CORPORATIONS AND ECONOMIC CRIME REPORT

THE BANKERS
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Corporations and Economic Crime Report
(Volume 1)

open secrets
power & profit | truth & justice
Nothing is illegal if one hundred businessmen decide to do it.
INTRODUCTION:
SETTING THE SCENE

Corporations have extracted wealth and profit from South Africa at the expense of its people for hundreds of years. From the time of the Dutch East India Company’s conquest of the Cape, the battle for control of the state has been waged by powerful private interests with the knowledge that such control will not only be profitable but will also help to secure impunity for a litany of crimes. ‘State capture’ is deeply woven into the fabric of the country’s history and it is not surprising that its latest manifestation has again revealed systematic attempts by private actors to repurpose public institutions for their own benefit.

The power of corporate actors comes partly from access to cold hard cash, and their resulting ability to buy influence with politicians and capture or undermine regulators. Yet equally important is their ability to construct a public story that diminishes and seeks to make invisible their crimes. This was nowhere more evident than when South African corporations, rich with profits made during apartheid, appeared at the Truth and Reconciliation Commission (TRC) to argue that they were ‘victims’ of the regime and its inefficiencies. Today, many corporations vocally bemoan corruption as a public sector phenomenon that distorts markets and harms them, ignoring their role in these crimes.

Moreover, corporations engage in this kind of myth-making within a domestic and international legal framework that has many gaps in its ability to hold corporations accountable.
For example, despite the power of global private financial institutions and their persistent role in financial crimes, there remains no customary international law or binding treaty to supervise financial institutions. Legal principles for corporate accountability, particularly for past crimes, lag behind those for holding individual actors to account. Even where such accountability is possible, state institutions have continuously failed to undertake effective investigations and prosecutions of those implicated in wrongdoing, both past and present.

In addition to these challenges, there is a series of myths about corporate crimes that undermine efforts to tackle them. For one, it is suggested that criminality in the private sector is less widespread or its impact is not as serious as corruption in government. The consequences of the looting of pension funds, the illicit removal of the country’s wealth, and the fleecing of social grant beneficiaries – all at the hands of private actors – reveal how inaccurate this view is.

The other myth is contained in the first, that one can or should separate the idea of corporate criminality from corruption in government. Bankers, auditors, lawyers and management consultants were fundamental in facilitating illicit activity by the Gupta network of companies, and in the undermining of governance in the public sector. They were not incidental actors and they profited from the roles they played. Similarly, the crime of apartheid was not just committed by a white nationalist regime, but also by the international banks that supported the regime through loans and illicit financial assistance.

Discussions of corporate criminality, particularly in Africa, have often focused on the extractive industries. However, the financialisation of economies and the ability of corporations to move money rapidly around the world require us to pay particular attention to the financial and professional services sectors: the bankers, accountants and lawyers who are the heart of the global financial economy.

We feel it is imperative that these popular narratives are challenged. Failure to do so distorts the fact that large South African and global corporations have been complicit in serious crimes; from the crimes of apartheid, to the looting of state-owned enterprises today. In addition, failure to turn the spotlight on to these private networks and hold them accountable allows them to survive changes in governments and regimes that might otherwise provide new possibilities for accountability. Instead of answering for their crimes, these networks can draw in new elites to existing networks of criminality.

This report is an attempt by Open Secrets to contribute to shining a light on the serious and systematic crimes committed

A NOTE ON THE LAW

In many of the cases considered in this report, the actions of the corporations do not technically constitute ‘crimes’. Many economic activities (for example, profit-shifting) are legal, and corporations will skirt the lines of lawfulness to extract as much value as possible while escaping legal obligations. However, the fact that a certain activity is ‘lawful’ does not mean that it cannot have unjust outcomes, or that the only economic crimes which exist are those already codified in law. Often, ‘lawful’ economic activity can contribute to heightened poverty and inequality, and can negatively impact on human rights. Civil society groups can play a vital role in advocating for the state to develop the law where new economic crimes are needed, or to increase regulation around a certain economic activity. We must remain vigilant to ensure that the law is able to fulfil and protect constitutionally embedded rights.
by corporations, their devastating impact, and the ways in which their impunity can be challenged. It draws extensively on research undertaken by Open Secrets as well as the brave work of other activists, researchers and journalists who have consistently exposed corporate criminality in South Africa and the devastating cost that it has for South Africa’s most vulnerable.

The report begins by outlining the role played by international banks in supporting the apartheid state, both through the facilitation of illegal weapons trades and the continued provision of loans and capital despite international recognition of apartheid as a crime against humanity. It also considers the impact on democratic South Africa in repaying these odious debts. It then examines four contemporary case studies that speak to the role of corporations, particularly those in the financial sector, in illicit and illegal activity. They aim to provide an insight into how corporations have taken advantage of slack regulation and weak institutions to profit at the expense of South Africans.

The case studies are:

1. The roles of the Bank of Baroda and Nedbank in the Gupta state capture network;
2. Illicit financial flows (IFFs) and the role of auditing firms in this phenomenon;
3. The social grants crisis and the roles of Net1 and Grindrod Bank; and,
4. The looting of the Venda Mutual Bank (VBS) and the consequences for the Bophelo Beneficiary Fund (BBF).

It ends by considering the role played by civil society in fighting back against these powerful players and the struggle for accountability. We identify the key themes that emerge by examining these case studies, which span 40 years, and propose reforms and changes that are essential in our collective struggle to end impunity for corporate actors and achieve justice.

To be clear, a report of this nature is almost certain to evoke an emotive response from some quarters that suggests we are whitewashing malfeasance by state officials. This is far from the truth. Much of the work presented in this report is a reflection of a failure by regulators and public officials to tackle economic crime perpetrated by corporate actors. However, this fact should not provide a guarantee to implicated parties that they should be given a get out of jail free card. One of the pressing reasons for this is that large, often poorly regulated corporations play an important role in our daily lives. Capital ownership is increasingly skewed into the hands of the few to the detriment of the many. This report is intended as a contribution to a call to action to ensure that there is equality before the law – and that those with the most power in our society are the focus of far greater probity than is currently the case.

OPEN SECRETS’ WORK

This report is part of Open Secrets’ broader work focusing on the role of the financial sector in human rights violations. Our mission is to undertake in depth investigations into economic crimes by the private sector from the past and present day, and to pursue accountability for these crimes by using the law and strengthening accountability mechanisms where we can. We also advocate for change and reform through online and printed media and publications, in collaboration with partners in civil society. This report is envisaged as the first in a series focusing on the role of corporations in economic crime in South Africa.
Like many authoritarian and violent regimes, apartheid relied on financial assistance from international banks to survive. Military and police might were used to marginalise and exclude millions, but the state could not have funded this violence to the extent it did or for as long as it did if it wasn’t for its banking accomplices. The banks discussed below were complicit in facilitating and perpetuating apartheid and its crimes. It’s a harrowing tale of men in suits who profited off misery.

The South African experience is not unique; consider for a moment the international banks that profited from holding the funds of Jewish families murdered by Nazis in the European genocide. This crime took decades to uncover but provides some hope to South Africa, where another story of crimes by banks is finally being told.
Between 1974 and 1994, the apartheid state spent more than R500 billion (in today’s terms) on weapons to entrench its authoritarian rule. It did so despite compulsory United Nations (UN) arms embargoes that made these purchases illegal. To do this, it required the assistance of international financial institutions in two ways. Firstly, it required a secretive network of bank accounts and front companies to ensure that this weapons trade remained covert. Secondly, it required international banks to continue to supply loans and capital that allowed the state to spend ever-increasing amounts on weapons to fuel war and repression in Southern Africa.

Despite international public condemnation of apartheid, many countries around the world and their arms corporations continued to supply the regime with weapons in exchange for profit. There was much money to be made from the companies, middlemen and banks involved in these transactions, given the regime’s willingness to pay for total secrecy. Officials who worked for the state-owned arms firm, Armscor, at the time of these purchases have admitted that they would pay a premium on all transactions of between 25% and 30% more than the normal cost.²
Secret bank accounts and front companies worked together to hide the illegal trade and prevent the anti-apartheid movement from easily tracking how the apartheid state so successfully violated the embargo.

More than 800 numbered bank accounts meant that billions of rand moved out of South Africa did not go directly to the arms companies. Instead, the money was moved through and between numerous anonymous bank accounts to camouflage both where it came from and where it was going.

At least 39 Armscor front companies were set up in Panama between 1978 and 1991.

Front companies registered here were used to hide payments made to bank accounts controlled by Armscor in Europe.

One of the most important global money-laundering schemes ever'

~ Professor Mark Pieth

Graphics from Apartheid Guns and Money: A Tale of Profit by Hennie Van Vuuren
Paris Embassy: Armscor’s secret hub responsible for all weapons trade with France and Europe. They managed 487 Armscor bank accounts, mostly with Kredietbank.

Kredietbank Belgium: The bank’s senior managers included pro-apartheid lobbyists. They owned KBL – the primary conduit for Armscor’s money-laundering network.

Kredietbank Luxembourg (KBL): Armscor’s main bank in Europe provided hundreds of untraceable accounts. KBL officials assisted in the formation of Armscor’s front companies.

Payment was made to the weapons suppliers around the globe through Armscor’s main accounts at KBL.

At least 76 Armscor front companies were established in Liberia, linked to 198 Kredietbank accounts.

Armscor received requests for weapons procurement from the SADF. The SA Reserve Bank authorised payment from Armscor’s bank accounts at Volkskas.

Money routed through the ‘Dark Zone’, a trail of secret international bank accounts.

Graphics from Apartheid Guns and Money: A Tale of Profit by Hennie Van Vuuren

‘One of the most important global money-laundering schemes ever’ — Professor Mark Pieth
Armscor was the institution tasked with buying the guns and busting the embargo. To get South African actors to play along was easy. During apartheid, the South African Reserve Bank (SARB) was complicit in this system by signing off on the money leaving the country, while the white parliament agreed that defense spending from the secretive Special Defence Account (SDA) would not be subject to ordinary oversight.

This was not enough though. The majority of weaponry and weapons technology needed to be bought internationally, and so it was essential to have friendly international banks to facilitate the purchases.

Evidence gathered over five years by Open Secrets shows that this help was found through a Belgian bank, Kredietbank, and its subsidiary, Kredietbank Luxembourg (KBL). These banks, and particularly KBL, were integral to the ability of the military state to arm itself in the face of sanctions. KBL went beyond simply facilitating transactions from Armscor; bank officials met with Armscor officials to design a network of numbered bank accounts and shell companies that would help to obscure the movement of money that financed the trade. 

Bank officials knowingly opened these accounts and registered the front companies, sometimes acting as their directors as well. In total, it is estimated that up to 70% of Armscor’s illicit transactions were managed by KBL.

The secret bank accounts and front companies worked together to hide the illegal trade and prevent the anti-apartheid movement from easily tracking how the apartheid state so successfully violated the embargo. More than 800 numbered bank accounts meant that billions of rand moved out of South Africa did not go directly to the arms companies. Instead, the money was moved through and between numerous anonymous bank accounts to camouflage both where it came from and where it was going.

Most of Armscor’s main bank accounts held at KBL were attached to front companies registered by the bank in Liberia and Panama. In total, with the help of KBL, Armscor set up 76 front companies in Liberia, which in turned operated 198 Kredietbank accounts. A further 39 front companies were set up in Panama.

Using these secret jurisdictions as a base – where regulators didn’t ask too many questions and the ownership of the companies could remain secret – they could throw investigators off the scent. This made it impossible for those trying to monitor and enforce the embargo, and thus compromised those who were fighting to end apartheid.

According to former Armscor officials who managed this system from a secret office in Paris, the continued purchase of weapons during the embargo would not have been possible without the assistance of KBL.

Apartheid was built on political violence that was used to enforce dispossession and exclusion. This manifested in the fostering of wars in Southern Africa, political imprisonment, detention without trial, torture and forced removals. These human rights violations were enabled by the weapons that the South African security forces continued to receive despite the embargo.

It is undoubttable that KBL profited from this facilitation. The period in question coincided with a prolonged term of massive growth and profitability by the bank. Its conduct is an important case study of an institution willing to engage in illicit activity for the promise of financial reward. In this case, profit came at the expense of South Africans who suffered under the crime of apartheid.
Pretoria, China and Zaire: The SADF needs a range of machine guns, mortars and high-calibre bombs. Armscor’s offices in Paris and Hong Kong are instructed to find and buy the weapons. Chinese state-owned arms company Norinco, likely with approval from the Chinese Communist Party, agrees to supply the weapons to Pretoria. Zaire’s intelligence officials agree to assist.

Money for weapons is paid from Armscor’s Volkskas (which later became part of Absa in the 1990s) bank account in Pretoria, with the permission of the SARB.

The money flows through the accounts of front companies in Panama and Liberia, and ends up in KBL accounts in Luxembourg. The network of secret accounts breaks the money trail.

Armscor officials in the secret office in the Paris embassy provide direction to KBL on making payments to the weapons providers to buy the guns.

Guns are shipped secretly, often through third parties, to South Africa. The weapons are used for the apartheid military and their allies in wars in Angola and Mozambique, for cross-border raids and for domestic repression.

The ship arrives in Matadi, the weapons are relabelled as ploughs & bicycles, and reshipped with the blessing of President Mobutu Sese Seko.

The ship’s papers state it is going to Maputo, but the real destination is Durban, where the weapons are offloaded.

A Danish ship, the Vinderslevholm, departs the Shanghai port with 282 tonnes of weapons onboard.

Zaire’s intelligence officials supply end-user certificates and letters of accreditation to the Armscor officials.

282 tonnes of guns, bombs and mortars are likely distributed for use in the wars raging in southern Africa. More was likely to follow.
BANKROLLING APARTHEID

There is an added layer of banking complicity that needs to be considered when it comes to the story of apartheid. Just as integral as the covert banking channels described above was the problem of accessing the cash needed to fund state purchases, including arms. At its height, apartheid’s military spending likely consumed more than 25% of the entire budget. In the context of economic downturn and domestic turmoil, this meant one thing: loans were essential to keep the state afloat.

While South Africa intensified wars on its borders and increased a domestic crackdown on dissent in the early 1980s, public criticism and calls for financial sanctions were on the rise. Despite this, a financial publication at the time noted that South African borrowers ‘have never been more welcome in the Euromarkets than they are at present’. The banks were eager to secure borrowers who would pay high returns, and it mattered little if the loans themselves propped up a crime against humanity.

The willingness of international banks to continue lending in this period led to the apartheid state and its state-owned enterprises, including Armscor, increasingly looking to raise private loan capital from bond issues and syndicated loans in the European market, resulting in what was described as ‘an orgy of borrowing from private international banks’ in the 1980s.

The most prominent lenders were private banks from the United Kingdom, Switzerland, Germany, France and the United States. These banks not only profited from interest repayments but they also eagerly facilitated the expansion and profit-making of their own countries’ transnational corporations, which were very active in South Africa. From the British firms’ oil and steel interests to the American firms’ manufacturing interests, German involvement in the communications sector and motor industry, and the German and French involvement in South Africa’s nuclear weapons and energy project, these activities were helped along by the supply of capital to South Africa from the banks in the respective countries.

The consequences of the easy access the apartheid state had to private loans were twofold. For one, it allowed them to continue to pour funds into procuring the means to oppress the population, and thus to intensify and prolong the regime’s crimes. Apartheid was far from the only authoritarian regime to be propped up by global banks. According to research by Juan Pablo Bohoslavsky, the UN Independent Expert on issues of foreign debt and international finance, the provision of loans by banks to autocratic regimes has two major effects:

1. It adversely affects human rights by strengthening the repressive capacity of the regime; and,
2. It consolidates and prolongs the regime by delaying the possibility for reform or political change.

In addition, these loans saddled democratic South Africa with a catastrophic ‘odious’ debt that compromised attempts to rapidly seek redress for the worst socio-economic consequences of apartheid. We deal with this issue in greater depth in the next section.
Swiss banks were particularly supportive of the apartheid state. Executives from notorious banking giants like the Union Bank of Switzerland (UBS) lobbied their government to oppose sanctions against the regime. This supportive relationship was based on one thing: gold.

By the 1970s, Swiss banks were responsible for marketing and selling the majority of South Africa’s gold. They made a fortune in return. The Swiss banks promised a more anonymous market and backed it up with increased loans to the apartheid regime. Through gold, an enduring alliance was born.
The legacy of the role played by large global banks has remained largely unexamined for the past two decades. This is a result of a failure, during the political transition, to fully investigate and examine the role of corporate complicity in apartheid. In particular, the relative invisibility of economic crimes and violations that resulted from the focus on physical violence by the TRC continues to compromise those seeking economic and social justice in South Africa’s ongoing transition.

Despite the TRC’s important contribution to reckoning with our past, this failure to grapple with economic crime, particularly the role of private actors in profiting from oppression, has had serious consequences. It has fundamentally compromised the pursuit of economic and social justice and set a precedent of impunity for private actors who are complicit in grave crimes.

The First People’s Tribunal on Economic Crime in South Africa was a civil society-led process that gathered evidence and held public hearings on economic crimes in South Africa linked to the arms trade from apartheid until today. The panel of the Tribunal, consisting of respected jurists and civil society leaders, made the following remarks on the issue of continuities in grand corruption:

“We would also emphasise that state capture is to some extent also a result of the corrupt activities that had gone before it. Absent the violation of United Nations sanctions, and the corrupt Arms Procurement Package, the kind of state capture described in the evidence would probably not have occurred. The examples of state capture mentioned here are the tip of the iceberg.”

Open Secrets is the Secretariat of the People’s Tribunal on Economic Crime.

www.corruptiontribunal.org.za
As discussed in the previous section, the world's largest private banks were essential to bankrolling apartheid. Right up until 1985, the banks named in the box above willingly lent billions to the apartheid state. It was only in 1985 that a depressed economy, widespread unrest, pressure by the global anti-apartheid movement, and large-scale capital flight stopped the banks from rolling the debt over again. This prompted a debt crisis that apartheid negotiated itself out of with the help of its Swiss banking allies.11

By the time the first democratic election was held in 1994, South Africa was heavily indebted to these financial institutions, which had continued to provide money to the oppressive regime right up to the brink of financial crisis. By 1994, the debt was about R90 billion. In today's terms, that is nearly R350 billion — which had to be repaid to these banks by the new democratically elected South African government and its state-owned entities.

It goes without saying that repaying this debt was a significant diversion from pressing social needs at the time. The new democratic government faced a massive challenge to extend basic services to the majority of the population, who had previously been excluded. The demand on the public purse for housing, water and electrification, health, social services and education was high, but these legitimate needs had to contend with the pressure to repay banks that had knowingly and recklessly lent money to the apartheid state. The apartheid debt was still being paid off in 2001, at the same time as the country was struggling to fund HIV medication to the most vulnerable. This begs the question: should these banks have been repaid?

CONTINUING TO PAY APARTHEID’S ODIOUS DEBT
ODIOUS DEBT?

The ‘odious debt doctrine’, though subject to various definitions, makes the argument for permitting states to renounce the debts of a previous regime when a range of criteria is met. The most common criteria proposed are that if:

1. The debts were taken on against the interests of the people, and not for their benefit;
2. The debts were not consented to by the people; and,
3. The lenders knew of the above two facts and proceeded with these loans regardless. 13

In the case of apartheid, it is clear that the vast majority of South Africans neither consented to nor benefitted from these loans. In fact, the opposite was true given the role of these funds in financing oppression and prolonging a system that was considered a crime against humanity. It is also true that the lenders were aware of the conditions in South Africa under apartheid and the actions of the regime and their consequences for black South Africans. It was also repeatedly raised by the international community that their financing of the state would likely contribute to a perpetuation of the regime and its policies.

The UN General Assembly urged banks not to give financial assistance to the apartheid government in a range of resolutions, including Resolution 31/33 in 1976, which called upon all states to stop all new foreign investment in and financial loans to South Africa as an important step towards ending apartheid. The UN Special Committee Against Apartheid went a step further in 1980, addressing transnational corporations and suggesting that such forms of financial assistance made them ‘accomplices in the inhuman practices of racial discrimination, colonialism and apartheid perpetrated by this regime’. 14

Thus, since all three criteria for the odious debt doctrine were met, there is a strong argument that South Africa should not have been required to make a full repayment of this debt. Unfortunately, like most governments in poor and developing countries, the democratic South African government never pressed the issue regarding apartheid debt. 15 Given the power of transnational banks within international capital markets and the need to access future loans and finance, many new governments prefer to take on crippling debt rather than fight for repudiation.
This means that banks are able to knowingly and recklessly lend vast sums of money to violent and repressive governments and enjoy not only impunity for their complicity in those crimes, but also the guarantee of a return.

The struggle against impunity for these financial institutions has been led by social movements and broader civil society. In the late 1990s, Jubilee, a broad international coalition of civil society organisations, mobilised and advocated for the repudiation of apartheid debt and on the issue of reparations. These efforts shone a sharp light on this injustice but were ultimately unsuccessful, not least because they did not enjoy the full support of the democratically elected government.

In a similar vein the Khulumani Support Group – representing victims of apartheid – sued a range of global corporations, including banks such as UBS, Credit Suisse and Barclays, for their complicity in apartheid. Unfortunately, their work in holding corporations to account was stymied in part by the South African government under Thabo Mbeki. The government, through its ministers, publicly condemned their attempts to pursue justice and preferred instead to side with the interests of the powerful corporations.

The apartheid state handed over R90 billion in debt to the new democratic government. In today’s terms that is R350 billion. To put that in contemporary (2018) perspective:

- This is the combined amount set aside in the 2018 budget for basic education, higher education, skills levies, and the National Student Financial Aid Scheme (NSFAS).
- This could fund the entire South African health budget nearly twice over.
- This is nearly 6 times the amount budgeted for child care grants in this year’s budget.

**APARTHEID DEBT**

**WHAT DID IT COST?**

**R350 BILLION**

The apartheid state handed over R90 billion in debt to the new democratic government. In today’s terms that is R350 billion. To put that in contemporary (2018) perspective:
Criminal networks that seek to profit from corruption and other economic crimes today need to obscure trails of money and keep real ownership secret in order to throw off their track investigators from the state and civil society. They could not have done so without banks helping them or turning a blind eye and ignoring their obligations to report suspicious transactions.
STATE CAPTURE
BANKERS

Just as private banks were essential to the continuation of apartheid, there is increasing evidence that contemporary state capture in South Africa and the related looting of state-owned enterprises by Gupta-linked companies could not have occurred without the help of banks.

Those networks that seek to profit from corruption and other economic crimes today need to obscure trails of money and keep real ownership secret in order to throw off their track investigators from the state and civil society. They could not have done so without banks helping them or turning a blind eye and ignoring their obligations to report suspicious transactions.

As new evidence emerges, the number of banks implicated in the state capture allegations is increasing. In this report, we focus on two banks that operated together and appear to have been party to numerous suspicious transactions: the Bank of Baroda and Nedbank.
Dirty Money

The language of money laundering and secret money flows can be confusing. Here are some of the most common techniques used that appear consistently in the evidence about state capture:

- **Smurfing**: Breaking up large amounts into much smaller transactions.
- **Layering**: Moving money through multiple accounts to obscure the origin and trail.
- **Roundtripping**: Moving money through a series of transactions, usually between related entities often with the same ownership, to boost revenue (or create the appearance of revenue) without any genuine commercial activity by that entity.
- **Loan Backs**: One company makes a fixed deposit with cash from one transaction, and then a second related company takes a ‘loan against fixed deposit’ to access these funds. In the case of the Guptas, this was used to move money between related firms but without a clear trail, often across international borders.

Poverty

2.8 million more people in poverty from 2011 to 2015

The legacy of a long history of state capture is seen in high levels of unemployment, poverty and inequality in South Africa. The last decade has done nothing to address these challenges, and in many cases the country has slipped backwards.

Unemployment

2.5-million lost jobs

South Africa is renowned for high income inequality. However, wealth inequality is even more stark. Tax data suggest that 10% of the richest South Africans own at least 90% of all the country’s assets.

Inequality

2.8 million more people in poverty from 2011 to 2015

Had the South African economy kept pace with other emerging markets between 2007 and 2017, the South African economy could have created between 500,000 & 2.5-million more jobs. According to Statistics SA, South Africa lost 69,000 jobs in the 2nd quarter of 2018.

More than half of South Africans were poor in 2015, with the poverty headcount increasing to 55.5% from 53.2% in 2011.
The Bank of Baroda is a state-owned Indian bank and until this year had a Johannesburg branch offering various banking services in South Africa. While evidence is still emerging regarding the full extent of the bank's complicity in the state capture project, it was clearly involved in multiple suspicious transactions that even the bank's employees flagged as questionable. It is estimated by investigative journalists at the Organised Crime and Corruption Reporting Project (OCCRP) that between 2007 and 2017, about R4.5 billion moved between more than 20 Gupta-linked front companies that held accounts at Baroda.

Baroda accounts were used often in what appeared to be cases of roundtripping as described above – transferring large sums of money between companies owned by the Guptas or their associated companies. This was often done through inter-company loans – usually with no clear commercial or legal purpose (and often even in the absence of a loan agreement) and thus apparently done to obscure the origin of money. An example of this was Trillian Management Company, owned by Salim Essa and at the time receiving significant payments from Eskom, which loaned R160 million to another Gupta-linked company, Centaur Mining, in the absence of any loan documentation.

State-owned power utility Eskom is currently in legal action to recover up to R1.6 billion that it alleges was paid unlawfully to global consultants McKinsey and Trillian Management Consulting. McKinsey eventually repaid R902 million to Eskom and offered a public apology, though it refused to pay back interest earned on those fees which could be in the hundreds of millions. Most of the payments to Trillian of up to R500 million per transaction for ‘management and financial services’ were made when Trillian lacked the capacity to undertake the work, and on the same day as invoices were submitted (leaving no time for Eskom to even assess the work). Baroda employees noted these irregularities and completed Suspicious Activity Reports (SARs) as required by the Financial Intelligence Centre Act. According to the OCCRP, senior managers at Baroda would then step in to quash these reports, ensuring that they never reached the regulator. The truth seemed to cause unease among the bosses at the bank.

The purchase of Optimum Coal by Tegeta, a company linked to the Guptas and part owned by Duduzane Zuma at the time, has been one of the defining scandals of the state capture saga. In short, with the help of then mining minister Mosebenzi Zwane and Eskom executives, commodities giant Glencore (with a deeply chequered past of its own on the continent) was bullied into selling Optimum. Following this, the same actors ensured that Tegeta would be favoured to buy the mine, despite not having the capital available. This included Eskom using public funds to help Tegeta buy the mine by pre-paying nearly R600 million to the company.

Throughout the saga, the Bank of Baroda facilitated the money movement and other illicit activity, as is described below.
By the time of the purchase of Optimum, most South African banks were in the process of closing Gupta accounts as a result of the obviously illicit transactions that were occurring. Most had been very slow to do so and acted on evidence of dodgy dealings at a time when the reputational risk to themselves was very high. The closures meant that the Gupta network became increasingly dependent on Baroda.

Tegeta’s accounts at Baroda received large deposits totalling nearly **R2.5 billion** in 2016 from other Gupta-linked accounts. This included nearly **R1 billion** in three transactions from a firm run by Duduzane Zuma. Once again, bank officials flagged them all as suspicious but senior officials eventually quashed the SARs. Much of the money coming in originated at Eskom, which was paying Tegeta exorbitant amounts for coal.26

When Glencore was strong-armed into selling Optimum to Tegeta, the head of the Bank of Baroda in South Africa issued a letter of assurance that Tegeta was able to pay the full amount. Yet this was just days before Tegeta announced that it was actually R600 million short (which Eskom then waived by pre-paying Tegeta for services to get rid of the shortfall). **Ultimately, at least R1.8 billion in transactions to pay for the mine went through Baroda accounts.**

Explaining part of the desire to push through the purchase, Tegeta also got access to R1.7 billion in rehabilitation funds as part of the transaction – these are funds set aside to address environmental issues after a mine has closed. Although it is illegal to use such funds for any other purposes, they were deposited in Baroda accounts and the Guptas were – illegally – permitted by the bank to borrow money using the funds as collateral.

**NEDBANK**

Nedbank has been implicated in the state capture allegations both in terms of its connections to the Bank of Baroda and in its own right for its role in the corruption surrounding Transnet’s purchase of locomotives from China. The bank is wont to paint a picture of itself as a victim, but the truth is more complicated.

**FACILITATING THE FACILITATORS**

The Bank of Baroda was a foreign bank and so required a South African sponsor bank in order to operate. Nedbank agreed to play this role and allowed Baroda to use its infrastructure for all financial transactions. It appears that this relationship enabled both banks to avoid responsibility for identifying and reporting suspicious transactions. The system worked in such a way that the banks did not have access to all the information they may have needed. Nedbank did not have sufficient information to do due diligence on transactions that occurred between Bank of Baroda accounts. At the same time, Baroda did not have access to information about the origin of money transfers to Baroda accounts that came from external banks.26
Why should Nedbank be criticised if it did not have insight into the suspicious roundtripping and other transactions between Baroda accounts? It should because Nedbank had closed its own Gupta-linked accounts in 2016 because of corruption and money laundering concerns. CEO Mike Brown has claimed that as a result, the bank came under pressure from senior ANC officials, including Zwane. Given that, why did Nedbank decide to keep all of its Baroda business in the face of numerous suspicious activities linked to Gupta entities? After all this relationship continued until 2018. Could one reason be political sensitivity at play, given the ownership of Bank of Baroda by the Indian state? These are important questions that need to be put to the banks by the Zondo Commission of Inquiry into State Capture.

**LOOTING TRANSNET**

Nedbank also played a role in the now infamous scheme to earn Gupta-linked firms and associates kickbacks from the Transnet purchase of Chinese locomotives. It is estimated that up to R50 billion was extracted from Transnet in this scheme. It is a convoluted story, but involved Transnet (led then by Brian Molefe) making a drastic change in policy by outsourcing its loan-making and interest-rate management to a company called Regiments (now partly controlled by Trillian’s Eric Wood) with an agreement that Regiments would use a higher fixed interest rate and ‘fold’ its fees into that structure. This would make Regiments a fortune and make the fees more difficult to identify.

A day after this about-turn, Regiments loaned R4.5 billion to buy the Chinese locomotives. At this point, it needed to find a bank to do an interest rate swap – a contract to exchange interest rate payments whereby Transnet (through Regiments) agreed to pay a fixed rate higher than the current floating rate (ostensibly to ensure stability). All of South Africa’s banks that were approached refused to do so because they found it alarming that Transnet had suddenly abandoned its long-time internal financial team and was using an unknown third party.

However, Nedbank agreed and stepped in to be the counterparty on the swap. The deal resulted in an interest rate of 11.15% (as opposed to the floating rate of 9.1%) and 11.83% after Regiments’ fees were included. The interest rate generated profit for Nedbank – in the first swap it made R28.2 million (a cut of the fees) and in the second more than R46 million.

**GLOBAL BANKS - HSBC**

It wasn’t only Baroda and South African banks that have been implicated in the scandal. British banking giant HSBC held the majority of the accounts used for transactions related to kickbacks from the Transnet deal. This included a deal for a $321 million commission to be paid to Salim Essa’s Hong-Kong registered firm ‘Tequesta’ for providing BEE assistance, which Transnet would pay. The fees were paid to two HSBC accounts – one belonging to Tequesta and the other to a company called Regiments Asia. The companies have largely the same principals, were registered on the same day with the same address and were clearly set up only to receive these Transnet kickbacks. The money was usually quickly moved on by both companies to a range of other companies that equally showed little genuine business activity. If HSBC undertook the legally required due diligence, why did it continue to facilitate these transactions for four years?
Conservative estimates of *Illicit Financial Flows* (IFF’s) from Africa suggest that they amount to $50 billion (R750 billion) every year.

Along with Nigeria, South Africa is the largest source of IFFs on the continent and among the top ten sources in the world.

**KEY TERMS**

- **Illicit financial flows**
  IFFs broadly include a range of strategies or methods of moving financial capital out of a country in a way that is against domestic or international law. It includes tax evasion, companies misrepresenting their trade by falsifying invoices, money laundering and hiding the proceeds of criminal activity.\(^{34}\)

- **Trade misinvoicing**
  This is one of the largest sources of IFFs. In basic terms, it is a way of corporations lying about the values of exports and imports in order to avoid paying the required taxes and duties.
ILLICIT FLOWS AND THEIR ENABLERS

IFFs have become a growing concern for low income and developing countries that are trying to mobilise resources for development at home. While trying to boost their revenues for essential spending, money and assets are flowing out of these countries at an alarming rate. Given the secretive and illicit nature of these activities, IFFs are notoriously hard to measure. However, conservative estimates of IFFs from Africa suggest that they amount to $50 billion (R750 billion) every year. Along with Nigeria, South Africa is the largest source of IFFs on the continent and among the top ten sources in the world.

Losing billions of rand in this way every year moves money away from taxes and essential social spending, as well as away from fairer wages and domestic investment. The largest component of IFFs is made up of corporations engaging in misinvoicing of their trade, shifting profits to secret jurisdictions with low tax rates, and other forms of corporate tax evasion.

The world’s largest multinational corporations are often the worst culprits when it comes to this kind of conduct. However, they could not do it if it wasn’t for a sophisticated global financial architecture that enabled it. This system is set up willingly by the largest global banks, law firms and accounting firms. Below we look at the role of the so-called big four accounting firms.
In 2011, data from the London Stock Exchange indicated that the top 100 companies on that exchange controlled a staggering 34,216 subsidiaries over multiple jurisdictions. The world’s largest companies are thus made up of a sprawling and complex network of different entities. This makes them very difficult to monitor and regulate as they fall under so many different laws and jurisdictions. For example, the banking giant HSBC is made up of 821 different legal entities in 71 countries. Anheuser-Busch InBev, the largest brewer in the world and now owner of SAB Miller in South Africa, consists of 680 legal entities in 60 countries.

While some of these entities are engaged in actual operations, hundreds are special purpose entities – shelf companies that exist only on paper and often in tax-friendly jurisdictions. Their purpose is to facilitate the movement of financial assets in such a way as to minimise the payment of tax and other liabilities where corporations have actual operations and from where they draw profit. The Organisation for Economic Co-operation and Development (OECD) estimates that money moved through these types of entities makes up 25% of foreign investment into countries such as Luxembourg and the United Kingdom, giving them a direct interest in allowing these practices to continue.
THE ENABLERS

This begs the question of who helps to set up such complex corporate structures. While large global banks play an important role, much of the work is done by the big four accounting firms, namely PricewaterhouseCoopers (PwC), Deloitte, Ernst&Young (EY) and KPMG. The term ‘big four’ is not misplaced – together they employ nearly one million people in nearly 3,000 global offices (including a prominent presence in tax havens) and posted combined revenue of $134 billion (nearly R2 billion today) in 2017. They provide services to more than 98% of the largest firms on the British and American stock exchanges.

These firms provide two sets of services to large multinational corporations. The first is the one we likely think of initially – the auditing services through which we expect them to check financial records and identify irregularities. However, a very profitable second aspect is the range of advisory and consulting services that these firms offer. If you visit their websites, you will see prominent advertisements for their services to structure corporate entities to ensure ‘tax efficiency’.

What does tax efficiency entail in reality? The Luxembourg leaks, provided by a whistle-blower who used to work for PwC, revealed that PwC’s work included securing at least 548 secret deals in Luxembourg to ensure that more than 300 of its multinational clients could reduce their effective tax bill below 1%. They did so by using creative loan agreements and ensuring payments of millions to companies registered in Luxembourg but with few or no actual operations there. One small Luxembourg building was home to 1,600 corporate entities.

Beyond these obvious problems, the quality of auditing work appears to have fallen too. The consulting work described above is not in the public interest (as auditing theoretically should be) but in the interests of the client, and of course the accounting firm’s bottom line. This leads to obvious conflicts of interest with the auditors seeking to please the management of the companies.
they audit in order to ensure the continued flow of fees.\textsuperscript{47} In some cases, when companies have failed and questions have been asked of the auditors, it has emerged that the auditing company was earning eight times more from consulting for the company than for auditing it.\textsuperscript{48}

We see these issues playing out in South Africa too. The role of KPMG in facilitating or ignoring criminality with regard to VBS and Gupta-linked companies is discussed elsewhere in this report.

**LEGALITY AND REGULATION**

Not all of what is described above is illegal. The tax avoidance schemes explored often hover on the border of what is permitted, with many found unlawful by courts in the end. However, the big four firms are experts in finding loopholes in legislation. Why? Mainly because many of their senior executives helped to write the laws in the first place, in national governments, regulators and bodies such as the OECD.\textsuperscript{49} This revolving door between regulators and the big four raises serious questions of regulatory capture and the inside knowledge of tax strategies that these executives can put to work in helping their clients to beat them.

At the same time, financial accounting standard setters such as the International Accounting Standards Board are primarily reliant on funding from the big four firms and are unlikely to bite the hand that feeds them.

We are thus left in a position where the big four firms help to write the laws that govern tax and international finance, fund the regulators and have increasingly aligned interests with their corporate clients and the 1%. In this context, global corporations are able to extract vast profits without paying their fair share in tax, and ordinary citizens are the losers.
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Social grants have been a major casualty in the story of contemporary corruption in South Africa.

The grants crisis has had disastrous consequences for the functioning of the social welfare system and the 12.5 million South Africans who rely on it to survive.
Social grants have been a major casualty in the story of contemporary corruption in South Africa. The grants crisis has had disastrous consequences for the functioning of the social welfare system and the 12.5 million South Africans who rely on it to survive.\textsuperscript{50} Much has been said about the role played by a ‘shadow network’ of ANC politicians and the failure of the South African Social Security Agency (Sassa) to follow court-ordered instructions.\textsuperscript{51} Below, we focus on the role played by banks and payment service providers to uncover how they manipulated their proximity to the social grant system to extract profit from vulnerable social grant beneficiaries.

In 2014, the Constitutional Court ruled that the contract between Sassa and CPS was unlawful and invalid.\textsuperscript{52} It declared:

“It is true that any invalidation of the existing contract as a result of the invalid tender should not result in any loss to Cash Paymaster. The converse, however, is also true. It has no right to benefit from an unlawful contract. And any benefit that it may derive should not be beyond public scrutiny.”
WHO ARE THE PLAYERS?

<table>
<thead>
<tr>
<th>Company</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>Net1 UEPS Technologies Inc</td>
<td>A privately-owned South African company that provides payment and transaction solutions to individuals without bank accounts, who require a system for receiving cash from employers or government agencies such as Sassa. The company targets ‘unbanked’ or ‘under-banked’ populations in emerging economies through subsidiary companies. Net1 also offers what it refers to as ‘financial inclusion services’ (also known as microfinancing or microcredit). These provide cash loans and insurance to people who ordinarily struggle to access these financial products.</td>
</tr>
<tr>
<td>Cash Paymaster Services (CPS) and EasyPay</td>
<td>These two companies are subsidiary of Net1. They are the entities that offer theoretically more affordable banking alternatives compared to large commercial banks. CPS directly facilitated the payment of social grants.</td>
</tr>
<tr>
<td>Grindrod Bank</td>
<td>This bank is a subsidiary of Grindrod Limited and provided access to the necessary banking services of ATMs, electronic transfers and point of sale services. Grindrod Bank had no direct contract with Sassa and was not under its direction.</td>
</tr>
</tbody>
</table>

According to CPS’s financial statement, audited by KPMG and presented to the court in 2017, CPS made a pre-tax profit of R1.1 billion from the contract with Sassa. In a critical review of the statement, the Alternative Information and Development Centre (AIDC) asserts that this figure is underestimated by between R214.2 million and R614.4 million. Through its contract with Sassa, CPS facilitated the payment of social grants using its card technology and programme, and provided grant recipients with EasyPay Everywhere (EPE) cards. It worked closely with Grindrod Bank, which provided the services mentioned above.

HOW DID THEY PROFIT?

ACCESS TO A VULNERABLE TARGET MARKET

The actions of CPS and other Net1 subsidiaries throughout their control of social grants payments exposes the dangers of involving private corporations in the provision of social security. Net1’s long-term relationship with Sassa gave it access to 12.5 million economically marginalised people who squarely fit into its core business target market. This is because beyond the income it received from CPS’s lucrative government tender, Net1 was able to offer its other services outside those specified in the contract with Sassa. In practice, this meant convincing grant recipients at pay points operated by CPS to sign up for small loans or insurance policies. These microfinance products were made to seem like easy money that could conveniently be paid
for through the EPE cards provided by CPS and Grindrod Bank.

According to an investigation by Summit Financial Partners, grant beneficiaries were required to sign up for an EPE card to apply for a loan from Moneyline (another Net1 subsidiary). A further finding in this survey was that Moneyline flagrantly disregarded the requirements of the National Credit Act. Moneyline requested no proof of income or transaction history from grant beneficiaries, and provided loans to individuals who received grants of less than R800 a month – the minimum income required to receive credit. Microfinance providers often function in this predatory manner, relying on the limited financial literacy of a poorer client base to extract as much profit as possible.

Access to this market of grant recipients and the ease of pushing these services on to poor consumers have been highly profitable for Net1. The corporation derives 21% of its revenue from the Sassa contract alone. If we include the profit made indirectly by its various subsidiaries that target grant recipients with other dubious financial products, then access to this market may account for up to 70% of its revenue. Grindrod Bank also derives significant profit from this arrangement and has, according to an April 2017 report by the Global Credit Ratings Company, gained significant income through charging fees to the Sassa cardholder base and on its ATM services. In 2016, the bank earned R81.1 million from fees alone.

UNAUTHORISED DEDUCTIONS

Over the past few years, civil society organisation Black Sash has collected complaints from grant recipients relating to deductions for airtime, electricity and loans from their bank accounts that they did not authorise. This often occurs because grant recipients are signed up to agreements with a Net1 subsidiary that sells these products without full explanation of the terms and conditions attached to the debit order. Often service fees as high as 30% to 40% of the loan are charged without the knowledge of the recipient.

In other instances, it has been clear that deductions have been made without consent. One Sassa beneficiary interviewed by GroundUp said that between R100 and R160 was deducted from her account monthly for five months by Umoya Manje (another Net1 subsidiary) for airtime, even though she sold airtime herself and had no need to buy more. In both cases, the deductions made are illegal as they are based on agreements that were not freely entered into by the grant beneficiary.

Unlawful deductions have a serious knock-on effect. Monthly debit orders are deducted from Sassa grants immediately after they enter recipients’ bank accounts. Many grant recipients are then forced to approach Net1 subsidiaries to apply for further loans as a short-term solution to their diminishing social grants. What is perhaps most sinister about this scenario is that Sassa beneficiaries can only use their grant as collateral, meaning that they will lose their entire grant if they fail to pay. In the Constitutional Court's March 2017 decision to further extend the invalid contract between Sassa and CPS (to ensure the continued payment of grants), a term was added that the personal data of beneficiaries was not to be used for any purpose other than the payment of grants. Despite this, Net1 and Grindrod Bank took advantage of their proximity to Sassa beneficiaries and their data to accumulate further profit. For example, the transaction histories of beneficiaries would be accessed from their Grindrod bank accounts when signing up
for loans with Moneyline. According to the Summit Financial Partner’s investigation, “It is undoubtedly clear that Net1 would not be able to process the amount of EPE cards, Moneyline loan agreements and Smart Life policies that they do without the information they have collected over the course of their Sassa mandate.”

The actions of CPS and Grindrod Bank in the period leading up to the end of the contract have also shown Net1’s profit-driven interests in the business of social grants. As Sassa has been moving towards insourcing the administration of social grants, CPS officials have been stationed at old grant pay points, ATMs, and shops, to advertise EasyPay Everywhere cards to grant recipients who arrive to sign up for new Sassa cards. Grindrod Bank has caused further confusion by distributing pamphlets stating: “You have the right to continue to use your Sassa-branded Grindrod card or your EasyPay Everywhere (green) card for as long as you want to.” These tactics reflect Net1 and Grindrod Bank’s apparent desire to hold on to and continue to profit from grant-dependent, economically vulnerable South Africans.

THE COSTS TO THE POOREST

The infiltration of Grindrod bank accounts and the growth in agreements with Net1 subsidiaries, both of which have the added obstacle of being difficult to cancel, have created an unprecedented problem of indebtedness among already poor South Africans. This has resulted in a significant weakening of the South African welfare system and its impact on poverty and inequality reduction. For grant beneficiaries who already struggle to survive on insufficient grant amounts, this never-ending cycle of indebtedness is devastating.

Net1 and Grindrod Bank have also contributed to the chaos surrounding the cancellation of the CPS contract. By blurring the distinction between the EasyPay and Sassa cards, whether intentionally or not, they have contributed to a long-term problem of ensuring the efficient administration of social grants by Sassa in future.

CIVIL SOCIETY DEMANDS ACCOUNTABILITY

The conduct of Net1 and CPS has not gone unchallenged, though as with many of the cases discussed here, it has often been down to civil society to provide this challenge in the absence of proactive state institutions. The Hands Off Our Grants Campaign was initiated in 2012 and is made up of a number of civil society organisations, including Black Sash, Right2Know and Katolieke Ontwikkeling Oranjervier. It has played a watchdog role in the grants process, particularly during the height of the crisis, relaying complaints of beneficiaries to relevant authorities and taking legal action where necessary. Black Sash has been involved in appealing a High Court decision allowing Net1 deductions from social grants. This type of intervention is crucial for ensuring that grant beneficiaries are protected from exploitation by corporations that undermine the social welfare system and make deductions from grants to service debt.

While corrupt individuals within Sassa have in the past sided with CPS to ensure the renewal of its contract despite failing to meet BEE requirements, the parastatal has been more proactive in reporting abuses by Net1 and Grindrod Bank of late. In July 2018, Sassa reported CPS to the Constitutional Court for interfering with the move to the new grants system. The institution’s move to guard the interests of vulnerable grant beneficiaries against profit-seeking companies is heartening but comes far too late.
Access to this market of grant recipients and the ease of pushing these services on to poor consumers have been highly profitable for Net1.

The corporation derives 21% of its revenue from the Sassa contract alone. If we include the profit made indirectly by its various subsidiaries that target grant recipients with other dubious financial products, then access to this market may account for up to 70% of its revenue.
VBS could not account for R900 million. Not only had deposits been looted, but bribes had been paid in an attempt to secure deposits (mostly from poor municipalities) to plug the holes that resulted from the looting.

An independent investigation and report, commissioned by the South African Reserve Bank and authored by senior Advocate Terry Motau, found that nearly R1.9 billion in ‘gratuitous payments’ were made by VBS to 53 individuals and other entities.
VBS: A BANK HEIST

VBS Mutual Bank is a mutual bank established in 1982 as the Venda Building Society. Its majority owner is a company called Vele Investments and it is also part owned by the Venda sovereign, King Ramabulana. VBS came under the spotlight in 2016 when it provided a loan of R7.8 million to then president Jacob Zuma to help him to repay money spent on upgrading his personal residence at Nkandla. The loan came soon after Zuma had made the decision to coronate the king in the midst of a court battle over succession rights.\(^7\) VBS was soon to be caught up in a scandal of much greater proportions.

VBS was in the news again in March 2018 – it had been placed under curatorship as a result of a severe liquidity crisis. It was only after the curator, Anoosh Rooplal, had the opportunity to examine the bank’s finances that the full scale of the criminality became clear. The bank could not account for R900 million. Not only had deposits been looted, but bribes had been paid in an attempt to secure deposits (mostly from poor municipalities) to plug the holes that resulted from the looting.\(^7\) An independent investigation and report, commissioned by the South African Reserve Bank and authored by senior Advocate Terry Motau, found that nearly R1.9 billion in ‘gratuitous payments’ were made by VBS to 53 individuals and other entities.\(^7\)
THE HUMAN COST

Millions of South Africans rely on their municipalities to deliver basic services to them. The municipalities that unlawfully deposited the R1.5 billion into VBS cannot now and may never retrieve those funds. Some of these municipalities in North West have admitted that this is having a severe negative impact on service delivery – particularly regarding water and electricity. Some municipalities deposited into VBS grants meant for the provision of water supply facilities. The greed of banking executives and the failure of regulators have a high human cost.
PENSIONERS CAUGHT UP IN VBS LOOTING

A lesser told story in the VBS and Vele saga is that pensioners’ money was deposited into VBS shortly before it was placed under curatorship, again despite laws prohibiting depositing pension money in a mutual bank.

The BBF is a pension fund primarily set up to hold money for the children and spouses of deceased Anglo Platinum mine workers – over 7000 beneficiaries in total. It was controlled by a holding company called Mvunonala. The first scandal to hit the BBF was disturbingly similar to the story of the looting of VBS. At least R300 million was misappropriated by its administrators and trustees.

The trustees, who had a fiduciary duty to the fund and who were meant to protect the interests of the widows and children of mineworkers, embezzled much of the cash or spent it lavishly on events for management, as well as cars and property for directors, management and external parties.81 The trustees in question were all directors of either Mvunonala or its subsidiaries, and subsequently concealed these losses through false reporting.

After it became clear that the fund had been seriously mismanaged and almost all of its assets misappropriated, although far too late in the day, the Financial Services Board (FSB) and its executive, Dube Tshidi, intervened and appointed a curator for BBF and its administrator, Bophelo Benefit Services (BBS). The curator, Juanito Damons, recommended a forensic audit into how the monies could be recovered from directors, previous management and trustees of both BBF and BBS.

At this point, Vele Investments stepped in to ‘save the day’. By August 2017, Mvunonala had been bought by Vele.82 Following this, Damons made a public statement that he had ‘taken custody of cash, assets and investments belonging to the pension fund, BBF’ as a result of this investment by Vele – which included R370 million from the Vele purchase that was for the purposes of addressing BBF’s losses.

LINGERING QUESTIONS

The widows and children of mineworkers no doubt constitute some of the most vulnerable people in South Africa. The fact that the money owed to them was stolen not just once but twice, should illicit outrage in South Africa. It also begs crucial questions about the regulatory framework to hold banks and pension fund trustees accountable. Two crucial questions are:

1. Why did the FSB as regulator of pension funds not intervene in the BBF case sooner, and why did it permit the curator to make unlawful and reckless decisions regarding the investment of the money recovered for BBF?

2. Given that Vele is the majority shareholder of VBS and that Vele purchased Mvunonala, were the funds ever meant to fund the shortfall and claims that BBF had against Mvunonala – or were they placed directly into VBS mutual bank when it was in crisis as another way of plugging the gaps in the bank through related party transactions?
This should have been an important victory to ensure that the beneficiaries of the pension fund were protected. Yet what the curator did next was inexplicable. He immediately placed between R300 million and R385 million in an account at VBS Bank in the name of BBS. Of course, within months, VBS was placed under curatorship and all deposits of more than R50,000 were frozen. If VBS is beyond recovery, which may well be the case, nearly R400 million of BBF’s cash has again been lost. The curator made this decision even though it is illegal for a pension fund to hold more than 25% of its assets in one place, or hold any assets at a mutual bank.
VBS managed to secure deposits from 14 South African municipalities totalling R1.5 billion, even though it is unlawful for municipalities to make deposits with a mutual bank.

The bank’s curator has alleged in court papers that VBS used a private company called Robvet to facilitate the payments of ‘commissions’ to people to ensure that these deposits kept coming in to plug the gaps left by the looting.
When it comes to a framework for regulation of the private sector in South Africa, it is not a lack of institutions or legislation that is a problem.

The problem lies in both a lack of political will and the capacity in those institutions necessary to aggressively pursue accountability.
The case studies in this report provide a picture of systematic failures of accountability for corporate actors that commit economic crimes and that are complicit in other crimes. This is often a result of a failure of state institutions tasked with investigating and holding accountable these actors. The continuity of these types of crimes and the powerful networks that enable them is made possible in the context of a lack of accountability.

Yet the detailed accounts provided here point to a second important fact. Civil society, social movements and journalists have in many instances been the central drivers for accountability in South Africa. Together with whistle-blowers, they have uncovered and published the damning evidence of many of these crimes, fulfilling the public's right to truth and empowering us to call for accountability. Many have also engaged in litigation for accountability and redress where the state has been unable or unwilling to do so.
THE FAILURE OF INSTITUTIONS
OF ACCOUNTABILITY

When it comes to a framework for regulation of the private sector in South Africa, it is not a lack of institutions or legislation that is a problem. Rather, the problem lies in both a lack of political will and the capacity in those institutions necessary to aggressively pursue accountability. This is particularly undermined by turmoil in some of the most important public crime-fighting institutions, such as the police and the National Prosecuting Authority (NPA).

The challenges faced by many of these institutions is deeply linked to criminal networks from South Africa’s past and present that have interfered to weaken their capacity to investigate and prosecute economic crimes.

For example, allegations of corruption in the infamous 1999 Arms Deal led many implicated parties, many of whom had close ties to Jacob Zuma, to launch a fightback to neuter anti-corruption investigators and prosecutors. It was this that led to the disbanding of the Scorpions (Directorate of Special Operations) in 2008. Until then, the highly specialised unit had had a remarkable success rate in terms of investigations and convictions (its replacement, the Hawks, has not been as successful). The Hawks, tasked with replacing the Scorpions in 2008, has been subject to continuous political interference and its unwillingness to pursue explosive allegations and evidence of corruption and state capture in the past decade has confirmed many of South Africa’s fears about its lack of independence.

There has been evidence of similar political interference at the NPA. The NPA’s conduct under various directors, most recently Shaun Abrahams before his dismissal, has suggested the manipulation of the office to settle political scores. Abrahams’s removal means that the NPA will soon have its eighth national director of public prosecutions since 1994.

WHO IS MEANT TO REIGN IN THE CORPORATIONS?

South Africa relies on a multi-agency framework to tackle corruption and economic crimes in the public and private sectors. Unfortunately given their poor state, the most important institutions in this framework remain the Hawks and the NPA in terms of the possibility of fully investigating and prosecuting the most serious of these crimes. It is these institutions that have been most undermined by political interference, in turn undercutting any good work done by other agencies. (See page right)

CORRUPTION RAMPANT WHILE NPA STALLS

The NPA’s failures affect our ability to hold the private sector and the government to account. The Special Investigating Unit (SIU) focuses on investigating corruption and tender fraud, usually at the level of local and provincial government. In a damning indictment of the prosecuting authority, the SIU has alleged that it has reported 463 criminal cases of fraud and corruption to the NPA for prosecution since 2007. These cases involve the theft of billions of rand. The NPA has failed to prosecute a single case.
### LIST OF REGULATORS

<table>
<thead>
<tr>
<th>Regulator</th>
<th>Purpose</th>
</tr>
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<tbody>
<tr>
<td>South African Reserve Bank (SARB)</td>
<td>The SARB is supposed to regulate and supervise South Africa’s banks and guard financial stability by ensuring banks have sufficient liquidity and capital. The prudential regulator set up under the new twin peaks legislation is housed in the SARB.</td>
</tr>
<tr>
<td>Financial Sector Conduct Authority (FSCA)</td>
<td>The FSCA replaces the FSB according to the new twin peaks legislation and is the dedicated market conduct regulator. Its aim is to protect consumers from unfair treatment by financial services companies.</td>
</tr>
<tr>
<td>Financial Intelligence Centre (FIC)</td>
<td>The FIC is tasked with identifying the funds generated from crime, as well as combating money laundering and terror financing. However, it hands over its findings to the police and the NPA and relies on them to take cases further.</td>
</tr>
<tr>
<td>National Credit Regulator (NCR)</td>
<td>The NCR is the agency tasked with enforcing the National Credit Act, including ensuring fairer non-predatory consumer credit markets.</td>
</tr>
<tr>
<td>JSE Limited (JSE)</td>
<td>The JSE is responsible for monitoring trade on the exchange and identifying any possible market abuse.</td>
</tr>
<tr>
<td>South African Revenue Service (SARS)</td>
<td>The SARS is responsible for collecting tax and custom revenue in South Africa, but also for investigating allegations of tax dodging and other tax offences. It relies on the police and NPA to take cases further.</td>
</tr>
<tr>
<td>National Treasury</td>
<td>The Treasury is responsible for ensuring sound financial management across the government and the state, and should enforce the requirements of the Public Finance Management Act. The Treasury was the subject of sustained attack by elements of the state capture network who hoped to undermine this check on the system.</td>
</tr>
<tr>
<td>Hawks</td>
<td>The Directorate for Priority Crime Investigation – known as the Hawks – is a special unit in the police tasked with investigating serious corruption, economic crime and organised crime. Its record has been disappointing.</td>
</tr>
<tr>
<td>National Prosecuting Authority (NPA)</td>
<td>The NPA plays the crucial role of instituting prosecutions based on allegations and evidence brought to it by these agencies. The NPA Act also grants investigative capacity to the NPA in relation to serious and organised crime. It has rarely utilised this power.</td>
</tr>
<tr>
<td>Competition Commission and Competition Tribunal</td>
<td>The Competition Commission investigates corporations for abusing market power, engaging in unfair practices to eliminate competition, or colluding with other corporations to raise prices and harm consumers. The Commission refers its cases to the Competition Tribunal for adjudication.</td>
</tr>
</tbody>
</table>
In the absence of accountability and a failure of state institutions to tackle the criminality described in the case studies above, South Africa’s journalists have played an invaluable role in bringing us evidence and fearlessly revealing the truth about economic crimes and corruption. This evidence has extended to corruption in the state and the role of the private sector in economic crime, and it has equipped South Africans to make powerful demands for accountability.

In return, investigative journalists have come under increasing attack from the powerful interests they threaten. We have witnessed intimidation, violence and a propaganda campaign against a range of journalists. Few faced worse than the SABC Eight, who stood up against censorship at the public broadcaster.

Journalists at amaBhungane, Daily Maverick, the OCCRP and News24 broke the Gupta leaks stories and helped piece together a full and disturbing picture of the networks of private and public actors that have been looting the state. A counter-narrative that has attempted to discredit them has accused them of targeting Zuma and the Gupta family, and ignoring other entrenched corporate interests. The truth is that we have a far deeper understanding of the role of the globes’ largest corporations in criminality thanks to their reporting.

**THANKS TO JOURNALISTS**

WE HAVE EVIDENCE OF:

- The role played by management consultants McKinsey in the looting of Eskom, receiving nearly R1 billion in fees in return. 89

- The illicit payments made by global software giant SAP to Gupta-linked companies in order to secure contracts with Transnet and Eskom. 90

- How KPMG assisted Gupta-related companies in hiding illicit transactions, including ignoring obviously dodgy related party transfers and infamously passing off wedding costs as a business expense. 91

- The role played by another consulting firm, Bain & Co, in the destruction of capacity at SARS to collect revenue. 92

- Allegations that German company Software AG paid bribes to secure a contract from Transnet. 93

- Payments of bribes by Liebherr-International AG (Switzerland) and Shanghai Zhenhua Heavy Industries Limited (China) to secure contracts from Transnet. 94
CIVIL SOCIETY:
THE PEOPLE’S TRIBUNAL

Civil society has played a crucial role in terms of supporting advocacy and truth telling in the public sphere, and in providing spaces for whistle-blowers to come forward and reveal what they know about corruption and the role of corporations in economic crime. The Tribunal was a deliberate response to the failure of the state to fully investigate allegations of corruption and state capture. It provided a forum open to the public for explosive information and evidence related to economic crimes from apartheid to the present day.

An example is the People’s Tribunal on Economic Crime, the first public civil society-led tribunal of its kind dedicated to tackling corruption and economic crime. Together, more than 25 individuals and civil society organisations told the country what they knew about these crimes and the impact felt as a result by ordinary South Africans.

Many social movements and non-profit organisations have also tackled economic crimes head on through mobilisation, advocacy and litigation. The work of Black Sash in bringing attention to and addressing the criminality in the social grants system through the Hands Off Our Grants Campaign is testament to the importance of this kind of work.

WHISTLE-BLOWERS

Very little of the work discussed in this report would be possible without the brave contribution of whistle-blowers and their willingness to risk their careers and often their physical safety, to reveal knowledge of criminality. Mosilo Mothepu was the first of several whistle-blowers to raise the alarm about the conduct of Gupta-linked companies and their actions related to South Africa’s state-owned enterprises. She took the information she had to the public protector in 2016 when she was an executive at Trillian Financial Advisory. Mothepu has since faced intimidation and lawsuits from Trillian and has been unable to find employment for nearly two years. She describes being a whistle-blower as ‘long, difficult and often lonely’.

Since then, many other whistle-blowers have divulged critical evidence of corruption and other economic crimes. The work of investigative journalists has depended largely on the Gupta leaks emails provided by whistle-blowers who have had to protect their identity. This is not surprising given the common consequences of vilification, unemployment and violence that many face when they blow the whistle on these crimes. Some, such as Mpumalanga councillor Jimmy Mohlala, who blew the whistle on tender corruption in that province, have been killed.

THE LAW IS NOT ENOUGH

While South Africa’s legislative framework formally provides protection for whistle-blowers, predominantly through the Protected Disclosures Act, the reality is different. Organisations such as the Platform to Protect Whistle-blowers in Africa (PPLAAF) and the Open Democracy Advice Centre (ODAC) work with whistle-blowers every day. They note that while formal protections exist, in many cases no action is taken to address the crimes the whistle-blowers expose, while they face intimidation and isolation.
The case studies discussed in this report, both historic and contemporary, point to systemic corporate criminality in South Africa.

Whether directly committing unlawful acts, facilitating the unlawful acts of others or engaging in conduct that exploits the grey areas of the law, corporate interests have profited at the expense of ordinary South Africans.
WHERE TO FROM HERE?

Corporations, and particularly financial services providers, are not bit-players or mere opportunists when it comes to corruption and economic crimes. Rather, they are integral to a system that enables these crimes to take place. They profit hugely as a result.

There are common themes that emerge from this analysis. For one, it is clear that contrary to the notion of victimless crimes, the conduct discussed here inflicts great harm on the most vulnerable South Africans. Just because these acts were done by people in suits in fancy offices far removed from ordinary South Africans does not mean that the losses are any less keenly felt. These crimes have stripped South African pensioners and grant beneficiaries of money directly and have facilitated the wider spread looting of the country’s resources, diminishing the amount available for all. The austerity of the current government is all the more cruel in this context. The smug beneficiaries of these economic crimes carry, at least in part, responsibility for the deepening crises of poverty, inequality and unemployment in our society.

Secondly, it is clear that continuing to draw a distinction between state corruption and private sector crimes is unhelpful and inaccurate. Some of South Africa’s greatest corruption scandals have had corporate interest at their core. It is perhaps more helpful to understand these as crimes of the powerful,
as this enables us to examine the networks of both private and public actors that collude and coalesce to profit from injustice.

Finally, there is a severe crisis of accountability for the powerful corporations described here. From aiding and abetting a crime against humanity all the way to the theft of pensioners’ money, there are few cases where we can point to successful prosecution or repatriation of funds. Without these processes, impunity reigns and networks of powerful private actors engage in the same conduct over time. This reflects a fundamental failure of the state to provide the oversight and sanction required to discourage and stop this type of conduct. It also reflects gaps in the legal system to hold corporations to account.

From these themes, it is also clear what can be done to strike back at these powerful networks:

**REFORM INSTITUTIONS OF ACCOUNTABILITY URGENTLY**

The erosion of capacity, political will and morale at the NPA has become one of the most significant obstacles to accountability in South Africa. Even where other investigators and regulators in the state and civil society unearth evidence of criminality, these cases are transferred to the NPA and are not taken forward. It is imperative that all future leaders of the NPA are not only people of integrity, but more importantly that their appointment indicates commitment to an institution that will be shielded from political interference in the long term. Civil society should also demand a commitment from the NPA that it will pursue cases of economic crime from apartheid to the present day in a bid to tackle impunity.

**EMPOWER AND REFORM THE REGULATORS**

Those institutions tasked with regulating the private sector are too often limited to information gathering and cannot pursue effective accountability without relying on the NPA. Regulators should be given more powers to investigate the conduct of private sector actors and to initiate action independently to seek restitution where misconduct is found. These thoughts have been echoed by the Treasury, which has made clear that the new FSCA must have greater powers to engage in sufficiently intense, intrusive and effective supervision. However, greater powers must be teamed with reforms that guarantee the independence of these institutions that often are very close to the industries that they regulate, making them unwilling to aggressively pursue accountability.

**LITIGATE WHERE POSSIBLE**

As with most jurisdictions, in South Africa criminal prosecutions rely on the state to have the will and the capacity to proceed. When the state lacks either, or both, it is often perceived that the courts are closed. However, civil litigation can still be brought by any individual or group that can show harm. While there remains problems regarding access to the judicial system, there is still an opportunity to pursue accountability for corporations and individuals that commit economic crimes, or are complicit in other violations, even where the state won’t act. Civil proceedings have the great benefit of getting liable parties to pay back money illicitly gained.
SUPPORT CIVIL SOCIETY

It remains true that corporate criminality does not always receive the analysis and attention it deserves. However, this report and the extensive research and investigations it has drawn upon point to the powerful and relentless role played by different elements of civil society in gathering the information needed to pursue accountability. Whether they are journalists, social movements or individual whistle-blowers, they require material support and solidarity from us all – particularly when they come under attack from the powerful actors that they expose.

ACRONYMS AND ABBREVIATIONS

BBF  Bophelo Beneficiary Fund
BBS  Bophelo Benefit Services
CPS  Cash Paymaster Services
DPCI  Directorate for Priority Crime Investigation (the Hawks)
EPE  EasyPay Everywhere
FIC  Financial Intelligence Centre
FSB  Financial Services Board
FSCA  Financial Sector Conduct Authority
IFF  illicit financial flow
JSE  Johannesburg Stock Exchange
KBL  Kredietbank Luxembourg
KOOR  Katolieke Ontwikkeling Oranjerivier
NCR  National Credit Regulator
NPA  National Prosecuting Authority
OCCRP  Organised Crime and Corruption Reporting Project
ODAC  Open Democracy Advice Centre
OECD  Organisation for Economic Co-operation and Development
PFMA  Public Finance Management Act
PPLAAF  Platform to Protect Whistle-blowers in Africa
SAR  Suspicious Activity Report
SARB  South African Reserve Bank
SARS  South African Revenue Service
Sassa  South African Social Security Agency
SDA  Special Defence Account
SIU  Special Investigation Unit
TRC  Truth and Reconciliation Commission
UBS  Union Bank of Switzerland
VBS  Venda Mutual Bank
SOURCES:

1: Daniel Bradlow, Not all Nudges are Equal: Soft International Law and Financial Governance, Draft Paper (August 2018), made available by the author.


3: Ibid.

4: Ibid. 204-205.

5: Ibid.

6: Ibid.

7: ‘A warm welcome from the lenders’, Euromoney Magazine (June 1984), World Council of Churches Archive.


9: Juan Pablo Bohoslavsky, Submission: Complaint brought to the OECD by Open Secrets and the Centre for Applied Legal Studies concerning the conduct of KBL European Private Bankers and KBC Group Belgium (28 May 2018).


19: Anna Orthofer, ‘South Africa needs to address its dangerously wide wealth gap’, The Conversation (6 October 2016).


21: Ibid.

22: Ibid.


26: Ibid.

54 – Open Secrets: Bank Robbers
27: Statement by Michael Brown to the Commission of Inquiry into State Capture, 29 August 2018.
31: Memo from Transnet Group Treasurer to Transnet Acting Group Chief Financial Officer, 3 December 2015.
33: Ibid.
39: Ibid.
47: Ibid.
50: Ernest Mabuza, ‘Susan Shabangu urges social grant recipients to get new Sassa cards’, Sowetan Live (3 September 2018).
SOURCES (CONTINUED)


52: Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others 2014 (4) SA 179 (CC)

53: Ibid., at para 67.

54: See http://www.net1.com/about/overview/.


56: Marianne Thamm, ‘Sitting Bucks: Damning survey explains how Net1 benefits from close proximity to social grant recipients’, Daily Maverick (28 February 2018).

57: Milford Bateman, ‘Microcredit has been a disaster for the poorest in South Africa’, The Guardian (19 November 2013).


59: Ibid.


61: Ibid.


63: Ibid.

64: Ibid.

65: Black Sash Trust v Minister of Social Development and Others (Freedom Under Law NPC Intervening) 2017 (9) BCLR 1089 (CC).


70: Lindsay Dentlinger, ‘Black Sash in Court to Protect Grant Beneficiaries from Exploitation’, Eyewitness News (16 August 2018).


76: Jan Cronje, ‘Gordhan: KPMG SA was a ‘willing partner in state capture’”, Fin24 (26 September 2017).

77: Sipho Masondo and Dewald Van Rensburg, ‘How VBS Mutual Bank was plundered’, Fin24 (24 June 2018).

78: Ibid.


56 – Open Secrets: Bank Robbers
82: Sipho Masondo, ‘Vele pays R300m for troubled investment firm’, Fin24 (3 September 2017).
87: Professor Haroon Bhorat et al., ‘Betrayal of the Promise: How South Africa is being Stolen’, Public Affairs Research Institute (May 2017).
91: Staff Writer, ‘Five of the worst — the SA companies that have been accused of being captured by greed’, Business Day (3 September 2018).
92: Pauli Van Wyk, ‘For Moyane and Zuma, Bain was a team player’, Daily Maverick (4 September 2018).
95: See https://pplaaf.org/whistleblowers/mosilo-mothepu.html.
OUR PUBLICATIONS

APARtheid Guns and Money: A Tale of Profit
Published in 2017, this exposé drew on extensive archival research and interviews to reveal the global covert network of corporations, spies, banks and politicians in nearly 50 countries that operated in secret to counter sanctions against the apartheid regime, and profit in return.

Joining the Dots: The Long Shadow of Economic Crime in South Africa
Prepared for the first People’s Tribunal on Economic Crime, this report examined continuities in economic crime and corruption in South Africa related to the arms trade, from apartheid to contemporary state capture. In doing so it highlighted the powerful deep state networks that have facilitated these crimes.