

# PUBLIC SERVICE ANTI-CORRUPTION STRATEGY



DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION  
JANUARY 2002

## TABLE OF CONTENTS

SUBJECT	PAGE
1. SUMMARY OF PROPOSALS.....	3
2. INTRODUCTION.....	6
3. BACKGROUND.....	6
4. STATUS REPORT.....	6
5. DIMENSIONS OF CORRUPTION.....	7
6. IMPACT AND COST OF CORRUPTION.....	9
7. DEFINITION OF CORRUPTION.....	10
8. PURPOSE OF STRATEGY.....	11
9. PRINCIPLES OF STRATEGIC FRAMEWORK.....	11
10. PUBLIC SERVICE ANTI-CORRUPTION STRATEGY.....	12
11. IMPLEMENTATION.....	20
12. APPENDIX 1.....	22
13. APPENDIX 2.....	24
14. APPENDIX 3.....	27
15. APPENDIX 4.....	30

## SUMMARY OF PROPOSALS

1. It is proposed that a holistic and integrated approach to fighting corruption be established. This requires a strategic mix of preventative and combative activities and a consolidation of the institutional and legislative capabilities of Government.
2. The proposed Public Service Anti-corruption Strategy contains nine considerations that are inter-related and mutually supportive. These considerations are as follows:-
  - 2.1 *Review and consolidation of the legislative framework (pages 12 and 13):* It is proposed that a new legislative framework to fight corruption be established and implemented by July 2003. This framework must provide for-
    - A new corruption Act that provides a workable definition of corruption, that reinstates the common law crime of bribery, that creates presumption of *prima facie* proof to facilitate prosecution, that extends the scope of the Act to all public officials and private citizens and their agents;
    - A range of offences and obligations;
    - A holistic approach to fighting corruption;
    - Compliance with regional and international conventions;
    - Civil recovery of proceeds and the ability to claim for damages; and
    - Prohibition of corrupt individuals and businesses.
  - 2.2 *Increased institutional capacity (pages 13 to 15):* It is proposed that the courts, existing institutions and departmental capabilities be improved for optimal functioning. In particular it is proposed that-
    - That the efficacy of existing departments and agencies be improved through the establishment, by March 2002, of appropriate mechanisms to coordinate and integrate anti-corruption work
    - Departments create a minimum capacity to fight corruption (audit report available by May 2002).
  - 2.3 *Improved access to report wrongdoing and protection of whistleblowers and witnesses (page 15):* This consideration focuses on improving application of the

protected disclosures legislation, witness protection and hotlines. Implementation of the improvements is to commence by August 2002.

- 2.4 *Prohibition of corrupt individuals and businesses (page 16)*: It is proposed that mechanisms be established to prohibit (a) corrupt employees from employment in the Public Sector and (b) corrupt businesses and agents of such businesses from doing business with the Public Service for a maximum period of five years. It is envisaged that the information system for prohibited employees will be established by April 2003 and a central electronic register of prohibited businesses will be established by September 2002.
- 2.5 *Improved management policies and practices (pages 16 to 18)*: Solid management practices is widely recognised as the first line of defense against corruption and it is proposed that improvements be effected with regard to procurement systems, employment arrangements, the management of discipline, risk management, management information and financial management. The proposals include the extension of the system of disclosure of financial interests, screening of personnel, establishing mechanisms to regulate post-Public Service employment and strengthening the capacity to manage discipline. It is envisaged that revised management practices be implemented by November 2002 and that a management information system will be operational by April 2004.
- 2.6 *Managing professional ethics (pages 18 and 19)*: It is proposed that a generic professional ethics statement for the Public Service be developed that is to be supplemented by mandatory sector-specific codes of conduct and ethics. Professional ethics will be supported by extensive and practical explanatory manuals and training and education. Implementation is envisaged to be December 2002.
- 2.7 *Partnerships with stakeholders (page 19)*: Partnering has been identified as a cornerstone of the national fight against corruption and in particular-
- The National Anti-corruption Forum will be used to promote Public Service interests;
  - Partnerships will be established with the Business and Civil Society Sectors to curb corrupting practices; and
  - Public Service unions will be mobilised to advocate professional ethics with members.
- 2.8 *Social analysis, research and policy advocacy (pages 19 and 20)*: It is proposed that all sectors be encouraged to undertake ongoing analysis on the trends, causes and impact of corruption and for these sectors to advocate preventative measures. These partnerships will be established by August 2002.

- 2.9 *Awareness, training and education (pages 20 and 21):* It is proposed that all the above developments be supported through ongoing awareness, training and education and that a targeted public communication campaign be launched by July 2002. The campaign will be aimed at promotion of South Africa's anti-corruption and good governance successes domestically and internationally. The local part of the campaign will be hinged on the promotion of *Batho Pele* initiatives and pride amongst employees.

*Annexures:*

- Annexure 1: Progress report on implementation of summit resolutions.  
Annexure 2: Memorandum of Understanding: National Anti-corruption Forum.  
Annexure 3: A review of South Africa's national anti-corruption agencies  
Annexure 4: Implementation Plan.



## **PUBLIC SERVICE ANTI-CORRUPTION STRATEGY**

### **INTRODUCTION**

1. This anti-corruption strategy has been developed for the Public Service in order to give effect to the expressed commitment of Government to fight corruption in the Public Service. In accordance with the resolution of the National Anti-corruption Summit, this strategy represents a further step towards Government's contribution towards establishing a National Anti-corruption Strategy for the country.
2. The Public Service, as a distinct sector of the South African society, requires a tailor made strategy that addresses issues of corruption in an integrated manner. This strategy is however sensitive and complimentary to national, regional and international requirements.

### **BACKGROUND**

3. During 1997, Government initiated a national anti-corruption campaign. This campaign progressed to a National Anti-corruption Summit in April 1999 at which all sectors of society (public & private) committed themselves to establishing sectoral anti-corruption strategies. At the same time, they too committed to the co-responsibility for fighting corruption through the coordination of these sectoral strategies. A range of other resolutions (Appendix 1) emanated from this Summit and all the sectors committed to implementing these. Sectoral cooperation is too being conducted under the auspices of the National Anti-corruption Forum (NAF). The Forum's mandate and functions can be seen in Appendix 2.
4. All over the Public Service many good anti-corruption initiatives commenced to support the implementation of the Summit resolutions. The Department of Public Service and Administration was instructed to forge these initiatives into a coherent strategy with the support of other departments. A Public Service Task Team (PSTT) consisting of key departments was convened for this task and representation from the local government and public entities has been included in order to establish a platform for the roll-out of the strategy to the whole of the Public Sector (Public Service, Local Government and Public Entities).

### **STATUS REPORT**

5. Compared to international practice, elements of a good anti-corruption strategy exist in South Africa and in particular in the Public Service. In addition to strong political commitment, South Africa has a solid legislative, regulatory and institutional framework, largely put in place since 1994. The Public Service

utilises good management practices, including a code of conduct, modern employment practices, financial disclosures, fair procurement and a progressive disciplinary system for the ensuring of economic utilisation of all state resources.

6. The South African framework does however not function optimally at present. Reasons for this can be seen in the lack of sufficient resources to fulfil mandates in the light of more pressing problems such as unemployment and health delivery, the fragmentation of the legislative framework, inefficiencies within and between institutions with anti-corruption mandates, a lack of focussed socialisation programmes, inefficient application of the disciplinary system, underdeveloped management capacity in some areas and societal problems (wealth accumulation). The concealment of corruption acts will also have to be regarded as criminal acts in the future. Implementation of the resolutions of the National Anti-corruption Summit has also been uneven (see Appendix 1 for report).

## DIMENSIONS OF CORRUPTION

7. In order to develop a Public Service Anti-corruption Strategy it is important to understand the various forms in which corruption manifests itself in the Public Service and elsewhere in society. The following examples illustrate the various manifestations<sup>1</sup>:
  - a. *Bribery*: Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of a public servant. This benefit may accrue to the public servant, another person or an entity. A variation of this manifestation occurs where a political party or government is offered, promised or given a benefit that improperly affects the actions or decisions of the political party or government. In its most extreme manifestation this is referred to as State Capture, or the sale of Parliamentary votes, Presidential decrees, criminal court decisions and commercial decisions. *Example*: A traffic officer accepts a cash payment in order not to issue a speed fine.
  - b. *Embezzlement*: This involves theft of resources by persons entrusted with the authority and control of such resources. *Example*: Hospital staff that steals medicines and in turn sells these to private pharmacists.
  - c. *Fraud*: This involves actions or behaviors by a public servant, other person or entity that fool others into providing a benefit that would not normally accrue to the public servant, other persons or entity. *Example*: A public servant that registers a fictitious employee in order to collect the salary of that fictitious employee.

---

<sup>1</sup> Adapted from Petter Langseth, *Integrated vs Quantitative Methods, Lessons Learned: 2000* (presented at NORAD Conference, Oslo, 21 October 2000)

- d. *Extortion*: This involves coercing a person or entity to provide a benefit to a public servant, another person or an entity in exchange for acting (or failing to act) in a particular manner. *Example*: A public health official threatens to close a restaurant on the basis of fabricated health transgression unless the owner provides the public health official with regular meals.
- e. *Abuse of power*: This involves a public servant using his/her vested authority to improperly benefit another public servant, person or entity (or using the vested authority to improperly discriminate against another public servant, person or entity). *Example*: During a tender process but before actual selection of a successful contractor, the head of department expresses his/her wish to see the contract awarded to a specific person.
- f. *Conflict of interest*: This involves a public servant acting or failing to act on a matter where the public servant has an interest or another person or entity that stands in a relationship with the public servant has an interest. *Example*: A public servant considers tenders for a contract and awards the tender to a company of which his/her partner is a director.
- g. *Insider trading/ Abuse of privileged information*: This involves the use of privileged information and knowledge that a public servant possesses as a result of his/her office to provide unfair advantage to another person or entity to obtain a benefit, or to accrue a benefit himself/herself. *Example*: A local government official has, as a result of his/her particular office, knowledge of residential areas that are to be rezoned as business areas. He/She informs friends and family to acquire the residential properties with a view to selling these as business properties at a premium.
- h. *Favouritism*: This involves the provision of services or resources according to personal affiliations (for example ethnic, religious, party political affiliations, etc.) of a public servant. *Example*: A regional manager in a particular Province ensures that only persons from the same tribe are successful in tenders for the supply of foods in to the manager's geographic area of responsibility.
- i. *Nepotism*: This involves a public servant ensuring that family members are appointed to public service positions or that family members receive contracts from State resources. This manifestation is similar to conflict of interests and favouritism. *Example*: A head of department appoints his/her sister's child to a position even when more suitable candidates have applied for the position.
8. The above illustration of the manifestations of corruption is by no means complete or exhaustive. Corruption appears in permutations and in degrees of intensity. Degrees of intensity vary from the occasional acceptance of bribes to



systemic corruption where bribery is the accepted way of “doing business” and large-scale looting of a country’s resources take place. Thus corruption also manifests as personal and political corruption. Corruption increases if left unattended and once this has culminated in systemic corruption creates a bigger challenge to address.

9. Socio-economic conditions, the political-institutional infrastructure, cultural heritage and other factors influence the way in which corruption is perceived and addressed. Whilst corruption seems easily identifiable, the varying perspectives makes it particularly difficult to define corruption and develop appropriate remedies. Such perspectives vary from the Moralistic-Normative perspective (corruption is inherently bad), the Functionalist perspective (corruption is ever-present in society and not always unwanted), the Public Office-Legalistic perspective (legal institutions independent from government is required to combat corruption), the Public Interest-Institutionalist perspective (institutions shape individual corrupt behaviour), the Interest-maximizing perspective (a market-centred perspective that accuses officials of converting political resources into goods needed to initiate and maintain corrupt relations) and the Political Economy perspective (State is the mechanism for the accumulation of wealth, especially where indigenous people lack independent access to the economy outside of the State).
10. Understanding the dimensions of corruption entails also understanding what is not corruption. Corruption is often described interchangeably with maladministration, incapacity and inefficiency, especially because public resources are being used. The deficiency of approaching corruption in this manner is that corruption becomes undefinable and thus impossible to address. Though corruption seems easily identifiable, it is of paramount importance to establish a workable legal definition of corruption, in order to maximize preventative and combating efforts, including the proper arrangement of responsibilities between institutions.

## IMPACT AND COSTS OF CORRUPTION

11. Whilst it is undisputed that corruption has become global in scope, it has particular damaging effects on the domestic environment of countries. In generalised terms four types of costs can be identified:
  - a. *Macro-fiscal*: This includes lost revenues from tax and customs levies, licensing fees, traffic fines, etc. and excessively high expenditure as a result of corruption loadings and fronting on state contracts. In extreme manifestations such as with State Capture, the lack of competition between bidders raises the costs dramatically. A study conducted of Central and East European countries reveal unofficial payments to be as high as 6% of

revenue<sup>2</sup>. It is estimated that Nigeria has lost \$100 Billion over a period of 15 years in this manner<sup>3</sup>.

- b. *Reduction in productive investment and growth:* The costs of corruption are particularly high for countries in great need of inflows of productive foreign capital. Widespread corruption provides a poor environment that does not attract foreign investment and those investors likely to make long-term contributions to development. Corruption however attracts those investors seeking to make quick profits through dubious ventures. Similarly corruption in aid programmes reduces benefits for recipients and hampers continued funding. Abuse of regulatory powers and misprocurement imposes further costs. International evidence indicates that countries with a higher incidence of corruption systematically have lower investment and growth rates and that public safety can be compromised by unsafe infrastructure<sup>4</sup>.
  - c. *Costs to the public and the poor in particular:* Diversion of resources from their intended purposes distorts the formulation of public policy and the provision of services. This is as a result of bribe-extraction for delivery of services, poor quality of services and poor access to services. Petty corruption and payment of bribes have a particular impact on the poor. Public programmes such as access to land, health services and the legal system are negated if bribe paying determines the allocation of these priorities and services. It has the effect of benefiting a few at the expense of the many and reinforces existing social and economic inequalities. This in turn undermines the credibility of government and public institutions.
  - d. *Loss of confidence in public institutions:* Once services can be bought and public officials break the trust and confidence people have in them, a loss in confidence in public institutions set in. This in turn undermines the rule of law, security of property, respect for contracts, civil order and safety and ultimately the legitimacy of the State itself.
12. Little research has been conducted in South Africa on the costs of corruption, both in terms actual monetary value and trust in public institutions.

## DEFINITION OF CORRUPTION

13. As the above indicates, defining corruption is problematic and disputed. One of the most common definitions of corruption is: "The use of public office for private gain." This definition needs to be broadened to include the following features:

<sup>2</sup> Hellmsn J, Ones G, Kaufmann D, *Beyond the "Grabbing Hand" of Government in Transition: Facing up to "State Capture" by the Corporate Sector*, published in *Transition* (Vol 11, No2).

<sup>3</sup> Financial Times, July 24, 1999.

<sup>4</sup> *Corruption in Poland: Review of priority areas and proposals for action*, The World Bank, October 11, 1999.

- a. The abuse of *power and breach of trust*;
  - b. The fact that corruption occurs in the *public, private and non-governmental* sectors; and
  - c. The fact that *private* gain is not the only motive for corrupt activity.
15. Therefore, for the purpose of this document, corruption can be described as “**any conduct or behaviour in relation to persons entrusted with responsibilities in public office which violates their duties as public officials and which is aimed at obtaining undue gratification of any kind for themselves or for others**”. This should not be viewed as a legal definition, but rather as a working definition for the purposes of operationalising this strategy<sup>5</sup>. (See paragraph 17 below for proposals on the content of corruption legislation.)

#### PURPOSE OF STRATEGY

14. The purpose of the Public Service Anti-corruption Strategy is to prevent and combat corruption through a multiplicity of supportive actions.

#### PRINCIPLES OF STRATEGIC FRAMEWORK

15. The Public Service Anti-corruption Strategy is informed by the following principles to root out corruption:
- a. The need for a holistic and integrated approach to fighting corruption, with a balanced mixture of prevention, investigation, prosecution and public participation as the platform for the strategy.
  - b. Constitutional requirements for the criminal justice system and public administration.
  - c. Public Service tailor-made strategies are required that operate independently but complimentary to national strategies, particularly with regard to detection, investigation, prosecution and adjudication of acts of corruption, as well as the recovery of the proceeds of corruption.
  - d. Acts of corruption are regarded as criminal acts and these acts can be dealt with either in the administrative or criminal justice system, or both if need be.
  - e. Domestic, regional and international good practice and conventions.

---

<sup>5</sup> The Ministry of Justice and Constitutional Development is currently developing the *Prevention of Corruption Bill*, with a revised legal definition of corruption.

- f. All aspects of the strategy must be:
  - i. supported with comprehensive education, training and awareness
  - ii. coordinated within Government
  - iii. subjected to continuous risk assessment
  - iv. expressed in terms of measurable and time-bound implementation targets.

## **PUBLIC SERVICE ANTI-CORRUPTION STRATEGY**

16. In order for the Public Service Anti-corruption Strategy to become successful, the following activities have to take place. These strategic considerations are all inter-related and dependent on one-another. Sufficient allocation of resources too have to be given to these “stepping stones” of the anti-corruption strategy in order for it to succeed.

### Strategic Consideration 1: Review and Consolidation of Legislative Framework

17. The existing legislative framework is solid but fragmented and requires review and consolidation to improve its efficiency. The existing Corruption Act of 1992 has proven to be ineffective and because the common law crime of bribery was repealed by this Act, prosecution of bribery cases has been insignificant. In particular the process of review and consolidation must:
  - a. Establish a workable legal definition of corruption.
  - b. Extend the scope of legislation to all officials in public bodies, corruptors and their agents.
  - c. Reinstate the common law offence of bribery.
  - d. Create presumption of *prima facie* proof to facilitate prosecution of an offence under the revised legislation.
  - e. Establish extra-territorial application and jurisdiction, and compliance with international conventions to which South Africa is a signatory.
  - f. Improve the civil and recovery elements of the legislative framework, in particular tax legislation that prohibits rebates related to bribes, the applicability of Sections 297 and 300 of the Criminal Procedure Act, recovery of losses in terms of the Public Finance Management Act, prevention of organised crime, recovery from pension provisions, freezing of assets and return of assets to institutions that incurred losses.

- g. Enable the State and individuals to claim for damages.
  - h. Prohibit corrupt individuals from further employment in the Public Sector as well as prohibit corrupt Businesses (including principals and directors of such Businesses) from gaining contracts funded from State revenue.
  - i. Regulate post-Public Service employment.
  - j. Establish responsibility for maintaining the witness protection system.
  - k. Make legislation easy to understand and apply.
18. In addition to the general requirements indicated above, new anti-corruption legislation must establish the following offences and obligations:
- a. Offences of accepting undue gratification, giving undue gratification, accepting or giving undue gratification by or to an agent, fraudulent acquisition of private interest, using office or position for undue gratification, dealing with, using, holding, receiving or concealing gratification in relation to any offence, and offences in respect of tenders as well as attempt, conspiracy, preparation and abetting.
  - b. Offences related to bribery of public officers, foreign public officials, bribery in relation to auctions, and bribery for giving assistance, etc. in regard to contracts.
  - c. Corruption of witnesses and deliberate frustration of investigations.
  - d. Possession of unexplained wealth.
  - e. The obligation to report corrupt transactions.

#### Strategic Consideration 2: Increased Institutional Capacity

19. This consideration is directed at **existing** institutions and entails three elements that relate to courts, national corruption-fighting institutions and departmental institutions.
20. *Courts*: The current proliferation of courts must be reviewed in order to assess and improve the efficiency of courts. Particular attention should be given to improving the specialised capacity of court officials to address corruption cases, rather than create additional specialised courts. The existing specialised commercial crime courts have proved to be hugely successful.

21. *Improving the functioning of existing institutions that have anti-corruption functions:*<sup>6</sup> The National Prosecuting Authority (specifically the Directorate of Special Operations and Asset Forfeiture Unit), the Public Protector, the Auditor-General, the Public Service Commission, the Special Investigation Unit (SIU), the South African Police Service (the Commercial Branch and the SAPS Anti-corruption Unit), the National Intelligence Agency, the Independent Complaints Directorate, the South African Revenue Services, committees of legislatures and occasional commissions established in terms of the Commissions Act all conduct anti-corruption work at present. Of these agencies, only the SIU has an exclusive (albeit narrow) anti-corruption mandate and none of the existing mandates promote a holistic approach to fighting corruption. The research indicates that initiatives to fight corruption are fragmented and hampered by the number of agencies and institutions that attend to corruption as part of a broader functional mandate. This situation of fragmentation, insufficient coordination, poor delineation of responsibility and assimilation of corruption work into a broader mandate directly affects the resourcing and optimal functioning of these agencies and institutions as far as anti-corruption roles are concerned. In order to address this situation, the following are required:
- a. A clear definition of the roles, powers and responsibilities of these institutions in order to increase their efficiency, including the allocation of new roles to negate deficiencies in areas of focus and to promote a holistic and integrated approach.
  - b. Establishment of formal coordinating and integrating mechanisms within the national Executive and between departments and agencies involved in anti-corruption work. Coordination at the level of departments and agencies must be regulated by a protocol and this mechanism must be accountable to the national Executive through the Governance and Administration structures.
  - c. Well defined accountability arrangements for all the institutions (departments and agencies).
  - d. Increased institutional capacity of institutions (departments and agencies), in particular the competencies of employees and a focus on prevention.
22. *Departmental Institutions:* Many departments have created specific departmental capacity to address corruption. Such capacity appears in many configurations, often linked with other functions such as internal audit or inspectorate functions. All departments and institutions of the Public Service must establish a minimum capacity to undertake the following functions:
- a. Conduct risk assessment.

<sup>6</sup> See Appendix 3 for a detailed report, *A review of South Africa's national anti-corruption agencies*, Office of the Public Service Commission, August 2001.

- b. Implement fraud plans as required in terms of the Public Finance Management Act, which must include, as a minimum, an anti-corruption policy and implementation plan.
- c. Investigate allegations of corruption and detected risks at a preliminary level.
- d. Enable the process of conducting further investigation, detection and prosecution, in terms of prevailing legislation and procedures.
- e. Receive and manage allegations of corruption through whistleblowing or other mechanisms.
- f. Promote professional ethics amongst employees.

Strategic Consideration 3: Improved Access to Report Wrongdoing and Protection of Whistleblowers and Witnesses

23. A range of mechanisms to promote the reporting of corruption and the subsequent protection of whistleblowers/informants exist, but these are not adequate. Access and protection must be improved by:
- a. Establishing guidelines for the implementation of the Protected Disclosures Act, including guidelines that make a distinction between whistleblowing and witness protection.
  - b. Institutions to implement departmental whistleblowing implementation policies, including policies for supporting persons maliciously and falsely implicated.
  - c. Obtaining support from the Civil Society Sector to assist, support and protect whistleblowers.
  - d. Promoting a culture of whistleblowing amongst employees.
  - e. Taking steps to improve the conditions for and functioning of the system of witness protection, including the issuing of guidelines on the conditions and working of the system.
  - f. Reviewing the effectiveness, risks and existing problems of current hotlines in order to improve the system, with particular reference to access to the independent agency.

#### Strategic Consideration 4: Prohibition of Corrupt Individuals and Businesses

24. Employees and businesses that have been party to acts of corruption often change employer within the Public Sector or, in the case of businesses, change name or the segment/location in which they operated. To remedy this situation and to raise the integrity and ethics of the Public Service and the businesses it does business with, prohibition must be established by:
- a. Excluding an employee and owners and directors of businesses found criminally guilty of corruption from employment or contract with the Public Sector for a maximum period of 5 years. Such punishment must be included in legislation as mandatory provision upon sentence. The presiding officer has discretion as to the period of the prohibition.
  - b. Recording the prohibition of such persons on employment systems.
  - c. Publication of sanctions and names of businesses, owners and directors.
  - d. Creating a centralised electronic register through the Common Service Provider of the National treasury of prohibited businesses, and their respective owners and directors, that have participated in acts of corruption. Manuals and directives on the application of the register will supplement this.
  - e. Requiring institutions to consult the centralised electronic register before contracts are concluded.
  - f. Requiring contractors to declare previous criminal convictions related to corrupt practices

#### Strategic Consideration 5: Improved Management Policies and Practices

24. Management must be held accountable for preventing corruption and this must be so stipulated in their service agreements. Good management is the first line of attack on corruption. This consideration entails six elements that relate to procurement, employment, managing discipline, risk management and management information systems.
25. *Procurement:* The Public Service procurement system is in the process of revision. Revised systems must:
- a. Carry sufficient controls to eliminate risks.
  - b. Require declaration of financial interests of employees involved in procurement as well as employees responsible for negotiating with service providers/contractors.



- c. Ensure minimum standards of conduct through contractual binding of contractors.
  - d. Require positive security clearances of all procurement personnel.
  - e. Establish clear guidelines for dealing with prohibited individuals and businesses.
  - f. Enforce screening of individuals and businesses to which contracts are awarded.
  - g. Enforce declaration of conflict of interest and adjudication on declared conflict by a competent authority.
  - h. Align all departmental and other State (including public entities') procurement systems with the Government's guidelines on Value for Money, Open and Effective Competition, Ethics and Fair Dealing, Accountability and Reporting and Equity.
  - i. Enforce minimum training requirements needed by all procurement officials, the rotation of personnel and spread of accountability.
26. *Employment:* In order to strengthen the management capacity and level of integrity in the Public Service:
- a. Pre-employment screening and verification of qualifications and previous employment must be required of all senior managers, procurement officials and employees in sensitive or high-risk positions.
  - b. Before the appointment of a senior manager, procurement official or an employee in a sensitive and high-risk position is confirmed, the employing authority must ensure that such an employee obtains a positive security clearance and if any conflict of interest is prevalent.
  - c. Mechanisms to regulate post-Public Service employment must be established, including-
    - (i) a two year-prohibition to accept employment, directorship or a benefit from a service provider to whom an employee has been instrumental in awarding a contract, tender or partnership arrangement;
    - (ii) a prohibition on "switching sides" during ongoing proceedings and negotiations with a service provider; and

- (iii) contractual binding of service providers to act ethically and not to recruit employees involved in the tender, contract or partnership arrangement.
  - d. Continuous self-development of employees must be encouraged through appropriate support.
27. *Managing Discipline:* The establishment of the independent agency does not in any manner discourage or preclude disciplinary action against undisciplined employees. One of the functions of the agency will be to promote disciplinary capacity in institutions. The disciplinary system is currently being reviewed and the following improvements must be considered:
- a. Early signs of a lack of discipline must be progressively managed.
  - b. The accountability and capacity of managers to manage discipline must be improved through encouraging managers to act against transgressions, through the further development of a pool of employees competent to conduct all aspects of disciplinary proceedings and through establishing a culture of accountability with managers and employees alike by including the ability to maintain discipline as performance measurement criteria.
  - c. Establishing a cadre of well-trained senior employees to manage complex and high profile disciplinary cases.
  - d. Improving the manner in which private citizens are summoned and their actual participation in disciplinary proceedings.
28. *Risk Management:* Risk management, as a ongoing management practice must be encouraged and be part of a manager's service agreement. Risk must be defined to be encompassing of all resources and delivery risks.
29. *Management Information System:* An integrated information management system, that links with existing human resource and financial management management systems, must be developed and implemented. This system will improve management through timeous information and systemic controls. The system must ensure generic recording and classification of acts of corruption.
30. *Financial management:* Meticulous application of the requirements of the Public Finance Management Act, 1999, must be enforced.

#### Strategic Consideration 6: Managing Professional Ethics

31. Coherent processes and mechanisms to manage professional ethics are key to the fight against corruption. Noting the complexities of this matter, the following must be established:

- a. Promotion of the concept and practice of ethics management.
- b. Development of extensive training material and training opportunities on ethics management.
- c. Establishment of a generic professional ethics statement for the public service.
- d. Development of mandatory sector-specific codes of conduct and professional ethics.
- e. The inclusion of (i) conflict of interest and (ii) a system of declaration of assets/financial interests in the codes of conduct.
- f. Regular ethics audits that must be reported on in annual reports.
- g. Professional ethics must be promoted through explanatory manuals, continuous training and education and establishing partnership with professional associations.
- h. The Senior Management Service must be developed to espouse professional ethics and to provide leadership to other employees.

#### Strategic Consideration 7: Partnerships with stakeholders

32. Partnering has been identified as a cornerstone of a national anti-corruption strategy. To promote partnership the following must be established:
  - a. The Public Service must promote its interests in the National Anti-corruption Forum and in particular must utilise the Forum to strengthen preventative measures.
  - b. Partnerships with organised stakeholders in the Business and Civil Society Sectors, to curb corrupting practices by members of these Sectors must be established.
  - c. Public Service unions must specifically be mobilised to advocate professional ethics with members.

#### Strategic Consideration 8: Social Analysis, Research and Policy Advocacy

33. The role of society in fighting corruption is internationally recognised. Society and in particular organisations within civil society that has an interest in corruption matters and the effects thereof on societies, should be encouraged to undertake the following:

- a. Ongoing social analysis and research on the trends and causes of corruption as well as the impact of anti-corruption measures.
- b. Advocacy of preventative measures and the promotion of a culture of whistleblowing within their constituencies.
- c. Ongoing monitoring and evaluation of corruption trends, causes and measures in all Sectors.

#### Strategic Consideration 9: Awareness, Training and Education

34. Although many good initiatives exist to fight corruption, public awareness is poor. Employees are insufficiently educated on their rights and responsibilities as well as about the mechanisms that exist to fight corruption. A comprehensive awareness campaign, supported with education and training, needs to be established and implemented at two levels.
35. *Public Communication Campaign:* A targeted communication campaign that contain the following elements must be developed:
  - a. A targeted campaign to promote South Africa's anti-corruption and good governance successes internationally.
  - b. Promotion of departmental successes in anti-corruption work.
  - c. Messaging that balances a positive duty upon employees (not to tolerate corruption) with negative messages of the consequences (for both perpetrators and victims)
36. *Raising the Awareness and Education of Employees:* A comprehensive awareness campaign and training and education of employees must include the following:
  - a. The promotion of the guidelines on professional ethics, and training (both at induction level and continuous training) on practical application of professional ethics.
  - b. Awareness of the current legislative framework as it relates to corruption, with practical guidelines on the rights of employees who blow the whistle on corruption, the nature of the witness protection system and the roles and responsibilities of existing anti-corruption institutions.
  - c. Encouragement of employees to blow the whistle on corruption within their work environments.
  - d. Responsibility of employees to evaluate and report risks to internal audit functionaries in departments.

- e. Integration of anti-corruption issues into the wider campaign to promote the Batho Pele principles, with particular links to the “I am proud to be a Public Servant” element of that campaign.

## **IMPLEMENTATION**

37. Appendix 4 is the systematic implementation plan for the execution of the anti-corruption strategy in the public sector. Here, the broad strategy is broken down into various strategic considerations (objectives), needed for the successful implementation of the strategy. These strategic considerations are then further broken down into their specific elements (goals).
38. Each element then has to be delegated to a specific, applicable and responsible department, for execution. Time frames/target dates will also have to be established as well as the cost implication for each step.
39. The anti-corruption strategy in essence seeks to address the needs of the Public Service. Elements of the strategy will have to be tailored to suit the legislative and other environments of local government and public entities.



## Appendix 1

### PROGRESS REPORT ON IMPLEMENTATION OF SUMMIT RESOLUTIONS

Indicated below is a status report on progress with the implementation of the Resolutions of the National Anti-Corruption Summit.

Resolution	Status report
<p><b>Combating corruption</b></p> <ul style="list-style-type: none"> <li>• A review and revision of legislation.</li> <li>• Establishment of a whistleblowing mechanisms</li>   <li>• Speedy enactment of the Open Democracy Bill</li>   <li>• Establishment of special courts to adjudicate on corruption cases</li>   <li>• Establishment of Sectoral Coordinating Structures (broadly classified as Public Sector, Civil Society and Business)</li>   <li>• Establishment of a National Coordinating Structure to lead, coordinate, monitor and manage the National Anti-Corruption Programme</li> </ul>	<ul style="list-style-type: none"> <li>• Justice has started the review of the Corruption Act.</li> <li>• Protected Disclosure Act commenced on 16 February 2001, but guidelines for practical implementation do not exist.</li> <li>• Promotion of Access to Information Act, 2000 assented to on 3.2 2000. Privacy element of Open Democracy Bill currently with SA Law Commission.</li> <li>• Responsibility of the Department of Justice and Constitutional Development. Courts not functioning as yet.</li> <li>• Establishment in early conceptual phase</li>   <li>• Memorandum of Understanding for establishment of National Anti-Corruption Forum in place</li> </ul>
<p><b>Preventing corruption</b></p> <ul style="list-style-type: none"> <li>• Blacklisting of individuals, business and organisations who are proven to be involved in corruption</li>   <li>• Establishment of Anti-Corruption Hotline</li> <li>• Establishment of Sectoral and other Hotlines</li> <li>• Disciplinary action against corrupt</li> </ul>	<ul style="list-style-type: none"> <li>• Mechanisms currently in conceptual phase. National Treasury considering central database of corrupt and under-performing service providers. Some departments have established own blacklists.</li> <li>• Established in all nine Provinces.</li> <li>• Established.</li> <li>• Disciplinary codes revised. Efficacy</li> </ul>

<p>persons</p> <ul style="list-style-type: none"> <li>• Consistent monitoring and reporting on corruption</li> <li>• Promotion of and implementation of sound ethical, financial and related management practices.</li> </ul>	<p>of application still to be measured. PSC completed report on the investigation into dismissals as a result of misconduct (1999)</p> <ul style="list-style-type: none"> <li>• To a limited extent done by Transparency International and political parties, NGO and media. No Public Service mechanisms established yet.</li> <li>• New Public Service Regulations and Public Finance Management Act, 1999 contain elements. Honesty and Integrity is a defined competency identified for SMS. Ethics and Fair Dealing is one of five pillars in newly established Procurement Guidelines.</li> </ul>
<b>Building Integrity and raising</b>	
<p><b>Awareness</b></p> <ul style="list-style-type: none"> <li>• Promotion and pursuance of social research and analysis and policy advocacy to analyse causes, effects and growth of corruption</li> <li>• Enforcement of Code of Conduct and Disciplinary Codes in each sector</li> <li>• Inspiring the youth, workers and employers towards intolerance for corruption</li> <li>• Promotion of training and education in ethics</li> <li>• Sustained media campaigns to highlight aspects of the strategies</li> </ul>	<ul style="list-style-type: none"> <li>• No substantial studies/research done. UNODCCP sponsored project to do country assessment will take effect soon.</li> <li>• Public Service Code of Conduct, new Disciplinary Code and practical guideline on the Code of Conduct are in place.</li> <li>• No particular strategy in place as yet.</li> <li>• No T &amp; E programme in place. Provincial workshops on Code of Conduct and anti-corruption were conducted by PSC in all provinces.</li> <li>• Risk management workshops were also conducted.</li> <li>• No visible Government media campaign. Some media houses are very visible in reporting on corruption. GCIS prepared Draft Communication Plan for a National Integrity Strategy and the introduction of National Anti-Corruption Forum.</li> </ul>

**Appendix 2**

**Memorandum of Understanding: Establishing of the  
National Anti-corruption Forum**

**PREAMBLE**

WHEREAS the National Anti-corruption Summit held in Parliament, Cape Town, on 14-15 April 1999, recognised the serious nature and extent of the problem of corruption in our society;

AND WHEREAS the delegates to the National Anti-corruption Summit themselves to develop a culture of zero tolerance of corruption;

AND WHEREAS it has been resolved at the National Anti-corruption Summit that sectoral co-operation at national level is required to prevent and combat corruption;

NOW THEREFORE a National Anti-corruption Forum is established.

**The founding of a National Anti-corruption Forum**

1. A non-statutory and cross-sectoral National Anti-corruption Forum (hereinafter “the Forum”) is established:
  - a. to contribute towards the establishment of a national consensus through the co-ordination of sectoral strategies against corruption;
  - b. to advise Government on national initiatives on the implementation of strategies to combat corruption;
  - c. to share information and the best practice on sectoral anti-corruption work; and
  - d. to advise sectors on the improvement of sectoral anti-corruption strategies.

**Members of the Forum**

2. The Forum shall consist of thirty (30) members on the basis of ten (10) representatives from each of the sectors envisaged in the resolutions of the National Anti-corruption Summit.
3. The members of the Forum shall be fit and proper persons who are committed to the objectives of the Forum and who shall serve as members on a voluntary basis. Such representatives shall be suitable leaders within each sector.



4. Each sector shall ensure that members of the Forum are representative of all constituent parts of the sector and that members provide continuity in their contributions to the work of the Forum.
5. The Minister for the Public Service and Administration will convene members of the Public Sector.
6. The Forum shall appoint a Chairperson with two deputies from the other representative sectors.

### **Convening the Forum**

7. The National Anti-corruption Forum shall convene at least two meetings of the Forum a year.
8. The Forum shall be assisted by a secretariat provided by the Public Service Commission.
9. The Public Service Commission shall at the first meeting of the Forum submit a proposal to the Forum on the manner, nature and impartiality of support of the secretariat.
10. The Public Service Commission shall, under the guidance of the Forum, convene an Anti-corruption Summit on a bi-annual basis.
11. The Forum shall consider its composition, capacity and continued functioning after one year.

### **Functions of the Forum**

12. The functions of the Forum shall be to do all such things that are reasonably necessary to achieve its objectives as set out in paragraph 1 above. The Forum shall at its first meeting adopt a plan of work in order to achieve the objectives set out in the Memorandum of Understanding.

### **Reporting**

13. The Public Service Commission shall prepare an annual report on the activities of the Forum. The annual report must be approved by the Forum. The Public Service Commission shall publish the annual report, including to Parliament, at the bi-annual Anti-corruption Summits and on the Public Service Commission's official Website.

14. Any report by the Forum shall be distributed by the members of the Forum to the entities they represent to be made as widely available as is reasonably possible.

### **Expenditure**

15. The Public Service Commission will bear all expenditure emanating from secretarial support, excluding the cost of publication and printing of annual reports. Each sector undertakes to bear all costs related to the attendance of Forum meetings and the bi-annual Summits. The Public Service Commission will strive to obtain donor funds and sponsorships for the activities of the Forum and the bi-annual Summits.



## Annexure 3

## A review of South Africa's national anti-corruption agencies

### EXECUTIVE SUMMARY

#### ABSTRACT

South Africa's complex political economy has given rise to several forms of corruption. These have many causes including the fact that the new social forces governing South Africa have historically been excluded from the economy, but now control state power in a context where the state is a major mechanism of accumulation. Anxious to deliver services to previously excluded and marginalized people, the new administrative cadre finds itself stifled by a bureaucratic, rule-bound public system. The state should not be bulldozed into panic reactions but it should, when appropriate, root out corruption through swift decisive action. Bribery, fraud, nepotism and systemic corruption are some of the forms corruption takes in contemporary South Africa. A number of state agencies are in place to combat and prevent corruption. To some extent mandates overlap, and some degree of rationalization is needed to promote effectiveness. Legislative reform, spearheaded by the Department of Justice, will be crucial in improving the efficacy of the agencies that are also hamstrung by a lack of resources and an unmanageable caseload. Central coordination of the activities of the agencies is essential for greater effectiveness of the agencies. The absence of such coordination is insufficient motivation for the establishment of a single anti-corruption agency. The strategic role of such an agency is not clear. Its establishment would be costly and is undesirable at present given other pressing priorities such as job creation, poverty alleviation and the fight against HIV/AIDS.

#### MANDATES

- This is a report of a review of the national anti-corruption agencies currently in operation in South Africa.
- It argues that performance by the agencies could be improved through better coordination and cooperation and concludes by suggesting that a single anti-corruption agency would not be appropriate at present.
- The organisations audited have very specific mandates, whether to recover public funds, audit state expenditure or to collect taxes. In certain cases (e.g. the Special Investigating Unit - SIU), the mandate is very broad and overlaps with other agencies' mandates such as that of the Public Protector and the Asset Forfeiture Unit.
- Dealing with corruption is not the primary function of any of the agencies discussed, apart from the SIU and the SAPS Anti-Corruption Unit.
- The Independent Complaints Directorate (ICD) is able to exercise discretion in terms of dealing with certain cases of misconduct, but corruption issues are not a priority as it struggles with a limited budget to fulfil its prime mandate, namely, investigations into deaths in police custody or as a result of police action.
- There are cases, such as abuse by the police, which can only be dealt with by the ICD.
- Recovery of public monies and assets can take place by both the Asset Forfeiture Unit (AFU) and the SIU.

- There are a number of agencies, including the PSC, the Auditor General and the Public Protector, which can conduct investigations, for example into maladministration. Such efforts need to be co-ordinated.
  - Despite each agency seeing its role with respect to corruption issues as fairly unique, they all agree that there is an overlap between their functions and that rational principles should be applied to address the situation.
- STRUCTURAL ARRANGEMENTS**
- There is structural uncertainty as to the future of certain agencies.
  - Clarity on the long-term future location of the SAPS Anti-Corruption Unit is needed. The Commercial Branch of the SAPS is also awaiting clarity regarding its status within the restructured SAPS.
  - The Directorate of Special Operations (DSO) now forms part of the National Directorate of Public Prosecutions (NDPP). However, the former Special Directorates on Organised Crime and Public Safety, Serious Economic Offences and Corruption have not been formally structured in terms of their operations, other than to reside under the DSO.
  - The ministerial protocols that will spell out the operating arrangements between the DSO and other criminal justice components such as the SAPS have not been finalised.
- LEGISLATIVE REFORM**
- Legislative reform with regard to the Corruption Act is needed. The Department of Justice is currently working on new legislation.
  - Proposals have been made for the Auditor-General's Act to be amended in order to bring it in line with the PFMA and to provide for new powers in terms of search and seizure.
- RESOURCE CONSTRAINTS**
- Few of the bodies audited believed they have sufficient financial and human resources with which to carry out their mandates.
  - In particular, the ICD which has a blueprint of 500 staff and is only able to employ 100 with its budget, which in real terms has remained static, and the Office of the Public Protector, which has a blueprint of 200 staff and is only able to fill only half of these posts due to insufficient resources.
  - Certain agencies, such as the DSO, have a very high budget allocation when compared with other bodies, such as the SAPS Commercial Crime Branch.
  - Training is seen to be a top priority for all the agencies.
  - Internal integrity mechanisms, other than screening of personnel, seem to be acquiring a greater significance.
- PUBLIC PERCEPTIONS AND INTERACTION**
- Levels of interaction with the public vary across agencies. This is an area requiring attention. It is vital that citizens are aware who can help in a particular instance. In this way wasteful interaction with agencies can be reduced.
  - Public polling of agencies in terms of client satisfaction is starting to happen, although more needs to be done in this area.
  - A negative consequence of the multiplicity of agencies is that it encourages "forum shopping" by a public anxious to secure a response to complaints.
- CASE LOADS**
- Information on cases, particularly with regard to corruption-related issues, is difficult to obtain. For instance, figures on cases resulting in a conviction are not gathered in the National Prosecuting Authority.
  - Certain agencies such as the ICD and SAPS Anti-Corruption Unit as well as SAPS Commercial Crime Branch stand out in terms of having readily available figures. The type of corruption cases being dealt with by agencies is often not clearly specified.
  - There are significant backlogs of corruption-related cases (particularly within the SAPS and SIU) that need to be dealt with as a matter of urgency. (The

Auditor-General's Forensic Auditing Division is busy with a project in this regard).

- Specialised Commercial Crime courts have offered some relief to SAPS and DSO in terms of dealing effectively with commercial crime cases and there are plans to extend these.
- Many cases land up at an agency not best placed to deal with the complaint – this is particularly true for the Public Protector, the Public Service Commission, ICD and the DSO.
- The referral of such cases amongst agencies is seemingly not tracked in a formal comprehensive fashion, other than the ICD, which keeps a record of referrals. There is no record as to what the outcome of referred cases are, largely limited by lack of follow-up capacity.

#### **PERFORMANCE**

- Performance and effectiveness indicators between the agencies vary according to their specific mandate.
- Performance could be improved through better use of shared resources based on a clearer understanding of the strategic roles and responsibilities of the respective agencies.

#### **CO-ORDINATION**

- Interaction between certain agencies does take place, in particular between certain investigating agencies such as the SAPS and the DSO, and in relation to the prosecuting authorities that have a monopoly over the prosecution of cases.
- There is however, no formal agreement with regard to the co-ordination of case-related information.
- The need for formal co-ordination arrangements is emphasized by all agencies. A draft Memorandum of Co-operation that tried to address this issue was not signed in 1999.
- The PSC has signed a Memorandum of Understanding with the Office of the Auditor General.

#### **THE NEED FOR A SINGLE AGENCY**

- There are differing views on the establishment of a single anti-corruption agency. While there is some support for the idea, real concerns exist about its location, funding and mandate. A single agency should not be encouraged simply because current mechanisms are not functioning optimally.
- It is important to establish whether existing agency or agencies could not be restructured and transformed before planning the establishment of a new body.
- Risks involved in establishing a new single agency include the addition of another layer of bureaucracy to the law enforcement sector and the diversion of already scarce resources from existing agencies and other government priorities including job creation, poverty alleviation and HIV/AIDS programmes.
- The priority should be to retain the current agencies with some rationalisation while making them more effective by formalising co-ordination arrangements.