

Reviewing Ethical Codes of Conduct for elected representatives in SA

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The current ethical system for elected representatives

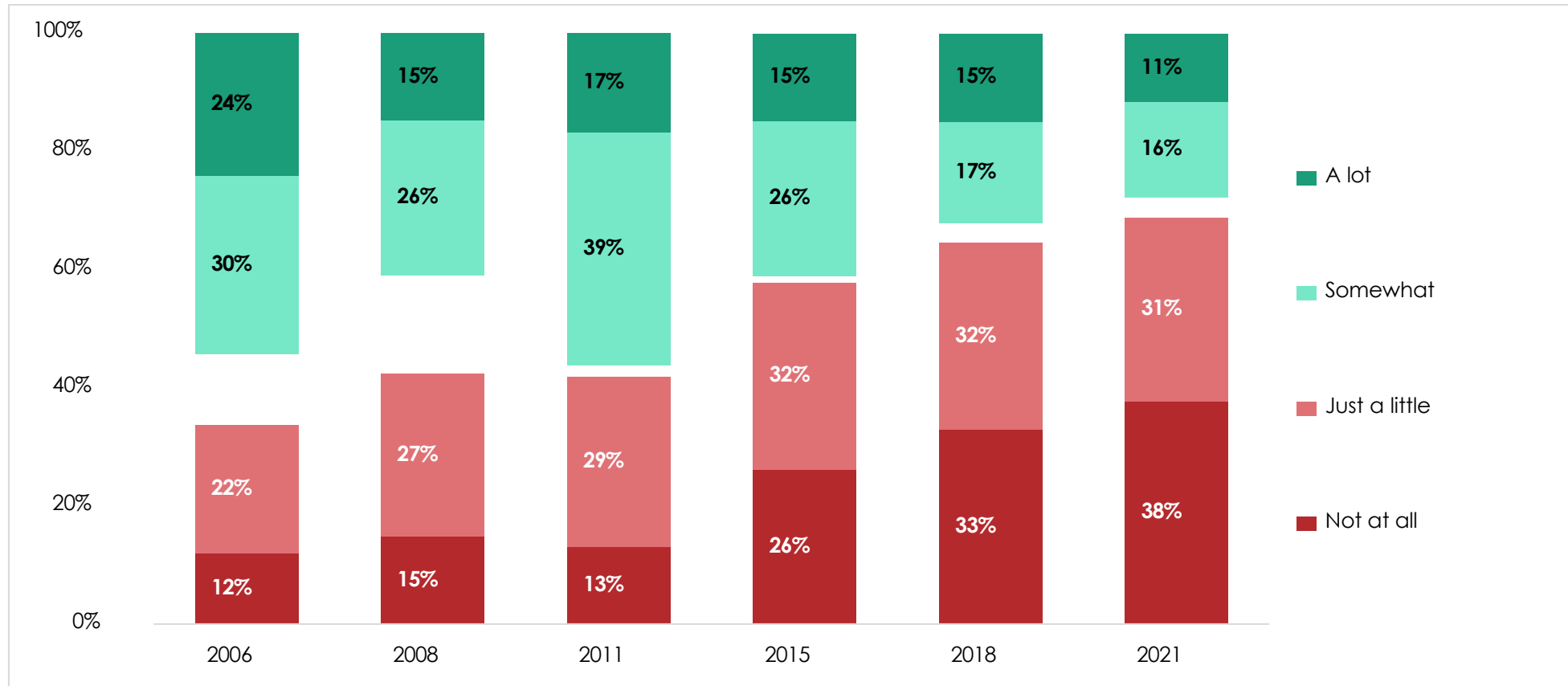
- Many of the ethical codes for elected representatives in South Africa are structured in the following ways:
 - (i) Require compliance to the constitutional values,
 - (ii) Has borrowed values from UK Nolan Standards for Public Life,
 - (iii) Has rules related on conflict of interests,
 - (iv) Identifies prohibited conduct like lobbying for remuneration and prohibiting members from doing business with the state and
 - (v) Has well established rules related to disclosure of financial interests.
 - (vi) Many have identified processes for investigations
 - (vii) Have stipulated sanctions for breaches of the Code
 - (viii) Most Legislatures and Metros have officials who are responsible for the implementation of the Code. Some officials have independent Integrity Commissioners and some have Registrars who report to a Committee of Members.
 - (ix) The Executive Members Ethics Act is implemented by the President and Premiers.

What are the public expectations of elected Members?

- Elected members should fulfil their constitutional obligations to ensure accountability, to conduct constitutional mandate of passing laws and to oversight on the exercise of power by the Executive.
- Members to ensure that they fulfil their representative roles in the public interest.
- To ensure that those who are corrupt are not protected by misplaced sense of loyalty.
- To ensure that party obligations do not take precedence over their public responsibility
- To avoid conflict of interests.
- To be accountable for their exercise of public power.

Results of an Afro Barometer 2021 survey

Figure 4: Trust in Parliament | South Africa | 2006-2021



Rethinking the ethical framework in South Africa

- Members have to balance their responsibilities vis a vis their party roles and the constitutional obligation to represent the public interest.
- Acting in the public interest is fundamental to the role and function of a Member, however the Codes of ethical conducts do not address these in a systematic way.
- Whilst recognizing public interest is difficult to define and definitions are hugely contested, in the South African context there is a need to develop a workable definition.
- SM. King et al in the SAGE journal 21 February 2015 outlines the following definition of public interest as “(a) the fiduciary duties to the commons as defined and constrained by constitutional principles, (b) policies that are congruent with democratic values, and (c) the practice of nonidiosyncratic and universalized ethical administrative leadership and decision making”
- Howard Elcock, believe that the collective “public interest” is found in four values: “accountability, legality, integrity and responsiveness.” See Elcock (2006) and Harmon (1992).

Rethinking the ethical framework in South Africa.

- The Codes of Conduct for elected representatives are all different. Members of the Executive has a legislated Code namely the Executive Members Ethics Act, Members of Parliament and Provincial Legislatures have each adopted a Codes of Conduct in terms of the Rules of the Legislature except the WC which has a legislated Code of Conduct, Councillors are bound by the Municipal Structures Act.
- In survey conducted which I conducted for CASAC it was found that some legislatures were not able to provide access to the disclosure of financial interests, in a few legislatures there was reluctance to provide access and request that we fill in PAIA forms, other legislatures and municipality simply ignored the request for access to disclosure. The Study showed that the implementation of the Codes of Conduct was uneven.
- There are no mechanisms to ensure compliance.
- It is recommended that there is a single Code for all elected Members which is equally applicable at all levels of government and that a single repository be created to access such information. Perhaps there is a need for a single national ethics office which monitors compliance by elected representatives.

Matters for consideration in the review of the Code of Ethical Conduct.

- The Public Protector Report on State Capture Paragraph 8.9 report 6 of 2016/2017 recommends that, “Parliament to review, within 180 days, the Executive Members’ Ethics Act to provide better guidance regarding integrity, including avoidance and management of conflict of interest. This should clearly define responsibilities of those in authority regarding a proper response to whistleblowing and whistle-blowers. Consideration should also be given to a transversal code of conduct for all employees of the State.” An amendment was drafted but not implemented.
- The needs to be an upper limit for a gift and hospitality. Any gift, hospitality and benefit exceeding beyond an agreed upon amount must be declined by the elected representatives.
- There is a need to include substantial assets and unsecured loans in disclosure of interests.
- Whilst there is a prohibition on lobbying for remuneration, there should be disclosure requirements for lobbyists operating at Legislatures and to provide details on gifts and benefits received by Members or Councillors.
- Further consideration should be given to the manner in Executive Members place there interests under administration.