales Ajay Sooklal set the tone for more startling revelations to come during the year when he named a range of key role players in the alleged corruption clouding the arms deal - including former presidents Jacob Zuma and Kgalema Motlanthe.

When the tribunal presented its final report in September 2018, it was with damning implications for the named individuals and companies, as it recommended that there was enough evidence to warrant further investigation.



## SASSA LITIGATION

CW also appeared before the High Court in Pretoria in February to demand the setting aside of a R316-million payment by the South African Social Services Agency's then CEO Virginia Peterson to reward service provider Cash Paymaster Services (CPS) for the 2014 re-registration of beneficiaries. We asked that CPS be compelled to pay back this amount, arguing that the process of re-registration was catered for in the original contract with CPS. CW first applied for the setting aside in March 2015. A month later, in March, CPS was ordered to pay back the money in full, with interest accrued since June 2014 until the date of payment. CPS' parent company Net1 challenged the judgment, and CW responded to the challenge. The matter now rests with the Supreme Court but nonetheless, it is already a significant win for civil society and demonstrates the importance of pursuing unlawful transactions that stem from irregular procurement processes.

## APPOINTMENTS AND DISMISSALS

When questionable appointments occur in the public service, instruments of democracy have to be employed to challenge them. When challenges are successful, it's a win for democracy and good governance. In March 2018, we hailed President Cyril Ramaphosa's decision to suspend former South African Revenue Service (Sars) commissioner Tom Moyane, who was later dismissed in November following recommendations of the Nugent commission of inquiry into alleged governance irregularities at Sars. In recent years, we've challenged Moyane to account for his role in protecting top Sars official Jonas Makwakwa from a proper investigation, after a Financial Intelligence Centre report implicated Makwakwa and his partner Kelly-Ann Elskie in suspicious transactions relating to money laundering and other criminal activities. Even before his dismissal, CW charged Moyane for his alleged criminal conduct in December 2016 and learned a year later that the National Prosecuting Authority (NPA) had declined to prosecute. The NPA informed CW that it is, however, reviewing that decision. Meanwhile, Moyane challenged his dismissal through a string of court applications that ended in the Constitutional Court – and lost them all.

On that note, we welcomed the recent appointment of Advocate Shamila Batohi as the new national director of public prosecutions (NDPP), following the eventual dismissal of Shaun Abrahams. In August 2018 the Constitutional Court set aside Abrahams' appointment, ruling that it was invalid. With Freedom Under Law and later, the Council for Advancement of the South African Constitution, CW had previously set the ball rolling in the High Court by successfully challenging the legality of the 2015 removal of former NDPP Mxolisi Nxasana, which included a golden handshake of R17.3-million.

A Pretoria High Court ruling in December 2017 found that, based on the unlawfulness of Nxasana's removal, Abrahams' subsequent appointment as NDPP by Zuma was also invalid. Ramaphosa had been barely a week in office when he announced that he would withdraw an appeal, brought by Zuma, contesting the High Court's ruling.

The process engaged in the lead up to Batohi's appointment was also an indirect victory for CW, after we campaigned vigorously in 2016 for a transparent and merit-based process to appoint the new public protector. In the past, such top appointments were made unilaterally by the president, but the process which culminated in the appointment of Advocate Busisiwe Mkhwebane took place openly and under public scrutiny.

## KNOW YOUR POLICE STATION

In November 2018 we learned that CW was one of four winners of US\$250 000 in the Google Impact Challenge South Africa, for our concept project titled Bua Mzansi – Know Your Police Station. The prize money is being used to develop an interactive online tool aimed at enhancing public participation and transparency in the functioning of police stations, and enabling communities to hold the police accountable. It will enable people to access over 1 100 police stations throughout the country, allow residents to rate the police stations based on their experiences, and report incidents of corruption. Given that we've recorded rising public frustration at the poor performance of the police service, coupled with almost-zero accountability standards, we are thrilled to be able to provide a channel for the public to actively safeguard democracy and play a role in ensuring good governance.

## COMMUNITY ROAD SHOWS

Community engagement is a crucial part of our public awareness and participation activities, as we have learned that many residents are not fully aware of their democratic rights & responsibilities.

In March, our team headed to the Eastern Cape for a series of activities at various community locations in Port Elizabeth, including schools, clinics, taxi ranks, town halls and shopping centres.

We listened to the communities' concerns and advised them on a way forward, or referred them to organisations that could assist where we couldn't. Later, in September, we visited the Western Cape for the same purpose.

## INTEGRITY IDOL

Meanwhile, CW had been helping to drive the inaugural edition of Integrity Idol South Africa, a global initiative that acknowledges and awards civil servants for ethical behaviour, thereby supporting a culture of accountability in government.

Our first set of finalists, from the healthcare, education, and safety and security sectors, was announced in April and it was police captain Vinny Pillay, from the Umhlali Police Station in KwaZulu-Natal, who won the popular vote and took home the honours.

## SGB ELECTIONS AND TRAINING

The three-yearly school governing body (SGB) elections caught our attention in early 2018. CW held extensive engagements with SGB members across several provinces.

Like a democracy, a school is only as good as the extent to which its stakeholders are involved, and our aim was to equip parents, teachers and community members with the means to hold school management accountable.

Our long-running schools campaign has shown us clearly where the vulnerabilities lie in the school management system.



## POLICY, STRATEGY AND LEGISLATION SUBMISSIONS

Legislation and policy submissions are a large and important part of our work, as they allow us to home in on vulnerabilities in existing and new laws, where corruption might creep in. Canny perpetrators have learned to exploit even the tiniest loophole for their own self-enrichment, and our job is to contribute to the closing of these loopholes.

We made submissions on a number of laws, including the draft Public Audit Amendment Bill, the Political Party Funding Bill – now signed into law but not yet enacted – and the Traditional and Khoi-San Leadership Bill.

We are also involved in raising public awareness of and soliciting public input into the proposed National Anti-Corruption Strategy (NACS).

We focused our activities on creating avenues for public engagement and consultation on the draft document, targeting the general public, civil society and the private sector for their inputs and thus ensuring their representation in the final NACS. This included a public survey in June 2018, calling for respondents' thoughts on the NACS. Now closed, the survey has provided valuable information.

We can never afford to relax our vigilance. Political interference has taken our economy back by decades, it has destroyed key public institutions which should be supporting our democracy, and it has prevented millions of South Africans from living better lives.

**As long as there is a reason to participate in democratic processes, CW will continue to do so, and encourage the public to do the same.**



# HUMANITY

TOGETHER WE CAN  
REVIVE OUR DEMOCRACY







# BOARD MEMBERS

**Corruption Watch currently has eight sitting members of the board who help to steer the course of our work and provide valuable insight and experience across a range of sectors in which they operate.**

They help to ensure that all legal requirements are met, that workplace policies and governance issues are observed, that the financial health of the organisation is intact, and that the strategic direction of the organisation addresses the needs of our society.



**MAVUSO MSIMANG** **Chairperson**

Msimang is the former CEO of the Oliver and Adelaide Tambo Foundation, and also previously served as the director-general of the national Home Affairs department and CEO of SANParks. He sits on the board of WWF South Africa. His non-executive board directorships include Harmony Gold, the African Parks Network and the Peace Parks Foundation, and he is a former chairperson of the iSimangaliso Wetland Park, a world heritage site.



**DAVID LEWIS** **Executive Director**

Lewis is the founder and executive director of Corruption Watch. He previously chaired the Competition Tribunal for a decade and was involved in the trade union movement, serving as the general secretary of the General Workers Union and national organiser of the Transport and General Workers Union. Lewis also directed the University of Cape Town's Development Policy Research Unit.



**ADILA HASSIM** **Advocate and Junior Counsel at Thulamela Chambers**

Adila Hassim is an advocate and a founding member of Corruption Watch. She is currently junior counsel at Thulamela Chambers. Hassim earned a BA and LLB from the University of Natal. After completing her degrees, she later earned an LLM from the Saint Louis University School of Law in the US, and a JSD, or doctorate in law, cum laude from the University of Notre Dame Law School. She is a member of the Johannesburg Bar and was admitted as an advocate of the High Court of South Africa in 2003. A prolific author, Hassim has been published in law journals, health journals and newspapers, and has co-authored books on human rights and health law. She is a member of the National Association of Democratic Lawyers and an honorary member of the Treatment Action Campaign (TAC).



**THABI LEOKA** **Economic Strategist**

Dr Thabi Leoka is an economic strategist, currently working at Argon Asset Management. She has held top positions at Renaissance Capital, Standard Bank Corporate and Investing, Barclays Wealth, and Investec Asset Management – she was based in London for the latter post. She obtained her PhD and MSc in Economics from the London School of Economics, and also holds an MA in Economic Development and International Trade from Wits University, and a BA in Social Science from Wits University. Leoka is a regular columnist for Business Times in the Sunday Times, and for Money Management. In addition, she is an accomplished speaker and was an economic advisor to the Fees Commission as well as finance minister Nhlanhla Nene.



**ALICE BROWN** **International Human Rights Advocate**

Brown is an international human rights advocate and an expert on the use of the law for the public good. Her distinguished career has focused on civil rights litigation and social justice philanthropy, with an emphasis on institution building for NGOs. Brown is a member of the Council on Foreign Relations, a board member of Section27 and also a member of the advisory committees of the Wits Justice Project and of Lawyers Against Abuse. She is a former board member of Human Rights Watch, the Lawyers' Committee for Human Rights and the South Africa – United States Fulbright Commission, and an alumna of Common Purpose South Africa.



**MZUKIZI QOBO** **Author, Thought Leader, Political Risk Analyst and Public Speaker**

Dr Mzukisi Qobo advises organisations on mitigating political risks and help them to capture opportunities from regulation. He previously worked at the Department of Trade and Industry as chief director for trade policy, and drafted the current South African trade policy and strategy framework. Until recently he taught international political economy at the University of Pretoria, where he was deputy director at the Centre for the Study of Governance Innovation. He is a senior associate at Tutwa Consulting and a research associate affiliated with the Department of Political Sciences, University of Pretoria. He is a regular columnist for Business Day and appears regularly on domestic and international media. He obtained his PhD from the University of Warwick, UK MA from the University of Stellenbosch; and Bachelor of Arts from the University of Cape Town. Qobo is author of *The Fall of the ANC: What Next?* published by Pan Macmillan (Picador Africa).



**SITHEMBILE MBETE** **Political Science Lecturer**

Mbete is a lecturer in the Department of Political Sciences at the University of Pretoria where she lectures in international relations and South African politics. She is also a doctoral candidate at the university, writing a thesis on South Africa's foreign policy during its two terms in the UN Security Council. Mbete joined the University of Pretoria from the Presidency, where she was a researcher in the secretariat of the National Planning Commission. Her work in this regard was focused on public service reform and anti-corruption policy. She contributed to the drafting of the National Development Plan. Prior to this she worked as a political researcher at Idasa (Institute for Democracy in Africa) where she was responsible for parliamentary monitoring and political analysis. While at Idasa she monitored the parliamentary deliberations on the Protection of State Information Bill, commenting on and writing about the bill in the media. She served on the provincial and national working groups of the Right2Know Campaign and helped coordinate activism against the legislation.

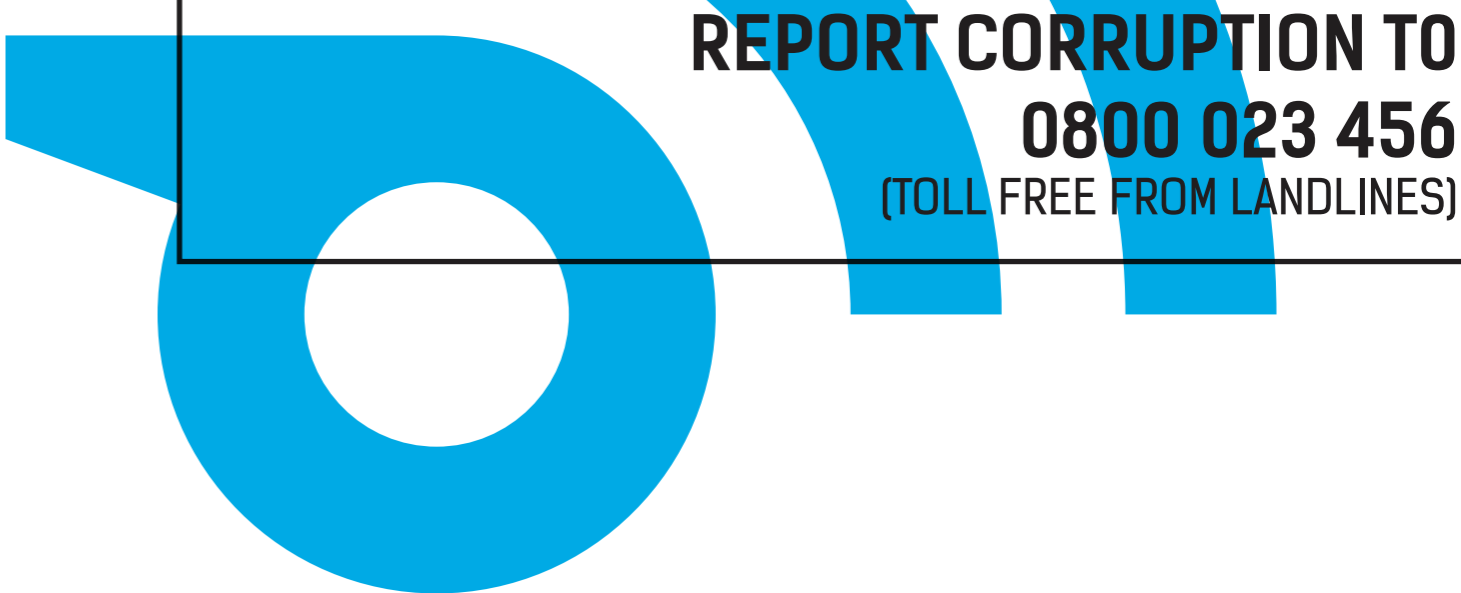


**FIROZ CACHALIA** **Adjunct Professor**

Firoz Cachalia currently works as an adjunct professor at his alma mater, Wits University's School of Law. His extensive career in government and civil society included his service as a member of the executive council of the provincial Gauteng government from 2004 to 2011, first in the safety and security portfolio and later in the economic development portfolio. He would later head up the provincial government's planning commission between 2011 and 2012, the board of which he continues to sit on to date. Other boards on which Cachalia sits include the South African Reserve Bank, where he also chairs the board risk committee; Hlanganisa Institute of Development of Southern Africa; and the Helen Joseph Hospital. He is also a member of the Council for the Advancement of The South African Constitution. Cachalia was admitted as an attorney in 1993, and continued with his legal studies through Wits (LLM) and the University of Michigan in the United States. His first occupation was as researcher for the Centre for Applied Legal Studies in the early 1990s, following the completion of his legal articles.



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