PRELIMINARY REPORT ON
APARTHEID ERA CORRUPTION
AND OTHER ECONOMIC CRIMES

SEPTEMBER 2015
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1. EXECUTIVE SUMMARY

In 2003, 42 672 South African white owned private sector companies applied for amnesty for illegal activities. These companies, under the special dispensation protected by law, disclosed their illegal activities to the tune of R68,6 billion in foreign assets. The ANC government only asked them to pay back R2,9 billion. Similarly, the construction cartel which collectively and illegally amassed R50 billion from the world cup deals, was only fined a paltry R2.7 billion.

A report submitted to former President Thabo Mbeki, by a private investigator in the United Kingdom, revealed that that he could trace R26 billion stolen by apartheid leaders and placed offshore. This grand theft has received scant attention from the office of the Public Protector.

A collusory web of silence appears to have been cast over apartheid era economic crimes. Black First Land First (BLF) recognizes that corruption, which was structurally inherent in and to our colonial past, still shapes the DNA of our contemporary political, economic, economic, legal and cultural reality. Corruption has become part of the daily ritual of white and black elites in South Africa. Black First Land First (BLF) argues that the current tide of corruption cannot be rooted out unless the historical patterns of interrelatedness of private and public sector corruption is exposed, and apartheid beneficiaries, in particular, white capital, are held accountable.

BLF is committed to fighting against corruption through substance, not spectacle, through principle, not favour. BLF regards the current outcry on corruption farcical and off-course given the silence against historical crimes of corruption against black people.

This document contains BLF’s preliminary report into apartheid era corruption and other economic crimes, together with a set of proposed actions. A copy of correspondence sent to the Public Protector, National Treasury and Governor of the Reserve Bank is contained in the appendix of the report.
# A Summary of Key Apartheid Corruption and Other Economic Crimes

## Apartheid

<table>
<thead>
<tr>
<th>GRAND THEFT BY WHITE CORPORATES</th>
<th>ILLEGAL OFFSHORE DEALINGS</th>
<th>COLLUSION IN MAJOR INDUSTRIES</th>
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<tr>
<td>• Hundreds of Billions were stolen during apartheid through the Reserve Bank</td>
<td>• It has been reported that R26 billion was stolen by apartheid leaders, businessmen and bankers</td>
<td>• An investigation of this illegal activity by the Public Protector has not been released.</td>
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<tr>
<td>• In one year alone, (2003) illegal activities by over 40 000 white owned corporates amounted by R68,6 billions</td>
<td>• Many industries complicit in corruption and price-fixing</td>
<td>• Construction cartel illegally amassed R50 billion from the world cup deals, and only fined a paltry R2.7 billion</td>
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## Democracy

<table>
<thead>
<tr>
<th>PUBLIC FUND THEFT</th>
<th>MISUSE OF PUBLIC FUNDS</th>
<th>BURDEN OF COLONIAL DEBT</th>
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<tr>
<td>• The Institute of Internal Auditors reported in January 2015 that in the last 20 years the country has lost R700 billion to corruption alone.</td>
<td>• Nkandla Security Upgrades: reported cost - R246 million</td>
<td>• In 2015, R100 billion was paid for colonial debt</td>
</tr>
<tr>
<td>• In 2007 under President Mbeki 20% of the GDP was stolen through illegal capital flight. this translates to R422 Billion!</td>
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### ACTIONS PROPOSED BY BLF WITH REGARD TO APARTHEID ECONOMIC CRIMES

<table>
<thead>
<tr>
<th>Action 1</th>
<th>Public Protector to provide updates on investigations into the theft of BILLIONS of rands by apartheid leaders and beneficiaries</th>
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<td>Action 2</td>
<td>President Zuma to release the CIEX report</td>
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<td>Action 3</td>
<td>Treasury to disclose how much was declared by amnesty applicants &amp; what was actually paid to the State</td>
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<td>Action 4</td>
<td>Treasury to reveal what action was taken in relation to companies which did not comply with the amnesty provisions</td>
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<td>Action 5</td>
<td>BLF calls for an end to impunity of multinational companies for corporate crimes</td>
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<td>Action 6</td>
<td>An end to capital flight and reparations for all capital flight that occurred during the apartheid era and beyond</td>
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<tr>
<td>Action 7</td>
<td>That all the monies recovered from all these thefts to be set aside for youth empowerment and direct benefit (18-35 years)</td>
</tr>
<tr>
<td>Action 8</td>
<td>The abolition of the ruinous colonial loan contracts including IMF and World Bank contracts, and factored into claims for reparations</td>
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BLF shall undertake both direct action including legal challenges to fight corruption at its root cause. BLF shall engage like-minded organizations for further engagement, in a principled struggle against corruption.
**ACTIONS PROPOSED BY BLF WITH REGARD TO APARTHEID ECONOMIC CRIMES**

BLF is committed to fighting for accountability, recovery and redress, which the movement believes is critical in rebuilding and restoring an economy that has been shattered by apartheid corruption and other economic crimes. This preliminary report shows that approximately R556 billion was stolen through these crimes of corruption – and this is likely to simply be the tip of the iceberg. R134 billion is recoverable immediately – and we call on government to now truly begin the process of recovery, redress and rebuilding.

**BILLIONS LOST TO CORRUPTION FOR IMMEDIATE RECOVERY**

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<th>Category</th>
<th>Amount (R)</th>
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<td>Stolen from Reserve Bank</td>
<td>68</td>
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<tr>
<td>Illegal offshore deposits</td>
<td>47</td>
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<tr>
<td>Construction cartel</td>
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**PRELIMINARY REPORT ON APARTHEID ERA CORRUPTION & AND OTHER ECONOMIC CRIMES**
1. TRANSITIONAL JUSTICE, CORPORATE RESPONSIBILITY AND REPARATIONS: HISTORICAL LEGACY

This report rests on an informational framework from both national and international practice and jurisprudence to make sense of the inter-linkages and similarities of corporate corruption abated and aided by the global state systems and national governments. The first part of the report locates these illicit activities internationally and then delves into the South African experiences and the massive theft by apartheid leaders and white companies.

a. Latin America

i. Argentina, Chile and Brazil

Over 30 years ago when the Latin American countries, after seizure of power from military dictatorships, began their search for transitional justice, no intention of holding national and multinational corporations fully accountable was shown. These countries sought rather a balance between seeking justice from individual perpetrators (without compromising stability) and responding to demands for peoples’ justice (truth and reparations). In the recent past, we have seen Argentina, Chile and Brazil prosecute their respective former dictators for violations arising from their unjust rule. This also involved going into the area of violations relating to economic crimes.

Generally disputes relating to economic crimes which inevitably relate to violations of economic and social rights, as well as disputes relating to "access to land and natural resources“, are not regarded as being crucial to the process of transitional justice. There does however seem to be a shift to incorporating the areas of dispute that were previously neglected - from a narrow focus on "physical integrity violations" and currently there is a recognition that oppression "cannot be de-linked from their economic and social causes and consequences".
1. TRANSITIONAL JUSTICE, CORPORATE RESPONSIBILITY AND REPARATIONS: HISTORICAL LEGACY (continued)

ii. Philippines

In the Philippines in 1986, a people's revolution ended over 20 years of dictatorship rule under Ferdinand Marcos, and replaced with a democracy. It must be stated that the US sponsored ruling elite factions (that were sidelined by Marcos) succeeded in subverting people's power and ascending to key positions of power in Philippines society. Through this process people's power through the electoral system was converted to political representation within the system which in turn was fully developed into a neo liberal outfit. The successive governments since 2006 have continued to maintain a neo liberal system of governance and consequently Philippines remains characterized by landlessness, poverty and unemployment (with land and the bulk of the country's wealth remaining in the hands of a few).

It is important to point out that in the post-Marcos dictatorship era, foreign corporations perpetuated their capitalist interests by entering into mutually beneficial relationships with the successive neo liberal governments and corporations which in turn has resulted in large scale corruption, economic crimes and human rights violations. In this context a transitional justice framework which catered for addressing both individual and corporate responsibility and which resulted in the following successes must be viewed in terms of its limited expression within the neo liberal framework of governance that hosted it:

The Marcos family was firstly prosecuted for corruption and an amount of $680M was recovered of their "ill-gotten assets in Switzerland", and secondly for human rights violations of about 10000 victims (via an ATCA case prosecuted in Hawaii). $200M out of the $680M recovered from the Swiss banks is being employed towards the implementation of a 2013 reparations legislation and program of action.
1. TRANSITIONAL JUSTICE, CORPORATE RESPONSIBILITY AND REPARATIONS: HISTORICAL LEGACY (continued)

iii. Columbia

The first ruling on reparations was made on 16 December, 2011 by the Colombian courts against “El Alemán“, the former paramilitary leader of the armed “Élmer Cárdenas" group. The court ordered that reparations be paid for the illegal conscription of 309 minors by the Élmer Cárdenas group. It was held that each one will receive "repairs including monetary compensation and medical and psychological care." Additional compensation was made to girl soldiers "who were in a situation of potential assault or harassment from other combatants, as well as those recruited at extremely young ages."

It is instructive to point out that the judge in the El Aleman case did not limit herself to condemning him as an individual perpetrator. She ordered the Attorney General of Colombia to investigate Chiquita Banana (a multinational company) and to take the necessary measures to attach their assets (in furtherance of reparations payments) in Colombia. While the Colombian courts core mandate was to deal with "individual criminal responsibility" the case does however illustrate a domestic courts capacity as a "transitional justice mechanism" to establish corporate responsibility.

b. Africa

i. Democratic Republic of Congo

Thomas Lubanga was convicted by the International Criminal Court (ICC) in 2012 for the illegal conscription of 129 child soldiers in the Ituri conflict in the Democratic Republic of Congo (DRC). He was sentenced to 14 years imprisonment. On 3 March 2015, the ICC Appeals Chamber ordered reparations against Mr. Lubanga. Since Mr. Lubanga had no resources to make reparations to the victims, the ICC Trust Fund for Victims (TFV), was identified as the agency to pay reparations to victims on behalf of the perpetrator in cases like this.
1. TRANSITIONAL JUSTICE, CORPORATE RESPONSIBILITY AND REPARATIONS: HISTORICAL LEGACY (continued)

The point is that the Appeals Chamber in the Lubanga case confirmed reparations as a "measure of accountability" in casting responsibility on "individual perpetrators" to pay for their wrongdoings. The Lubanga decision was the first ICC reparations order and as such set the precedent for reparations as a "measure of accountability" in bringing perpetrators to book. To seek reparations via the ICC (and quite apart from that) there is a need to - in the first place - develop reparations domestically so as to provide justice to victims. In South Africa no such development has occurred internally.

ii. Timor-Leste (East Timor), Chad, Liberia, Sierra Leone, Kenya And Tunisia

Countries like Timor-Leste (East Timor), Chad, Liberia, Sierra Leone, Kenya and Tunisia employed a model for redress that allowed for a more advanced system of transitional justice via decreeing accountability from white capital for its role played during colonialism. In dynamic ways, the respective mechanisms (truth commissions) examined 'economic crimes' on the same level as 'physical violations' and to this end the role of white capital in both types of abuse. However economic crimes relating to the real issues of landlessness, natural resources, poverty, unemployment, healthcare etcetera remain uncharted territory for redress in the examples quoted.

While the Truth and Dignity Commission (TDC) of Tunisia claimed to examine the rights of victims violated via the abuses by individuals (e.g. dictators) and corporations that resulted inter alia in repression, poverty, landlessness, unemployment and exclusion - the model of governance (within which the TDC is linked) makes the whole object of administering justice in this respect an exercise in futility. The same is true of Sierra Leone, Liberia and all the other countries stated above whose system of governance is neoliberal in character.
1. TRANSITIONAL JUSTICE, CORPORATE RESPONSIBILITY AND REPARATIONS:
HISTORICAL LEGACY (continued)

iii. South Africa

In 2002 the Khulumani Support Group representing claimants in South Africa, sued, in terms of the Alien Tort Claims Act (ATCA), 20 financial institutions and corporations in the US Federal Court that conducted their businesses in South Africa during the apartheid era. To this end they were extending their remedies via the Truth and Reconciliation Commission (TRC) so as to hold the institutions and corporations accountable. It was argued that the involvement of the banks and corporations in the core industries during apartheid influenced the furtherance of abuses against blacks, and that the activities of these institutions during the relevant time (via inter alia their collaboration with the relevant security agencies and to this end providing military and other strategic equipment to those security agencies) made them complicit in committing those crimes. The main issue in question in the Khulumani case relates to the conduct by subsidiaries of the American principle companies being IBM and Ford Motor Company.

After twelve years of protracted struggle in the court arena on 27 July 2015, the United States Court of Appeals upheld the lower court's dismissal of the case on the basis that the Khulumani Support Group had no valid cause of action against the South African subsidiaries because the conduct of all of the subsidiaries’ occurred abroad.

The 2008 ‘Framework for Business and Human Rights’ drafted by the Special Representative of the Secretary-General on Human Rights and Transnational Corporations are so widely framed that it has consequently not served to prevent banks from laundering dictators’ assets. Hence the framework does not really address the aspect of corporate accountability.
1. TRANSITIONAL JUSTICE, CORPORATE RESPONSIBILITY AND REPARATIONS: HISTORICAL LEGACY (continued)

It has been suggested that the framework be read with the following; "2005 UN Basic Principles and Guidelines on the Right to Remedy and Reparation" - where a number of the norms of transitional justice contexts are featured (including the application of transitional justice “to business enterprises exercising economic power”), and; the "UN Convention Against Corruption (UNCAC)" where crimes relating to large scale corruption and the recovery of illegally obtained assets are listed. It must be pointed out that, with the exception of the experience in a few Latin American countries, in the context of the limitations of the neo liberal system of government that has succeeded each of the oppressive systems the norms that are applicable to both dictators (or leaders of groups) as well as banks and other financial institutions with illegally obtained assets and profits, has not translated into any kind of meaningful reality for the people(s) affected.

The advanced models of transitional justice, intimated in post conflict countries like Timor-Leste (East Timor), Chad, Liberia, Sierra Leone, Kenya and Tunisia, has had the overall effect of dispensing transitional justice which is suggestive of a corporate philanthropic orientation. This outlook, which showcases the perpetrators as promoting the general welfare of victims by means of charitable gesturing, serves simply to safeguard capitalist interests in the world while hiding the role of banks and corporations in their perpetuation of racist capitalist relations.

In this context, the question of how to realize corporate accountability amounts to just a matter of making corporations and individuals each equally accountable (via the transitional justice system) albeit on a cosmetic level. Moreover, justice (via both the transitional justice models canvassed above) has historically been employed in service of a system of governance that secures and perpetuates the capitalist interests of corporations and to this end white capital in general.
1. **TRANSITIONAL JUSTICE, CORPORATE RESPONSIBILITY AND REPARATIONS: HISTORICAL LEGACY (continued)**

This country's transitional justice experience via the TRC shows a reluctance to holding corporations accountable. This was characterized by ‘reconciliation’ and limited time afforded by the hearings on the role of big business and by extension white capital during apartheid. In fact it did not help develop and realize the ethic of corporate accountability in any meaningful way. In this regard the TRC's call for a nominal once-off ‘wealth tax’ on businesses that benefited from apartheid did not result in any real transitional justice to affected people's. Government responded to this call with the Exchange Control and Tax Amnesty legislation in February 2003.

2. **EXCHANGE CONTROL AND TAX AMNESTY LEGISLATION ANNOUNCED IN FEB 2003**

On 28 May 2003 Parliament enacted the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 in terms of which inter alia: an Income Tax amnesty was offered to any South African resident (including the deceased estate of a SA resident), a close corporation or a trust whose application for amnesty was successful; amnesty would be applicable only to those persons and entities that came forward voluntarily and; those who were already being investigated in connection with their foreign assets were precluded from being granted amnesty. The purpose of the legislation, as suggested by the then Minister of Finance, Mr. Trevor Manuel in a press statement dated 29 May 2003, was based on the following considerations: Notwithstanding the pre- existence of exchange controls there was a tendency for South African citizens and corporations to illegally shift assets offshore via a variety of schemes and for a number of different motives. The then existing Tax Laws effectively served to absolve the relevant individuals and corporates from disclosing the income derived from the assets so shifted.

This effectively meant that the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 would in general serve to facilitate the disclosure and repatriation of foreign earned profits and financial assets illegally obtained so that the affairs of the wrongdoers could be regularized.
2. EXCHANGE CONTROL AND TAX AMNESTY LEGISLATION ANNOUNCED IN FEBRUARY 2003 (continued)

In his budget speech on 15 February 2006 Minister Trevor Manuel announced the finalization of the amnesty applications received in respect of the exchange control and tax amnesty announced in February 2003. To this end he declared inter alia that 42 672 applications were dealt with; R68,6 billion in foreign assets were disclosed; the declared income tax base was raised by about R1,4 billion, and; that R2,9 billion was raised in revenue via amnesty levies. In terms of the legislated "Levy Base and Rates" the "disclosure of foreign assets" for the purposes of "Exchange Control relief is conditioned on an amnesty levy" which "applies at a 5 per cent rate for assets repatriated to South Africa and at a 10 per cent rate for assets held offshore".

In this context BLF wrote to the National Treasury on 19 September 2015 and requested the following information:

- A comprehensive list of all applicants who applied for Tax amnesty is required
- Information on disclosure on illegally gained "foreign assets" from applicants
- Information on declared assets expatriated to SA in total and per applicant, and associated levy paid
- How much of the illegally obtained "foreign assets" continued to be held offshore in total and per applicant and what levies were exercised
3. EXCHANGE CONTROL AND TAX AMNESTY LEGISLATION ANNOUNCED IN FEBRUARY 2003 (continued)

Furthermore BLF requested full disclosure to be made regarding what happened to those who did not disclose foreign earned profits and financial assets illegally obtained. We asked: Did any investigation follow? If yes full disclosure of the outcomes and details thereof must be submitted? If treasury has done nothing, it must in that event explain clearly why it did nothing.

It must be pointed out that, as an outcome that ought to have been reasonably foreseeable by the TRC, the government's response in the form of the Exchange Control and Tax Amnesty legislation has serious anti black outcomes. In this regard the failure of actual transitional justice in South Africa so as to really hold white capital accountable was part of the neo colonial structural logic of the transitional justice ‘model’ employed by the neo liberal system to secure the interests of white capital.

4. THE 'CIEX' REPORT AND THE PUBLIC PROTECTOR'S INVESTIGATION

In 1997 a private investigations company from the UK (Cix) - which was led by the former chief of MI6 Michael Oatley - was contracted by the ANC government to investigate apartheid era crime and corruption. Subsequently, in 1999, Cix reported that it had identified R26-billion that was "stolen", "laundered" and or "held offshore" by apartheid-regime "bankers, arms dealers and senior politicians". Subsequently and in August 2011, the Public Protector Adv. Thuli Madonsela indicated that she would conduct investigations into some of Cix’s claims. To this end she will enquire into the missing apartheid billions including inter alia the R26 billion implicated in apartheid-era corruption.
4. THE 'CIEX' REPORT AND THE PUBLIC PROTECTOR’S INVESTIGATION (continued)

Her investigations regarding the Ciex claims will reportedly focus on the "lifeboat" loans that took place from 1985 to 1995 which involved numerous secret Reserve Bank loans to Bankorp, which was later purchased by Absa. The then Minister of Finance, Barend Du Plessis, never acknowledged the "conflict of interest" situation arising from him approving the Reserve Bank loans to Bankorp. To this end the Minister's brother was on the board of directors of a huge subsidiary of Bankorp/Sanlam.

The Reserve Bank loans, as alleged in the Ciex Report, essentially amount to gifts to the numerous shareholders of Bankorp. These included Absa, Sanlam and Rembrandt (being the Rupert family’s investment agency). The Ciex Report findings were, inter alia, that an amount of R3.2bn in public funds could be recovered from Absa, and about the same amount of money from Sanlam.

The Ciex report also outlines operations where monies were channeled via US-based business to pay for fictitious services and goods.

The findings of the Ciex Report were evidently reported to former Deputy President Thabo Mbeki and many of the cabinet ministers (including the then Finance Minister Trevor Manuel and former Labour Minister Tito Mboweni who in turn became the head of the Reserve Bank). Ciex agreed to do the job at a fee of 10% of the funds recovered. However after the 1999 national elections which put Thabo Mbeki into power, the contract (signed in 1997 by former secret service head Billy Masetla) was terminated. A "version of the Ciex report" was later leaked and reported in Noseweek in September and October 2010.

There were other state commissioned or instructed investigations apart from that of Ciex. To this end the National Intelligence Agency (NIA) in the late 1990's established a special unit to investigate corruption of state finances under the apartheid regime. It was led by Thabo Kubu (former MK commander) and was composed of both former ANC intelligence operatives and apartheid operatives (including the late Dirk Coetzee).
4. THE 'CIEX' REPORT AND THE PUBLIC PROTECTOR'S INVESTIGATION (continued)

After irregularities were found by the Auditor General in the Thabo Kubu Unit's accounts the unit was closed down. It must be pointed out that there was subsequently no public disclosure of the details or outcome of the investigations that this unit was tasked to do. Since these investigations are of public interest, their full outcomes and details must therefore be made available to the public without delay. As reported there was an investigation led by Judge Willem Heath as well as an one led by Judge Dennis Davis which was commissioned by the Reserve Bank. The Heath Special Investigation Unit found in 1999 that the payments by the Reserve Bank to Bankorp the predecessor to Absa, as well as similar payments to Sanlam, were illegal. No subsequent attempts were made to recover this money. But it is the Ciex findings that were the most revealing in terms of the extent of the apartheid regime's involvement in the corruption of state finances and economic crimes. The plunder involved various alleged illegal transactions and related to the corrupt business dealings of inter alia the following concerns: the SA Reserve Bank; Absa Group; Sanlam; Rembrandt (now Remgro); KWV, and; the Dutch Reformed Church.

The Ciex report found that the ANC government could still recover an amount of R26 billion made up as follows:
4. THE 'CIEX' REPORT AND THE PUBLIC PROTECTOR'S INVESTIGATION (continued)

The Public Protector's provisional report is still outstanding four years since she started the investigation.

There is no indication when it be finalized or if the matter has been pursued. The big question asked by Hennie van Vuuren a researcher interested in apartheid economic crimes is “Will Adv. Madonsela’s report lead to a full investigation that brings closure to these claims emanating from Ciex?” The fact that the ANC Government has no inspiring legacy in enquiring into apartheid-era crimes is to this end most instructive.

Hennie van Vuuren says that the National Treasury has been extensively violated between 1976 and 1994. In 2006, in the era of President Thabo Mbeki, Van Vuuren's report titled 'Apartheid Grand Corruption' was published by a group of civil society organisations in an attempt to address apartheid era corruption and economic crimes.

While Cabinet noted that the report raised crucial issues not limited to unlawful acts relating to government assets and while to this end there was extensive media coverage, there was however no public disclosure of any further state investigation.

The ANC government must say openly where it stands with this. It is imperative that they clearly articulate their response because it is this government that had contractually hired and commissioned Ciex with specific terms of reference. It must tell the public further what it has done regarding the claims made by Ciex.

If this government has done nothing, it must in that event explain clearly why it did nothing.
4. THE 'CIEX' REPORT AND THE PUBLIC PROTECTOR'S INVESTIGATION (continued)

The following questions arise in this context:

- The SA government must say why a report (Cix Report), which was paid for with public funds, did not lead to further investigation and even prosecutions?

- In 2012 the SABC commissioned a documentary on the Ciex claims. What happened to this project? If it was put on hold or withdrawn, why was that done in the light of the serious claims made by Ciex?

- Why is there a lack of political will in tackling the issues raised in the Ciex report or the issues raised in the ‘Apartheid Grand Corruption’ report by Hennie van Vuuren or in any of the other investigations dealing with apartheid era corruption and economic crimes?

- Why is it that the above reports and findings on apartheid era financial corruption and economic crimes were not used by the new government to deflect criticism of its own corruption problems?

- Why was it not used to break with the past and start anew? To this end why was it not used to serve justice and to destroy the anti people culture of corruption?

- Why is there such resistance by the political elite to enquire into apartheid era corruption and economic crime, if it is not because this current neo colonial system is itself so inextricably interrelated to and intertwined with the apartheid era system.

BLF not only demands answers to these questions, we also demand reparations to address the economic crimes of white capital. To this end we demand that the assets and funds indicated in the Ciex report be recovered from the perpetrators as a logical and just source for reparations.
5. CAPITAL FLIGHT FROM SOUTH AFRICA

Shawn Hattingh in "BHP Billiton and SAB: Outward Capital Movement and the International Expansion of South African Corporate Giants" informs us as an illustration of his subject matter that in the period from the 1940s to the middle of the 1970s, the most successful South African corporations, including the SA Breweries (SAB) and Gencor (pre runner to BHP Billiton) flourished under and benefited immensely from apartheid's anti people policies especially from setting up various operations in the Bantustans; with the economic crisis of the mid-1970s these SA corporations began to expand internationally so as to restore profits and regain advantage; in the 1980s SA corporations overcame barriers like sanctions and tough exchange controls by implementing appropriate mechanisms to avoid the exchange controls - including the mechanism of transfer pricing; SAB established numerous fictitious business concerns in the Netherlands and then ceded to these businesses their trademarks in South Africa; via this avenue and "royalty payments" they received in respect of these trademarks they shifted huge amounts of capital from SA to the Netherlands; this capital was employed towards expanding internationally and thus avoiding sanctions; in an attempt to compete with their international competitors these corporations subsequently began to favour a neo liberal settlement so as to secure their interests in favour of international expansion.

This context has ultimately created the conditions resulting in the post apartheid state serving the SA's largest corporations very efficiently; corporations like SAB and Gencor/Biliton were thus restructured under the ANC dispensation and subsequently moved their primary listings offshore to London, and; the repatriation of profits offshore together with these corporations ceasing to be "South African owned" were thus completed. Sam Ashman et al in "Amnesty International: The Nature, Scale and Impact of Capital Flight from South Africa, Journal of Southern African Studies" indicate that in July 2010 the South African Reserve Bank declared its intention to grant new amnesty to those responsible for illegal capital flight from the country in terms of the following conditions.
5. CAPITAL FLIGHT FROM SOUTH AFRICA

A levy of 10% of the value of the illegal assets (that constitute the capital flight) would apply to those corporations and individuals who disclose that "their illegal expatriation of capital" occurred before February 2010, and; the said corporations and individuals would to this end not be required to pay any further penalties and would in addition be allowed to retain their assets offshore in terms of "the ‘Voluntary Disclosure Programme’ (VDP)".

This clearly amounts to a move in furtherance of the complete deregulation of capital outflows and in this regard capital flight, which has been characteristic of the apartheid regime, has increased manifold under the ANC dispensation. It is further reported that: as a percentage of GDP, capital flight increased from an average of 5.4% per annum (pa) of the GDP between 1980 and 1993 to 9.2% pa between 1994 and 2000; between 2001 and 2007, capital flight averaged at 12%; in 2007 a shocking 20% of the GDP was stolen by capital flight. Most of the illegal capital flight operations arise from "transfer pricing" by the conglomerates, more especially relating to mining. In this context capital flight has been the most important form taken by the post-apartheid dividend, and has dictated and conformed with other less than satisfactory economic and social developments attached to the post-apartheid era, including elite Black Economic Empowerment." The impact has been to further colonize the social, economic and political landscape of the country and entrench landlessness, unemployment, poverty and all other forms of exclusion.
6. CONSTRUCTION CARTEL CORRUPTION

In June 2013 the Competition Commission found that 15 construction firms, Murray & Roberts and Aveng included, had colluded to push up costs by rigging contracts concluded in respect of the building of stadiums for the FIFA Soccer World Cup in 2010 and other projects. These firms were fined and to this end paid a total of R1.5-billion. More specifically they were found to have held meetings where they agreed to rig profit margins relating to the construction of six stadiums for the soccer tournament. Evidently, and in terms of documents on the Competition Commission's website, Murray & Roberts being SA's largest construction firm and their competitors met on two occasions and came to a settlement "to exchange cover prices, allocate tenders and aim for a 17.5% margin" and colluded in relation to projects "from roads to offices".

According to the Competition Commission, the construction firms possibly face prosecutions. It is reported that the first case for prosecution is regarding meetings that were held between the top construction players, namely, Aveng, Group Five, Murray & Roberts, Stefanutti Stocks and Basil Read, in 2006 in terms of which the firms are said to have distributed the tenders for the Mbombela, Peter Mokaba, Moses Mabhida, Soccer City, Nelson Mandela Bay and the Greenpoint stadia amongst themselves and had agreed on a profit margin (on all the said projects) of 17,5%. The investigation regarding the corruption of the construction cartel includes 140 projects to the value of R47 billion. These firms have however denied any collusion as alleged against them. The matter is now with the Competition Tribunal for adjudication and there is no degree of certainty as to when the relevant cases will be finalized. The firm Murray & Roberts was granted leniency because of the role they played in implicating the other companies that were involved in the collusion as alleged. To this end they were exempt from prosecution. Those firms that responded to the call to make full disclosure regarding any contravention of the Competition Act in relation to the 2010 Fifa World Cup infrastructure projects were given leniency. To this end the fines were not based on the firm's total annual profit - it was based on the annual profit in the relevant sector like civil engineering for 2010. The fines imposed were shockingly lenient and inappropriate and not in accordance with real and substantial justice.
7. ON CORRUPTION REGARDING THE POST APARTHEID ERA ANC GOVERNMENT

The media has reported government projects involving millions and even billions of taxpayers’ money including fruitless, wasteful and irregular expenditure at the provincial and municipal levels, as well as infrastructure projects far in excess of their original budgets. The Institute of Internal Auditors reported in January 2015 that in the last 20 years the country has lost R700 billion to corruption alone. It is estimated that the cost per taxpayer is theoretically R212000. Nkandla has become the symbol of corruption in a democratic South Africa, with security upgrades estimated at R246 million.

8. COLONIAL DEBT

The 2015 budget analysis dated 26 February 2015 by Alex Hogg in "Budget 2015: SA’s Debt: GDP ratio – Scariest graphic in Nene’s package" said that "the real elephant in the room is mushrooming Government Debt". The actual Debt as % of GDP is 44% for 2015. In 2012 Pravin Gordhan put the three year peak at 38% but by 2015 Government Debt has surged way past what had been expected. This takes South Africa’s Debt to GDP ratio to an additional 6 percentage points to the “peak” set in 2012. As at February 2015 Government was paying more than R100bn to service the debt. This according to Treasury’s own projection will rise to more than R150bn in three years.
9. CONCLUSION

In the light of the staggering corruption and shocking amounts stolen under apartheid, and which have not been accounted for or recovered, BLF regards the current fixation among political groupings, like The Economic Freedom Fighters (EFF), the Democratic Alliance (DA) and the Vavi coalition, on Nkandla as the epitome of corruption to be superfluous and misguided.

BLF will not support the purported march against corruption by forces of corruption, alongside their rightwing marching companions; Solidarity and Agriforum, at the end of September 2015. While the BLF condemns all acts of corruption, including any transgressions under the current ANC government, we believe an interrogatory spotlight needs to be placed first and foremost on the corruption and economic crimes by the leaders, perpetuators and beneficiaries of apartheid. There is a need for much needed concentration on white capital, that perpetuated patterns of economic corruption which still permeate our contemporary economy. We hold that the anti-corruption march is little more than a decoy to take our eyes away from this corruption of momentous and untold proportion. We will fight for full disclosure, recovery and reparations.

BLF calls for an end to impunity of multinational companies for corporate crimes. We salute efforts by advocates for corporate accountability, such as those who fought via the Khulumani et al vs Barclays et al case. We call for the subsidiaries of these foreign corporations to be brought to book and held both criminally and corporately liable in the South African courts.

The failure of actual transitional justice in South Africa to hold white capital accountable was part of the neo colonial structural logic of the transitional justice model employed by the system. The role of big business and by extension white capital was not considered in examining corporate accountability. What is needed to effect any kind of meaningful redress is to employ mechanisms that will reflect and indicate the actual seizure of power by the people as a necessary prerequisite to facilitate the proper administration of revolutionary transitional justice.
9. CONCLUSION

The journey undertaken by transitional justice has brought us to this point where it offers an interesting historical legacy as a point of strategic inflection for those facilitating a Black First revolution. In this context the achievement of corporate accountability to the black majority in SA becomes a reality.

In summary, BLF calls for the following:

- The abolition of the politically, socially and economically ruinous colonial loan contracts including IMF and World Bank contracts that mortgage the future of the black majority. To this end we also call for the cancellation of the colonial debts including IMF and World Bank debt.
- The cancellation of apartheid debt to be factored in the claim for reparations.
- Full disclosure of all investigations into apartheid crimes and other economic crimes.
- Details of plans for recovery and reparation.
- Reparations for all capital flight that occurred during the apartheid era and beyond. To this end reparations would constitute the return of all money's stolen (in the form of capital flight) by corporations and financial institutions from the GDP of this country.
- The return of all profits made by all the construction firms who had colluded to push up costs by rigging contracts in respect of the building of stadiums for the Fifa Soccer World Cup in 2010 and other projects. We say that they concluded the relevant contracts via illegal dealings which in turn led to them benefiting unjustly and criminally at the expense of the black majority.
- An end to capital flight.
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11. APPENDICE
BLACK FIRST LAND FIRST MOVEMENT

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The Public Protector
Hillcrest Office Park
175 Lunnon Street
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0001
7 September 2015

Dear Advocate Madonsela

REQUEST FOR FEEDBACK ON INVESTIGATION: CLAIMS BY CIEX

In 1997, a private investigation company from the UK (Cix) was contracted by the South African government to investigate apartheid era economic crimes. Subsequently, in 1999, Cix reported that it had identified R26-billion that was "stolen", "laundered" and or "held offshore" by apartheid-regime "bankers, arms dealers and senior politicians" - which amount could still be recovered.

In August 2011, you announced that you would conduct investigations into some of Cix’s claims and in this regard will enquire into the missing apartheid billions.

As the Black First Land First Movement (BLF) we would like to know how far you are with your investigations and to this end when can the public expect your report to be released.

We now await to hear from you.

Kind regards

Mr. Andile Mngxitama
National Convener: BLF
EXCHANGE CONTROL AND TAX AMNESTY ANNOUNCED IN FEBRUARY 2003: REQUEST FOR FURTHER PARTICULARS

On 28 May 2003 Parliament enacted the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 in terms of which inter alia: an Income Tax amnesty was offered to any "South African resident natural person, including the deceased estate of a person, a close corporation or trust" whose application for amnesty was successful; amnesty would be applicable only to those persons and entities that came forward voluntarily, and; those who were already being investigated in connection with their foreign assets were precluded from being granted amnesty.

The purpose of the legislation, as suggested by the then Minister of Finance, Mr. Trevor Manuel in a press statement dated 29 May 2003, was based on the following considerations: Notwithstanding the pre- existence of exchange controls there was a tendency for South African citizens and corporations to illegally shift assets offshore via a variety of schemes and for a number of different motives. The then existing Tax Laws effectively served to absolve the relevant individuals and corporates from disclosing the income derived from the assets so shifted. In this context such foreign earned profits and financial assets had historically been unreported. To this end the new legislation was an indication that "(g)overnment had rightfully taken the position that these contraventions should not be tolerated", This effectively meant that the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 would in general serve to facilitate the disclosure and repatriation of foreign earned profits and financial assets illegally obtained so that the affairs of the wrongdoers could be regularized.

In his budget speech on 15 February 2006 Minister Trevor Manuel announced the finalization of the amnesty applications received in respect of the exchange control and tax amnesty announced in February 2003. To this end he declared inter alia that 42 672 applications were dealt with; R68.6 billion in foreign assets were disclosed; the declared income tax base was raised by about R1.4 billion; and; that R2.9 billion was raised in revenue via amnesty levies.

In terms of the legislated "Levy Base and Rates" the "disclosure of foreign assets" for the purposes of "Exchange Control relief is conditioned on an amnesty levy" which "applies at a 5 per cent rate for assets repatriated to South Africa and at a 10 per cent rate for assets held offshore".

In this context the Black First And First Movement (BLF) would like Treasury to supply us with the following information:

1. A comprehensive list of all applicants (disclosing full particulars of person(s) and entities) who applied for Tax amnesty is required.
2. How much of the illegally obtained "foreign assets" including profits were disclosed per applicant?
3. How much of those declared assets were expatriated to SA in total and per applicant? What rate of levy did each of these applicants pay? Also what was the actual amount each applicant falling in this category paid in terms of the amnesty levy?
4. How much of the illegally obtained "foreign assets" continued to be held offshore in total and per applicant? What rate of amnesty levy did each of these applicants pay? Also what was the actual amount that each applicant falling in this category paid in terms of the amnesty levy?

Furthermore, BLF requests full disclosure to be made regarding what happened to those who did not disclose foreign earned profits and financial assets illegally obtained. Did any investigation follow? If yes full disclosure of the outcomes and details thereof must be submitted? If treasury has done nothing, it must in that event explain clearly why it did nothing.

Your considered response is now awaited.

Kind regards

Mr. Andile Mgxitama
National Convener: BLF
To The Governor of the South African Reserve Bank: Mr. Lesetja L Kganyago
24 September 2015

Dear Mr. Kganyago,

VOLUNTARY DISCLOSURE PROGRAMME AND TAXATION LAWS SECOND AMENDMENT ACT, 2010 (ACT NO 8 OF 2010): REQUEST FOR INFORMATION

On 1 July 2010 the South African Reserve Bank (SARB) issued a media statement stating its intention to implement an ‘Exchange Control Voluntary Disclosure Programme’ (VDP) as part of the gradual liberalisation of exchange controls. To this end and towards the end of 2010 government announced a ‘New Growth Path’ for SA that would: locate employment at the core of government’s economic policy; thrust the economy onto a production-led rather than a consumption-led path, and; integrate the macroeconomic and microeconomic levels of interventions so as to promote growth that is more inclusive.

In his Medium Term Budget Policy Statement in October 2010 Finance Minister Pravin Gordhan elaborated on the said "New Growth Path" by indicating inter alia that (in addition to the above): a decrease in the budget deficit as well as a significant loosening of SA’s exchange controls were envisioned; from January 2011 companies with their international headquarters based in SA will be permitted to raise and shift capital offshore without the need for approval from exchange control - to this end assets can be shifted offshore without payment of the exit levy of 10%; exchange controls on domestic companies will be reformed so as to remove limitations to international expansion; exchange controls and restrictions on offshore investments relating to individuals will be removed, and; limitations on the ‘blocked assets’ of emigrants will be lifted. The government’s intended path with regard to capital flows was clarified by the Minister’s announcement.

On 2 November 2010 Act No.8 of 2010 Voluntary Disclosure Programme And Taxation Laws Second Amendment Act, 2010 was promulgated as part of the gradual liberalisation of exchange controls previously announced and elaborated (as indicated above). In this context the Black First Land First Movement (BLF) requests the following information:

1. What estimate did SARB make of how much revenue was going to be generated by the VDP in terms of the new legislation?
2. What proportion of the estimated revenue did it predict as illegal flows?
3. What amount of money has been shifted from the country illegally/undeclared?
4. What mechanisms are in place to enquire into illegal capital flight in relation to which the above legislation applies?
5. How many criminal prosecutions and or other legal proceedings have been instituted against the wrongdoers / defaulters and what was the outcome of each case?
6. What are the consequences for those who did not take advantage of the VDP in terms of the new legislation?
7. How many applications were received in terms of the above legislation?
8. How much was declared as illegal capital flight by each applicant?
9. How much was declared as illegal capital flight in total?
10. How much was collected in terms of the flat charge of 10 per cent of the market value of the assets (for individuals and companies who disclosed their illegal expatriation of capital prior to 28 February 2010):
    a. per applicant?
    b. in total?

Your considered and prompt response is now awaited.

Kind regards

Mr. Andile Mngxitama
National Convener: BLF
Contact details for Black First Land First

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