

# Lifestyle audits in South Africa – overrated or X-factor?

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## Abstract

**Purpose** – President Cyril Ramaphosa, in his 2018 State of the Nation Address, stated that “Thieves who are stealing public funds should be arrested and prosecuted”, and called for lifestyle audits of public-sector employees. The gross misuse of COVID-19 relief funds by public officials indicated the urgent need to execute these audits as an anti-corruption measure. This paper aims to provide a review of the existing state of affairs with regard to the application of lifestyle audits in South Africa.

**Design/methodology/approach** – This paper critically analyses the literature available on the current position of South Africa concerning lifestyle audits in the public sector, based on the mandates of some of the anti-corruption agencies that could be responsible for the conducting and processing of such audits.

**Findings** – South Africa has only recently seen a framework for applying lifestyle audits, developed by the Department of Public Service and Administration. Although these first steps in developing a standard practice are laudable, the practical process of dealing with misconduct and/or criminal matters remains to be seen. It is recommended that South Africa consider a legislative approach to dealing with unlawfully obtained wealth by either criminalising the act of illicit enrichment (per the United Nations Convention Against Corruption) or creating an Unexplained Wealth Order, as seen, for example, in the UK.

**Originality/value** – South Africa is in dire need of addressing corruption in the public sector. Despite lifestyle audits being called for, the lack of proper implementation is negating any positive outcomes. Therefore, alternative solutions should be investigated.

**Keywords** Anti-corruption agencies, Corruption, Lifestyle audits, Lifestyle investigations

**Paper type** Research paper

## 1. Introduction

Corruption is worse than prostitution. The first endangers the morals of an individual and the latter the morals of an entire nation.

– Karl Kraus, Austrian satirist (1874–1936)



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On 21 December 2017, during Cyril Ramaphosa's first speech as newly elected president of South Africa, he stated: "Corruption must be fought with the same intensity and purpose that we fight poverty, unemployment and inequality" (Africanews, 2017). In the 2018 State of the Nation Address (SONA), President Ramaphosa called for lifestyle audits to be conducted on all executive managers in government, including himself, as an initiative to curb corruption in the public sector (South African Government, 2018). He echoed this in a 2020 letter addressed to the African National Congress regarding issues of corruption in South Africa. The letter highlighted eight key measures to be undertaken by the state to "disrupt and dismantle the state capture networks and decisively deal with the scourge of corruption". Two of these measures were to conduct lifestyle audits on all leadership and require leadership to make regular declarations of financial interests (Lategan, 2020).

After the SONA, a task team comprising the Presidency, the Anti-Corruption Task Team (ACTT), the Financial Intelligence Centre (FIC), the Public Service Commission (PSC), South African Police Service (SAPS), Auditor General (AG), Special Investigating Unit (SIU), South African Revenue Service (SARS) and other entities was requested to develop a framework for conducting lifestyle audits (Magubane and Gerber, 2018). Government also warned of widespread implementation of lifestyle audits in the public sector (Thompson, 2020).

In October 2020, the late Minister Jackson Mthembu said that lifestyle audits for ministers were finally commencing (Maqhina, 2020). However, in March 2021, Deputy Minister in the Presidency Thembi Siweya stated that lifestyle audits would only be conducted on senior management, and only in the new financial year, 2021/2022. Reasons for the delay in implementation related to more urgent matters brought upon the government by the COVID-19 pandemic (Maqhina, 2021). Considering the South African Government's historic delay in implementing new and improved strategies and legislation (Parliamentary Monitoring Group, 2021), one could argue that COVID-19 was merely another excuse for inaction. Government's COVID-19 pandemic response subsequently gave rise to even more corruption, which was widely reported [Felix, 2022; Imray, 2021; Oduor, 2021; SIU (Special Investigating Unit), 2021].

Legislation governing the standards and behaviour of public officials is contained in, amongst others, the Constitution of the Republic of South Africa (Constitution of the Republic of South Africa, 1996), which states in Section 195(1)(a): "A high standard of professional ethics must be promoted and maintained." Section 3(h) of the Public Service Act (PSA) (1994) refers to "integrity, ethics, conduct and anti-corruption in the public service", and also refers to lifestyle audits as an acceptable fraud prevention and detection mechanism. The objectives of the Public Administration Management Act 11 of 2014 (PAMA) are set out in Section 3 which, inter alia, requires a high standard of professional ethics and prevention of unethical practices. Finally, Section 38(1) of the Protection of Personal Information (POPIA) (2013) (POPIA) provides that personal information processed for the purpose of discharging a relevant function [1] is exempt from Sections 11(3), 11(4), 12, 15 and 18 – which deal with the collection and use of personal data – as the application of these provisions would likely prejudice the proper execution of that function.

This article elucidates the existing state of affairs with regard to the application of lifestyle audits in South Africa through a critical analysis of available literature. The article discusses, amongst other things, the country's current stance on compliance with the United Nations Convention Against Corruption (UNCAC), the available lifestyle audit framework in South Africa and the applicable anti-corruption role players. The remainder of this article is divided into six sections: a discussion of the requirements of the UNCAC pertaining to Article 20; the results of the South African Country Review according to the UNCAC; the definition of a lifestyle audit; the mandate of South African anti-corruption agencies to perform lifestyle audits; and the current framework for conducting lifestyle audits.

## 2. United Nations Convention Against Corruption

UNCAC is an international anti-corruption treaty born of negotiations held between 2001 and 2003 and was adopted by the General Assembly in October 2003 (United Nations Office on Drugs and Crime [United Nations Office on Drugs and Crime (UNODC), 2004]. Hechler (2017) describes it as a remarkable achievement – “a global response to a global problem”.

This treaty is unique in its global coverage. Article 68 of the UNCAC states that it has to be ratified by at least 30 countries for the Convention to take effect. These state parties must commit to taking the necessary measures to support and make the Convention effective [United Nations Office on Drugs and Crime (UNODC), 2004]. By 2020, 187 countries had ratified the Convention and South Africa adopted the Convention in November 2004 [United Nations Office on Drugs and Crime (UNODC), 2020].

The UNCAC not only underlines the importance of preventative and corrective measures but also focusses on the universal nature of corruption. It stipulates provisions for international cooperation and the return of the proceeds of corruption (Hechler, 2017). These provisions are mostly mandatory, with some strongly encouraged or optional. The Convention consists of eight chapters, of which Chapter II is concerned with preventative measures, and Chapter III with criminalisation and law enforcement [United Nations Office on Drugs and Crime (UNODC), 2004], which will be touched upon in this article.

The preventative measures commence with Article 5 stating that each state party shall develop and implement anti-corruption policies and procedures. Article 6 speaks to the existence of an anti-corruption body that implements the policies referred to in Article 5. Articles 7–10 elaborate on measures that should be implemented in the public sector, specifically the employment of civil servants, management of public funds, and a code of conduct applicable to the public officials – including requiring public officials to declare their financial interests, outside activities and any other matters that might cause a conflict of interests [United Nations Office on Drugs and Crime (UNODC), 2004].

After dealing with the bribery of public officials and the abuse of functions, Article 20 requests state parties to consider establishing the criminal offence of illicit enrichment when there is “a significant increase in the assets of a public official, which he or she cannot reasonably explain in relation to his or her lawful income” [United Nations Office on Drugs and Crime (UNODC), 2004].

To achieve these objectives, the UNCAC (UNODC, 2004) established a mechanism of peer-reviews involving two state parties. These reviews follow a desk review process, whereby the country under review prepares a self-assessment report, and the country will be visited only upon request by the reviewer (Hechler, 2017). Article 63, Chapter VII, states that state parties must prove that their legislation is aligned to the Convention. If not, new laws should be adopted, or existing ones amended, to comply with the Convention’s regulations [United Nations Office on Drugs and Crime (UNODC), 2004; Argandoña, 2007, p. 484].

## 3. South Africa’s review

As part of the 2010–2015 review cycle of the UNCAC, South Africa’s review was conducted by Mali and Senegal on Chapter III (Criminalisation and Law Enforcement) and IV (International Cooperation), in 2012. South Africa also received a country visit in September 2012 [United Nations Office on Drugs and Crime (UNODC), 2013, p. 1]. The second review cycle for South Africa, on Chapters II and VI, was performed in October 2020 by Niger and the Cook Islands; however, the report has not been published to date.

In the report on the first review, South Africa noted with growing concern the increase in corruption and the impact thereof on society and recommitted to promoting good governance and an ethical culture (UNODC, 2013, p. 2). This Country Review was conducted

in 2012, but South Africa has, to date, seen no change in its corruption status as measured by the Corruption Perception Index, where it is still ranked 69 of 180 countries, with a score of 43 (where 0 is “Highly corrupt” and 100 is “Very clean of corruption”) ([Transparency International UK, 2021](#)).

South Africa’s self-assessment on Article 20 of the Convention stated that it has not adopted the general statute to address illicit enrichment. As an alternative, Section 23 of The [Prevention and Combating of Corrupt Activities Act \(PRECCA\) \(2004\)](#) (PRECCA) was presented, as it deals with the issue of illicit enrichment by granting authority to the National Director of Public Prosecutions (NDPP) to apply to a judge for an investigation direction based on evidence of a disproportionate standard of living. This information could also be used in a criminal investigation or to seize property ([UNODC, 2013](#), p. 6).

South Africa further stated that Section 23 had not been implemented in practice, and that guidelines were under development to facilitate its proper application. Interestingly, PRECCA ([PRECCA, 2004](#)) came into effect in 2004; the Country Review in 2012 stated that the practical implications (of Section 23) were being developed but, by 2021, this Section had neither been implemented, nor had any guidelines been published on its practical implementation.

An explanatory memorandum attached to PRECCA Amendment Act of 2017 discusses the reasons for the proposed amendments, according to recommendations in international reports (UNCAC and the Organisation for Economic Co-operation and Development [OECD]). This memorandum refers to “a detailed mechanism to facilitate the investigation of suspected cases of illicit enrichment by public officials” as one of the successes of the Chapter III implementation ([PRECCA, 2017](#), p. 14). It seems that this opinion was based solely on the PRECCA ([PRECCA, 2004](#)), without proper evidence of implementation. Furthermore, Section 23 may perhaps relate to illicit enrichment. However, due to illicit enrichment not being classified as a crime (with related elements) in South Africa, Section 23 cannot be used as is without proper analysis of an individual’s income, living expenses and property ownership. This analysis corresponds with the workings of a lifestyle audit.

#### 4. Lifestyle audits

Corruption is clandestine in nature – these transactions are usually concluded “off-book”. Due to the difficulty in detecting these transactions, lifestyle audits can be used as an early warning mechanism to detect changes in an individual’s lifestyle ([Consumer Profile Bureau, 2021](#); [Hoogenraad-Vermaak, 2021](#)).

A lifestyle audit is a process of tests performed on a person’s financial information to determine if the person’s lifestyle corresponds with his/her known sources of income ([Powell, 2010](#)). It therefore aims to achieve one broad objective: to establish whether a person is living above his or her legal means. This, together with an unexplained change in a person’s lifestyle, is often the only clue to a lifestyle possibly funded by illicit activities ([Powell, 2010](#); [Thompson, 2020](#)).

Lifestyle audits are, therefore, an assessment of an individual’s income and expenses related to the living standard of the person. Such quantification can be periodically compared against the person’s income sources and expenditure items to discover any discrepancies. This process typically includes the analysis of bank statements, in-depth verifications, asset declarations and field surveillance, to name a few ([McIntyre and De Villiers, 2020](#), p. 13).

Since 2018, the media has continuously reported on the implementation of lifestyle audits in the public sector. See, for example, “Lifestyle audits to be standard practice in public service” ([Phakathi, 2019](#)); “Presidency again delays lifestyle audits for ministers and

deputies” (De Klerk, 2021); and “Lifestyle audits will be implemented on government officials accused of wrongdoing” (Sidimba, 2021). Some state employees, including members of Eskom and the Western Cape (WC) cabinet, have already been subjected to lifestyle audits.

In a meeting of the WC Standing Committee on Premier and Constitutional Matters held in October 2020, the chairperson shared the results of a comprehensive lifestyle audit and analyses of business interests conducted on the 11 WC Members of Cabinet and their spouses. This report included the methodology followed, which revealed that the audit included consent forms; questionnaires with supporting documentation, including bank statements and declarations; business intelligence searches; individual net-worth calculations; and interviews for clarification where necessary. The lifestyle audits revealed that all the MECs appeared to be living within their means, and that no suspicious transactions had been identified (Parliamentary Monitoring Group, 2020a).

Lifestyle audits conducted on some 400 senior Eskom employees focussed on whether these employees abused their positions to benefit themselves and their families unduly. Various other matters were also revealed when more Eskom employees were investigated. It was found that 135 officials were doing business with Eskom, valued in excess of R6bn, and 5 452 employees had failed to declare their conflicts of interests. Of these, 60 were found to have conflicting interests (Parliamentary Monitoring Group, 2020b).

#### *4.1 Rationale and methodologies*

Lifestyle audits can be used by government as an accountability tool and anti-corruption measure. The possibility that public officials who are living beyond their means acquired wealth from illicit activities, including bribes or other corrupt behaviours, would then lead to a personal integrity assessment (Martini, 2012, p. 2). The World Bank and UNODC (2012, p. 19) are of the opinion that lifestyle audits are more likely than other means of verification to reveal non-disclosure of a public official’s financial information and whether the official might be concealing assets in the names of family members or close acquaintances.

To examine an official’s financial information, a clear methodology should be followed. France (2021, p. 7) refers to two methodologies:

- (1) a desk review to verify information provided via financial disclosures and other open-source data; and
- (2) observations in the field – a surveillance-type method to determine whether an individual and his/her close acquaintances maintain a lifestyle that requires more than his/her declared wealth.

Two distinct methodologies emerged from the WC and Eskom lifestyle audits: general lifestyle audits and suspicion-based lifestyle audits. McIntyre and De Villiers (2020, p. 14) state that the objective of the lifestyle audit will indicate the appropriate methodology for a specific case.

A general lifestyle audit is a process whereby an individual’s known income is compared to publicly available information or information he/she declared as part of an entity’s annual financial declarations and conflict-of-interest processes, usually referred to as a “desktop review”. This information can include property ownership, Companies and Intellectual Property Commission (CIPC) information and general information available via the entity or publicly available data.

Suspicion-based lifestyle audits, also referred to as specific or complex lifestyle audits, require extensive information and procedures in addition to those mentioned above. Sources include statements of assets and liabilities, tax returns, bank statements, external data from

newspapers and social media, unstructured data and original documents (McIntyre and De Villiers, 2020, p. 13; Consumer Profile Bureau, 2021, p. 26). Personal information can either be requested from the individual or accessed with a subpoena or court order (which will only be provided based on a reasonable suspicion based on prima facie evidence) (Powell, 2010). Therefore, the process identifies a lifestyle disproportionate to the individual's known income, such as properties with no bond or vehicles with a monthly repayment exceeding what the person could reasonably afford (Powell, 2010).

The execution of a lifestyle audit is a cumbersome process that requires vast resources in the form of skills, time and money. Furthermore, the audit cannot be conducted without validating the data and ensuring that the process of collection was sufficient, reliable and legal (McIntyre and De Villiers, 2020, p. 13).

## 5. Anti-corruption agencies

South Africa follows the multi-agency approach to fight corruption [NACS Steering Committee (National Anti-Corruption Strategy Steering Committee), 2016, p. 32]. According to Pillay (2017, p. 3), this model entails exchanging information and coordination and cooperation between various government entities. Meagher and Voland (2006, p. 15) add that this approach is strengthened when combined with more specialised anti-corruption units. South Africa's anti-corruption strategy includes 19 different agencies/units, with access to a range of public databases to gather business intelligence on individuals and businesses. This section will touch on some of these bodies' mandates and their ability to conduct lifestyle audits (Table 1).

### 5.1 South African police service

Chapter 11 of the Constitution (Constitution of the Republic of South Africa, 1996) stipulates the responsibility of the SAPS, which includes preventing, combating and investigating

Function	Agency
Constitutional and public oversight bodies	(1) South African Police Service (SAPS)
	(2) Independent Police Investigative Directorate (IPID) (established within the SAPS)
	(3) Inspector-General of Intelligence (IGI)
	(4) Public Service Commission (PSC)
	(5) Public Protector of South Africa (PPSA)
Criminal justice agencies	(6) National Prosecuting Authority (NPA)
	(7) Asset Forfeiture Unit (AFU)
	(8) Directorate for Priority Crime Investigation (DPCI)
	(9) Investigating Directorate (ID) (established within the NPA)
	(10) Special Investigating Unit (SIU)
	(11) State Security Agency (SSA)
	(12) Financial Intelligence Centre (FIC)
Coordinating bodies	(13) Anti-corruption Inter-Ministerial Committee (ACIMC)
	(14) Anti-Corruption Task Team (ACTT)
	(15) Fusion Centre
Other	(16) National Intelligence Coordinating Committee (NICOC) [oversight body]
	(17) South African Revenue Service (SARS), Auditor General of South Africa (AGSA)
	(18) Office of the Chief Procurement Officer (OCPO)
	(19) Department of Public Service and Administration (DPSA)

Source: De Lange (2022, p. 72)

**Table 1.**  
South Africa's anti-corruption agencies

crime. Units dedicated to investigating commercial crime are housed within the SAPS, such as the Directorate for Priority Crime Investigation (DPCI) and the Public Protector of South Africa (PPSA).

*5.1.1 Directorate for Priority Crime Investigation.* The DPCI is an independent directorate established within the SAPS in terms of Section 17C of the [South African Police Service Act \(1995\)](#), as amended by the [South African Police Service Amendment Act \(2008\)](#). However, its lack of independence has been widely criticised ([Budhram and Geldenhuys, 2018](#), p. 48; [Mathekga, 2017](#), p. 254).

The DPCI is responsible for combating, investigating and preventing national priority offences of a serious nature, such as organised crime, commercial crime and corruption, specifically related to Section 34 of PRECCA ([PRECCA, 2004](#); [De Lange, 2022](#)). The DPCI's focus on reported crime or reasonable suspicion of a crime excludes general lifestyle audits. However, specific lifestyle audits may be performed as part of investigations.

*5.1.2 Public Protector of South Africa.* The PPSA is mandated by Section 182 of the Constitution ([Constitution of the Republic of South Africa, 1996](#)) to investigate any complaints or allegations of improper conduct in state affairs or public administration in any sphere of government. Therefore, this mandate includes public officials and public office-bearers but excludes the general public.

While the primary source of the PPSA's powers is the Constitution ([Constitution of the Republic of South Africa, 1996](#)), Section 182(2) provides for powers and functions as set out in the [Public Protector Act \(1994\)](#) (PPA). Section 6 sets out the matters the PPSA may investigate, and Section 6(4)(a)(iv) specifically refers to the investigation of improper or unlawful enrichment relating to public administration – i.e. corruption. These matters must be reported to PPSA either verbally or in writing, under oath, stating the nature of the matter, the grounds for investigation and the information known to the source (Section 6(1)).

Furthermore, the [Executive Members' Ethics Act \(1998\)](#), the code of ethics governing the conduct of the members of the Executive, mandates the PPSA to investigate any breach of the code of ethics as stipulated in Sections 3 and 4.

Since the 2018 SONA, when the importance of lifestyle audits was stressed, the PPSA has not indicated an interest in performing such audits. For example, the WC's lifestyle audits on 11 members of the Executive Council and their partners were performed by an external forensic firm ([Parliamentary Monitoring Group, 2020a](#)). The performing of general lifestyle audits seems to fall outside the scope of the PPSA, due to it not being a matter of investigation as stipulated in Section 6 of the PPA ([Public Protector Act, 1994](#)).

The inference can be drawn that the PPSA can perform lifestyle audits on public officials or members of the Executive under circumstances warranting an investigation; however, the general call for lifestyle audits by the president falls outside the Public Protector's ambit.

### *5.2 National prosecuting authority*

The National prosecuting authority's (NPA's) mandate is covered in Section 179 of the Constitution ([Constitution of the Republic of South Africa, 1996](#)) and the [National Prosecuting Authority \(1998\)](#). The NPA is mandated to conduct criminal proceedings on behalf of the state and perform any other related functions.

The NPA's structure comprises eight business units, including the Specialised Commercial Crimes Unit (SCCU), the Asset Forfeiture Unit and the Investigating Directorate (ID). The SCCU's mandate is to investigate and prosecute complex commercial crimes emanating from the SAPS Commercial Crime Branch. However, with regard to corruption cases, the SCCU partakes in the ACTT, which was established to concentrate on accelerating the investigation and prosecution of serious corruption cases.

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The NPA is thus only tasked with prosecuting matters initiated by police investigation [NPA (National Prosecuting Authority), 2021] and does not have the mandate to perform any investigation-related work.

*5.2.1 Asset forfeiture unit.* The Asset forfeiture unit (AFU) is a separate business unit within the NPA and was established to focus on the implementation of Chapters 5 and 6 of the Prevention of Organised Crime Act 121 of 1998 (POCA), which provides for both criminal (conviction-based) and civil (non-conviction-based) forfeiture. All proceedings in terms of Chapters 5 and 6 of the POCA are civil in nature. The confiscation and forfeiture provisions of POCA (POCA, 1998) apply to a broad range of proceeds and property, per Section 1 of the Act.

The main aim of the AFU is to seize the proceeds of organised crime, money laundering and criminal gang activities. In terms of Section 71 of POCA (POCA, 1998), the AFU can request any related information from statutory bodies or government departments.

The AFU can, therefore, compile lifestyle audits and use the results as part of investigations. However, conducting general lifestyle audits falls outside its scope. In addition, Willie Hofmeyer, former head of the AFU, recently stated that, in his experience, lifestyle audits are “useless”, due to the way information on trusts is kept at the Master’s office. He explained that it is impossible to find a link between an individual and a family trust (Erasmus, 2021).

*5.2.2 Investigating Directorate.* The ID was established in terms of a proclamation by *Government Gazette* in April 2019 (President of the Republic of South Africa, 2019, p. 1) as an instrument in the fight against corruption. It is a temporary operational intervention with a five-year mandate, instituted to deal with the immediate crisis caused by corruption in and disruption of state institutions [SAPS (South African Police Services), 2020, p. 40]. The ID focusses on common and statutory law relating to serious, high-profile or complex corruption arising identified by commissions of inquiry such as the Zondo Commission. Given the mandate of the ID, the conducting of general lifestyle audits is excluded.

### *5.3 Anti-corruption task team*

The ACTT has no legal framework to regulate its establishment or powers. It is a combination of members of 15 state agencies and departments, to ensure cooperation amongst the various role players and law enforcement agencies in achieving the objectives of the DPCI. The DPCI is therefore the convener of this body (Parliamentary Monitoring Group, 2020c).

### *5.4 Special investigating unit*

The SIU was established in terms of the *Special Investigating Units and Special Tribunals Act (1996)* and reports directly to the president.

The SIU’s mandate is to investigate fraud, corruption and maladministration within government departments. Bruce (2014, p. 55) describes the SIU as the only organisation solely dedicated to investigating corruption. However, the SIU can only investigate matters by means of a proclamation signed by the president. Furthermore, its mandate is the civil recovery of losses, meaning that criminal investigation are to be referred to the NPA (which, in turn, refers these to the DPCI) (Bruce, 2019, p. 2).

On 6 April 2018, Proclamation 11 of 2018 authorised the SIU to conduct investigations into allegations of fraud and corruption by employees of Eskom and Transnet. In addition, the SIU was instructed to conduct lifestyle audits on key senior employees implicated in the allegations. Civil action was instituted in 2 cases, and 71 matters were referred to the NPA and AFU (Parliamentary Monitoring Group, 2020b).



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In terms of Section 4(1)(c) of the SIU Act ([Special Investigating Units and Special Tribunals Act, 1996](#)), the SIU can investigate, institute and conduct civil proceedings in a Special Tribunal or any other court of law to assist in the recovery of losses or damage suffered by a state institution. This, together with its independent operations, seems to indicate that the SIU is ideally positioned to conduct lifestyle audits. However, due to the structure and mandate of the SIU, these matters can only be dealt with from a civil perspective, and criminal matters must still be referred to the NPA (Section 4(1)(d)).

#### *5.5 State security agency*

The mandate of the State Security Agency (SSA) is to provide intelligence on potential threats to the country's stability and its citizens' safety and well-being, on both national and international levels ([National Government of South Africa, 2021](#)). According to the [National Strategic Intelligence Amendment \(2002\)](#), the mandate also includes a counter-intelligence responsibility, meaning the SSA may conduct security screenings of new and current employees in all organs of state.

Security screenings may involve obtaining lifestyle-related information, but the SSA's mandate does not assign any direct obligation to perform lifestyle audits ([Cave, 2021](#)), as unexplained wealth, *per se*, is not a threat to national security.

Although Gauteng MEC David Makhura requested the SSA to perform lifestyle audits on all members of the Gauteng provincial government in August 2020 ([Nyathi, 2020](#)), the SSA's mandate did not provide for conducting such audits.

#### *5.6 Financial intelligence centre*

The FIC is an organ of state (Constitution, Section 195), established in terms of Section 2 of the [Financial Intelligence Centre Act \(2001\)](#), which governs its objective, functions and general powers. The main purpose of the FIC is to combat money laundering and terrorist financing, but it also plays a vital role in the fight against corruption. Section 3(1)(a) states that the general objective of the FIC is to assist in the "identification of the proceeds of unlawful activities" and 3(1)(c) make available the information to certain statutory bodies, to enable the administration and enforcement of the laws.

Regarding the FIC's objective, as stated in Section 3, "proceeds of unlawful activity" and "unlawful activity" have the same meaning as in Section 1 of the POCA ([POCA, 1998](#)). Proceeds of unlawful activity refer to gratification of any kind as a result of unlawful activity, whereas unlawful activity refers to conduct that constitutes a crime or contravenes any law. This objective alone can plausibly be construed to mean that lifestyle audits fall within the scope of powers of the FIC; however, its mandated objectives and powers do not explicitly make this provision.

Lifestyle audits, specifically complex audits, require an analysis of individuals' bank statements. Although the FIC has insight into all individuals' bank accounts and, therefore, their bank statements, Section 27 A limits this power to unusual or suspicious transactions and cash or international transactions above R24 999.99 (Regulation 22B) [[Financial Intelligence Centre \(FIC\), 2018](#)].

Furthermore, Section 40 restricts the FIC in sharing information to stipulated recipients – the NPA, SIU, PPSA and SARS – meaning the FIC cannot freely supply information to any governmental body to conduct general or complex lifestyle audits.

Despite the mission of the FIC being to provide financial intelligence in the fight against crime, and it having the ability and perhaps the expertise to conduct lifestyle audits, it is clear from its mandate that general lifestyle audits on public officials and the reporting thereof do not fall within its scope.

### 5.7 South African revenue service

Where SARS suspects an individual of having under-declared his/her income, the taxpayer is requested to fill out a Lifestyle Questionnaire, which requires information on the taxpayer's and his/her spouse's financial state of affairs, including specific particulars of income, living expenses, movable and immovable assets and investments and connected entities, to name a few (Thompson, 2020).

Chapter 5 of the [Tax Administration Act \(2011\)](#) (TAA) governs the information-gathering powers of SARS in order to administer the Act. It has been a standard practice of SARS since 2007 to gather information by means of the Lifestyle Questionnaire, issued to taxpayers in terms of Section 74B of the [Income Tax Act \(1962\)](#) (ITA), even though there is no obligation to complete this questionnaire. However, in [Commissioner for the South African Revenue Services v Brown \(2016\)](#), the judge held that the information required by the Lifestyle Questionnaire relates to "relevant material" as defined in Section 1 of the TAA, and therefore had to be disclosed. According to [The Short Guide to the Tax Administration Act 28 of 2011 \[SARS \(South African Revenue Service\), 2013, p. 23\]](#), SARS may request relevant material to administer a tax Act to verify whether a return, declaration or document is correct; to audit a person's tax affairs; to establish the correct tax liability or refund; to collect tax debt; and to investigate and collect evidence of tax offences.

Even though SARS can conduct search-and-seizure operations when criminal conduct is suspected, such as tax crimes of non-compliance, lifestyle audits do not fall within this category, and SARS will therefore not perform such operations to obtain information to conduct a lifestyle audit (Thompson, 2020).

Section 69(1) of the TAA ([Tax Administration Act, 2011](#)) provides for taxpayer confidentiality, meaning that SARS cannot disclose taxpayers' information to any person who is not a SARS official, except in the course of performance of a SARS official's duties in relation to a tax offence (Section 69(2)). In [Public Protector v Commissioner of SARS and Others \(2020\)](#), the Public Protector subpoenaed the Commissioner to provide information under Section 11(3) of the PPA after he had failed to disclose information relating to former president Jacob Zuma. It was held that SARS has a legal obligation in terms of the TAA to keep taxpayers' information confidential, and that the PPA ([Public Protector Act, 1994](#)) does not contain provisions that override the confidentiality provisions.

Only the following Acts contain provisions for overriding taxpayer confidentiality:

- Section 1 of the [Drugs and Drug Trafficking Act 140 of 1992](#).
- Section 37 of the [Financial Intelligence Centre Act \(2001\)](#).
- Section 71 of the [Prevention of Organised Crime Act 121 of 1998](#).

Thus, performing general lifestyle audits on public officials falls outside of the scope of SARS's functions.

### 5.8 Fusion centre

The Fusion Centre (housed within the FIC) was established in 2020 to strengthen cooperation between law enforcement entities such as the NPA, SCCU, AFU, SAPS, SIU, DPCI, FIC, SSA and SARS, to prevent, detect, investigate and prosecute COVID 19-related corruption ([Parliamentary Monitoring Group, 2020d](#); [Marais et al., 2020](#), p. 5). However, it has continued to operate as a multi-disciplinary initiative that coordinates the workflow between the different role players.

The Fusion Centre does not have its own legislative mandate; the different agencies involved in this undertaking use their own policies and legislative frameworks to gather, analyse and share information. If this centre proves successful as an inter-agency and inter-departmental model, formal legislative amendments would have to be formalised to give it the necessary protection and permanence (Marais *et al.*, 2020, p. 5).

As the mandate for the Fusion Centre has not been formalised, this multi-disciplinary entity might be able to conduct general lifestyle audits, as it will house individuals from different spheres of government with the necessary skills to conduct these audits. In addition, depending on the reporting structure, it might have the necessary independence.

#### *5.9 Auditor general of South Africa*

The office of Auditor general of South Africa (AGSA) is the supreme audit institution of the Republic, established by Section 181(1)(e) of the Constitution (Constitution of the Republic of South Africa, 1996), with its functions listed in Section 188 and regulated by the Public Audit Amendment Act 5 of 2018 (PAAA) (PAAA, 2018). It is mandated to report on all accounts, financial statements and financial management of government institutions. Under Section 5 of the PAAA, the AGSA can also perform other audit-related services.

The AGSA's functions are listed in Section 4 of the PAAA, and Section 5 provides for additional functions. Section (5)(1)(d) specifically relates to the carrying out of investigations or special audits of any institution if the AGSA receives a complaint or request and considers such to be in the public interest. The question remains whether the AGSA can, within its mandate, perform lifestyle audits.

Per Section 15 of the PAAA (PAAA, 2018), the AGSA has unrestricted access to information of the auditee, meaning that the financial disclosure made by public officials within the various departments falls within the definition of "unrestricted access". The AGSA, therefore, has access to information to perform general lifestyle audits on public officials.

#### *5.10 Department of Public Service and Administration*

The Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit (PAEIDTAU) was established in 2019, under Section 15 of the PAMA (PAMA, 2014), as a unit under the Department of Public Service and Administration (DPSA), to, *inter alia*, assist government departments to improve their internal systems related to disciplinary processes and to develop a framework for conducting lifestyle audits on public officials (DPSA, 2021a).

In terms of its mandate, this unit is able to conduct general lifestyle audits on all public officials, except members of the Executive (which includes members of cabinet and deputy ministers). Its mandate further states that discovery of a criminal act such as corruption will be reported to the relevant authorities.

In May of 2021, the PAEIDTAU published two documents, of which one related to lifestyle audits: the Guide to Implement Lifestyle Audits in the Public Service (DPSA, 2021b). This framework is currently the only one available in South Africa.

## **6. The available South African framework**

In March 2021, the Public Service released *The guide to implement lifestyle audits in the public service* (hereafter referred to as "the Guide"). The Guide was developed in response to the request to perform lifestyle audits in the South African Police Service Amendment Bill (2020). The then Minister of Public Service, Senzo Mchunu, approved the Guide on 1 April 2021 (Hoogenraad-Vermaak, 2021). To date, this is the only document in South Africa that deals explicitly with the execution of lifestyle audits in the public service.

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In the Guide, 'lifestyle audit' is defined as a combination of reports obtained from various databases in order to compile an individual's financial profile, i.e. declared income against known assets (DPSA, 2021b, p. 6). According to Cave (2021), conducting lifestyle audits not only forms part of government's proactive anti-corruption strategy but is also a governance best practice. Hoogenraad-Vermaak (2021) adds that lifestyle audits are a critical tool in managing risk relating to fraud and corruption in government departments.

The aim of the Guide is to provide assistance to departments and other government components to execute lifestyle audits. To do so, Regulation 22 of the Public Service Regulations (PSR) (2016) provides for heads of departments to manage the risks pertaining to ethics and corruption. Therefore, the Guide mandates the heads of departments or their delegated officials (i.e. ethics officers and investigators) to conduct lifestyle audits. It also provides for the development of a whistle-blowing system for suspicious activities (22(c)) and a single coordinated information system across all national and provincial levels (22(d)), and 22(e) further requires the head to refer allegations of corruption to the relevant law enforcement agency and to investigate whether disciplinary action should be taken and, if so, institute such action.

In the discussion of Regulation 22(e), the Guide states: "That corruption identified during lifestyle audits be referred, investigated and acted upon". This wording is peculiar. Various researchers have indicated that the results obtained from lifestyle audits are not conclusive in themselves (Powell, 2010) and do not provide a definite indication that a criminal activity took place (France, 2021, p. 10). The results can, at most, demonstrate inconsistencies found in the assessment of the individual's lifestyle that warrant further investigation.

The Regulations further relies on Section 34 of PRECCA (PRECCA, 2004), which requires a person holding a position of authority who knows or ought to have known, or has a suspicion about fraud (or other listed offences) in excess of R100,000 having been committed, to report it to the DPCI. Again, while lifestyle audits can only provide discrepancies and perhaps raise suspicion, it is by no means evidence of any criminal offence. The Guide also refers to Section 15(5) and (6) of the PAMA (PAMA, 2014), relating to the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit (PAEIDTAU). Section 15(5)(a) states that, when an institution discovers an act of corruption, it must (a) be reported to the police, and (b) issues of misconduct stemming from criminal investigations must be reported to the PAEIDTAU and the head of the institution for disciplinary proceedings. As stated previously, lifestyle audits cannot be relied upon to discover corruption. It is submitted that these legal stipulations are contrary to the function of lifestyle audits.

Ironically, the PAEIDTAU was established in 2014 – seven years prior to implementing the Guide – to set standards for addressing issues related to unethical conduct and corruption in the public service. However, in September 2021, the then Minister of Public Service and Administration, Ms Ayanda Dlodlo, launched the PAEIDTAU virtually, tasked with functions such as the implementation of an ethics and anti-corruption policy (including implementation of lifestyle audits), the strengthening of the ethics infrastructure and addressing issues of corruption through the referral of cases, disciplinary processes and identification of policy loopholes (South African Government, 2021). According to the Guide, this unit has arrangements with the SAPS in respect to the referral of investigations, and with the FIC for the screening of identified employees in any financial misconduct (DPSA, 2021, p. 11).

In terms of the methodology and methods followed in the execution of lifestyle audits, the Guide lists three tests to determine if an employee's lifestyle corresponds with his/her income [DPSA (Department of Public Service), 2021, pp. 12-16], detailed below.

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### *6.1 Lifestyle review*

This process includes the assessment and consolidation of reports on an employee's information contained in the various internal databases of the department, including the reporting, information, e-Disclosure systems, gift registers, the Central Supplier Database and the Personnel and Salary System. The e-Disclosure system contains information provided by employees, such as directorships and partnerships, shareholdings, loan accounts, ownership of income-generating assets and other immovable property, trusts and a declaration of supplementary remunerated work, to name a few. The consolidation also considers information retrieved from external databases such as the Deeds Office, eNatis and the CIPC.

A lifestyle review is initiated via alerts or reports from the reporting system, verification of a submitted financial declaration or random sampling in accordance with the ethics management strategy. However, the Guide is clear that a lifestyle review is the first step to finding inconsistencies, and will, if needed, be followed up with a lifestyle investigation.

### *6.2 Lifestyle investigations*

A lifestyle investigation is initiated when a lifestyle review identifies irregularities. The aim is to collect evidence to prove an allegation of undeclared income. The investigation uses the information gathered in the lifestyle review and includes criminal records obtained from SAPS and movement records from the Department of Home Affairs. The Guide states that, "where corruption is detected", the case must be referred to the SAPS for criminal investigation, but the department should continue with an internal disciplinary process, in line with Section 16 A(2) of the PSA ([Public Service Act, 1994](#)), which mandates the head of the department to take appropriate disciplinary steps against an employee who is not complying with the provisions of the Act, regulations or any other directive. The Guide also refers to a register that should be kept to monitor the progress of the referred cases, and that any issues of misconduct should be reported to the unit, per Section 15(5)(a) and (b) of PAMA ([PAMA, 2014](#)).

A lifestyle investigation is performed through four processes: engagement, evidence collection, reporting and loss recovery. The guide is not specific as to the methodology used during the evidence collection process, but explains it as creating and testing hypotheses regarding possible fraud. If such tests support the hypotheses, a report is compiled from the collected evidence, to serve as the basis for a lifestyle audit. The loss recovery process refers to asset forfeiture actions to be taken after the referral of a case.

### *6.3 Lifestyle audit*

According to the Guide, a lifestyle audit has to be performed by a professional auditor, who will quantify the employee's income and expenses to construct a standard of living, using direct or indirect methods. The Guide lastly requires the outcome to be a report able to withstand the scrutiny of a court.

Although it is commendable that the public service has taken the first steps towards meeting the president's request by compiling the Guide on the implementation of lifestyle audits, it remains to be seen whether the theoretical foundation of this Guide is feasible in practice. It is further noted that, to conduct the mentioned lifestyle analysis, individuals will need specialised training in the understanding and processing of financial information. The Guide refers to the PAEIDTAU to assist in this matter. Case referrals to the SAPS for investigation and the NPA for prosecution have not proved successful in recent years ([De Lange, 2022](#)), which begs the question whether implementation will indeed fulfil the mandate and yield results. Finally, a lack of independence is clearly visible in the structure

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of the lifestyle audit process in the public sector. The DPSA has developed the process and will execute the investigation in-house, with the support of ethics officers and assistance from the PAEIDTAU. Meagher and Voland (2006, p. 7) confirm this by stating that an anti-corruption agency within a government department may seem strong because it can report directly to the chief executive; however, this is also likely to weaken its independence.

## 7. Conclusion

The call in early 2018 for lifestyle audits as an anti-corruption measure has spawned ample attention from the general public, and many newspapers have reported on the progress (or lack thereof). The COVID-19 pandemic contributed further delays in the process. However, three years later (in 2021), the DPSA compiled the Guide on the application of lifestyle audits.

Lifestyle audits comprise the amalgamation of various reports and information to profile an individual's lifestyle according to income and expenses. However, the results must be interpreted with caution; it cannot be regarded as conclusive proof of illicit activity without any further proof. Furthermore, lifestyle audits are time-consuming for all involved and unsettling for the individual.

This article analysed various anti-corruption agencies according to their mandates, to determine the agency that should be responsible for the execution of general lifestyle audits on public officials. The AGSA, SIU and Fusion Centre seem best suited to conducting these audits. However, the Fusion Centre needs legislative amendments to establish its mandate.

The Guide provided by the DPSA presents a theoretical foundation for the implementation of lifestyle audits, but it does not specify the methods. Instead, it refers to the PAEIDTAU to assist in training, developing and assisting staff employed to perform these audits. It was argued that the lack of independence of this function within the DPSA might hamper audits, and referrals to the SAPS have also not proven successful. While the Guide was the first step in the right direction, it is doubtful whether it will deliver on the call of the president.

It is recommended that South Africa consider directly implementing Article 20 of the UNCAC – to which South Africa is a state party – into its domestic law, to establish the criminal offence of illicit enrichment. Alternatively, with the mandates of the SIU and AFU, it might be feasible to follow the civil route of the UK's Unexplained Wealth Orders.

## Note

1. "Relevant function" is defined in Section 38(2) of POPIA to mean a function of a public body or conferred on any person by law, which is performed with the view of protecting the public against acts of dishonesty, malpractice or seriously improper conduct by or unfitness or incompetence of persons authorised to carry on any profession or other activity.

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