

# Corporate corruption hurts Brand SA

**B**Y ALL accounts, the Fifa World Cup 2010 was a tremendous success in building the South Africa brand and reputation as a world-class African nation. The R50 billion infrastructure investment by the government was no doubt a welcome boost to the economy and directly to the construction, engineering and financial services industries.

With the government doing what it needed – investing in infrastructure and creating jobs – the event brought out the best of public and private sector partnership.

But it seems it also unearthed the worst of corporate South Africa: the Competition Commission's conclusion that 18 construction companies admitted to price fixing and collusion in building the required stadiums. Findings by John McCann Research established that the scandal cost each taxpayer R205, which dwarfs any other recent scandal, including Nkandla (R18), Travelgate (90c) and Oilgate 2 (R16).

Not that it came as a surprise. Construction has long been among the least reputable industries – whether you're building a house or building a country.

According to the 2012 Global Reputation Institute survey, the construction and engineering industry ranks only 14th out of 25 industries. The bottom of the barrel are structural industries such as utilities, telecom and financial services.

Corruption Watch is right to call for legal action and civil claims to be pursued against directors involved in the construction industry.

But it seems, with the relative recent ineptitude of the National Prosecuting Authority, which seem to have misplaced its middle descriptor, prosecution, the slap on the wrist by the Competition Commission is the best South Africans can expect.

It is therefore unconscionable for the likes of Business Day's Peter Bruce to conclude that such corruptive behaviour "may be in the national interest" as the collusion was an incentive or motivation to get the massive infrastructure programme done on time for the kick-off of the World Cup.

At the cost of the nation's reputation and poor people's cost of living and a better life?

How can it be in the national interest for J Arthur Brown to plunder Fidentia investors and ultimately citizens, and only get away with a R150 000 fine, a pittance for a millionaire convict?

How can it be in the national interest for multibillion-rand companies such as Pioneer Foods, Tiger Consumer Brands and Premier Foods cartel to fix the price of bread for 12 years, affecting the poorer and the SMMEs who earn a living from selling it?

During a time when people are struggling to put food on the table and living below the breadline, such behaviour cannot be in the public interest. And R1 billion in fines is not an adequate punishment either.

Or, in the case of the convicted

Company misbehaviour is at the heart of most of our scandals, from the World Cup construction cartels to the businesses that built President Zuma's Nkandla home, writes Thebe Ikalafeng



**HOME SWEET HOME:** President Jacob Zuma's Nkandla homestead. We often hold the public sector up for corruption, but tend to forget about their big business colluders, says the writer. PICTURE: DOCTOR NGCOBO

Wendy Machanik of Wendy Machanik Properties and Peter Gardner of Health & Racquet Clubs that cost shareholders equity and patrons' advance fees?

Corruption has become endemic in the (South) African culture. The 2012 Transparency International Corruption Perceptions Index ranks South Africa 69th out of 176 countries (tied with Brazil and Macedonia) as among the corrupt nations.

A recent TNS survey established that 88 percent of metro adults feel that corruption has become a way of life in South Africa.

And citizens seem to bear the brunt of it – always – without any recourse in sight.

No one should feel sorry for any guilty corporation, or the "poor" construction industry and its leaders – or the impact of the R1.4bn fines on their "meagre" 2 percent to 4 percent margins.

Being adept at price-fixing, the

R1.4bn fine is not a sufficient deterrent, as companies will simply manipulate future pricing to recover their "losses".

Their behaviour hurts beyond their margins. It hurts the bottom-line of Brand South Africa. It hurts the nation's competitiveness and growth, which is in the single digits, and is lagging behind African and Brics counterparts with growth rates beyond 5 percent.

There's a widely publicised argument that the public sector is the source of the corruption, and that this is a worse evil, because it deprives the public of public goods and waste.

A 2012 report by Edward Nathan Sonnenbergs has found that corruption, theft, extortion and forgery cost the taxpayer R930 million in 2011-12. According to Business Day, between 2010 and 2011 "88 percent of those accused of financial misconduct – mostly fraud – were found

guilty, however, only 19 percent were forced out of the public service".

It is a national disgrace, a crime by those who are supposed to be in a position of trust and of service.

The president of the Republic of South Africa should be applauded in this case for his recent firing of the tainted former minister of communications, Dina Pule – even based on allegations. In the public's eyes, perception is the truth.

As a nation, we were furious with the Department of Education's textbooks scandal in Mpumalanga and the security upgrades at Nkandla, among other public sector scandals. But as a nation, we have not demonstrated the same vigorous outrage in the construction industry scandal. It's been merely an academic and investigative journalists' cause. Why do we more readily accept the moral ambiguity of corporate of South Africa more than the public sector?

When the shoe is in the public sector, there's more often a universal moral high ground and grandstanding by the public and the private sector to paint the totality of the public sector as wholly corrupt. But when it comes to the private sector, there's a willingness to "move on" and isolate their actions as isolated lapses of judgement and integrity. But management guru Tom Peters says "there is no such thing as a minor lapse of integrity".

There's an implicit double standard and political grandstanding, and, at worst, a playing of the race card, when it comes to judging and sanctioning the private sector.

Almost half of those accused in the construction industry scandal are among the 400 listed companies on the R9 trillion combined market cap JSE. Shareholders should be outraged because they now have to suffer reduced dividends.

Citizens should be outraged

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THE LEGAL SYSTEM IS TOO OFTEN NOT ON THE SIDE OF THE POOR AND MARGINALISED

because they, too, will suffer, as the cost of living is often impacted negatively by corruption.

The nation should be furious because our reputation is being tarnished by this.

The public sector, admittedly not a model citizen, is corrupt through the private sector. In and of itself, it is a beneficiary of the moral laxity of corporate South Africa.

With its role of creating an enabling environment for business, together with the private sector, they have created a mutually enabling environment for corruption. The government does not produce goods or services. The private sector does. According to the World Economic Forum Global Competitiveness Report 2012-2013, companies rank corruption as the fifth most problematic factor for doing business in South Africa.

An honest assessment by the very private sector that enables corruption by entertaining it, whether by public sector, BEE fronting, tenderpreneurship, collusion or bribes, is needed. Without the private sector entertaining such crime, the public sector will be forced to focus on its primary responsibility of creating much-needed public goods – and doing it with integrity.

In the end it is the public, the citizens, that end up most affected.

The global sub-prime mortgage crisis and related financial services industry's impact, particularly in Europe and the US are instructive.

While the likes of Lehman Brothers were liquidated, it was the public sector, the government, that had to come to the rescue, using taxpayers' money to repair the public damage to investors and the respective nations.

Murray and Roberts' chief executive officer Henry Lass issued an apology to the nation, saying that he and board members had been unaware of the collusive conduct. He put the blame on the company's directors and subsidiary compa-

nies. This is unacceptable. A man of his vast corporate experience and, hopefully, understanding of corporate governance, should know that you can delegate authority but not you cannot abdicate responsibility.

Similarly, reputation is indivisible. The board and its various operations are jointly and severally liable. Ignorance does not absolve responsibility.

Trust and leadership, according to the Reputation Institute, are among the key attributes for building a reputation. Unfortunately, these series of scandals show that these are the values that corporate South Africa now find wanting. These scandals have been running for years – at least the construction and bread scandal industry has admitted this. It is not a momentary lapse, but a worrying feature of corporate South Africa.

Right now, there's little trust and leadership in corporate South Africa. We should all be angry – and we should not apply double standards, political grandstanding or play the race card when it comes to assessing corruption by the public sector versus the private sector. They're equally wrong, and illegal.

The legal system is too often not on the side of the poor and marginalised. It needs to be reviewed not as an academic and political exercise, but as an instrument to judge without fear or favour, especially towards the unscrupulous rogues who operate in South Africa in the pretext of doing business.

A recent survey on corruption in the private sector established that 76 percent of respondents agree that corruption occurs because of a poor ethical culture within the South African business community, 75 percent that corruption is a deterrent to doing business in South Africa, and 74 percent that the current corruption levels are harmful to further investment in South Africa.

Ultimately, as South Africans, like Corporate South Africa, we need to take a good look at ourselves and reflect on our legacy (and ethics) – and we need to ask whether this is the contribution to a competitive nation that we imagined for us and our future.

The leaders implicated in corruption scandals should all be communally frog-marched to Sun City to enjoy their ill-gotten gains among their ilk.

South Africans taxpayers, shareholders and people deserve better.

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## Forum

### Motala misses point that the chief justice is supposed to be impartial

I REFER TO the opinion piece by Ziyad Motala in The Sunday Independent of July 21, 2013, "Our chief justice speaks the truth".

This piece constitutes an apology for Chief Justice Mogoeng Mogoeng's very controversial and emotional comments made in an address at the annual general meeting dinner of the Advocates for Transformation.

In Motala's piece defending the chief justice's very disparaging attack on people who challenge the manner in which candidates are recommended for appointment to the Bench by the Judicial Service Commission (JSC), he fails to address the central issue in this dispute, namely whether the chief justice should be involved in this public controversy and whether such controversy undermines the independence of the judiciary, concerning which he, as chief justice, is under oath to protect.

The issue is not whether Justice Mogoeng is "speaking truthfully", whatever this may mean, but rather whether his comments undermine the independence and impartiality of the Bench as an institution.

Bearing in mind that the chief justice was speaking in his official capacity as the head of the judiciary in South Africa, I submit that both the content and tone of his address have

serious implications for judicial independence, which is guaranteed and entrenched in section 166 of the constitution.

This is the crux of the matter, which is not addressed at all by Motala in his rambling diatribe, in which he in effect demonises the critics and detractors of the JSC's modus operandi, by referring to them as the "previous oppressors".

In his address, the chief justice, without mentioning names, uses very scathing and powerful language in relation to those persons who challenge the modus operandi of the JSC in relation to the way it recommends candidates for appointment to the Bench.

In making this statement, the chief justice declared his allegiance to – and support for – the JSC against its detractors.

It is a fundamental principle in the operation of an independent and impartial judiciary that judges should avoid political and other controversy at all costs, concerning which, in particular, they or the courts in general may be called on to give judgment.

Therefore, the chief justice has also by his alignment and support for the JSC against its detractors done immeasurably great harm to the independence and impartiality of the

judiciary, which is a cornerstone of democracy in South Africa and of which he should be a manifest custodian, and he should not in any way, by his words or actions, undermine such independence.

Furthermore, it is also alleged by the detractors of the JSC that the commission does not merely discriminate against white male applicants, but also against any boldly independent-minded applicant jurists, black or white, male or female, who would act fearlessly in interpreting and applying the provisions of the constitution and the bill of rights, and thereby poses a threat to the executive regardless of any consequences.

These are the issues, inter alia, that need to be discussed and debated in the media.

Motala does not do this, but instead chooses to wage a vendetta on persons he disagrees with, rather than engaging them in a meaningful discourse on how transformation should affect the judiciary and the members of the Bar.

Motala's piece therefore does not make an informative contribution to an important discourse, which should be rational rather than personal.

Professor George Devenish  
Durban

### Buthelezi a leader of integrity at the helm of a strengthening IFP

YOUR write-up on political parties and the strengths and weaknesses of their leaders needs correction (Sunday Independent, July 21, 2013).

You claim that IFP president Prince Mangosuthu Buthelezi has survived many scandals, though you can only think of "Inkathagate".

"Inkathagate" hardly qualifies as a scandal by today's standard of "Nkandlagate", "Guptagate" and the arms deal. Even at the time, it was scarcely worth mentioning, and would not have been mentioned but for the value of propaganda.

In July 1991, R100 000 was donated to structures of the IFP to organise party rallies.

This was done behind Buthelezi's back.

When he found out about it, Buthelezi sent Dr Frank Mdlalose to refund the money.

Often those who don't know their history conflate this isolated incident with the training of a VIP protection unit to protect the chief minister of KwaZulu and his cabinet, based on threat assessments.

Two hundred men were trained by the state, and propaganda instantly turned this into a so-called scandal.

In truth, during half a century in politics and public life, Buthelezi has proven to be a leader of integrity who has never been tainted by corruption. He does not style himself as a peer of the Struggle or

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Mangosuthu Buthelezi

fashion himself as a "statesman" and a "voice of reason". History does that for him.

Buthelezi was raised in the ANC, working closely with his uncle, Dr Pixley ka Isaka Seme, the founder of the ANC,

have marvelled at his wisdom and his deep concern to sustain a value system that is critical to the survival of our democracy.

Buthelezi's integrity, leadership, faith and wisdom have had an undeniable and profound role in shaping the history of South Africa.

If you were not hell-bent on dishing up stale propaganda and sloppy journalism you would have recognised that far from being a "shrinking party reduced to a tribal outfit in KwaZulu-Natal and hostels of migrant workers", Buthelezi's IFP remains a major political player.

Ahead of next year's elections, the IFP is winning one by-election after the next, increasing its support while taking wards from the ANC and NFP; notably in Mpumalanga and President Jacob Zuma's home base of Nkandla.

The IFP's message of integrity is reaching the heart of every South African as our country flounders in a sea of corruption.

The partnership between the IFP and the people we serve is a partnership of goodwill that is putting moral values, integrity and service delivery back on the table.

We speak with the voice of ordinary South Africans as we call for a return to service, accountability and truth.

Sibongile Nkomo  
IFP Secretary General