



# 18<sup>TH</sup> BOARD OF HEALTHCARE FUNDERS ANNUAL SOUTHERN AFRICAN CONFERENCE



**B·H·F**  
SOUTHERN AFRICA

Board of Healthcare Funders  
of Southern Africa



POISED TO STRIKE  
*against corruption*

## 18<sup>th</sup> July 2017



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## The SIU

- In terms of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (“**SIU Act**”). The current Special Investigating Unit (“**SIU**”) was established by Proclamation No. R118 of 2001
- The SIU is a public entity that conducts investigations that have been mandated by a proclamation from the president, once the investigation is complete the President receives a final report with the findings

### Vision

*“The State’s preferred and trusted forensic investigation and litigation agency.”*

### Mission

*“We are the State’s preferred provider of forensic investigating and litigating services working together with other agencies in the fight to eradicate corruption, malpractice and maladministration from society.”*



### Major Functions

- Investigate corruption, malpractice and maladministration
- Institute civil proceedings



### SIU Powers

- Able to subpoena, search and seize evidence, and interrogate witnesses under oath (once a proclamation has been issued)
- Institute civil litigation to recover state funds lost or to prevent future losses



### Out of SIU Mandate

- Arrest or prosecute offenders
- Implement disciplinary actions
- Works closely with other relevant agencies where its powers fall short



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# Our Regulatory Environment



## Anti-Corruption Legislative Framework

<p><b>Municipal Finance Management Act</b> [No. 56 of 2003]</p> <p>Covers local government and also outlines the responsibilities of "accounting officers" (AOs). It introduces risk management and fraud prevention as statutory requirements in local authorities</p>	<p><b>Protected Disclosures Act</b> [No. 26 of 2000]</p> <p>To provide for the protection of employees who make a disclosure which is protected in terms of this Act;</p>	<p><b>Promotion of Administrative Justice Act</b> [No. 3 of 2000]</p> <p>Aims to make the administration effective and accountable to people for its actions</p>	<p><b>Promotion of Access to Information Act</b> [No. 2 of 2000]</p> <p>Gives effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights</p>	<p><b>Prevention &amp; Combating of Corrupt Activities Act</b> [No. 12 of 2004]</p> <p>Is the primary law governing the Anti Bribery and Corruption prevention management and enforcement in South Africa and for companies doing business in South Africa.</p>	<p><b>Public Finance Management Act</b> [No. 1 of 1999]</p> <p>Covers national and provincial departments and public entities and SOEs, outlines the responsibilities of AOs' requires government departments to develop and implement a Fraud Prevention Plan</p>	<p><b>Public Service Act - Proclamation 103</b> [Published in Government Gazette 15791 of 3 June 1994]</p> <p>To provide for the organisation and administration of the public service of the state</p>	<p><b>Public Audit Act</b> [No. 25 of 2004]</p> <p>To give effect to the provisions of the Constitution establishing and assigning functions to an Auditor-General; to provide for the auditing of state funds</p>	<p><b>Public Service Commission Act</b> [Act No. 46 of 1997]</p> <p>To provide for the regulation of the Public Service Commission and for matters connected therewith</p>	<p><b>Public Protector Act</b> [Act No. 23 of 1994]</p> <p>To provide for matters incidental to the office of the Public Protector as contemplated in the Constitution of the Republic of South Africa</p>	<p><b>South African Revenue Service Act</b> [No. 34 of 1997]</p> <p>To make provision for the efficient and effective administration of the revenue collecting system within South Africa</p>	<p><b>Financial Intelligence Centre Act</b> [Act No. 38 of 2001]</p> <p>To establish a Financial Intelligence Centre and a Counter-Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist and related activities</p>
<p><b>National Prosecuting Authority Act</b> [Act No. 32 of 1998]</p> <p>Assigns powers, duties and functions assigned to the Special Director of Public Prosecution</p>	<p><b>South African Police Service Act</b> [Act No. 68 of 1995]</p> <p>To provide for the establishment, organisation, regulation and control of the South African Police Service</p>	<p><b>Independent Police Investigative Directorate Act</b> [Act No. 1 of 2011]</p> <p>To make provision for the establishment of an Independent Police Investigative Directorate and to regulate the functions of the Directorate, and the appointment of investigators within the Directorate</p>	<p><b>Special Investigating Units and Tribunals Act</b> [Act No. 74 of 1996]</p> <p>Referral of matters to existing Special Investigating Unit</p>	<p><b>Prevention of Organised Crime Act</b> [Act No. 121 of 1998]</p> <p>The enabling legislation for the Asset Forfeiture Unit</p>	<p><b>Public Administration Management Act</b> [Act No. 11 of 2014] And <b>Promotion of Administrative Justice Act (PAJA)</b> [Act No. 3 of 2000]</p> <p>Established the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit</p>	<p><b>The Protected Disclosures Act</b> [Act No. 26 of 2000]</p> <p>Intended to protect whistle-blowers in an organisational setting who uncover illegal or dangerous activities</p>	<p><b>The Witness Protection Act</b> [Act No. 112 of 1998]</p> <p>Establishes the structures, rules and procedures for the protection of people who have to testify in court</p>	<p><b>Prevention of Organised Crime Act</b> [Act No. 121 of 1998]</p> <p>To introduce measures to combat organised crime, money laundering and criminal gang activities; to prohibit certain activities relating to such</p>	<p><b>Criminal Procedure Act</b> [Act No. 68 of 1995]</p> <p>To make provision for procedures and related matters in criminal proceedings</p>	<p><b>International Cooperation in Criminal Matters Act</b> [Act No. 75 of 1996]</p> <p>To facilitate the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime between the Republic and foreign States</p>	<p><b>Promotion of Access to Information Act (PAIA)</b> [Act No. 2 of 2000]</p> <p>The Act gives effect to provisions in the Constitution providing for access to information</p>

Existing legislation pertaining to corruption in South Africa can be grouped into the following 'themes':

- Commands different government tiers to develop and implement **individual fraud prevention plans**
- **Provides responsibilities** to accounting officers at different tiers of government
- **Assigns powers, duties and functions** for prosecuting authorities
- Makes provision for the **establishment of organisations** relating to investigation and prosecution
- **Promotes** effective and accountable administration
- Introduces measures to combat corruption
- **Provides protection** for whistle-blowers
- Provides the necessary **permission** to promote public access to information

## Dedicated Anti-Corruption Agencies



## Key Legislation for the SIU

- The South African Constitution
- Prevention and Combating of Corrupt Activities Act (PRECCA)
- Public Finance Management Act No. 1 of 1999 (PFMA)
- Financial Intelligence Centre Act No. 38 of 2001 (FICA)
- Prevention Of Organised Crime Act No. 121 Of 1998 (POCA)



“Our vision for 2030 is a South Africa that has **zero tolerance for corruption**. In 2030, South Africa will be a society in which citizens do not offer bribes and have the confidence and knowledge **to hold public and private officials to account**, and in which leaders have integrity and high ethical standards. Anticorruption agencies should have the **resources, independence from political influence**, and **powers to investigate corruption**, and their investigations should **be acted upon**” – excerpt from NDP Vision 2030



### Building a resilient anti-corruption system

Anti-corruption efforts should create a system that can operate freely from political interference and can be supported by both public officials and citizens



### Strengthen accountability & responsibility of public servants

South African public servants should be made legally accountable as individuals for their actions, particularly in matters involving public resources



### Create a transparent, responsive & accountable public service

State information should be made openly available to citizens and an information regulator should be established to adjudicate appeals when access to information is denied



### Strengthen judicial governance & the rule of law

Ensure the independence and accountability of the judiciary. Establish clear criteria for the appointment of judges and scale up judicial training to improve the quality of judges

### Key drivers of anti-corruption efforts:



Adequate Funding



Central Oversight



Societal Factors

In addition, corruption has to be fought on three fronts:

- **Deterrence** helps people understand the likelihood of getting caught and the associated consequences
- **Prevention** involved systems, such as information and audit, which make it difficult to engage in corrupt acts
- The social dimensions of corruption need to be tackled by focusing on values, through **education**

## Critical steps to reducing corruption



Strengthen the **multi-agency** anti-corruption system



Take a **societal approach** to combating corruption



Strengthen **protection of whistle-blowers**



Improve oversight over **procurement procedures** for increased accountability



Empower the **tender compliance monitoring** office to investigate corruption and the value for money of tenders



Strengthen **accountability and responsibility** of public servants



Create an open, responsive and accountable **public service**



Strengthen **judicial governance** and the rule of law



*The Vision 2030 also outlines critical steps that need to be followed in order to strengthen and monitor current initiatives that are in place and improve oversight and accountability*

South Africa has a number of agencies mandated to fight corruption

A functioning anti-corruption system requires:

- Sufficient staff and resources with knowledge and skills
  - Special legislative powers
  - High level information sharing and co-ordination
  - Operational independence
- However, there is currently **poor coordination** and an overlap in the mandates agencies
  - Duplication in the efforts of these agencies indicates that a clearer **demarcation of functions** is needed
  - Furthermore, **weak coordination undermines** their ability to investigate and prosecute corruption
  - The **autonomy** of each agency should be reinforced to insulate them from political pressure

The National Anti-Corruption Strategy directs all related efforts within the country that has a clear vision but which requires effective enforcement

The vision of the **National Anti-Corruption Strategy** is a South Africa that has:

- An ethical and accountable state, business and civil society sectors in which those in positions of power and authority act with integrity
- Citizens who respect the rule of law and are empowered to hold those in power to account
- Zero tolerance of corruption in any sphere of activity and substantially reduced levels of corruption

## Objectives of the National Anti-Corruption Strategy

1. Improve citizens' awareness of their rights and responsibilities relevant to fight against corruption.
2. Improve whistle-blower protection and active participation in anti-corruption efforts by members of the public
3. Improve transparency across sectors
4. Improve compliance with anti-corruption and integrity management obligations and mechanisms across sectors
5. Improve the structures for detection and enforcement (an independent, resourced, skilled and coordinated anti-corruption system)
6. Improve structures of oversight and accountability.
7. Improve domestic and international partnerships in and across sectors for reducing corruption and building accountability

### Anti-Corruption Pillars



Support **citizen empowerment** in the fight against corruption, including increased support for whistle support



Develop **sustainable partnerships** with stakeholders to reduce corruption and improve integrity management



**Improve transparency** by government, business and civil society sectors



Improve the integrity of the **public procurement system** to ensure fair, effective and efficient use of public Resources



Support the **professionalization** of employees



**Improve adherence** to integrity management and anti-corruption mechanisms and **improve consequence management** for noncompliance of these across government, business and civil society sectors



Strengthen **oversight and governance mechanism** in the government sector



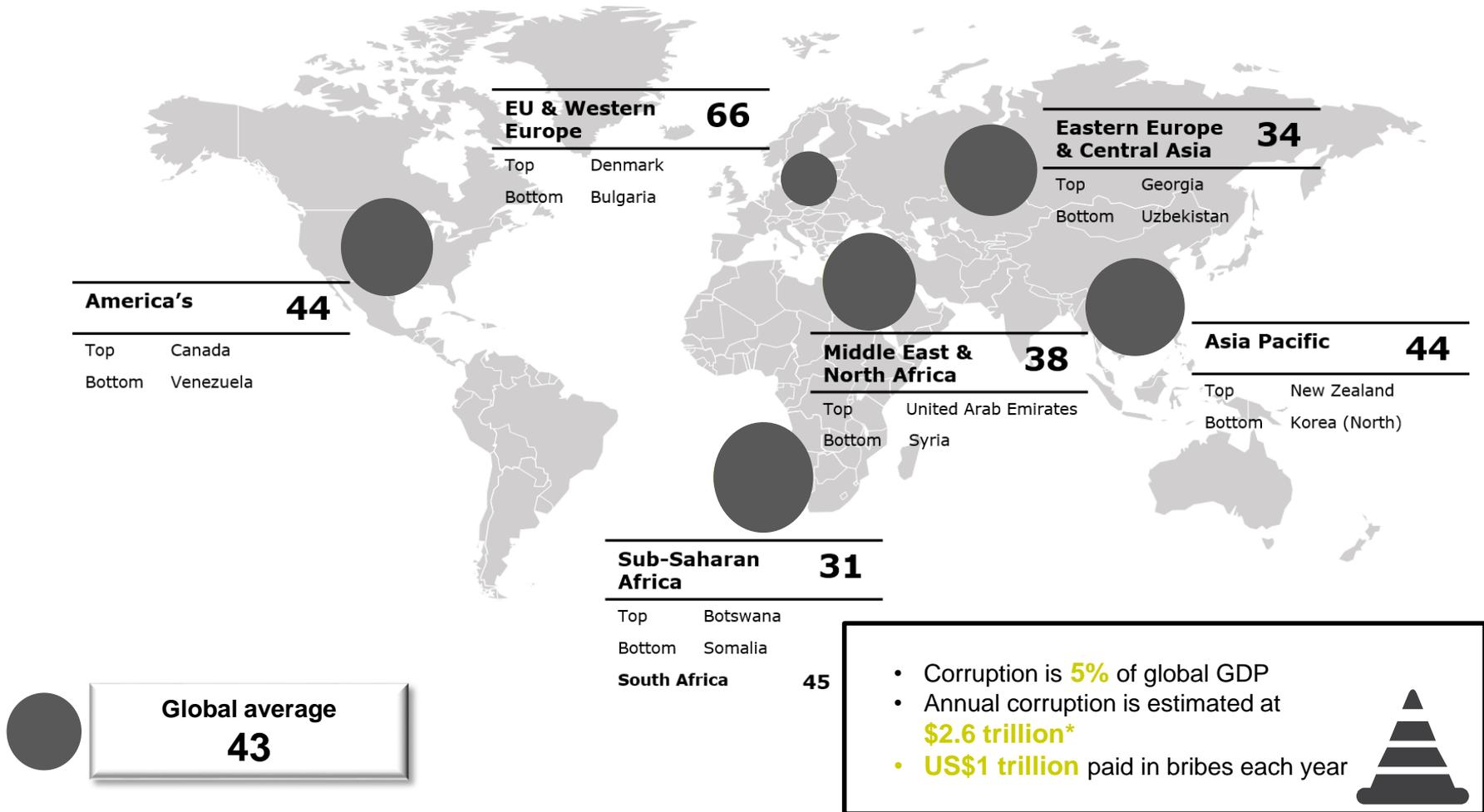
Strengthen the **resourcing, cooperation and independence** of dedicated anti-corruption agencies



**Build specific programmes** to reduce corruption and improve integrity in sectors particularly vulnerable to corruption (vulnerable sector management), with an initial focus on the Justice, Crime Prevention and Security Cluster

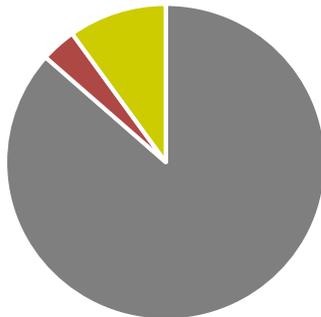


The EU and Western Europe have the highest Corruption Perception Index (CPI) score, while Sub-Saharan Africa has the poorest score globally, followed by Eastern Europe and Central Asia



Despite established democratic processes, corruption in South Africa remains high with the national government's performance in fighting corruption characterised as 'poor'

## Proportion of Reported Cases



■ Public ■ Private ■ Other

- Transparency International (TIC) released a report which tracked corruption and associated perceptions globally. The report highlights that corruption in South Africa's rate globally, is 'middle-of-the-road'
- Based on government performance in fighting corruption, South Africa scored poorly
- The report revealed the following about South Africa over the past year:
  - The level of **corruption remains high**, experiencing negative growth
  - People within the country **do not feel completely empowered** to fight corruption
- According to Corruption Watch 2016 Annual Report, majority of corruption cases reported in South Africa are within the **public sector**, with a small margin coming from the private sector

64/176



Rank\*

45/100



Score\*

7%



Bribery rate

\* Based on Corruption Perception Index

4 391

Corruption reports received in 2016

54 %

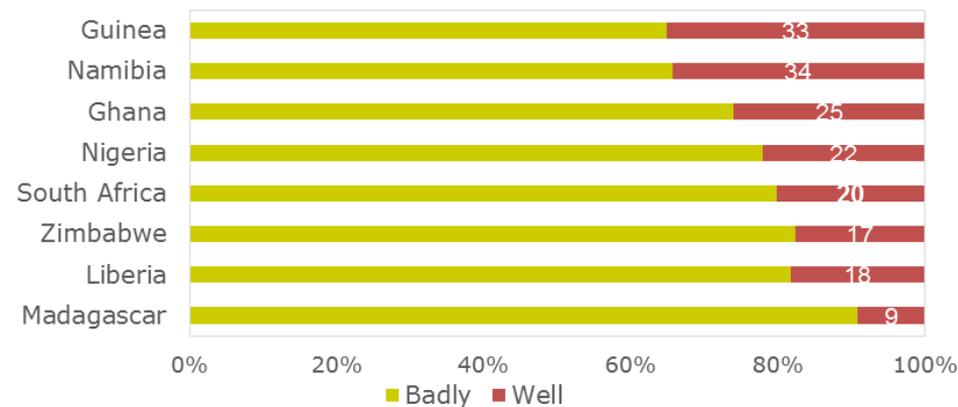
Increase in corruption reports in 2016

11

Corruption reports submitted per day

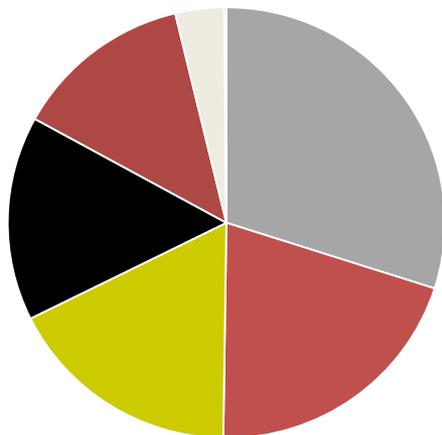
Based on Corruption Watch 2016 Annual Report

## Government performance in fighting corruption



## Types of Financial Misconduct Cases

- Fraud
- Theft
- Financial Mismanagement
- Misappropriation and abuse
- Gross Negligence
- Corruption
- Not Indicated



The graph shows that of the 665 financial misconduct cases reported in 2013\*\*:

- 'Fraud' is the type with the highest (29.9%) number of cases
- Followed by 'theft' with 20.3% of the cases
- Corruption comprises only a small proportion of the total financial misconduct reported



- The Public Service Commission published data regarding the amount involved, recovered or not-recovered in financial misconduct cases
- The information highlights the gap between amount involved and the amount recovered for the 2013/2014 financial year
- There has been more success at National government level, with 25% of funds recovered, however 91.5% of funds involved in financial misconduct at a provincial level have yet to be conducted

## Amount of money involved in financial misconduct cases (FY2013/2014)

	Government	Amount involved	Amount recovered (%)	Amount not recovered (%)
National	<b>National</b>	R47 671 788.57	0.33	25.71
	<b>Subtotal</b>	<b>R47 671 788.57</b>	<b>0.33</b>	<b>25.71</b>
Provincial	EC	R9 196 952.52	0.08	3.93
	FS	R1 175 770.22	0.00	91.75
	GP	R8 610 085.88	2.27	58.82
	KZN	R4 727 016.99	1.68	95.64
	LP	R1 199 096.81	8.86	87.57
	MP	R1 421 595.14	4.62	95.13
	NW	R132 565 585.87	0.01	99.99
	NC	R575 655.48	92.13	5.53
	WC	R1 122 464.87	13.72	85.73
	<b>Subtotal</b>	<b>R160 596 223.78</b>	<b>0.71</b>	<b>91.52</b>
<b>Total</b>	<b>R208 268 012.35</b>	<b>5.43</b>	<b>76.46</b>	



## Criminal Justice Agencies and Undertaking Criminal Investigations

- NPA
- NPS
- Asset Forfeiture Unit
- SIU
- Saps
- Directorate for Priority Crimes Investigation (HAWKS)
- Special Anti-Corruption Unit
- Multi-Agency Working Group
- Financial Intelligence Centre (FIC)
- National Intelligence Coordinating Committee
- SARS
- Specialised commercial Crimes Unit in the NPA

## Constitutional and other public oversight bodies

- Public Service Commission
- Public Protector
- Parliament's Standing Committee on Public Accounts (SCOPA)
- Independent Police Investigative Directorate (IPID)
- Inspector-General of Intelligence (IGI)
- The Competition Commission

## Dedicated coordinating bodies in government

- Anti-Corruption Inter-Ministerial Committee (ACIMC)
- Anti-Corruption Task Team

### Government



- Anti-Intimidation and Ethical Practices Forum (AEPF)
- Department of Cooperative Governance
- Office of the Chief Procurement Officer (OCPO)
- Auditor General of South Africa
- Department of Public Service and Administration (DPSA)
- Office of the Accountant-General (in NT)

### Civil Society



## Multi-sector approach

- Business Against Crime SA (BAC)
- Business Unity South Africa (BUSA)
- Business leadership / organised business

### Business



## The NACF

- South Africa pioneered a multi-sector approach to fighting corruption with the establishment of the National Anti-Corruption Forum in 2001
- This forum is composed of members from government, business and civil society. It was established to coordinate sectoral strategies against corruption, to advise government on the implementation of anticorruption strategies, to share information and best practice, and to advise sectors on the improvement of sectoral anti-corruption strategies
- Unfortunately, there has been insufficient commitment and continuity from the different sectors in the forum and the institution is underfunded and the NACF has not been fully functional since 2011 and as a result, has had limited effectiveness in the fight against corruption
- The National Anti-Corruption Forum has a valuable role to play in combating corruption at all levels in society. Therefore efforts should be made to strengthen it with the necessary resources in order to be more effective



- The Department of Arts and Culture
- The Department of Finance
- The Department of Home Affairs
- The Department of Intelligence Services
- The Department of Justice and Constitutional Development
- The Department of Provincial and Local Government
- The Department of Public Enterprises
- The Department of Public Services and Administration
- The Department of Safety and Security
- The Public Service Commission

- The Congress of SA Trade Unions (COSATU)
- The Civil Society Network Against Corruption
- The Economic and Social Council (ECCOSOC)
- The Federation of Unions of SA (FEDUSA)
- The Moral Regeneration Movement (MRM)
- The National Council of Trade Unions (NACTU)
- The South African National Editor's Forum (SANEF)
- The National Religious Leaders Forum (NRLF)
- The South African National NGO Coalition (SANGOCO)
- Transparency SA (T-SA)

- The business sector is represented by 10 delegates from the Business Unity South Africa (BUSA)
- The work of BUSA on the NACF is co-ordinated by Business Against Crime South Africa (BAC)

**There are eight anti-corruption agencies mandated to assist in anti-corruption efforts, resulting in a strong overlap of mandates and functions across dedicated agencies**

	NPA	SIU	HAWKS	South African Police Service	Public Service Commission	Financial Intelligence Centre	The Auditor General	Public Protector
<b>Mandate and functions</b>	<p>To institute criminal proceedings on behalf of the state and to carry out the necessary functions incidental thereto.</p> <ul style="list-style-type: none"> <li>A focus on the <b>prosecution of serious and priority crimes which includes corruption</b> and contact crimes</li> <li>Improve prosecutor capacity and efficiency</li> <li>Participate in the implementation of the Criminal Justice Review 7-point plan</li> <li>Participate in the implementation of integrated case flow management in all courts</li> <li>Increase the finalisation of criminal cases and reduce the case backlogs and average length of time persons spend in remand detention</li> <li><b>Develop and implement a plan for effective and efficient joint case planning with SAPS to reduce corruption</b></li> <li>Improve support to victims of crime</li> <li><b>Successful conviction of corruption charges over R5million</b></li> </ul>	<p><b>Recover and prevent financial losses</b> to the state caused by acts of corruption, fraud and maladministration.</p> <ul style="list-style-type: none"> <li><b>Investigate</b> serious malpractices, maladministration and corruption in connection with the administration of State Institutions</li> <li>To take appropriate and effective civil action against wrongdoers</li> <li>Assist in bringing wrongdoers to book, through misconduct proceedings/hearings and criminals prosecutions</li> </ul>	<p><b>To prevent, combat and investigate</b> national priority offences focusing on: Serious Organised Crime; Serious Commercial Crime and Serious Corruption.</p> <p>The division focuses on serious organised crime, <b>serious corruption and serious commercial crime</b> and mainly includes:</p> <ul style="list-style-type: none"> <li>To render an effective and efficient priority <b>crime investigation</b> service in SAPS, including serious organised crime, serious commercial crime and serious corruption.</li> <li>To render an effective and efficient commerce-related <b>investigation</b> service</li> <li>To render an effective and efficient financial <b>investigation</b> and asset forfeiture service in the service.</li> <li>To render an effective and efficient national priority crime management centre service.</li> </ul>	<p>South African Police Service has a responsibility to –</p> <ul style="list-style-type: none"> <li><b>Prevent, combat and investigate crime;</b></li> <li>Maintain public order;</li> <li>Protect and secure the inhabitants of the Republic and their property;</li> <li>Uphold and enforce the law</li> <li>Create a safe and secure environment for all people in South Africa.</li> <li>Prevent anything that may threaten the safety or security of any community</li> <li>Investigate any crimes that threaten the safety or security of any community</li> <li>Ensure criminals are brought to justice; and participation in efforts to address the causes of crime</li> </ul>	<p>The PSC is tasked and empowered to, amongst others, <b>investigate, monitor, and evaluate</b> the organisation and administration of the Public Service.</p> <ul style="list-style-type: none"> <li>Investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service;</li> <li>Propose measures to ensure effective and efficient performance within the public service;</li> <li>Either of its own accord or on receipt of any complaint</li> </ul>	<p><b>To identify the proceeds of crime, combat money laundering and terror financing</b></p>	<ul style="list-style-type: none"> <li>The AGSA audits and reports on the accounts, financial statements and financial management of government departments and any institution required by legislation</li> <li>The AGSA performs both mandatory and discretionary audits. The latter entails: <ul style="list-style-type: none"> <li><b>Investigations</b> <ul style="list-style-type: none"> <li>Report on factual findings with regard to financial maladministration and impropriety based on allegations or matters of public resources</li> </ul> </li> <li>Special audits</li> <li>Performance audits</li> </ul> </li> </ul>	<p>To strengthen constitutional democracy by:</p> <ul style="list-style-type: none"> <li>Investigating and redressing improper and prejudicial conduct and <b>Maladministration</b> and abuse of power in state affairs</li> <li>Resolving administrative disputes or rectifying any act or omission in administrative conduct through mediation, conciliation or negotiation</li> <li>Advising on appropriate remedies or employing any other expedient means;</li> <li>Reporting and recommending; advising and investigating violations of the Executive Members Ethics Act of 1994</li> <li>Resolving disputes relating to the operation of the Promotion of Access to Information Act of 2000,</li> <li>Discharging other responsibilities as mandated by legislation</li> </ul>

## Key Insights

- There is an overlap in mandates and functions across the dedicated anti-corruption agencies, particular between the SIU and the HAWKS
- The SIU, HAWKS, SAPS, AGSA are explicitly mandated to *investigate* corruption, while the other agencies may investigate such indirectly through that of financial misconduct or maladministration
- The SIU, HAWKS and SAPS are mandated to *prevent* financial losses to the state
- An overlap may indicate that resources are not being utilised effectively, particularly in the socio-economic context of South Africa



# The degree of overlap...



	NPA	SIU	HAWKS	Degree of overlap
<b>Directing Act</b>	Section 179 of the Constitution and the National Prosecuting Authority Act.	Established by the President in terms of the Special Investigating Units and Special Tribunal Act, Act No 74 of 1996 (SIU Act).	Established as an independent directorate within the South African Police Service in terms of Section 17C of the South African Police Service Act, 1995 as amended by the South African Police Service Amendment Act, 2008 (Act 57 of 2008)	
<b>Mandate</b>	<p>To institute criminal proceedings on behalf of the state and to carry out the necessary functions incidental thereto. The purpose of the NPA is provide a coordinated prosecuting service that ensures that justice is delivered to the victims of crime through general and specialised prosecutions, witness protection and to remove the profit from crime. The NPA contributes to the achievement of various key areas including:</p> <ul style="list-style-type: none"> <li>Reduced overall levels of serious crime</li> <li>A more effective Criminal Justice System (CJS)</li> <li>Reduced corruption</li> <li>Managed and improve population perceptions of crime</li> </ul>	Recover and prevent financial losses to the state caused by acts of corruption, fraud and maladministration. The SIU also assists departments with systemic improvements that improve service delivery	<p>To prevent, combat and investigate national priority offences focusing on: Serious Organised Crime; Serious Commercial Crime and Serious Corruption.</p> <p><i>The Division is composed of a Commercial Crime Unit, Financial Investigation and Assets Forfeiture Unit, Organised Crime Unit, the Priority Crime Management Centre and Support Services. It has drawn its personnel from the Commercial Crime Unit, former Hi-Tech Project Centre, the Organised Crime Unit and the former Directorate for Special Operations DSO)</i></p>	
<b>Core functions</b> not exhaustive	<ul style="list-style-type: none"> <li>A focus on the prosecution of serious and priority crimes which includes corruption and contact crimes</li> <li>Improve prosecutor capacity and efficiency</li> <li>Participate in the implementation of the Criminal Justice Review 7-point plan</li> <li>Participate in the implementation of integrated case flow management in all courts</li> <li>Increase the finalisation of criminal cases and reduce the case backlogs and average length of time persons spend in remand detention</li> <li>Develop and implement a plan for effective and efficient joint case planning with SAPS to reduce corruption</li> <li>Improve support to victims of crime</li> <li>Successful conviction of corruption charges over R5million</li> </ul>	<ul style="list-style-type: none"> <li>Investigate serious malpractices, maladministration and corruption in connection with the administration of State Institutions</li> <li>To take appropriate and effective civil action against wrongdoers</li> <li>Assist in bringing wrongdoers to book, through misconduct proceedings/hearings and criminals prosecutions</li> </ul>	<p>To prevent, combat and investigate national priority offences and any other offence or category of offences referred to by the National Commissioner. The division focuses on serious organised crime, serious corruption and serious commercial crime and mainly includes:</p> <ul style="list-style-type: none"> <li>To render an effective and efficient priority crime investigation service in SAPS, including serious organised crime, serious commercial crime and serious corruption.</li> <li>To render an effective and efficient commerce-related crime investigation service</li> <li>To render an effective and efficient financial investigation and asset forfeiture service in the service.</li> <li>To render an effective and efficient national priority crime management centre service.</li> </ul>	
<b>Strategic objectives</b> not exhaustive	<ul style="list-style-type: none"> <li>Increased successful prosecution of serious &amp; priority crime</li> <li>Improved prosecution of JCPS officials charged with corruption and prosecute serious corruption cases</li> <li>To improve justice services for the victims of crime</li> </ul>	<ul style="list-style-type: none"> <li>Conduct quality forensic investigations</li> <li>Facilitate or initiate appropriate remedial action</li> <li>Co-operate effectively with other role players</li> </ul>	<p> </p> <p>Significant Overlap    Some Overlap    Minimal Overlap</p>	





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Fraud and corruption were traditionally localised and regionalised, however due to technological advancements this is now becoming global



The rapid growth of technology and the seemingly limitless growth of the Internet are changing the ways criminals and law enforcement are operating. Technology advancements provide different and new venues for threat actors to employ technology to commit traditional forms of crimes.

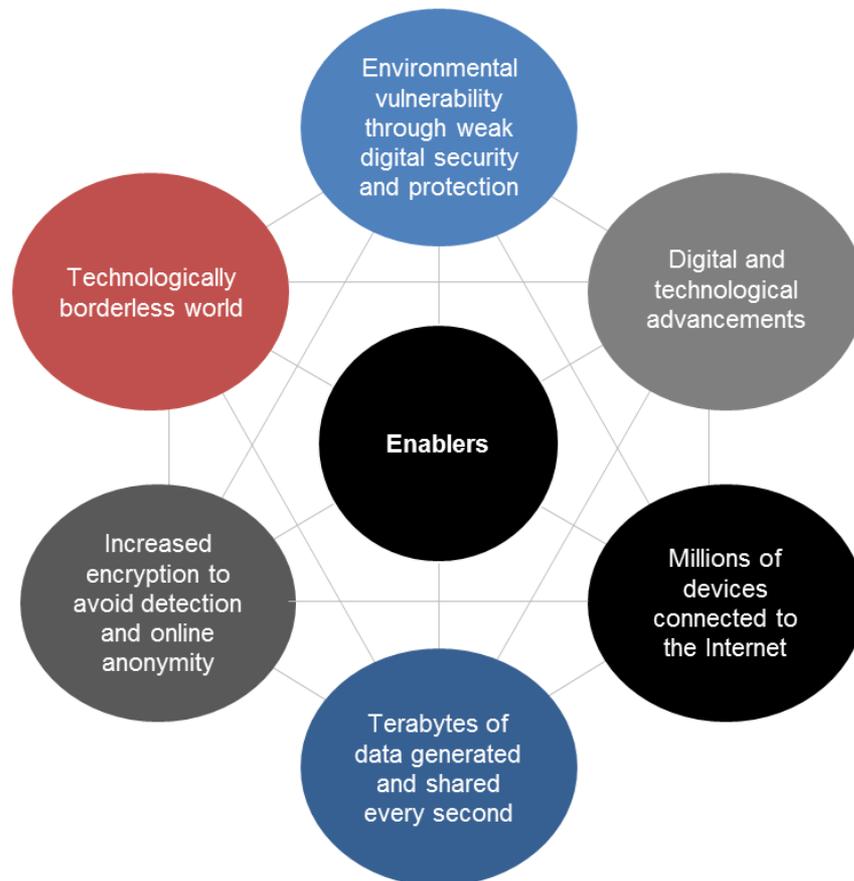


The Internet of Things and digital technologies are bridging geographical gaps and keeping people constantly connected to each other. This aids in the ability for threat actors to organise themselves, construct and conduct criminal activities locally and across borders i.e. globalising corruption



The globalisation and digitisation of the economy has led to an increase in cross-border business transactions involving on one hand countries with different laws on bribery and corruption, and on the other hand multinational companies with different ethical and business conduct standards. This creates vulnerabilities, grey areas and opportunities for corruption.

## Enablers through the Digital Revolution





*There are three main types of corruption that can occur in both the public and private healthcare sector*

## Fraud

Knowingly, intentionally and willfully executing, or attempting to execute a scheme or artifice to defraud any health care benefit program; or to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property owned by or under the custody or control of any health care benefit program.

**Ramasia (2017) defines** Health care Fraud “when a member, administrator or healthcare provider is dishonest in order to get money to which they are not entitled”

## Waste

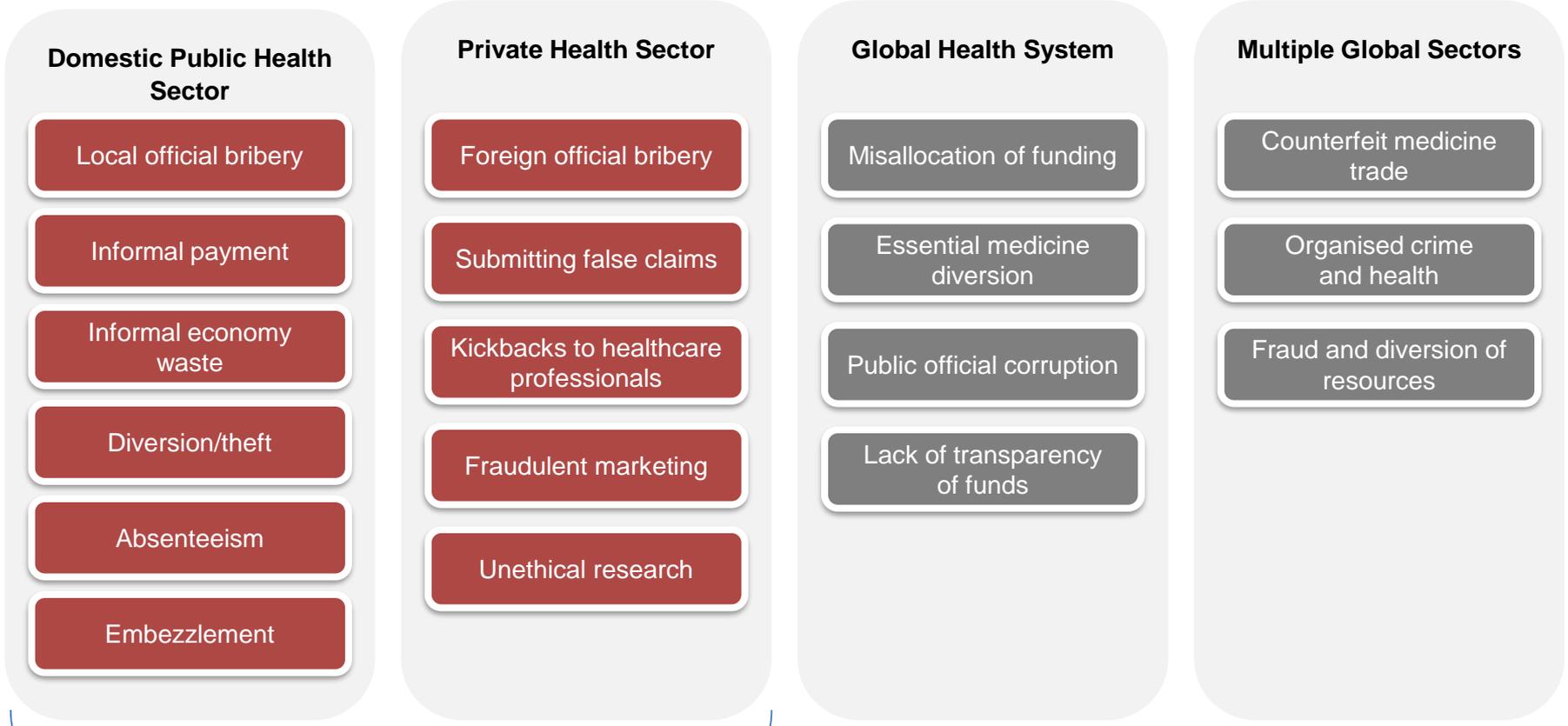
The overutilization of services, or other practices that directly or indirectly result in unnecessary costs. Waste is generally not considered to be caused by criminally negligent actions but rather the misuse of resources. Examples of waste include, but are not limited to: a mail order pharmacy sending medications to members without first confirming the member still needs them; or a physician ordering excessive diagnostic tests

## Abuse

Payment for items or services when there is no legal entitlement to that payment even when the provider has not knowingly and/or intentionally misrepresented facts to obtain payment. An example of abuse includes a medical professional providing treatment to a patient that is inconsistent with the diagnosis; or misusing codes and modifiers on a claim such as up coding or unbundling codes”



In the health setting, corruption can encompass bribery of health professionals, regulators and public officials; unethical research; diversion/theft of medicines and medical supplies; fraudulent or overbilling for health services; absenteeism; informal payments; embezzlement; and corruption in health procurement



***Our focus today***

## Private Sector

### Key Statistics

- Statistics estimate that the total fraud costs in the South African private healthcare system at approximately R22 billion each year
- International data suggests that losses to healthcare fraud and abuse may account for between 3% and 15.4% of claims paid - with an average of approximately 7%
- Applying these estimates to South Africa is likely to give a more realistic picture, suggesting that fraud costs may vary between R3 billion and R15 billion each year
- Estimates by the Healthcare Forensic Management Unit (HFMU) of the Board of Healthcare Funders of Southern Africa (BHF), find that at least 7% of all medical aid claims in South Africa are fraudulent and the figure could be as high as 15%
- It estimated that each member of a medical scheme in South Africa was effectively paying between R2500 and R2800 a year to cover fraudulent and irregular expenditure

## Public Sector

### Key Statistics

- **R24bn** of provincial health department expenditure between 2009 and 2013 was irregular
- In 2012 and 2013, **6%** of provincial health expenditure was irregular; double the estimated 3% of corrupt healthcare spending in the US
- A third of **Northern Cape** healthcare spending – **R1bn** – was **irregular** in 2012-2013; and in 2004-2005, seven provinces received unqualified audits, but this declined to only three in 2012-2013
- The majority of the print media reports on corruption concerned the public health sector (**63%**) and involved provincial health departments (**45%**)
- Much of the reported corruption occurs in **provincial** (sub-national) government administrations where vulnerabilities have been largely inherited from apartheid Bantustan structures.
- In Gauteng, irregular expenditure amounted to **R5.3 billion** between 2009 and 2012
- Although there was an improvement in irregular expenditure as a proportion of the total health expenditure from **11%** in 2010-11 to 4.8% in 2011-12, the figure increased again to **6.1%** in 2012/2013
- KwaZulu Natal's irregular spending as a proportion of the total health expenditure increased over the same four-year period.

Proclamation	Department	Status
<b>A</b> Life Esidimeni case (signed by the President)	Department of Health: Gauteng Province	SIU awaiting publication
<b>B</b> Proc R21 of 2010 Published in GG:33190 of 14 May 2010	Department of Health: Gauteng Province	Final report submitted
<b>C</b> Proc R21 of 2012 Published in GG: 35179 of 23 March 2012	Limpopo Province intervention: a) Department of Health and Social Development;	Final report being prepared
<b>D</b> Proc R36 of 2008 Published in GG:31394 of 04 September 2008	Department of Health: Eastern Cape Province	Final report submitted



## 94 Psychiatric patients transferred from Life Healthcare Esidimeni died, attributed to the patients being transferred to NGOs who were operating unlawfully (with incorrect or no licence)

### Allegations

- Legally required contracts were not in place between the Gauteng department of health and Selby Park Clinix and Life Esidimeni who now care for the about 800 mentally ill patients. Contracts would detail the level of care required.
- Members of the Mental Health Review Board that oversaw the disastrous move are still in their job, although the chairperson was removed.
- There have been ten deaths since the February report by ombudsman Makgoba and the reasons for these are not known by the families and Section 27. But post mortems were done in most cases.
- Many families of the 100 patients who died last year have not received the results of post mortems done on their loved ones.
- Some patients in Selby Park Clinic and Life Esidimeni Waverly and Baneng homes still are short of clothing and jerseys.
- The department of health has been open to working with the families and approachable.
- About 450 mentally ill patients are still in hospitals including Cullinan Care Centre, Yusuf Dadoo and Sterkfontein hospital and Weskoppies.
- *The President recently signed a Proclamation mandating the SIU to investigate affairs of the Gauteng Department of Health; specifically looking into the treatment of mentally ill patients (the Life Esidimeni case).*
- *The SIU will investigate the manner in which the services of various service providers was procured. The SIU awaits publication of the Proclamation.*

## R21 of 2010 Published in GG:33190 of 14 May 2010 - Final report Submitted

### AREAS OF FOCUS

Irregular procurement of services providers

Tender Irregularities for procurement of goods and services

Lack of transparency on payments made that was contrary to applicable legislation or practice notes

Irregular expenditure

Flaunting of Departmental policies

Unauthorized expenditure

Fruitless and wasteful expenditure



Proc R21 of 2012, Published in GG: 35179 of 23 March 2012 - Final report being prepared

## AREA OF FOCUS



## Proc R36 of 2008 Published in GG:31394 of 04 September 2008 - Final report Submitted

### AREAS OF FOCUS

Irregular payments to officers, employees, fictitious employees, and former employee of the department (salaries, overtime, benefits & allowances)

Losses suffered for excess payments made to service providers

Losses suffered payments made to service providers for work not done or completed

Irregular procurement of services by employees (including manipulation of procurement system)

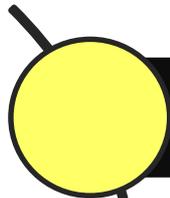
Non compliance by employees (extending & modifying contracts with service providers)

Irregular filling of a posts

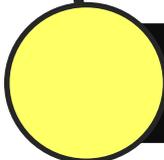
Irregular conduct relating to performance assessments of an employee



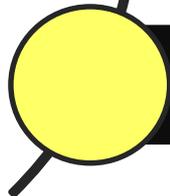
Further allegations that the SIU could possibly probe in the public health sector include maladministration in respect of the national Department of Health or provincial departments of health in relation to:



Overtime claims by employees who practice as medical practitioners of the Department(s), which claims were not due, owing and payable;



Unauthorized remuneration received by employees of the Department(s) who practice as medical practitioners of the Department(s);



Remuneration and benefits paid to employees of the Department(s) who practice as medical practitioners, who were not entitled thereto.

The Gauteng Department of Health has taken disciplinary action against 123 employees suspected of corruption. Of these employees, 72 have received final written warnings while a further 12 have been dismissed. The department adds that 30 employees will know their fate once internal disciplinary panels have determined their guilt or innocence.

The Northern Cape Health Department has been faced with many challenges and has not received a clean audit in the past 12 years. On-going construction of the new mental hospital, still incomplete 11 years after it was started. It was initially budgeted for R290 million, but costs are now standing at R1.8 billion

- National Department of Health (NDoH) revealed that there were certain unscrupulous companies and individuals disguised as representatives of the Department who were defrauding unsuspecting businesses.
- The scam involves the fraudsters using departmental letterheads to send out fake tenders to companies and requests to supply equipment and goods

- Gauteng health department dismissed 18 employees ranging from Emergency Medical Services personnel going absent without official leave (AWOL) with an ambulance, to a messenger who stole schedule four medicines and misappropriation of milk meant for patients
- The dismissed employees had committed the following offences, according to the department:
  - 8 for cases of theft, fraud and corruption
  - 2 for stealing cash (R10 000)
  - 1 going AWOL with an ambulance
  - 1 unauthorised use of government vehicle
  - 1 absenteeism
  - 1 taking part on an illegal strike
  - 1 not reporting an accident while using government car
  - 1 stealing schedule four medicines
  - 1 stealing three cell phones and consistent absenteeism, and
  - 1 embezzlement of milk.

Source: <http://www.corruptionwatch.org.za/gauteng-health-dept-starts-to-clean-up/>, Probe-underway-into-corruption-riddled-N-Cape-Health-department

Working together towards ridding society of corruption, malpractice and maladministration

## National Health Insurance (NHI)

- NHI is a “health financing system that pools funds to provide access to quality health care services to all South Africans, based on their health needs and irrespective of their socio-economic status”. – Department of Health
- National Health Insurance policy document was gazetted after approval by Cabinet in June 2017

- 
- Ensure health services does not result in financial hardship for individuals and their families
  - Realise universal health coverage for all South Africans
  - Provide all citizens with access to comprehensive healthcare services free of charge



Source: <http://www.gov.za/about-government/government-programmes/national-health-insurance-0>

The NHI represents a substantial policy shift that will necessitate a massive re-organisation of the current health system, both private and public. Cabinet has approved the White Paper on the National Health Insurance, to be gazetted as a policy document.

- SIU is mandated to investigate allegations of maladministration and corruption in the affairs of state institutions such as the NHI
- Should such allegations be forthcoming, the SIU will assess these allegations against the requirements of the SIU Act and will then seek a proclamation to investigate if necessary
- Should the allegations not fall within the scheme of the SIU Act, the SIU will facilitate the referral of the necessary evidence to the appropriate law enforcement agency (SAPS Commercial Crime Unit/Hawks)



Typical examples of allegations that the SIU has encountered in the public healthcare sector and could continue to occur with the implementation of the NHI include:

- Overtime claims submitted by public sector health care/medical practitioners when claims were not due owing and payable
- Unauthorized remuneration received by such practitioners
- Remuneration and benefits paid to such practitioners, who were not entitled thereto.
- Prevent possible procurement irregularities



Corruption starves valuable resources available to the health system, quietly reduces the effectiveness of health services and activities, and cripples civic trust in health institutions. In effect, corruption corrodes efforts to combat disease and improve population health status. On a very basic level, corruption in the health sector is about patient or “consumer” vulnerability

Corruption is influenced by adverse agent selection, lack of mechanisms to detect corruption and a failure to sanction those involved in corrupt activities



In South Africa, corruption is influenced by inadequate separation of powers between the governing political party and the state

Differences across the nine provinces exist, these differences are attributed to:

- Characteristics of provincial administrations
- Ineffective management
- Lack of enforcement of existing legislation
- Capacity constraints and different skill levels across provinces
- Selection of officials in various provincial administrations.

The complexity of the health system has lent itself to opportunities for corruption, particularly at a provincial health department level where large budgets and complex systems are managed

## Perpetrators

- Policy holders & healthcare service providers (Doctors & pharmacists)
- Medical practitioners
- Health care employees
- Health care Service providers



## Possible penalties applicable to perpetrators

- Section 66 of the Medical Schemes Act No. 131 of 1998 indicates that medical aid fraud committed either by a member or a healthcare practitioner, is a criminal offence which carries a fine or imprisonment or both.
- Healthcare Professional Council of South Africa (HPCSA) can be requested to look at case by case of each healthcare service provider, and determine whether the professional's license to practice should be revoked
- If the SIU investigates in terms of a proclamation, it will refer the necessary evidence of criminality to the NPA for prosecution
- Evidence of misconduct will be referred to the employer for the institution of disciplinary proceedings and to the HPCSA in order for the HPCSA to take the necessary steps as the professional body responsible for regulating the affairs of medical practitioners.



## “The rate of health care fraud, waste and abuse continues to rise” LexisNexis

1. So, what is the impact anti-corruption strategies can have on health outcomes? Which actors need to be involved in the process?
2. Which initiatives and methodologies are most likely to achieve successes?
3. How can we encourage and sustain positive results?



**Key elements**

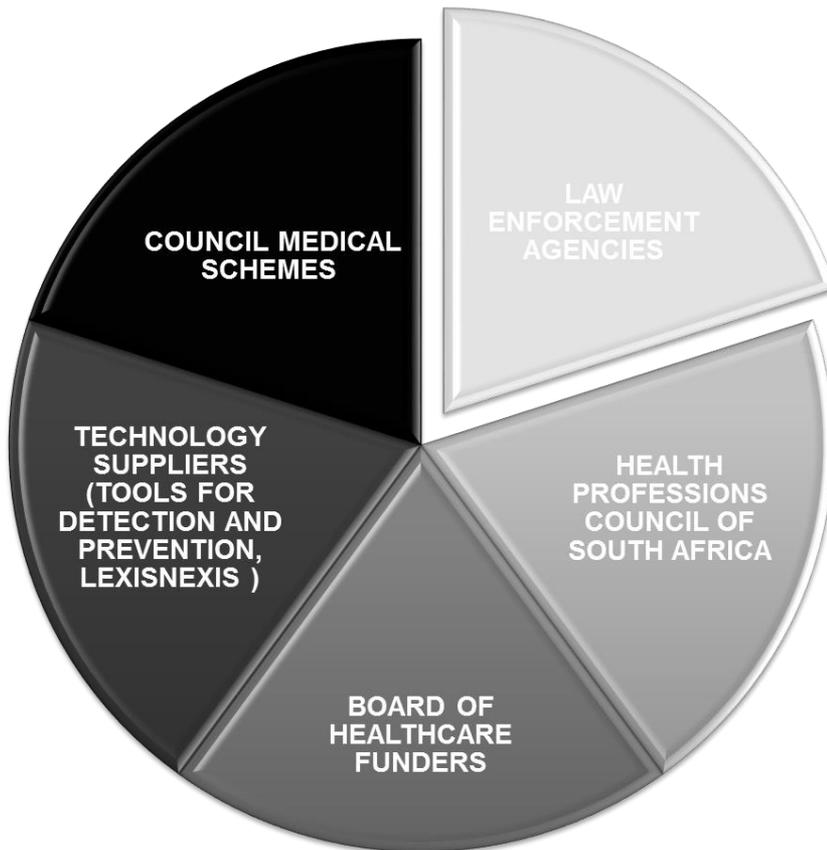
Collaboration

Awareness & Prevention

Governance



## Examples of organisations in the sector



## The need for collaboration

- The SIU is one member operating in the environment, for maximum impact in addressing corruption in the healthcare sector it is essential that various organizations come together to formulate and enhance prevention and oversight initiatives
- Each organisation will be required to apply it's mandate and responsibilities in the most applicable manner to the initiatives developed
- Transparency, communication and monitoring & evaluation will be important components of the collaborative approach





## Digital solutions

- Use of data analytics to analyse big set of data (claims) to find patterns/abnormalities
- Utilising enhanced digital systems to monitor non-compliance to policies and procedures and identify possible anomalies in spend and/or contract management



## Monitoring & Evaluation

- Create a framework that governs the collaborative approach
- Implement monitoring and evaluation methodologies (that have been utilised in other sectors) to determine the impact of anti-corruption initiatives



## Awareness

- Use media platforms to enhance transparency and publicise anti-corruption messages to different segments of the population (Commercials, Website, Social Media, Mobile Apps)
- Host preventative education programmes
- Develop and distribute guidelines toolkits and anti-corruption pamphlets
- Utilise an anti-corruption hotline with a dedicated line for reporting healthcare corruption



# Thank You Adv Andy Mothibi Head Special Investigating Unit



# CORRUPTION.



FIGHTING **CORRUPTION** IS EVERYONE'S DUTY

**REPORT FRAUD AND CORRUPTION ON 0800 701 701 (NATIONAL ANTI- CORRUPTION HOTLINE)**