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Tackling the “Disabling Environment” to boost Economic Growth, Small Business and Jobs

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The SBI welcomes feedback on this research and the resulting suite of papers, which can be submitted to Ms Leandre Swart at leandre@smallbusinessinstitute.co.za

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Abbreviations

BASA	The Banking Association of South Africa
B-BBEE	Broad-Based Black Economic Empowerment
CIPC	Companies and Intellectual Property Commission
COFI	Conduct of Financial Institutions
CoGTA	Cooperative Governance and Traditional Affairs
CPI	Consumer Price Index
DPME	Department of Planning, Monitoring and Evaluation
DSBD	Department of Small Business Development
FFC	Financial and Fiscal Commission
GDP	Gross Domestic Product
IES	Income and Expenditure Survey
IMF	International Monetary Fund
LCS	Living Condition Survey
NIDS-CRAM	The National Income Dynamics Survey – Coronavirus Rapid Mobile Survey
NPC	National Planning Commission
NSEA	National Small Enterprise Act
OECD	Organisation for Economic Co-operation and Development
PAJA	Promotion of Administrative Justice Act
PRO	Producer Responsibility Programme
RDP	Reconstruction and Development Programme
RIA	Regulatory Impact Assessment
SAA	South African Airways
SARS	South African Revenue Services
SBI	Small Business Institute
SBP	Small Business Project
SEIA	Socio-Economic Impact Assessment
SESE	Survey of Employers and the Self Employed
SME	Small and Medium Enterprises
SONA	State of the Nation Address
StatsSA	Statistics South Africa
UIF	Unemployment Insurance Fund

Preface

Prior to Covid-19 micro, small and medium enterprises – we refer to all these businesses as SMEs for brevity – constituted by far the majority of businesses in South Africa. Over 98% of all employing firms in the country employed fewer than 250 people, including medium-sized businesses, and the majority of firms (66%) were, according to our research published in 2018, micro businesses with ten or fewer employees. While there is no reliable data to inform us of how many survived, we are certain that SMEs remain in the majority, as they are around the world, despite rising liquidations and distressing turnover numbers due to the impact of the Covid-19 pandemic and the lockdown measures to contain it.

And yet instead of seeing SMEs as the engine room of our economy despite all the lip service paid by government and big business to them, they are forever treated as an economic widget. Policy and regulations are made for big businesses with large compliance departments, years of much-documented hostility by government is directed at big business, sweeping all 'business' together in unhelpful generalisations; and though much ink has been spilled writing about an enabling environment, there has been insufficient understanding applied to what this should look like.

It is one year on since government introduced the lockdown measures to contain Covid-19. The Small Business Institute (SBI) with support from mining house Exxaro has undertaken research in a Covid-19 world to analyse the situational environment for SMEs in South Africa. Conducted by SME research specialists, SBP, we provide a deeper understanding of the key barriers affecting SMEs and propose a set of recommendations aimed at addressing these problems. Our suite of papers is built on a review of a vast array of decisive studies and an assessment of critical barriers affecting SME performance based on available evidence. South African SMEs face many structural barriers to their formation, growth and expansion. All businesses, especially SMEs were having a tough time of it before the appearance of the novel coronavirus pandemic. There will be no point to layering clever, forward-looking initiatives on top of a foundation that has impeded business growth for decades in South Africa.

While "the business of business is business" as Milton Friedman might say, the multiplier effects of business on a country's development and prosperity for all its people are well documented. Business activity creates jobs, cultivates inter-firm linkages, enables innovation and technology transfer, builds human capital and physical infrastructure, generates tax revenues for governments, and, of course, offers a variety of products and services to consumers and other businesses. And it is in SMEs where the true spirit of enterprise is embodied. Under the right conditions, a vigorous and thriving SME community can enhance competition, entrepreneurship, job growth and spur economy-wide efficiency and innovation.

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Over the past year, an inordinate amount of energy and effort has been devoted to trying to formalise enterprises that are not caught up in the net. Any firm that sells a product or service contributes to our fiscus through the VAT tax they pay on inputs. All circulate money in the economy. One of the papers in our series has sifted through the rationale for formalisation and the pros and cons of the informal-formal continuum and where good policy to support *any* business along its journey to sustainability might focus. Another will clearly spell out what South Africa requires to truly enable businesses to start, run and grow, accommodating hiring along the way. We will offer a comprehensive distinction between 'inclusive localism' and the localisation debate underway and provide insight at the local level from two case studies focusing on strong local business chambers that are helping to bring hope and economic revival back to their local towns. The results stemming from the case studies give a fascinating view of a whole range of real-life examples. For government, and big business too, the case studies address questions about how to optimise what can be done immediately and the role that local champions play in harnessing people's energies to help bring about positive change, especially in decaying small towns. Answers to these questions are important in helping to rebuild businesses for the future in a world of new realities.

In this paper, we present a no-holds barred discussion of the structural challenges, which were present and worsening before Covid-19 struck. We discuss what reform policy makers *must* pursue, once and for all, to accommodate and encourage the growth of businesses which drive our economy, fund our government through taxes, hire our people, and produce what we eat, wear, and do. We provide recommendations to resolve the systemic and regulatory hurdles impeding the growth of SMEs.

Introduction:

Karl Marx famously wrote that history repeats itself, first as a tragedy and then as a farce. Few among South Africa's business community are natural disciples of Marx, but given the country's tortuous business environment, one might find bemused agreement on this point.

The tragedy is well known. It is no secret that the country was in serious trouble prior to the Covid-19 pandemic; the shock of Covid was an accelerator for an already deteriorating economy. As the National Planning Commission's (NPC) December 2020 report[1] that reviews progress of the NDP succinctly puts it, "Covid-19 revealed in great clarity the structural limitations on creating growth and employment and the significant state capacity constraints."

South Africa teeters on a precipice; some analysts say the economy is already in free-fall. The country's debt to GDP ratio hovers at an impossibly high rate of 87.4%; each and every single day, South Africa has to borrow R2.1bn to pay its bills. Latest GDP data shows that the economy contracted by 7% for the full year 2020[2]. While this is less than most analysts expected given disruptions caused by the pandemic, South Africa's economy is stuck in its longest downward cycle in 75 years as policy paralysis and weak business sentiment weigh on investment spend. Unemployment has breached its highest point on record – 32.5% on the official definition or 42.6% on the expanded definition[3]. This would suggest that unemployment, if unchecked, could surge through half the working population by the broader definition, including those discouraged from seeking work. There were 668 companies listed on the JSE in 1999. In January 2021 there are 336.

All these economic statistics obscure the real human tragedy. According to the narrow definition, over 7.2 million South Africans lost their jobs in 2020, affecting more than 35 million people; it is estimated that on average one employed worker supports five people. Slowing GDP growth per capita means that South

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[1] National Planning Commission. (December 2020). "Economic progress towards the National Development Plan's Vision 2030", Pretoria.
[2] Stats SA, GDP Q4 2020
[3] Stats SA. QLFS Q4 2020 (Quarterly Labour Force Surveys)

Africans on average will become poorer and poorer as time goes on. Earlier last year, the World Bank's Poverty and Equity Brief[4] said that, prior to the pandemic, 30.3 million (approximately 55 percent) of our population is living in poverty while a total of 13.8 million (25 percent) are experiencing food poverty. The NIDS-CRAM surveys show that the rates of hunger, especially child hunger rose sharply last year. People experiencing hunger because they didn't have enough money to buy food rose from 16% in July to 18% in November 2020. Distressingly, the increase was even larger for child hunger. Child hunger in households with black African children rose from 13% in July to 19% In November 2020. Thousands of small businesses shut their doors, or to survive had to retrench staff they had employed for years. Recorded liquidations of companies have increased substantially, 178 business liquidations were recorded in February 2021, an increase of 8.5% compared with February 2020. Hardest hit were firms operating in the tertiary sector including financing, insurance, real estate, other business services, trade, catering accommodation as well as manufacturing.[5]

We are, as the NPC review states, "in a vicious circle ensuing from a toxic confluence of factors, namely falling investment, further diminishing tax revenues, debt service costs that crowd out all other spending and thus constrained resources for investment in development. The results are falling employment and rising poverty and inequality."

That this situation must be turned around is universal consensus.

And herein lies the farce. We all agree on what needs to happen; structural reforms that have long been acknowledged are needed to lift the country out of its economic stagnation and uplift the quality of life for all South Africans. Yet in spite of all the high-level commitments made by the administration in each and every SONA since the RDP's promise for "favourable amendments to legislative and regulatory conditions" to ease the path of business growth for job creation - especially for small business – adds layer upon layer of contradictory laws and regulations to the statute book each year. And for decades government has proliferated more bureaucracies in an attempt to side-step the dysfunctions of the existing bureaucracies, creating a stranglehold on its own efficiencies. In so doing achieving the precise opposite of its own

[4] World Bank. (April 2020). "Poverty and Equity Brief Sub-Saharan Africa, South Africa".
[5] Stats Sa: Statistics of Liquidations and Insolvencies, February 2021, (released 23 March 2021).

intention and paving the way for corruption. Even in the first century AD, Tacitus wrote in the Annals of Imperial Rome "the more corrupt the state, the more numerous the laws".

After almost three decades of acknowledging the legislative and regulatory burden as excessive for small businesses to start, run and grow and create jobs along the way, and that policy uncertainty negatively affects investment in the economy, it is more accurate to say that South Africa's tragedy and farce cannot be distinguished.

Established in October last year jointly by the Presidency and National Treasury, Operation Vulindlela[6] is a unit now tasked with making long-promised priority reforms happen but narrowed to only a few. It focuses on reforms related to electricity generation, the spectrum auction, ports, and resolving a new water framework. While reforms in these areas are critical and encouraged, the regulatory burden choking the economy goes much, much deeper. It is yet to be seen how one unit, even with laudable intentions but without any new budget allocated to it, could possibly bring about reform to the structural challenges so deeply embedded in our regulatory and legislative landscape, which have been throttling our economy for years. For this to happen, all of government needs to act in concert, urgently, and to act capably with growing the economy as the priority.

Continuing on the path of failed ideology and failing state capacity, with vested interests in the governing party lobbying to keep it so, is like being stuck in the same rut - or more colloquially - pothole. Once stuck, doing the same thing as yesterday (and the year before and the decade before) or simply attempting to put more power into spinning the wheels, as a group of Harvard researchers[7] reflect, will not get South Africa out of the hole that government's aptitude for self-harming has dug. A new course of action is desperately needed. To get that action requires a government that understands, and sincerely acknowledges, that government is not the proximate cause of growth. That role falls to the private sector, to investment and entrepreneurship responding to market forces.

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[6] The Presidency and National Treasury. (March 2020). "*Operation Vulindlela, Summary Booklet",* Pretoria.
[7] Andrews.M, Pritchett.L, Woolcock.M. (2016). *"The Big Stuck in State Capability for Policy Implementation".* Working Paper, Center for International Development at Harvard University.

An enabling environment for economic growth?

All businesses, no matter their size, play a key role in any country's inclusive development. Profit seeking and competition among private firms, SMEs in particular, drive innovation and competition. Businesses hire and train local people, they pay taxes that enable government to afford welfare support, education, health and basic services for the wider community. Private enterprises (formal and informal) provide the vast majority of jobs across the world and are critical partners in poverty reduction.

The effectiveness and efficiency of factors such as the quality of legislation, markets and institutions can be decisive for a firms' performance, and for the performance of the economy as a whole. These factors help shape opportunities and incentives for businesses to invest productively, expand and create jobs. Key enabling factors for private businesses – large and small – to function include (i) predictability, particularly political, policy and macroeconomic stability, security and rule of law; (ii) clear property rights and their registration and enforcement; (iii) efficient government regulation and taxation; (iv) functioning financial markets; (v) efficient, affordable and accessible infrastructure services, including those to allow South African businesses compete in an increasingly digitalised world; and (vi) a productive labour force. The relative importance of these factors will differ from country to country and business to business, but studies have shown that institutional quality (adequate governance and regulatory systems and rule of law) and reliable infrastructure provision are key to attracting and sustaining investment, domestic and foreign.

While complex, many of these factors have compromised on South Africa's ability to attract foreign investment and retain domestic investment. South Africa's declines in rankings on so many global indices that measure elements of the investment climate such as the Ease of Doing Business, the Global Competitiveness Report, the Corruption Perception Index (to name but a few) confirm the rapid deterioration in the environment affecting business growth, job creation and the economy as a whole. As Finance Minister, Tito Mboweni, recently said "before we can blame the private sector for not investing in the country, we much check whether the growth environment scores are sufficiently there". He added that the private sector only invests "where it sees an opportunity and whether there is policy certainty. If there is an uncertain policy environment, then the private sector will not invest."

Regulation, and regulatory governance, are central to the process of government and fundamental to the performance of an economy. A well-functioning state has clear guidelines and sanctions to appropriately govern in the interest of the communities they serve. In the interests of good governance, it is self-evident that laws and regulations must be scrutinised and assessed not only in terms of their broad objectives but also their specific provisions, as instruments to achieve the objectives they set out. It is perhaps less well recognised that it is equally important to monitor and assess the impacts of those regulations, including the cost of compliance and administration they impose, and the efficiency and effectiveness of the ways in which they are implemented.

Regulatory burden stifles government service delivery

The travesty of adding layer upon layer to laws and regulations without due consideration and analysis of their impact is that it not only affects the ability of business to do business and add value to the economy, but it also constrains the business of government - delivering services to all South Africans.

According to many investigations, the consequences of the regulatory environment on government has an acute impact on local government where service delivery to local communities lies at the heart of governance. To illustrate, the former minister of CoGTA in 2014 stated “municipalities bear a heavy compliance burden and have to constantly submit reports to both provincial and national government. These reports are in the majority of instances based on the same information, but with different reporting nuances. It is typical in these environments to see instances of malicious compliance, whereby municipalities are reporting for reporting sake, without any conscious effort to address the rationale for the reporting requirement.” (SA Law Reform Commission, 2019)[8].

Published for public comment in 2019, the preliminary findings of the South African Law Reform Commission of a *Review of Regulatory, Compliance and Reporting Burdens imposed on Local Government by Legislation* are illuminating. Tasked by the former minister of CoGTA, through the Minister of Justice,

[8] South African Law Reform Commission. (May 2019). “Review of Regulatory, Compliance and Reporting Burdens imposed on Local Government by Legislation” Preliminary Report released for comments.

the Law Reform Commission sought to determine, among other things, the extent to which the statutory framework regulating local government is unsatisfactory. That is, to the extent to which the law is unfair, unclear, unduly complex or outdated. The Commission's report presents multiple findings, too many to list for the purposes of this paper. Some of the notable findings of the Commission are however highlighted below (Box 1).

Box 1: SA Law Commission review of regulatory, compliance and reporting burdens imposed on local government: Preliminary Findings.

Amongst many findings, the preliminary investigation revealed that:

- Independent findings conducted by the Financial and Fiscal Commission (FCC) found evidence that corroborated the assertion that some obligations imposed on local government are excessive. Examples cited in the Commission's report include (amongst others): "Municipalities are hardly coping with approximately 75 legislative reporting requirements with monthly, quarterly and annual deadlines"; "that the Municipal Finance Act and the Statistics Act contain 40 and 5 reporting requirements respectively"; "that there was no structured process in place across national government that ensures collaboration and coordination to deal with duplicate data collection process."
- The FCC cautioned in 2014 that "the legislative framework applicable to local government could be intrusive; complex; inflexible; difficult to implement uniformly or to enforce; and that it creates unnecessary compliance burden and a barrier to success, performance and development."
- The Local Government Data Collection forum, whose main purpose was to address multiple reporting established early on in its investigation that 95% of municipalities received questionnaires from provincial governments for information similar to that asked for by national government; and that 60% of municipalities do not complete all the questionnaires, among other things due to lack of adequate resources."
- "Experts in local government law warned as far back as 2008 that the plethora of laws intended to structure the institutions and process of local government, and legislation emanating from sector departments intended to manage functional areas in schedules 4B and 5B of the Constitution could be 'strangulating' local government. They singled out section 76-84 of the Municipal Systems Act, read in conjunction with section 120 of the Municipal Finance Management Act and the Public-Private Partnership Regulations issued in terms of the latter Act, which, they argued, renders processes such as outsourcing too difficult or costly to undertake. They also cautioned that there is a thin line between regulations and undue control and intervention."

Source: "Review of Regulatory, Compliance and Reporting Burdens imposed on Local Government by Legislation" preliminary report published for comment by the SA Law Commission, July 2019.

It is difficult to discern what happened with the Law Commission's investigations and findings and whether there has been any effort to address the review's recommendations, particularly by CoGTA. The arrival of

Covid-19 and subsequent subjugation of legislation by the Disaster Management Act, and its continual extensions, could well have delayed the follow-through as originally intended by the investigation.

Regulatory burden stifles business, especially small business

Business concerns regarding the impact of regulation, and the compliance burden, relate not only to the volume of regulatory requirements and poor administration, especially at the local level, but also the frequency of regulatory change or policy disruption applicable to their specific industry.

> Many of the common barriers to business growth and sustainability, especially small businesses, talk to the quality – and quantity – of regulatory change over the past two decades, particularly the period from 2008 onwards

Many of the common barriers to business growth and sustainability, especially small businesses, talk to the quality – and quantity – of regulatory change over the past two decades, particularly the period from 2008 onwards. New legislation, and subsequent rafts of regulation, are added to existing rules without government policymakers systematically analysing either the lack of enforcement of existing regulations and/or the impact of new regulations on policy coordination or coherence. This not only increases the regulatory burden but adds significantly to policy uncertainty. Cumulatively, it results in a proliferation of red tape, sabotaging the survival of small businesses especially and their ability to grow productively and employ more people.

> All formal businesses, irrespective of their size, have to comply with each and every rule, regulation and procedure for every industrial sector made by all spheres of government. For larger firms with resources in place to deal with the regulatory burden, compliance costs are much lower in comparison to small businesses, 0.2% of turnover. The burden of compliance however is felt more disproportionately by smaller businesses and is often 10 to 20 times more than that for their larger counterparts.
>
> Source: SBP, 2017.

Policy and regulatory uncertainty driven by ambiguous motivation

Mounting calls over the years by the business community, the ratings agencies, the IMF, World Bank and many others to reduce the barriers to South Africa's economic growth as an imperative of government, including those resulting from multiple and conflicting regulations, have gone unheeded or at best, been paid lip-service. South Africa's businesses – large and small – have seen substantial periods of policy uncertainty in recent years, some of which have come from single departments, and some in pieces of legislation that have come from different departments with contradictory provisions and little coordination. Business has also had increasing regulatory interventions in the business space, frequently without consultation - even prior to Covid-19 lockdown measures - and often with little consideration to their practicality, cost, administrative burden (both on business and government) and unintended consequences. Many pieces of legislation, particularly from 2009 onwards have run counter to the constitution[9].

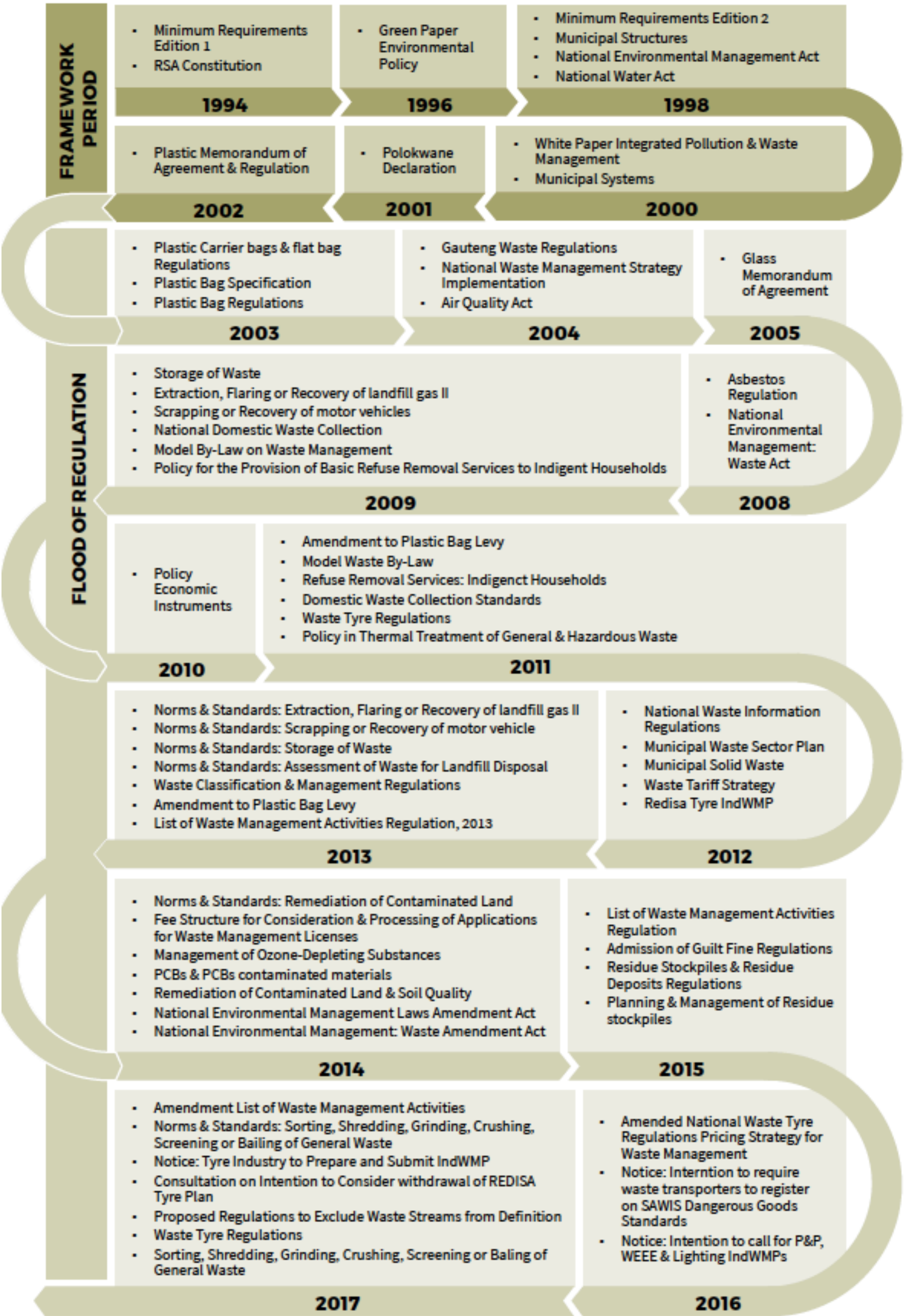
Policy inconsistencies have two main consequences for the business community: business has no clear direction when planning their longer-term investment, and when conflict or confusion arises with existing regulations, government often provides conflicting advice on how to proceed. Neither should not happen if policy and legislation were well-considered, well-informed and negotiated with all stakeholders to the largest extent possible in the drafting process, though it does keep armies of lawyers employed. Small businesses, which (as mentioned above) can ill afford the costs of compliance, let alone the lawyers, are seldom - if ever - consulted by government on the impact of laws and regulatory changes to their operations neither at the time of drafting policies nor when laws and regulations are implemented.

At a deeper level, South Africa's policy, legislative and regulatory landscape suffers from a case of ambiguous motivation. In many cases, it is not clear – certainly from a business and an economic growth perspective – what considerations lie behind substantive and intrusive measures that might do little to advance the economy, business growth and the interests of citizens.

To illustrate what the flood of regulations can look like, the following diagram show legislative and regulatory change affecting just the Waste sector. The flow of regulatory change in this sector is by no means comprehensive but demonstrates the amount of regulatory changes made between 1994 to 2017.

[9] Former Speaker of the National Assembly, Max Sisulu chiding members for the poor quality of legislation that it was approving. Such measures, he said, would be returned for correction, either by the National Council of Provinces or after having been found in court to be unconstitutional (May 2012). Cited: *"Current State of legislation in South Africa",* SBP Alert, August 2012.

Figure 1: Waste



Source: Adapted from Historical Review of Waste Management and Recycling in South Africa, MPDI Resources.

The diagram illustrated shows 65 changes in law and regulations that have been implemented from 1994 to 2017 in the waste sector. But these are by no means encompassing of all the other laws and regulations that businesses also have to navigate and comply with such as corporate compliance, financial compliance, BBBEE compliance, the raft of labour law compliance, tax compliance, the licensing regime (at all levels of government) and so on, which are applicable to all formal business in South Africa – large and small. Small businesses have it particularly hard as in many instances they can often straddle multiple value chains.

Most recently in January 2021, strict new recycling laws were introduced by amendments to the National Environmental Management's Waste Act. These require manufacturers, importers and brand owners to take responsibility to ensure that much of their products are returned - and recycled - after being sold and used. Producers and importers of a long list of products are required to start new programmes, set up collection points, do regular audits and achieve stringent new targets within six months of the amendment coming into effect. Any person, producer or Producer Responsibility Programme (PRO) found in violation of the laws could face imprisonment for up to 15 years or an 'appropriate fine'.

It is worth mentioning here findings from research conducted by SBP for organised business that investigated specific regulatory challenges affecting policy uncertainty and impeding investment and employment in South Africa. A list of over 45 laws, regulations and policy instruments was received from private business spanning themes grouped into Liquid Fuels, Gas and Petroleum, Mining, Investment and Corporate Governance, Consumer Goods, Environmental legislation and regulations, and Financial and Tax legislation. Impediments relating to employment and labour legislation were excluded on the basis that these required a separate study. The findings of the investigations, a 206-page report, listed specific policy, legislative and regulatory challenges with detailed recommendations for reform or adjustment.

Aside from recommendations responding to the specific regulatory barriers that were investigated, common themes emerged which pinpointed irregularities in the way that government develops policy, laws and regulations (Box 2).

Box 2 Challenges in the drafting of policy, laws and regulations in South Africa

- *Time delays in getting clear policy and legislative direction from government.* Business speaks to goal posts that are constantly shifting and deadlines not met by government. This results in businesses not being able to forward-plan and introduce changes to their operations to maintain compliance. Time-lags in policy certainty often result in regulatory fatigue, having to deal with the same issues time and again at the expense of core business operations and innovation.
- *Quantum of policy and regulatory change.* Concerns relate to the quantity, and severity, of regulatory and policy change being introduced at the same time from either single or multiple departments, often in contradiction of each other.
- *Poor drafting, lack of alignment and coordination, and duplication.* Draft laws (or amendments to laws) are unclear and ambiguous, particularly with inadequate definitions, which can allow for overreach and arbitrary interventions. This has critical impact on the applicability and scope of provisions, the practicality of implementation and risk of future disputes. Lack of alignment also leads to duplication. Businesses cite many instances of government policymakers working in silos and in isolation of each other, even within single departments. Not only does this result in duplication, but often new regulatory proposals contradict existing laws and regulations.
- *Unenforceability.* The challenge with tougher legislative amendments to current laws is that they often fail to address issues of enforcement of current legislation. If the business environment is complicated by lack of implementation and enforcement, it adds another layer of unpredictability.
- *Ambiguity.* Poor drafting can mean one of three things. First, it does not pass constitutional muster. Second, embedded ambiguities in many legislative interventions are increasingly left in the hands of the court to decide. Third, government might forge ahead (as in the case of Covid-19 regulations) heedless of evidence and warnings about the consequence of their interventions on people's livelihoods, business sustainability and impact on the economy. A lack of sincere engagement and consultation with business - large and small - by government, leads to uncertainty in the policy, legislative and regulatory environment. It also builds distrust.

Source: SBP .

When rules become red tape

As we note earlier, red tape is not a peripheral concern. Findings from studies conducted by SBP tracking a cohort of 500 SMEs (including micro businesses) over a period of six years found on average that small businesses spend between 4% to 6% of their turnover on compliance with regulatory demands. Among the manufacturing firms, this proportion represented on average some R400 000 per year. These are highly regressive costs, hitting smaller firms hardest.

Nor is red tape a new concern. Reducing red tape has been a priority on the country's agenda since 1994. If anything, red tape costs and administrative inefficiencies are rising. In 2004, SBP conducted a comprehensive study of the cost of red tape to the South African economy. These costs were estimated at some 6.5% of GDP, or R79bn per year. Extrapolating from the information gathered in later red tape studies, it appears that the red tape burden for small businesses has actually risen over the years, and for some types of business nearly doubled; it is safe to assume the costs have also risen concomitantly.

What causes red tape? For a phrase that is ever present in the lives of South Africans, red tape can be harder to pin down especially for government officials who often relegate the concept of red tape to mere form-filling or 'administrative burden'. Red tape is much more than that. Burgeoning red tape is a symptom of failing regulatory governance, broken systems and deteriorating administrative capacity resulting in service non-delivery.

> Red tape is a symptom of failing regulatory governance, broken systems and deteriorating administrative capacity resulting in service non-delivery.

Red tape happens when government administrators lose sight of the rules, regulations and procedural functions and misapply them, or it results in a mismatch between the regulatory intention and administrative processes to implement them. Red tape is also the result of too much arbitrary decision-making being built into the laws and regulations at the outset of drafting. A current example of capricious changes to rules made by government policymakers without understanding the economic impact they might have or the practicalities of implementation and the causal connection to longer-term consequences that counter government's own longer-term objectives is to be found in the DSBD's recent amendment of the National Small Enterprise Act (NSEA). Box 3.

Box 3.Red tape in the making: Proposed amendment to the National Small Enterprise Act, 2021.

The Department for Small Business Development (DSBD) published amendments to the National Small Enterprises Act for public comment on 11 December 2020. The amendments seek to regulate relations between small and other enterprises, and to introduce a new Ombudsman to intervene in all manner of contractual dealings made with small enterprises within a notion of ruling on "unfairness". The amendments state that the minister may, on the Ombudsman's recommendation, prohibit practices in relation to small enterprises as being "unfair", including the transfer of commercial risk to the weaker party. The SBI raised concerns stating that the planned changes will provide sweeping powers for both the minister and proposed ombudsman, encroaching on, and overriding, already established civil and contract law in South Africa. Abstract values such as "fairness" cannot constitute substantive rules for tribunals to use to intervene in contracts, and if enforced, this would give rise to legal and commercial uncertainty and undermine the rule of law. Such imposition would have considerable unintended consequences of discouraging larger businesses from dealing with smaller ones. A number of Ombuds are already available to small business owners seeking redress, including the Tax Ombudsman, the Consumer Protection Commission, the Banking Ombudsman amongst others.

An additional provision contained in the amendments to the Act provide for arbitrary powers given to the minister to declare an "unfair trading practice" without clearly defining what these might be. The provisions necessitate declarations by the minister of "unfair trading practices" by gazette notice, which could lead to a continual stream of notices based on arbitrary decisions made by the minister at whim.

There is no specificity provided in respect of responding to late payments to small business suppliers, if this is the intention of the amendment Bill. No definitions are given to constitute the meaning of a 'late' payment, allowing room for more interpretation. A study conducted by the DPME published in 2020 found that government is the greatest transgressor in late payments to small business suppliers, with the average delay ranging from 90 to 181 days and more. Instead of the passing more regulation, the SBI proposed in its responding submission to the minister on the draft Bill that the Small Claims Court threshold be increased from R15 000 and allow for juristic persons/small business owners to approach the court for dispute resolution.

Source: SBI 2021. Small Business Institute (SBI) comments on the National Small Enterprise Amendment Bill, 2020. Publicly available on SBI website: www.smallbusinessinstitute.co.za

Rigidity built into a bureaucracy can make it difficult for government to respond to changing circumstances. A case in point, government's loan relief and grant support to South African small businesses to counteract the lockdown measures to contain Covid-19 failed miserably. According to media and parliamentary reports, only a fraction of small businesses received loan relief promised by government. Of the R200bn set aside by government for business assistance only R13 billion had been lent by government, assisting approximately 10 000 businesses by August last year. The dismal performance has much to do with obligatory compliance measures to access government's loan relief. Qualifying businesses had to be South African owned and employing a 70% majority of South Africans. Informal traders and township businesses who were unable to trade for months in the hard lockdown stages, were required to obtain a licence to operate from the local municipality; register with the CIPC; the revenue authority SARS, and Unemployment Insurance Fund (UIF). This is time consuming and difficult to do under normal circumstances, nearly impossible in a hard lockdown. In June, the Minister of Small Business Development - charged with dispensing government's loan relief - reported to parliament that her department had formalised over 2, 242 spaza shops during COVID-19, processing applications from another 4,406.

Seemingly, government's motivation is focused more on formalising informal businesses and collecting their data rather than providing financial aid to distressed businesses during Covid-19. Another of our papers in the suite of papers for this research study, "New perspectives on Informality"[10] suggests that impeding businesses – any businesses – means less money circulating in the economy, fewer jobs and fewer opportunities for people to sustain their livelihoods, particularly in times of economic crisis such as the coronavirus pandemic.

Covid-19 relief schemes for small businesses implemented by the banking industry under a R100bn loan guarantee scheme provided by National Treasury encountered a regulatory wall. Announced by the president in April 2020, the scheme aimed to encourage banks to lend more money, on more favourable terms, to businesses whose operations had been affected by the pandemic. The National Treasury initially provided a guarantee scheme of R100bn (with the option to increase to R200bn if it was successful). However, as of 16 January 2021, the Banking Association (BASA) reported that only R17.84bn (of the R100bn) in loans had been approved and taken up by businesses, and based on present trends, it is probable that only R18.9bn in loans will be approved on the R100bn scheme. Aside from citing reasons of "business owners being reluctant to incur more debt due to challenges of inconsistent policy and regulation, uncertain business conditions and a weak economic outlook" BASA stated that banks' had incurred problems in fulfilling the Reserve Bank and Treasury criteria in applying the loans. "The Covid-19 loans can only be extended to businesses that meet the criteria set out by the Reserve Bank and National Treasury and banks' regulatory risk management policies. The scheme does not extend grants or equity to companies in financial difficulties nor assist those that are in distress for reasons other than those related to the pandemic. Only the Reserve Bank and National Treasury can make any changes to the operations and criteria of the scheme." According to BASA as of 16 January 2021, the scheme received 48,366 applications. Almost half of the applications - 46% - were rejected because they did not meet the eligibility criteria of the scheme.

[10] See paper, one in the suite of papers for this research study *"New perspectives on Informality: a focus on the South African context"*, published by the SBI (March 2021). To access: www.smallbusinessinstitute.co.za.

The 'Big Stuck' - broken systems and diminished state capacity. Regardless of noble intentions to improve service delivery, government finds itself in what some Harvard researchers call the "big stuck" or "capability trap"; it cannot perform the tasks required of it and doing the same thing day after day does not lead to any improvement, it only makes things worse. Researchers Andrews, Pritchett and Woolcock at Harvard's Center for International Development have developed a new way to measure trends in governance in the context of state capability[11]. They note the massive intellectual and ideological debate about *what* governments *should* do, but there is less debate *how* governments *could* do what they chose to do: building the capability of the state, how to do it and how long it can take. Developing a new methodology to measure this, the researchers investigated 102 countries and categorised them into "*rapid deterioration* in state capacity"; "*negative growth* in state capacity"; and the third and fourth categories which show countries demonstrating positive growth in state capacity; or are stagnant but not retrogressing; and groups in the middle which are "business as usual" but could produce high state capability in the future.

South Africa, according to their findings, falls within the category of "*rapid deterioration*" in state capability alongside 12 other countries of the 102 countries they investigated.

Clearly, South Africa's regulatory and administrative system is broken. Almost every South African and business owner can share real-life examples of the farcical nature of red tape in dealing with government at all levels and lack of service delivery. From the indignity of people having to queue endlessly to resolve billing problems at municipal offices; to old age pensioners and mothers with babies queuing in the hot sun with no access to water or toilet facilities to draw social grants; citizens queuing to be given the 'correct' forms and then queuing again to submit the same, then finding documents lost in the bureaucratic morass and having to do it all again, or out of sheer desperation pay bribes.

There are no incentives for officials to do their jobs better; a government job is viewed as a "job for life". In the Covid-19 lockdown, some government departments were closed for months creating massive backlogs in the system. The Civic Affairs Office at the Department of Home Affairs, which deals with

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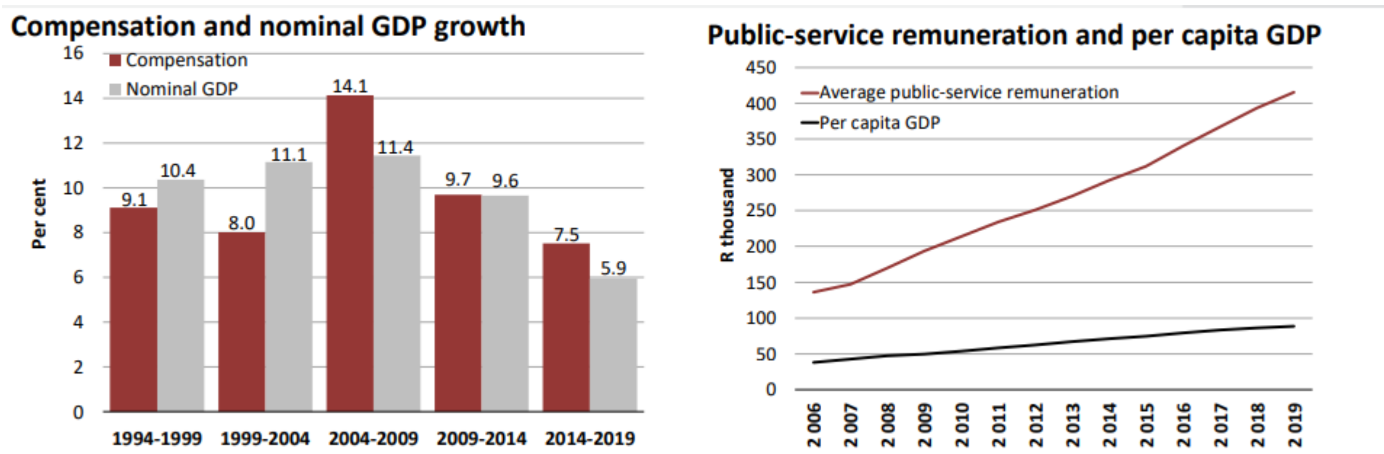
[11] Andrews. M, Pritchett. L, Woolcock. M. (January 2016). *"The Big Stuck in State Capability for Policy Implementation".* CID Working Paper No 318, Center for International Development at Harvard University.

important citizenship and immigration affairs for instance, closed in March last year. It has yet to open for business one year later.

Research supports that public sector employment is increasingly unproductive yet financing the public sector wage bill in South Africa is among the highest in the world. Whether measured as a percentage of GDP, of public spending or of tax revenues, payroll costs for government officials in South Africa are higher than the global norm. The main driver of these high payroll costs is that average remuneration of public servants is high when compared to private sector employees and per capita GDP (Intellidex, Nov 2020)[12].

Public-service compensation and nominal GDP growth and per capita GDP



Source: National Treasury, November 2020.

According to National Treasury data, 95% of all 1.33 million government workers in South Africa earn more than the bottom 50% of taxpayers.

South Africa's diminishing tax base means that the hole that is government spending can no longer be filled with more taxes. Forecasts for the 2021/22 budget to obtain tax revenue are the highest for personal income tax, 9.7% of GDP; VAT at 6.9% of GDP; and corporate tax at 4% of GDP. Yet only 1.6

[12] Intellidex. (November 2020). "The Public Sector Wage Bill – an evidence based assessment and how to address the challenges."

million people are shouldering the bulk of all income tax paid (92%) with the same group most likely paying over 80% of consumption taxes (such as VAT) paid in the country.

The country's labour laws do not allow for officials who have little capacity to do their job - or even interest in doing their job - to be dismissed once hired. Even corrupt officials. The governing party's 'cadre deployment' has created swarms of well-paid officials in government. Mediocre or bad behaviour is rewarded by the system. Government officials found to be incapable of doing their job are either sent on training courses at the cost of taxpayers, or promoted, or placed in similar positions in other departments. Meanwhile, their work is often outsourced to consultants, also paid for by taxpayers – a double taxation if you will.

South Africa finds itself in the paradoxical position of being overregulated and under governed by diminished and unproductive state capability.

South Africa finds itself in the paradoxical position of being overregulated and under governed by diminished and unproductive state capability. The Harvard researchers estimate that South Africa will take *centuries* to correct state capability based on current trends, measured against the country's annual growth.

What about e-government? As one of the papers in our research that focuses on South Africa's ability for digitalisation[13] points out, with digitalisation, government can lower its own transaction costs and speed up service delivery, reducing the cost of doing business for SMEs and saving citizens time and money. The IMF estimates that collectively, by introducing digital systems in the public service, emerging economies could save between $200bn to $300bn annually, or 0.9 to 1.1% of GDP.

Good intentions by government to be digitally connected have however failed abysmally. The NPC's review notes that over 35 000 government agencies need to be digitally connected but only 970 have connected

[13] See paper "*Digitalisation – the best hope for South African and its small firms*", paper in the suite of papers for this research study published by SBI (March 2021). To access: www.smallbusinessinstitute.co.za.

since 2017. And of these, the review noted, it was not clear whether these sites are operational. The World Bank's Digital Economy Diagnostic also found that while the national e-government central portal had been launched in 2017 to improve online services, as part of new "e-Government roadmap", neither relevant government departments had maintained a registry of what had been achieved. It is therefore impossible to take stock of how many services have been automated and at what level, according to the World Bank's diagnostic.

The greatest combination of tragedy and farce is that red tape is the barrier to business success most amenable to influence. Little is so within the control of government as decisions as to what laws and regulations to impose and how to implement them. Too many rules, regulations and procedures are instituted in an attempt to control for every contingency. Regulations cannot – and should not – eliminate every conceivable risk. Overregulation increases the compliance burden particularly on small businesses to unjustifiable levels while at the same time increasing the administrative burden on government.

> Too many rules, regulations and procedures are instituted in an attempt to control for every contingency

Recommendations

South Africa is at a turning point. The reality is that the Covid-19 pandemic not only helped to expose the country's socio-economic crisis but has significantly worsened it.

South Africa needs more job creators, it needs more productive businesses, and better growth prospects for those that already exist coupled with a stable, honest and effective government. It needs an enabling environment that supports flourishing innovative entrepreneurship, thriving small businesses and a private sector that will drive employment. Economic modelling suggests that for one percentage point change in real GDP growth leads to 0.91 percentage point change in employment (Business for SA, Nov 2020)[14].

[14] Business for SA. (Nov 2020). "A New Inclusive Economic Future for SA: Delivering An Accelerated Economic Recovery Strategy".

The priority job at hand is to fix the economy. That falls to government working in strong partnership with the private sector. Every decision made by government has to be weighed against its economic consequence. Digging our economy out of the pothole means the way policies, laws and regulations are designed has to change.

There are two common adages: "If at first you don't succeed, try and try again"; and "Insanity is doing the same thing and expecting different results". Perhaps a more accurate and clearer version of the first adage is, as the Harvard researchers reflect: "If at first you don't succeed, try something different."

1. Message to Government - Stop the parody of Socio-Economic Impact Assessments (SEIAs).

SEIAs were adopted by government in 2015 to replace the previous regulatory impact assessment (RIA) system implemented between 2008 and 2014. SEIAs are purportedly used to improve evidence-based policy making.

South Africa has a long history of attempting to implement regulatory impact assessments. To understand why the quantity of poorly conceived laws and regulations harming the economy has multiplied over the years, leading to the poor quality of regulation - and a lot of it - it is essential to appreciate the evolution of how regulatory impact assessment methodology has been applied by government since 2007. Box 4 below provides the narrative.

Box 4: The story of implementing regulatory impact assessments in South Africa & its failures

In 2007 Cabinet adopted the implementation of a Regulatory Impact Assessment (RIA) system into South Africa's law-making process with the main purpose to improve regulatory governance and reduce red tape. This followed an intensive study two years earlier by a consortium of local and international governance and constitutional experts, led by SBP and commissioned by the presidency and the National Treasury.

The RIA system that was introduced by Cabinet in 2007 followed a number of good regulatory governance principles championed by the OECD and practiced in over 75 countries, but sensitive to government's overarching policy goals and the country's transformation agenda. The RIA tool thus allowed for consistent assessment of the socio-economic impact of policy initiatives, regulation and legislation including subordinate regulations.

Importantly, priority criteria in the RIA system guided policy makers to assess policy and legislative proposals against impacts to the economy and small business (among six others). The RIA tool sought to introduce an improved understanding of the impact of policies, laws and regulations at the outset of their development, directing policy makers through a consistent, analytical process in a 3-stage RIA step-by-step process. The RIA system required transparent public stakeholder engagement, including with government departments. The responsibility of the RIA was left initially to the drafting department, but allowances were also made for RIAs by the central RIA Unit, Cabinet and Parliament. Most importantly, the commitment was that RIAs were to accompany draft bills to parliament to allow public scrutiny and ensure transparency.

Some eighteen months into RIA Implementation however, the RIAs encountered resistance. Because the RIA tool emphasised stakeholder engagement early on in drafting policies and laws, some policymakers met a great deal of resistance to the policy changes they proposed. The perception was created in some parts of the state that the transparency associated with RIA and publishing policy proposals was a hindrance, as it resulted in public lobbying and delays to implementing legislation that the politicians wanted pushed through. Departments were encouraged to cut back on the publication of policy in order to speed up legislative processes. This is consistent with trends seen in the historical data of the volume of legislation passed, measured against the number of policy documents released for public scrutiny in the period between 1994 and 2014. Indeed, in 2007 and 2008 no policy documents were released by national departments.

The moment RIA was introduced in South Africa thus coincided with a long term drop off in the rigour and transparency of policy formation. The RIA tool fell through the cracks in the change of the administration following 2009. During the time that RIA was implemented, only one regulatory impact assessment was ever published for public scrutiny, by the Department of Labour in 2012 on the proposed amendments to the Labour Relations Act, which accompanied the draft Bill to Parliament.

Some years later, "socio-economic impact assessments" (SEIAs) were introduced in 2015 to replace the RIA system. While departments are required to conduct a SEIA before submitting policy and legislative proposals to Cabinet, none – except for one SEIA (National Treasury on the draft Twin Peaks Bill) - have been published for public scrutiny or accompanied draft Bills to parliament to ensure transparency and rigour.

Source: SBP 2021. Excerpts from various papers: "Evolution of RIA in South Africa;" SBP working paper 2015. "RIA Insights, handbook prepared for RIA Implementation in the Western Cape", SBP 2016. "RIA in developing and emerging economies – a tool for good governance?" SBP, presentation to OECD regulatory governance workshop, Pretoria 2015.

The SEIA methodology cobbled together in 2015 and implemented through the DPME is designed to *retrofit* policy decisions already made by policymakers rather than to guide them to investigate and assess alternatives to legislative and regulatory proposals, including the "do no harm" option, which underpins good regulatory impact assessment methodology. Good practice in regulatory impact assessments across the world guide policymakers to analyse - at the outset - the problem (not symptom) that needs to be addressed before an intervention is selected; and to assess whether regulatory proposals are appropriate to the size of the problem. The SEIA method however leads policymakers at the outset to artificially zero in on “behaviours that must be changed” which encourages policymakers to make subjective assessments of their own proposals.

The most fundamental challenge with the SEIA approach adopted by government is that it drives arbitrary selection of ‘winners’ and ‘losers’ in policymaking. Regardless of the consequential costs to the economy, or good policies labelled arbitrarily or ideologically as ‘losers’. The SEIA guidelines explicitly state this, as noted: “A challenge for SEIAS is that in a deeply unequal society like South Africa any policy will have unequal impacts. It is therefore not possible simply to compare estimates of costs and benefits. Rather, impact assessments must analyse costs and benefits to different groups. Furthermore, some costs will prove unavoidable in order to achieve government’s broader national priorities. Result: Possibility of unintended rising costs.” (Guidelines SEIA, DPME 2015)[15].

Good practice RIA methodology on the other hand attempts to ensure that regulations are as neutral as possible, and where the risks of regulatory interventions are explicitly identified, these must be mitigated to every extent possible.

While SEIAs support stakeholder consultation on regulatory proposals, including with other government departments, a lack of rigour in its methodology allows for shallow or selective consultation by policymakers.

‘*Economic growth and investment’* – against which all regulatory proposals are assessed for impact by the SEIAs – falls only to the *third priority* on the list of four national objectives of the SEIA assessment: the first is ‘social cohesion’, followed by ‘security’ and ‘environmental sustainability as the last. The original RIA approach that was applied however, prior to the SEIAs in 2015, listed regulatory impact assessment of proposals measured against the national priorities of: economic growth (1st); competitiveness (2nd); employment (3rd); small business (4th); poverty and equity (5th): transformation (6th); environment (7th); and health (8th). While listed in that order, all of these national priorities were measured in the RIA

[15] DPME. “SEIAS Guidelines (2015). Published on DPME website.

application as – combined - are factors that support an enabling environment for businesses growing our economy.

Reporting on a SEIA undertaken is provided by a certificate that accompanies regulatory proposals to Cabinet. The lack of diligence embedded in the SEIA methodology can support yet more malicious compliance whereby policymakers report for reporting sake. Most importantly, SEIAs that are undertaken by departments to support their regulatory proposals are not transparent and not open to public scrutiny. As mentioned above, only one SEIA thus far has been published by the National Treasury in 2018, which assessed the impact of the Conduct of Financial Institutions (COFI) Bill introducing a Twin Peaks model of financial regulation for South Africa.

2. **Implement transparent and methodical regulatory impact assessment (RIA) methods to improve the quality of evidence-based policies, laws and regulations.**

Government would argue that it already is implementing tools to support evidence-based regulatory assessments – the SEIAs. However, as we note above, the rigour, thoroughness and transparency of the SEIA system is considerably flawed. The original intention of the RIA system introduced in 2007, and the RIA methodology - if properly and diligently applied by government - is to inform policy decision making and to ensure consideration of the impact of regulatory proposals in terms of risks, benefits and costs. Producing RIAs and reporting on them transparently gives the state, parliament and stakeholders (especially affected parties such as small businesses) the opportunity to consider affects and unintended consequences of regulatory proposals. Most importantly, good practice in RIA ensures improvement in regulatory governance and is based on the principles of good regulatory governance, which ensures that laws and regulations should be:

Good regulatory governance principles underpinning RIA methods:

Proportionate	Rules, regulations and procedures are appropriate to the size of the problem
Targeted	Rules, regulations and procedures focus on addressing a key and well-defined problem and do not cause unintended consequences in other areas
Consistent	Decision making is predictable and avoids policy uncertainty
Accountable	Regulatory actions and outcomes are accountable to ministers, parliament and the public
Transparent	Decision-making in matters with regard to the process followed and the decisions of regulatory proposals are transparent and open to public scrutiny

Many of these principles are embodied in our Promotion of Administrative Justice Act (PAJA, 2000), the cornerstone of South Africa's administrative law, which stipulates that administrative action needs to be lawful and reasonable and to follow fair procedures. Yet increasingly the experience is that too many rules, procedures and regulations are instituted by government policy makers that attempt to address too many needs and consequently fail to address any one problem adequately. Again, regulation can't eliminate every risk, nor should it. This situation is compounded by the fact that government machinery is geared towards pushing out new laws and regulations, not removing them, which results in regulatory accumulation, another description of red tape. Applying RIA methodology retrospectively will help to clear out South Africa's cluttered statute book.

Whichever term South Africa wishes to name its impact assessment methodology - SEIA or RIA - government's regulatory impact assessments, most especially on substantive laws and amendments, need to be grounded by good governance principles and need to be transparent. Publishing them for public scrutiny will show that government policymakers have, at the very least:

- Thoroughly analysed the problem that government wishes to specifically address (problem not symptom) and have built a thorough, diagnostic case for legislative intervention having analysed alternative options including "do no harm";

- Determined interventions that are proportionate to the problem and risks of implementation are minimised;
- Enforcement and implementation measures have been thoroughly considered;
- Costs of implementation have been analysed and do not outweigh benefit;
- Broadly consulted on the proposal (particularly in the early stages in developing the proposal), including with affected parties both within government and the broader business community and small businesses in particular; analysed the parties' responses and the measures to minimise negative impact and unintended consequences.

As South Africa peers down into the economic abyss with mounting unemployment, rising poverty levels and diminishing tax revenues pushing the country over the edge, every political decision must be weighed against its economic consequence and every policy should be rigorously tested through an economic lens.

3. **Message to Parliament: Strengthen parliamentary oversight - Joint Rule 159**

Parliament's Joint Rule 159 presents a mechanism to improve parliamentary capacity to assess the impact of draft legislation presented by the executive and to beef up parliamentary oversight. Joint Rule 159 refers to the rules on how the executive submits draft legislation to parliament and provides that all draft legislation submitted for consideration should include a covering memo which provides a clear record of the intentions of the legislation and the consultation process followed.

The Independent Panel Assessment of Parliament conducted some years ago in 2010 concluded that Joint Rule 159 was not effectively followed nor implemented by the Executive. This weakness had to be addressed by parliament as a priority. Specifically, the Independent Panel recommended that in the pre-introduction of Bills to parliament, the Executive must show:

(i) All relevant and likely budgetary, financial, economic, administrative, social, environment and other impacts if the Bill in question is enacted;

(ii) Should further explain clearly the scope of any law-making and other powers being delegated to ministers or officials, and why it is thought necessary to delegate;

(iii) Should also clearly set out the criteria in terms of which any discretionary powers are to be exercised;

(iv) Should summarise all submissions (written and oral) from affected parties including other government departments regarding the Bill and contain the relevant department's response to each of these submissions. In turn, the relevant parliamentary committee should respond to all submissions made to it; and

(v) The impact of legislation must also be monitored after its enactment. Such monitoring must consider the unintended consequences of the legislation, failure by the Executive or other organs of state to take required actions in response to legislation, and the extent to which the objectives and implementation targets of legislation is achieved.

The obligation of parliament to South Africans is to ensure that legislation is processed both in line with the constitution and processed with an appropriately diligent and professional understanding of the issues at stake. Joint Rule 159 must be strengthened and implemented in accordance with the Independent Panel's recommendations as noted above.

4. **Message to Business: support and conduct a Reduce "Red Tape" Challenge**

The problem at this delicate moment in the country's trajectory is that government has woven itself a gordian knot of red tape. Unchecked, regulations have multiplied to the extent that the tangled web of red tape is intractable to unravel. Even with every good intention to reduce it and solve the administrative inefficiencies embedded in the system that cause red tape, the challenge is where to start; what to tackle as a priority; and how to implement red tape reform measures.

This is where business can step in. A practical way to set the agenda for red tape reduction is for business to sponsor and run a "reduce red tape challenge" - a public call to business and especially small business owners. A web-based tool will provide for a dynamic interface with business owners battling red tape to have their say on regulations affecting their everyday lives; whether to speak up for well-designed rules that protect, or challenge those badly designed or badly thought-through regulations that are an unnecessary burden.

For the very first time in South Africa, a “reduce red tape challenge” will provide the opportunity to crowd-in the voice of small business owners (formal and informal) on one of the most critical factors that constricts their enterprises to form, run and grow and employ more people. To illustrate the impact that a “red tape challenge” can have on an economy is to be found in the UK’s example. The UK ran a similar challenge[16]. In a short period of three years, after receiving over 30 000 comments, it resulted in the government scrapping a record amount of red tape which, when calculated by multiplying the net annual cost of the time the regulation had been in effect, achieved £ 1,2 billion (equivalent to R24 billion) cumulative net saving to business, which it could then in turn invest in capital equipment, or scale up production, or hire more people, or expand its footprint.

5. In search of the grail … where IS the evidence for evidence-based policy?

As former statistician-general, Pali Lehohla notes, “South Africa has monumental lapses when it comes to collecting, updating and even using statistical information.” (Lehohla, August 2020). ‘Where is the data?’ is the battle cry for local and international researchers investigating and measuring South Africa’s socio-economic position. And especially for researchers investigating the country’s small business landscape. Growing small businesses has been on the national agenda since 1994; they feature prominently in the NDP Vision 2030 as a means to achieving productive output and jobs. But what do we know about the growth of small businesses and their measured value to South Africa’s gross domestic product? Do we know how many small businesses exist in the economy, measured against size in terms of employment and sector?

The short answer is, no. It is simply not possible to measure progress of small businesses in the economy as the data is not available. Estimates of the small business community to GDP growth are simply that … estimates, which are often based on flawed assumptions or non-existent data.

[16] OECD. Red Tape Challenge (United Kingdom). “Pilot database on stakeholder engagement practices in regulatory policy”, OECD (2016).

Box 5: Quarter of a century of missing data on small businesses in South Africa

In 1995, the *National Strategy for the Development and Promotion of Small Business in South Africa* (White Paper) had this to say about the importance of gathering and producing better data on the small business segment of the economy …

"Reliable statistical information is important for the small business sector, for small-enterprise support agencies and for the central as well as provincial governments to monitor policy effectiveness and facilitate forward planning. At present the statistical base is extremely poor with respect to most aspects of small-enterprise development in South Africa. The task to upgrade and regularly update relevant trends cannot be the responsibility of government alone. The most effective approach will need the co-operation of the following parties: …. Central Statistical Services, who should collect as much of the relevant data as is possible within the framework of its resources and techniques …." (Section 4.3.4)

Do we know whether small businesses in the target groups that government policy – and regulatory interventions – have focused are surviving and adding productive value? Again, no. Policy and regulatory interventions are not measured with any statistical rigour. Do we know whether the aims of BBBEE transformation is actually achieving its objectives? Again, and again, no. Data to verify whether the BBBEE transformation policy is working is held by the BBE commission and is not publicly available.

What about attempting to understand the size and characteristics of the lower end of business activity including the informal sector? This segment of the economy represents the largest policy thrust in terms of the selected target group for policy and regulatory intervention by government. The only survey conducted by Stats SA to provide an inkling into the nature of this segment of the economy is the Survey of Employers and the Self Employed (SESE) which measures non-VAT registered micro and small businesses in the economy. The SESE is based on a sample drawn from the Quarterly Labour Force Surveys, which methodologies in turn have recently come under the spotlight for reporting inconsistencies. Even so, the SESE is however reviewed only every four (4) years, with an additional 2-5year time-lag in reporting the results. So, the data that the SESE reports on is outdated by five to six years.

Another critical, and fundamental challenge in measuring the small business segment of the economy is that from a macro-statistical perspective, definitions of micro, small and medium enterprises is not uniformly applied, or harmonised across any government department.

More fundamentally, as Pali Lehohla strongly points out “statistics are only an incidental verse in the bible of policy space in South Africa.” He states that what is worrisome today is the amount [lack] of attention that is given to the debt-to-GDP ratio, warning that the statistical collection and outdated measurements used “will sink the country”. He explains that “Stats SA over a 10-year period has not run an income and expenditure survey (IES). The last one was run in 2015 but was not used because the Treasury, cabinet and parliament did not allocate the resources to run it. Stats SA has not run a living conditions survey (LCS) nor an economic census for the same reason of financing.” He goes on to say, “The IES covers 600 products and provides data for producing the basket of weights upon which the CPI is determined. The CPI is used to deflate the GDP, thus transforming it from nominal growth outcome to a real growth GDP. The LCS provides measures on poverty. The economic census provides data that would enable Stats SA to update the structure of the GDP components and ultimately make South Africa comparable globally and address its information on global competitiveness.” (Lehohla, August 2020). “And here” he states, “is the scientific malaise poisoning the debt-to-GDP ratio and the CPI. The GDP, just in terms of relative weights and classification of new sectors, has hitherto not been updated, and the CPI that should deflate it to real GDP has also not been updated.”

Research, data and information is a critical role of the capacity of the state. Without statistically robust and relevant and updated data, the state cannot perform its functions properly, innovate and correctly target it’s polices, let alone measure them once implemented.

It is appalling that government has under-resourced our country’s statistical agency Stats SA for decades. It is even more disgraceful that further heavy-handed budget cuts of R200-million were recently taken from Stats SA budget for state research in order to bailout corrupt and failing state owned enterprises, SAA in particular. Can this shameful situation be fixed? It falls within the hands of a diminished state capacity to alter the course.