



Chapter 1

The Epidemic Of Corruption in the Corporatisation of Higher Institutional Education in South Africa

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Abstract

For many years, higher education was regarded as a privilege where marginalised and poor individuals of society could not afford the luxury of education. In some ways, the structure of higher educational institutions (HEIs) such as universities was seen as a threat to power and there was no substantial international assistance to develop HEIs. Universities have, in particular, been recognised for their role in developing the human capital necessary for technological advancements, including that of accelerated growth. Since the 1970s, there has been a global increase in higher education enrolment. However, access to higher education remains low in sub-Saharan Africa compared to other regions, with enrolment rates having been reported as only being 1.4% in 1970 and 8.9% in 2014. The substantial increase in enrolment rates worldwide highlights the importance of ensuring proper regulation of the higher education sector. However, corruption within such academic institutions has a negative effect on achieving the goals for higher education in countries like South Africa. Herein, the abuse of power for private gain often rears its ugly head from time to time. When individuals –

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including students, faculty, administrators, and board members – engage HEIs structures for the purpose of exploiting its resources, the essence of the HEI is compromised. Furthermore, when individuals with criminal affiliations hold positions in councils or become integral parts of university administration and management, HEIs are at risk of mirroring the corruption often associated with state-owned enterprises. Added to this, many HEIs are currently traversing to corporatism or more commonly known as corporatisation. Corporatisation comes with its own challenges and academics have explored the effects of HEIs corporatising such as institutions becoming subsidiaries for business enterprises instead of making them a so-called “Bureau of Knowledge Production”². This argument is further compounded by the complexities of corruption. The various forms of corruption and fraud in HEIs are wide and include, for example, fraudulent admissions and degrees being awarded. This list is certainly not exhaustive, however, for the purposes of this chapter, a selected number of types of corruption that are typical within an HEI setting will be discussed. The chapter will examine the effects of the corporatisation of HEIs and the implications of corruption to the structures and operation of an HEI. In doing so, this chapter examines the current legislative and national institutional policies in South Africa which address corruption, with a specific focus on the positive institutional approaches undertaken by the University of Johannesburg regarding corruption. In doing so, the effects of corruption on an international scale at HEIs are highlighted and recommendations are provided that will aid in combatting corruption at HEIs.

1. Introduction

In January 2023, a significant incident unfolded at the University of Fort Hare, where Professor Sakhela Buhlungu, the vice-chancellor at the time, narrowly escaped an attempted assassination. The motivation behind this violent act was reportedly linked to Professor Buhlungu’s active role in

2 Imenda “The idea of a South African university and implications for knowledge production” 2005 *SAJHE 19 Special Issue 2005* 1405-1418.

investigating corruption within the university.³ The University of Fort Hare holds historical significance as the *alma mater* of Nelson Mandela, adding gravity to the situation. The attempt on Professor Buhlungu's life underscores the severe consequences that can arise when individuals within HEIs take on the task of exposing and addressing corruption.⁴

Corruption at HEIs, specifically universities, can have far-reaching effects, such as compromising the integrity of academic institutions and eroding public trust. When university officials engage in corrupt practices, it not only tarnishes the reputation of the institution but also undermines the fundamental principles of education.⁵ Resources intended for academic development and student welfare may be misappropriated, hindering the overall quality of education provided. Moreover, corruption can foster an atmosphere of fear and intimidation, as evidenced by the attempt on Professor Buhlungu's life. Such incidents not only endanger the lives of individuals committed to upholding ethical standards, but also create a chilling effect that deters others from challenging corruption within the academic community.⁶ The attempted assassination of Professor Sakhela Buhlungu at the University of Fort Hare serves as a stark reminder of the dangers associated with investigating and confronting corruption within HEIs. The repercussions extend beyond the immediate threat to individuals' lives, impacting the institution's reputation, academic quality, and the broader trust placed in the educational system.

3 Govender "Fort Hare Vice-Chancellor's bodyguard shot dead in suspected 'assassination attempt'" 2023 <https://www.timeslive.co.za/news/south-africa/2023-01-07-fort-hare-vice-chancellors-bodyguard-shot-dead-in-suspected-assassination-attempt/> (21-02-2024).

4 *Ibid.*

5 Jack "Corruption fight goes on, says V-C after 'assassination attempt'" 2023 <https://www.timeshighereducation.com/news/corruption-fight-goes-says-v-c-after-assassination-attempt> (21-02-2024).

6 Hlati "Outrage over hit attempt on Fort Hare Vice-Chancellor" 2023 <https://www.iol.co.za/capetimes/news/outrage-over-hit-attempt-on-fort-hare-vice-chancellor-8a5c5b6a-f951-4732-80ed-912756287foe> (21-02-2024).

Corruption has detrimental effects for HEIs and the broader community.⁷ The effect of corruption ruins the reputation of HEIs, and has the indirect consequence of preventing access of student applicants and wastes HEIs' money and resources.⁸ Added to this, when unqualified and incapable graduates enter the market, it poses a risk to the safety and wellbeing of the public at large.⁹ Corrupt and fraudulent practices within HEIs effectively erode the integrity within society. Research undertaken during 2017 involving 7 000 young adults (between the ages of 18-35) in East Africa revealed that 60% "admired" individuals who became rich overnight with minimum or no effort, and half of the participants were of the view that it did not matter how a person acquired such money.¹⁰ An astounding 35% believed that corruption should not be viewed as an ill in society.¹¹

Corruption in the higher education sector is not an isolated incident and it affects countries globally.¹² HEIs co-exist within political, social, and economic platforms, and play a major role in shaping the society in which they exist, which ultimately aids in social progression.¹³ Education is the antidote that aids in eliminating communal problems and provides social cohesion. HEIs are foundational in cascading knowledge to both individuals and society, and they also facilitate academic

7 Denisova-Schmidt "The challenges of academic integrity in higher education: Current trends and prospects" 2017 *Chestnut Hill, MA: The Boston College Center for International Higher Education (CIHE)* 2.

8 Altbach "The question of corruption in academe" 2004 *International Higher Education* 7-8.

9 Pérez-Peña "Best, brightest and rejected: Elite colleges turn away up to 95%" 2014 *New York Times* 2 <https://www.nytimes.com/2014/04/09/us/led-by-stanfords-5-top-colleges-acceptance-rates-hit-new-lows.html> (16-05-2024).

10 *Ibid.*

11 *Ibid.*

12 Marklein "Quality assurance cannot solve corruption on its own" 2016 *University World News* 30 <https://www.universityworldnews.com/post.php?story=20160130005848512> (16-05-2024);

Egharevba and Atkinson "The role of corruption and unethical behaviour in precluding the placement of industry sponsored clinical trials in sub-Saharan Africa: Stakeholder views" 2016 *Contemporary Clinical Trials Communications* 102-110.

13 O'Malley "Global: Detecting application fraud" 2010 *University World News* <https://www.universityworldnews.com/post.php?story=20100326124132375> (16-05-2024).

freedom and institutional independence, which enhance scientific consideration and creation of new knowledge.¹⁴ When corruption rears its ugly head in HEIs, it poses a risk to the very foundations of societal structures.

2. The corporatisation of higher education and corruption

In order to understand the challenges and context surrounding the rise in equitable access to higher education in South Africa post-1994, it is essential to delve into the historical backdrop of the country's education system, particularly the intricacies of Bantustan tertiary education.¹⁵

Before the dismantling of apartheid in 1994, South Africa was characterised by institutionalised racial segregation, where the majority of the population – specifically black individuals – were systematically excluded from quality education and various opportunities. Bantustans, also known as homelands, were designated territories for different ethnic groups, creating a fragmented and unequal educational landscape.¹⁶ In the context of higher education, access to education was severely restricted for black individuals. Certain HEIs were designated for specific racial groups, with many HEIs catering exclusively to white students. Barriers to access were further compounded by the Bantustan system, where HEIs within these territories were often underfunded and lacked resources, perpetuating educational inequalities.¹⁷

To access an HEI outside their designated Bantustans, black students faced significant hurdles. Permission from the government, often in the form of ministerial exceptions, was required. These exceptions were granted on a case-by-case basis and were limited, reinforcing the systemic discrimination

14 Chapman and Lindner “Degrees of integrity: The threat of corruption in higher education” 2014 *Studies in Higher Education* 247-268.

15 Luescher “South African higher education reviewed: Two decades of democracy” 2016 *Council on Higher Education (CHE)* 18.

16 *Ibid.*

17 *Ibid.*

embedded in the education system.¹⁸ The term “people of colour” was used to encompass individuals from diverse racial backgrounds, including black, Indian, and mixed-race populations, who were historically marginalised under apartheid.¹⁹ Post-1994, with the advent of democracy, there were concerted efforts to address these historical injustices and promote equitable access to education for all.

However, as the narrative suggests, the increased enrolment of people of colour in HEIs also posed financial challenges for the government. The demand for resources, scholarships, and infrastructure to accommodate a more diverse student population strained the already limited financial capacity of the government, necessitating a delicate balance between fostering inclusivity and managing fiscal constraints.²⁰ This has led to HEIs having to redesign their identities according to the demands of corporate culture. This has also led to fee increases and the outsourcing of services. Dlamini postulates that the corporate structure is business- and market-driven.²¹ The consequences range from the younger generation being unable to access tertiary education to challenges in academic freedom, institutional independence, and corruption.²² Borg highlights the concern that, within corporate settings, the principles of shared governance are being undermined or distorted, and the concept of accountability may be narrowed down to a financial or accounting-centric perspective, potentially neglecting broader ethical and social dimensions.²³ Dlamini further contends that with corporatisation growing rapidly in higher education, HEIs may be perceived as businesses instead of institutions that generate knowledge.²⁴ He

18 *Ibid.*

19 *Ibid.*

20 Dlamini “Corporatisation of universities deepens inequalities by ignoring social injustices and restricting access to higher education” 2018 *South African Journal of Higher Education* 54–65.

21 Dlamini (n 19) 56; Badat “The challenges of transformation in higher education and training institutions in South Africa” 2010 *Development Bank of Southern Africa* 8.

22 Dlamini (n 19) 57. See also Chapman and Lindner (n 12).

23 Borg *Gramsci and Education* (2002) 87; Dlamini (n 18) 58.

24 Dlamini (n 19) 60. See also Blass “The rise and rise of the corporate university” 2005 *Journal of European Industrial Training* 58–74.

highlights that universities should be wary of profit-making.²⁵ Lerner points out that when there has been a corporatisation of HEIs, the process is characterised by two related processes. On the one hand is the erosion of tenure and its impact on HEI governance, and on the other, the development of the so-called “star system”, whose effects are a two-tiered labour market in which staff of a limited number of faculties will advance rapidly in their careers and remuneration, while staff of contingent or adjunct faculties – who is low-paid and hired on a semester-by-semester basis – will not advance in their careers as desired.²⁶ In addition, according to Waite, HEIs co-exist with the wider public and society. They are influenced by the laws and policies that govern them.²⁷ Unfortunately, societal tensions and anxieties are at times portrayed by these institutions, and they feel the ill effects of corporatisation and, in some instances, corruption.²⁸ Added to this, Waite further contends that the establishment of market values corrupts learning.²⁹

Several scholars, as discussed above, oppose the idea of corporatisation of HEIs. Compounded with the consequences of corporatisation are the ills of corruption that somehow intrude upon the aims of education as well. At this juncture, the different forms of corruption that may occur at HEIs are discussed, and this may cement the arguments against the corporatisation of HEIs.

25 Dlamini (n 19) 61. See also Giroux “Neoliberalism, corporate culture, and the promise of higher education: The university as a democratic public sphere” 2002 *Harvard Educational Review* 425-464.

26 Lerner “Corporatizing Higher Education” 2008 *The History Teacher* 219-227.

27 Waite “Corporatism and its corruption of democracy and education” 2010 *Journal of Education and Humanities: Theory and Practice* 81-106; Zernike “Students are covering a bigger share of the costs of their college education” 2009 *The New York Times* A15.

28 Waite (n 26) 85.

29 Waite (n 26) 90.

3. The different forms of corruption that exist at universities

3.1 University councils

A fundamental issue at the core of the problem of corruption stems from a deficiency in governance and managerial capabilities, coupled with a compromise in academic integrity.³⁰ Jansen particularly highlights university councils as a pivotal source of the predicament. These high-level decision-making bodies encounter various challenges.³¹ Not only do many university councils fail to provide adequate support to university management, but they also contribute to internal divisions within the institutions. In some instances, they even engage in the misappropriation of university resources.³² Jansen points out a significant flaw in numerous university councils being an increasing politicisation as well as the appointment of many council members who lack the background typical of established universities and often come from a business or professional sphere.³³ Instead, universities are seen as business opportunities, which introduces activities ranging from attending endless meetings for financial allowances to engaging in business transactions with a university. Moreover, Jansen notes a concerning trend among ministerial appointees, and there is a growing concern that many of these individuals appear to align with the ruling African National Congress (ANC) party's "cadre deployment" initiative.³⁴ This highlights the concern that politically aligned figures are strategically placed on university councils by the Minister of Higher Education and Training to fulfil a political agenda. This involvement may include aligning with specific student or union groups and influencing appointments, thereby compromising the university council's independence and effectiveness.

30 Jansen *Corrupted: A Study of Chronic Dysfunction in South African Universities* (2023) 66-69.

31 Jansen (n 29) 115-117.

32 Jansen (n 29) 115-119.

33 *Ibid.*

34 Jansen (n 29) 167.

3.2 Political manipulation

Governments and political parties affiliate themselves with the daily activities of HEIs as graduates and HEIs provide structure to the political and social environments in developing countries.³⁵ In this respect, corporatisation enables HEIs to expand into political networks.³⁶ This has its advantages and disadvantages. One such advantage would be the establishment of a new institution that may have lower tertiary fees and this may cause tension in other institutions that base their revenue on the quality of service that they deliver. Public universities in South Africa are state owned, but there has been an increase in private tertiary education institutions. These privately-owned institutions may have different accreditation and minimum requirements from their public counterparts.³⁷ The credibility of some institutions becomes questionable.³⁸ The politicisation of HEIs further creates a trend of appointing politicians as office-holders and heads of HEIs. An example would be the newly appointed chancellor of University of Johannesburg Dr Phumzile Mlambo Ngcuka, who was a member of parliament in 1994 and also held various ministerial positions. In addition, political corruption at HEIs may also involve the granting of unearned credentials.³⁹

3.3 Corruption in accreditation

Accreditation provides an assurance to students, parents, employers, and society that the HEI meets certain quality standards in education. Accredited HEIs are recognised for providing high-quality education and producing graduates who are well prepared for their careers. Graduates from accredited HEIs are often more competitive in the job market and are more

35 See Mathrani *et al* “Interpreting academic integrity transgressions among learning communities” 2021 *International Journal Education Integrity* 2.

36 *Ibid.*

37 Kokutse “Corruption among factors affecting HE quality process” 2018 *University World News* 1.

38 *Ibid.*

39 France-Press “Grace Mugabe’s PhD investigated by Zimbabwe’s anticorruption watchdog” 2018 *The Guardian* <https://www.theguardian.com/world/2018/jan/09/grace-mugabe-phd-investigated-zimbabwe-anti-corruption-watchdog> (16-05-2024).

likely to be recognised by employers.⁴⁰ Undergraduate degrees provide the basis for a proficient licence which places pressure for accreditation, and often leads to corruption and extortion.⁴¹ One of the pitfalls is that HEIs may not have the resources and infrastructure to receive accreditation. This leads to a lower professional standard and a gap between the knowledge and skills of graduates.⁴² Moreover, academic staff may be pressured into lowering the threshold for pass marks, as lower pass rates would result in damage to reputation and financial loss for the HEI.

3.4 Corruption in student admissions

Fraud in respect of HEI admissions is a worldwide problem. The credibility of the selection process for admissions at HEIs is brought into disrepute by fraud and corruption.⁴³ Bribery and its ills can provide a pass mark for an exam or a test, and it can even guarantee a place for a student who does not qualify for HEI entrance. The Global Report on Education on Corruption revealed that, in some instances, students paid officials in order to gain admission into HEIs.⁴⁴ Paying officials to gain access to an HEI has become common practice globally.⁴⁵ Students feel peer pressure to pay a bribe as other students are also engaging in similar conduct, which exacerbates the sense of not wanting to be left behind.⁴⁶ This line of thinking can bring the good standing and reputation of an HEI into disrepute.⁴⁷ By way of example, in 2021, the University of KwaZulu-Natal (UKZN) disclosed that it spent over R73.5 million on an initiative named Operation Clever, which investigated irregularities at its Nelson R Mandela School of

40 See Chapman and Lindner (n 13) 247-268

41 Heyneman "Education and corruption" 2004 *International Journal of Educational Development* 637-648.

42 See Mohamedbhai "Higher education: A hotbed of corruption?" 2015 <https://www.insidehighered.com/blogs/world-view/higher-education-hotbed-corruption> (16-05-2024).

43 See Shaw "Impacts of globalisation on the academic profession: Emerging corruption risks in higher education" in Sweeney, Despota, and Lindner (eds) "Global Corruption Report: Education" 2013 194-201.

44 Shaw (n 42) 194.

45 Shaw (n 42) 198.

46 *Ibid.*

47 Shaw (n42) 200.

Medicine.⁴⁸ This disclosure followed a court order mandating the release of specific details about the probe. Operation Clever was initiated to examine allegations of irregular student admissions, the sale of exam papers, tampering with academic records, mark alterations, and irregularities related to student accommodation, among other accusations.⁴⁹

3.5 Corruption in the appointment of staff and promotion process

In certain instances, appointments to positions of leadership – for example, heads of department, heads of schools, vice deans, and deans – might be awarded due to favours. These types of appointments and promotions of such staff members at HEIs adversely affects the value of teaching, learning and, research. When heads of departments at Italian tertiary departments were awarded qualifications based on favours exchanged in both the private and professional domain – instead of it being based on accolades – it caused concern.⁵⁰ In this respect, a positive step that HEIs can undertake to counter corruption is to adhere to ethical recruitment practices to promote fairness, transparency, and equal opportunity.⁵¹ These practices can include publishing job vacancies, advertising job openings through various channels, and implementing selection criteria relevant to the advertised

48 McCain “R73.5m spent on ‘Operation Clever’ probe into medical school admissions, UKZN reveals” 2021 <https://www.news24.com/news24/southafrica/news/r735m-spent-on-operation-clever-probe-into-medical-school-admissions-ukzn-reveals-20210208> (21-02-2024).

49 *Ibid.*

50 Edwards “Dozens of Italian university professors arrested over corruption claims” 2016 *The Local* <https://www.thelocal.it/20170926/university-teachers-under-house-arrest-over-corruption-after-being-unmasked-by-an-english-academic> (16-05-2024).

51 UJ “University of Johannesburg: Code of Ethics and Business Conduct” 2007 <https://www.uj.ac.za/wp-content/uploads/2021/10/code-of-academic-and-research-ethics-approved-2021.pdf> (16-05-2024). See also the World Bank “World Bank: Preventing corruption in the recruitment and promotion of public officials” n.d. <https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/User%20Friendly%20Version%20of%20the%20Anti-Corruption%20Guidelines.pdf> (16-05-2024).

position. Also, HEIs can conduct comprehensive background checks on all candidates to ensure that they meet the necessary qualifications and do not have any criminal records or previous history of unethical behaviour. Many HEIs conduct these background checks and such practices have proven to be effective in ensuring fairness in candidate appointments.⁵²

3.6 University financial mismanagement and procurement fraud

There has been alarming concern that HEIs' funds are vulnerable as management may use such funds for incentives for fraudsters.⁵³ Reorganised functions and risk management processes at times result in administrators being unaware that fraud occurs right within their own departments.⁵⁴ Moreover, many HEIs find themselves in situations of acquiring funds to ensure the maintenance of educational standards. The growth in the higher education sector has also resulted in the construction of new buildings at HEIs,⁵⁵ which opens the door to the potential for corruption, fraud, and mismanagement of funds.

The mismanagement of HEIs, misappropriated funds, and collusion with service providers inevitably lead to substandard work.⁵⁶ Take, for instance Makerere University in Uganda, which fell victim to substandard work when a newly erected wall collapsed during rainy weather.⁵⁷ Moreso corruption in procurement and tender processes can have a significant negative impact on HEIs, leading to substandard goods and services, inflated prices, and a lack of accountability. It can also undermine public trust in an

52 UJ is an example where background checks are made on potential employees. "The University of Johannesburg privacy notice" n.d. <https://www.uj.ac.za/wp-content/uploads/2022/05/uj-privacy-notice.pdf> (21-02-2024)

53 Mohamedbhai (n 41).

54 *Ibid.*

55 *Ibid.*

56 *Ibid.*

57 Karugaba and Olupot "Parliament wants Makerere boss to explain collapsed perimeter wall" 2009 *New Vision* https://www.newvision.co.ug/new_vision/news/1221457/parliament-makerere-boss-explain-collapsed-perimeter-wall (16-05-2024).

HEI and erode confidence in the fairness and transparency of the procurement process.

3.7 Sextortion

The term sextortion denotes the abuse of power to acquire a sexual favour or some advantage.⁵⁸ In this regard, sex is the type of benefit (instead of money for the bribe), which may also be used in corrupt practices. Female staff and students are commonly the victims of sexual harassment at HEIs⁵⁹ and, although an alarmingly occurrence, it is unfortunately rarely acknowledged as a problem or a concern.⁶⁰ From the 1990s, studies and reports have suggested that sextortion is on the rise – with, for example, a third of female students in the United States facing sexual harassment each year.⁶¹ Power relations play a critical factor in respect of sexual harassment. These relations create the platform for exploitation in gender roles, such as a relationship developing between a lecturer and a student or a similar relationship occurring in an employer–employee relationship.⁶² The Global Report on Corruption asserted that HEIs can serve as environments conducive to sexual harassment.⁶³ Unfortunately, the lack of knowledge regarding rules and procedures at HEIs are stumbling blocks for victims seeking remedies.⁶⁴

58 International Association of Women Judges (IAWJ) *Stopping the Abuse of Power through Sexual Exploitation. Naming, Shaming and Ending Sextortion. A Tool Kit* (2012).

59 Adams *et al* “Sexual harassment: The ‘silent killer’ of female students at the University of Ayoba in South Africa” 2013 *SAJHE* 114,9–1163.

60 Dziech and Hawkins *Sexual harassment in higher education: Reflections and new perspectives* (2018) 25.

61 “Combatting sextortion: A comparative study of laws to prosecute corruption involving sexual exploitation” 2015 *Thomas Reuters Foundation* <https://www.trust.org/contentAsset/raw-data/588013e6-2f99-4d54-8dd8-9a65ae2e0802/file> (16-05-2024). See also Kalof *et al* “The influence of race and gender on student self-reports of sexual harassment by college professors” 2001 *Gender & Society* 282–302.

62 Thomas Reuters Foundation (n 59); Kalof (n59) 282–302.

63 Shaw (n 42) 103.

64 See Marks and Nelson “Sexual harassment on campus: Effects of professor gender on perception of sexually harassing behavior” 1993 *Sex Roles* 207–217.

3.8 Academic dishonesty

There are several factors that contribute to academic dishonesty and these can include, for example, plagiarism, fraud in exams, and organisations that provide illegitimate academic qualifications (often referred to as degree mills). Academic dishonesty has become a lucrative business. In 2016 so-called “contact cheating” drew over 20 000 students who purchased assignments.⁶⁵ Another form of academic dishonesty that creates grave consequences is the fabrication of research data. The lack of transparency in, for example, clinical trials creates potentially dangerous consequences where unsafe drugs can be approved for medical use.⁶⁶ Fraud in exams is also common and creates challenges especially where technological advancements may facilitate such fraudulent actions.⁶⁷ In 2017, officials at a university in Uganda were criminally charged for engaging in forging student grades.⁶⁸ In the same year, a man in India was charged with the sale of 2 000 forged degrees.⁶⁹ Academic dishonesty in these various forms threatens not only HEIs but also the proper functioning of society in general.

The various forms of corruption at HEIs erode the very essence of education and its objectives. The law does, to a certain degree, serve as a deterrent and policies within HEIs may assist in curbing corruption. The legislative and institutional

65 See Lancaster “How to stop cheating in universities” 2017 *The Conversation* <https://theconversation.com/how-to-stop-cheating-in-universities-85407> (15-06-2024).

66 See Regmi “Ethical and legal issues in publication and dissemination of scholarly knowledge: A summary of the published evidence” 2011 *Journal of Academic Ethics* 71-81.

67 Conway *et al Cheating: Digital learning activities and challenges. In Handbook of research on academic misconduct in higher education* (2017) 112-130.

68 Ligami “Up to 88 Makerere staff face degree forgery prosecution” 2017 *University World News* 1 <https://www.universityworldnews.com/post.php?story=20170915135929598> (16-05-2024).

69 Gohwar “Degree certificate racket thrives in Bengaluru” 2017 *The Hindu* 1 http://www.thehindu.com/news/cities/bangalore/degree-certificate-racket-thrives-in-bengaluru/article19127959.ece?utm_content=buffer69bc3&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer (16-05-2024).

approaches regarding corruption in South Africa is discussed in the paragraphs that follow.

3.9 International examples

International corruption incidents include competition, fame, and bad reputation which placed exceptional pressures on HEIs.⁷⁰ It was evident that the individuals and institutions who lacked managerial control were susceptible to corruption. A higher education system that fails is one where it is impossible for graduates to be free from some form of corruption.⁷¹ Take, for instance, when Bosnia conducted a study that revealed that 50% of its students viewed corruption as the most critical issue that surrounds higher education, while the remainder of students indicated that cheating was nothing out of the ordinary.⁷² In 2016, the Kenyan government resolved to eliminate the country's national examination board after its leaders were found guilty of cheating on the entrance exams.⁷³ Examination questions were on sale via WhatsApp.⁷⁴ Academic fraud has spread though internationalisation. The United States reports that international student enrolments at institutions of higher education worldwide increased drastically from 1.1 million in 1985 to 4.3 million in 2011.⁷⁵ In 2016, it was estimated 30% of United States universities were said to have used agents for undergraduate admissions, and most of the agents helped international students fabricate parts of their applications.⁷⁶ Internationally, fraud within HEIs has been

70 Shaw (n 41) 101; Shore "How corrupt are universities? Audit culture, fraud prevention, and the big four accountancy firms" 2018 *Current Anthropology* S92-S104.

71 Shaw (n 41) 102.

72 Shaw (n 41) 191-192.

73 Havergal "Kenyan exam board bosses arrested over university entry 'fraud'" 2016 *Times Higher Education* 33 <https://www.timeshighereducation.com/content/chris-havergal-0?page=33> (16-05-2024).

74 *Ibid.*

75 Parr "Rising university corruption linked to falling public investment" 2013 *Times Higher Education* <https://www.timeshighereducation.com/news/rising-university-corruption-linked-to-falling-public-investment/2007868>.article (21-02-2024).

76 American Council on Education "Mapping internationalization on U.S. campuses" 2012 *American Council on Education* 1 26-27.

documented as a substantial business, amounting to a staggering \$1.5–\$2.5 billion.⁷⁷

4. Existing laws, structures, and policies that address corruption

4.1 South African legislative framework

The Constitution of the Republic of South Africa and other legislative machinery recognises that corruption erodes society's rights.⁷⁸ Take, for instance, section 217 of the Constitution, which expects all sectors of the government to engage with contracts in a transparent and fair manner.⁷⁹ Added to this, the Competition Act of 1998 requires the establishment of the Competition Commission and Tribunal,⁸⁰ with the core function of investigating prohibited uncompetitive activities.⁸¹ The Prevention and Combatting of Corrupt Activities Act of 2004 (PCCA) was promulgated with the intent of dealing with and eradicating corruption. The PCCA regards corruption as a crime,⁸² and utilises measures from an investigative to a preventative stance in an attempt to eliminate corruption. The offences listed in the PCCA range from the abuse of power for gain to that of personal gratification in an unlawful and fraudulent manner⁸³ If the person agrees to accept gratification to use their power in an unjustified manner, they too will be guilty of corruption under the PCCA.⁸⁴ In addition to identifying corruption as a crime,

77 Parr (n 73).

78 The Constitution of the Republic of South Africa, 1996.

79 Corruption Watch “Corruption and the law in South Africa: a reference guide” 2015 7 <https://www.corruptionwatch.org.za/wp-content/uploads/2015/06/Corruption-Watch-Corruption-and-the-law-in-SA.pdf> (16-05-2024) (Hereafter “Corruption and the Law”).

80 The Competition Act 89 of 1998.

81 Corruption and the Law (n 77) 8.

82 The Prevention and Combatting of Corrupt Activities Act 12 of 2004 (hereafter “the PCCA”).

83 Corruption and the Law (n 77) 9.

84 s 1 of the PCCA. The term “gratification” includes, amongst other things, gifts, donations, fees, loans, the avoidance of loss, any status, honour, service and right or privilege.

the PCCA also provides and imposes fines and punishments,⁸⁵ which can include imprisonment for up to five years.⁸⁶ Finally, the Protected Disclosures Act of 2000 (PDA) allows for workers to unveil details about illegal or other unusual behaviour in the work environment.⁸⁷ The PDA provides for protection against any employment disclosure, and it extends to both the public and private spheres.⁸⁸

4.2 South African institutional structures

The National Prosecuting Authority (NPA) initiates criminal processes for the state. The prosecuting authority has a range of units that deal with specific commercial crimes, which includes an asset forfeiture division as well as a witness protection division.⁸⁹ Moreover, the Public Protector is tasked with dealing with any unusual and untoward conduct in state affairs or in the public sphere of government.⁹⁰ The Directorate for Priority Crime Investigation is a division within the South African Police Services that deals with organised crime, serious corruption, and serious commercial crime.⁹¹ These are just some of the national institutions in South Africa amongst others where one of their functions is to fight corruption. In addition to these national governmental institutions, HEIs may have their own structures to combat corruption. An example of this may be found in the University of Johannesburg's Fraud Prevention Policy.⁹²

In November 2021, the Risk and Assurance Unit at the University of Johannesburg adopted the fraud prevention policy. The policy envisages a zero-tolerance stance to all types of fraud and corruption amongst its workers, students, and vested

85 s 26 of the PCCA, dealing with penalties.

86 *Ibid.*

87 The Protected Disclosures Act 26 of 2000.

88 Corruption and the Law (n 77) 12.

89 Corruption and the Law (n 77) 21.

90 *Ibid.*

91 *Ibid.*

92 University of Johannesburg "Fraud Prevention Policy" 2021 <https://www.uj.ac.za/wp-content/uploads/2021/12/fraud-prevention-policy-approved-nov-2021.pdf> (16-05-2024) (Hereafter "Fraud Prevention").

stakeholders.⁹³ In this, the University of Johannesburg seeks to comply with the Constitution and all laws in the country,⁹⁴ and the policy is also reflective of the PCCA.⁹⁵ Article 6 of the policy offers safety to whistleblowers when they voluntarily share information that deals with fraud, dishonesty, and corruption.⁹⁶ The policy goes further, in terms of article 7, to hold the University's council answerable for fraud risk management.⁹⁷ The accountability is assigned to the council's Audit and Risk Committee, which function is based on the information received by the Management Executive Committee. In addition, the policy requires auditors (both internal and external) to be involved and review the findings.⁹⁸ The policy seeks to foster the highest standards of ethical and professional conduct within the University of Johannesburg,⁹⁹ and strives to acquire the maximum levels of business integrity through firm corporate governance, accountability, and transparency. The initiative taken by the University of Johannesburg is a commendable one and certainly not an isolated instance, as other HEIs have similar policies. Whether such policies prove effective will be seen in a matter of time.

4.3 International instruments

In 2005, the United Nations Convention Against Corruption (UNCAC) was formulated, a convention to which South Africa ascribes. UNCAC prescribes steps to be taken to eliminate and minimise corruption, and it fosters collaboration between all countries in combatting corruption.¹⁰⁰ Moreover, UNCAC encourages all states to participate in the prevention and elimination of corruption, as well as providing protection to those who report corruption.¹⁰¹ South African obligation in terms of this convention finds its voice in its domestic legislation (as

93 Fraud Prevention (n 90) 4-5.
94 Fraud Prevention (n 90) 5-6.
95 Fraud Prevention (n 90) 6-7.
96 Fraud Prevention (n 90) 8-9.
97 Fraud Prevention (n 90) 9-10.
98 Fraud Prevention (n 90) 10.
99 Fraud Prevention (n 90) 5-6.
100 Corruption and the Law (n 77) 2-3.
101 *Ibid.*

discussed earlier in this chapter). Added to this, the African Union Convention on Preventing and Combating Corruption provides similar principles to that of UNCAC, requiring signatories to establish, maintain, and strengthen independent, national, and anti-corruption authorities or agencies.¹⁰²

5. Recommendations and conclusion

Despite the various arguments opposing the corporatisation of HEIs, the overwhelming drive for it outweighs its opposition for the simple reason that corporatisation is now fast becoming a global trend. It is not presumptuous to assume that South Africa will invariably follow suit in its entirety soon. However, if corporatisation is the route of HEIs in South Africa, then proper the mechanisms and strategies need to be put in place to curb and eradicate the ills of corruption, mismanagement of funds, and fraud. After all, HEIs have become politically driven and an important component for endorsing and applying institutional improvements. Furthermore, redistributing power among various individuals will enhance the process of change within HEIs. In this regard, there is a need for HEIs to improve governance that will address corruption, the mismanagement of funds, and fraud. At the centre of this debate is establishing accountability within HEI structures, and thereby necessarily to support and enhance legislative and institutional structures and policies (as seen in the example of the University of Johannesburg's internal policies to address corruption).

In addition, there needs to be a drive for domestic interventions to combat corruption at tertiary level. The South African government has a key role to play in combatting corruption, as it must enact and enforce adequate regulations and standards. In the same token, government must allow for academic freedom and not interfere in the matters of HEIs. Ongoing enactments regarding corruption in respect of the HEI policies and the transparency of distribution of public funding

102 art 5.3 of the African Union Convention Against Corruption 2003 <https://www.refworld.org/legal/agreements/au/2003/en/63979> (16-05-2024).

is of grave importance. Government plays a significant role in guaranteeing that the law is preserved and upheld, and a strong message must be sent to individuals connected to academic dishonesty, fraud, mismanagement of funds, and corruption – specifically in the form of grave criminal consequences attached to such conduct. Besides ensuring government accountability, professional regulatory bodies (like medical councils and legal associations, which mandate licences for practice) play a role in mitigating corruption within HEIs. These entities serve as gatekeepers for their respective professions and hold registers of accredited professionals, and these registers should remove such transgressors if they engage in inappropriate conduct. Professionals, like doctors and lawyers, also have to ascribe by codes of conduct for the profession. Similar approaches could be adopted in HEIs.

If South African HEIs are embarking on the road of corporatisation, then focus must be placed on how to combat corruption, mismanagement of funds, and fraud. This chapter highlighted some of the risks, and also provided recommendations that could assist South African HEIs in this journey of corporatisation.