

FOREWORD

It is not a moot point that corruption is a universal problem. Its effects can seriously constrain development of national economies and prevent good governance. Corruption erodes stability and trust, and it damages the ethos of democratic governments. Its macro-economic and social costs are immense.

On the international level, a number of anti-corruption initiatives are underway, including the United Nations Global Programme against Corruption (run by the Centre for International Crime Prevention of the United Nations Office on Drugs and Crime) as well as the negotiations of the United Nations Convention against Corruption, all of which involve South Africa.

To address the specific problems of corruption in South Africa, in 1997 Government launched South Africa's National Anti-Corruption Programme: this was soon followed by Public Service and National Anti-Corruption Summits. Late in 1999, Government also co-hosted the 9th International Anti-Corruption Conference. At the beginning of 2002, Government adopted the Public Service Anti-Corruption Strategy. Five years into the process, Government's assessment was that good progress was being made to implement the resolutions of the Summits, and many departments and agencies were believed to have put in place solid systems to fight corruption.

However, at the operational level, problems were emerging, most notably the absence of clear anti-corruption legislation, insufficient co-ordination of anti-corruption work within the public sector and among the various sectors of society, and poor information about corruption and the impact of anti-corruption measures.

In order to help articulate and analyse these challenges, Government, in partnership with the United Nations Office on Drugs and Crime (formerly the Office for Drug Control and Crime Prevention) - Regional Office for Southern Africa, undertook a comprehensive country assessment on corruption. This assessment forms part of a wider partnership project agreement, signed by the Government of South Africa and the Office on Drugs and Crime in March 2001, to support Government's national anti-corruption programme. The assessment entailed, inter alia, perception and

experience surveys among households, public service delivery institutions, and businesses; analyses of legislation and codes of conduct; and data collection on criminal and disciplinary cases related to corruption.

It is our pleasure to present the Country Corruption Assessment Report on behalf of the South African Government and the United Nations Office on Drugs and Crime (UNODC). The objective of the report is to provide a comprehensive overview of the evidence available on the incidence and nature of corruption as well as the anti-corruption mechanisms put in place or envisaged in South Africa.

This Report provides baseline information on the scourge of corruption that is both solid and objective. This information will enable one to monitor progress in the governance environment and in the effectiveness of strategies to combat and prevent corruption. It will also assist all sectors to form a more accurate picture of the current levels of corruption in South Africa and how those levels impact on service delivery and investment.

It is evident from the assessment that South Africa has made great strides in the fight against corruption; however, there are still serious challenges to be faced. These challenges require a concerted effort from all sectors, plus partnerships with business, civil society and the international community. It is especially important that Government's partnerships with business and civil society are nurtured, as it would be impossible for Government alone to deal with corruption.

In these partnerships, each partner must be held accountable for its own corruption, but each also should exercise both a critical role and seek assistance and co-operation from the other partners. There is no doubt that on a national strategic and policy implementation level, Government's share of responsibility is the largest as it is Government which is open to the sharp public scrutiny for its own corruption and anti-corruption efforts. Yet, as corruption is a kind of partnership though illicit, so too is the response to it a partnership which is legitimate, desired and necessary.

It is important that South Africa continues to participate in the development and implementation of anti-corruption legal instruments at the international level (e.g. the UN Convention against Transnational Organised Crime and the Convention against Corruption), regional level (e.g., the AU Convention) and sub-regional level (e.g., the SADC Protocol against Corruption). It is important that the country also provides support to various international and regional strategies and mechanisms for the promotion of

good governance and anti-corruption. This particular role of South Africa rests, inter alia, on its leadership within the framework of the New Partnership for Africa's Development (NEPAD).

The Report is as comprehensive and complete as any "first of its kind" analysis could be. Thus, it has serious shortcomings, but it does reflect the current state of affairs in South Africa's corruption and anti-corruption arena. It is strong where South Africa is strong, and it is weak where South Africa is weak. After all, it is intended to be a Report about the strengths and the weaknesses in the prevention of and the fight against corruption in the country. As such, we believe it will serve its initial purpose and provide solid ground for further work and action.

We would like to thank everyone who has contributed to the country corruption assessment and to this Report. This joint anti-corruption project, including the assessment and this Report, is the expression of a true partnership involving the United Nations Office on Drugs and Crime, many South African government departments, NGOs, as well as the donor community. We express our continued commitment to furthering this partnership in anti-corruption efforts in the interest of the South African people and the international community.

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EXECUTIVE SUMMARY

Background

This report is a result of a joint effort by the Government of South Africa and the United Nations Office on Drugs and Crime - Regional Office for Southern Africa (UNODC/ROSA). An anti-corruption partnership

agreement was entered into between Government and UNODC on 9 March 2001, and among various anti-corruption activities, it also envisaged a preparation of a Country Corruption Assessment Report.

Two parallel and mutually referential developments influenced this anti-corruption partnership: a global recognition of a need to prevent and fight corruption within the framework of development and globalisation, and a clear commitment of a democratic government of South Africa to good governance and care for public wealth in the interest of the people of South Africa.

A number of worthy international anti-corruption initiatives, particularly in the development of strategic and legislative frameworks, have been undertaken or are underway. Within the UN system, three such initiatives stand out: the adoption of the United Nations Convention against Transnational Organized Crime (which South Africa signed and is poised to ratify), the launch of the Global Programme against Corruption (in which South Africa fully participates), and the work on the preparation of a UN Convention against Corruption (to which South Africa contributes in a systematic and regular manner).

In the African context, South Africa plays a prominent role within the New Partnership for Africa's Development (NEPAD) particularly with regards to good governance and in the adoption of the Africa Union Convention on Preventing and Combating Corruption. Within the Southern African Development Community (SADC), the Protocol against Corruption was adopted in August 2001 (which South Africa ratified) and a number of organisational and training initiatives have been undertaken, including the creation of the Southern African Forum against Corruption. In most of these sub-regional initiatives, the United Nations Regional Office for Drugs and Crime in Southern Africa has played an important role. Thus, the partnership between the UNODC and South Africa goes beyond the specific parameters of the anti-corruption agreement.

Commitment to good and clean governance, and thus anti-corruption, was and still is one of the priorities of the democratic South Africa and its Government since 1994. Indeed, the Government of South Africa has undertaken a number of important and far-reaching anti-corruption measures. These range from the adoption of the comprehensive framework for initiatives to combat and prevent corruption in the public service (known as the Public Service Anti-Corruption Strategy), through to the promulgation of a rather comprehensive anti-corruption related

legislative framework and the development of investigating and prosecuting anti-corruption capacities, to efforts to develop partnerships with business and civil society. As can be seen from this Report, many of these efforts have started yielding results, but others are lagging behind and need further development in order to complement the strategic anti-corruption undertaking.

The Report

This Country Corruption Assessment Report will serve as a baseline to measure progress in combating and preventing corruption, as well as perceptions of corruption in South Africa. The Report combines the methodology of the United Nations Global Programme against Corruption with the main strategic considerations of the Public Service Anti-Corruption Strategy. The format of the Report follows the strategic considerations contained in the Strategy both for purposes of presentation, as well as for setting the monitoring and evaluation benchmarks.

This Report provides for the first time, a comprehensive overview of the phenomenon and nature of corruption in South Africa as well as the responses to it. Although comprehensive, it is not complete. There are still major gaps in knowledge of the incidence of corruption as well as in the systematic trends in perceptions of corruption. There are no consolidated statistics of corruption incidents or of the internal or external legal (civil, criminal and administrative) responses to such incidents. The statistics, which do exist, are ambiguous, because corruption incidents are often classified as fraud or theft in order to facilitate prosecution.

Furthermore, there is also no central database of cases which would allow Government to learn from incidents in order to understand corruption better and to be able to design preventive strategies. The anti-corruption area is still under development, including the rounding of its legislative component. Co-ordination among various anti-corruption agencies only began a year ago (with the debate on a dedicated and centralised agency versus a devolved but co-ordinated anti-corruption mandate, although the latter is still under implementation).

There are also gaps in the knowledge of the measures taken to combat and to prevent corruption. The assessment has brought together information of what government departments and agencies are doing to combat and prevent corruption within their own organisations. However, in this respect, Report is still incomplete. It will be necessary in due course, to

assemble a central database of the measures taken and their effects. Similarly, the area of partnership with business and civil society needs further and effective development (although the tripartite National Forum against Corruption has been nominally established), which has particular consequences when it comes to public anti-corruption education, is still underdeveloped.

The Report describes the corruption scene, analyses the strengths and weaknesses of the counter-measures and proposes some remedies. For a report to be comprehensive even at this stage, it needs to be based on reliable information, parts of which are still lacking. Yet, it should be remembered that this Report is the very first of its kind in South Africa, and it was expected that it would be lacking in some important considerations. It does, however, reflect the state -of - art in the corruption and anti-corruption scenario within South Africa.

Extent of Corruption

Any corruption assessment must start with assessing the levels of corruption. Due to its importance, even the summary of this issue will be somewhat longer than the corresponding parts of the Executive Summary. All actors (e.g. government, opposition parties, social scientists, Business, Civil society, a man on the street, donors, a foreign investors, international organisations) would like to know how much corruption there is and whether it has increased or decreased relative to the past. Their interest is not purely cognitive, but more often than not, it is political and economic. Yet, to answer this simple and legitimate question is not easy. In fact, it is impossible to provide a comprehensive and complete answer to this simple question since it depends on a number of factors such as those listed below:

- * what is corruption (definition: legal, operational, perception)
- * which corruption is to be looked at (type)
- * measurement and frequency (how often)
- * in which temporal and spatial framework (time and location)
- * who is involved (actors) · available knowledge about corruption (sources)
- * public tolerance levels (cultural context)
- * purpose of looking at corruption (recording, tracking, evaluation, change-inducement)

- * providing response for whom (society at large, public institutions, investors, donors)
- * use of knowledge on corruption (motivation)

An overview of various studies on corruption in South Africa immediately revealed that there was no standard approach in terms of definitions, methodologies, samples and sources. Based on the information that was available, a reliable answer could not be provided for the extent of corruption within South Africa.

In order to be able to answer that question, one would require reliable and compatible information on at least three aspects of the corruption: firstly, the publics and/or specialised groups' perception about how much and which type of corruption exists; secondly, the actual experience of corruption of the target populations; and thirdly, records of reported and processed cases of corruption within the public, private and civil society sectors.

The first finding of this Report is that such information is not readily available. In order to provide reliable information, three surveys on perceptions and experiences of corruption were conducted: a household survey, a business survey and a survey of the public service and its clients in the provincial offices of three government departments in two provinces (KwaZulu-Natal and Gauteng). These surveys have established useful baselines and they should be repeated at regular intervals in order to be able to ascertain trends.

The information obtained from the surveys was supplemented by information obtained from government departments, public agencies with anti-corruption mandate, at few selected surveys (not commissioned as part of this project) and commissioned focus groups.

There is no doubt that South Africans perceive that there is a lot of corruption, and that it is one of the most important problems which should be addressed (41%), while just a few less (39%) contend that there is a lot of corruption albeit it is not the most pressing issue. In general, it is believed that there is a lot of corruption and that it is a common occurrence. The business sector (62%), in particular, believes that corruption has become a serious issue in business and for business although it is likely that it is not seen as an important factor in deciding on

investment (e.g. only 12% refrained from making a major investment because of corruption).

In the two provinces: KwaZulu-Natal and Gauteng, clients of public services (health, police and home affairs) estimated that between 15% and 30% of public officials in these locations are corrupt, and 10% indicated that public officials expect some form of extra payment for services rendered. Public officials themselves perceived clients to be corrupt in a sense of constantly seeking "back-door" solutions to their problems. The managers interviewed held quite a negative view of corruption within their own departments, some claiming that even 75% of staff is untrustworthy and involved in low-level corruption in the form of bribery.

Citizens, businesses and public officials overall actual experience of corruption is much lower than one might expect from a rather widespread belief that corruption is a common occurrence. For example, the 1998 National Victim Survey found that only 2% of individuals experienced corruption while the 2001 household survey revealed that some 11% of entire families / households had a direct experience with corruption. The business survey showed that 15 % were approached to pay a bribe while 7% had to pay a bribe and a further 4% had to pay extortion. More than one third of public officials in KwaZulu-Natal and Gauteng admitted to having been approached by a client wanting to give them a gift in exchange for a service provided. Slightly more than one in ten public officials admitted to accepting such a gift.

The regional survey (seven SADC countries) revealed that South Africans experienced much less corruption than the levels they perceived themselves. The worldwide International Crime Victim Survey (ICVS) also revealed that there is a considerable gap between the perceived and experienced levels of corruption in general, including in South Africa (in Johannesburg in 1993, 1996 and 2000). Within the SADC region, the comparable data show citizens in Johannesburg experiencing much lower levels of corruption than those in Lusaka (Zambia), Maseru (Lesotho), Mbabane (Swaziland), Maputo (Mozambique) but still higher than their counterparts in Gaborone (Botswana) and Windhoek (Namibia).

South African citizens appear to view the most common areas of corruption in relation to seeking employment and the provision of utilities such as water, electricity, and housing. Public service managers also identified nepotism in job seeking, promotions and in the provision of entitlements. The business community identified clearance of goods

through customs, procurement of goods for government, police investigation and obtaining of business licenses and permits, work and resident permits as the most corruption prone activities. The public servants most associated with corruption both for the citizens and the businesses appear to be the police. All surveys indicate that police officers are the most vulnerable to corruption, followed by customs, local government, home affairs and court officials. To this list, businesses added the managers and/or employees from companies other than their own.

The majority of those surveyed felt that government was not doing enough to combat corruption. However, this perception is not uniform across ethnic groups and is held mainly by specific communities.

Public servants who were interviewed generally felt positive about their role and were concerned to ensure that corruption was eliminated. Clients of the public service were much more positive about the service delivery than would be expected from their general perception of corruption. This supports the results of the perceptions survey of the SAPS, which indicated clients' perceptions following a visit to a SAPS Community Service Centre, are much more positive than those of the general population.

An attempt to assess corruption levels by looking at the official records of corruption cases was not very successful. It should be emphasised that most of the public service departments do not have information available on incidents of corruption, although among the 85 departments surveyed, more than half claim to have a dedicated anti-corruption unit or unit that does similar work. Some 15 % have advanced investigative capacity and 20% have clear reporting lines and regular monitoring of effectiveness.

The only exception to this was the SAPS Anti-Corruption Unit which provided some data for enquiries received, case dockets and as members were charged and convicted. If one is to evaluate internal reported or detected corruption cases within SAPS, it represents about 3% of the total SAPS workforce. It may or may not mean a high incidence of corruption within the SAPS, however, the fact remains that SAPS had a clear policy and structure for fighting corruption within its own ranks. In October 2002 the functions of the Unit were incorporated into the Organised Crime and General Detective Units. It is expected that the new anti-corruption organisational structure within SAPS will prove to be efficient and even more accountable to the public.

Information from law enforcement and criminal justice agencies about corruption cases was difficult to collect. Many of the problems emanate from the corruption offence as defined by the Corruption Act of 1992 which, most of the experts agree, was inadequate to provide for effective investigation and prosecution of corruption cases. (Thus, often officials resorted to fraud or theft or similar charges.) Consequently, a draft Prevention of Corruption Bill has been presented to Parliament with much clearer definitions and a wider range of corruption offences. Once enacted and enforced, it should result in better management and monitoring systems as to how much corruption the justice system is handling.

The SAPS Commercial Crime Unit handles corruption cases under the 1992 Corruption Act. While SAPS is the lead agency for reporting corruption cases by the public and business, the Commercial Crime Unit's corruption workload in 2000 was only about a quarter of the percent of its total intake. This, by any measure, constitutes a low volume. Statistics from 1998 to 2000 reveal that corruption cases reported to SAPS increased slightly from more than 800 in 1998 to more than 1000 in 2000. Of these cases, approximately half were referred to court, and almost half were withdrawn.

Several factors may have affected this outcome. Firstly, the reporting level of corruption is relatively low, although it has increased to 15% of the cases experienced by the public (ICVS, Johannesburg, 2000) and 21% experienced by the businesses. Secondly, due to the complexities of the existing legislation, there is a preference on the part of law enforcement to charge for fraud or theft. Thirdly, investigating corruption and prosecuting a corruption case is rather complex and requires particular skills which are not readily available.

The work of the Special Investigating Unit and the Asset Forfeiture Unit is of fundamental importance in the prevention and fight against corruption, in recovery of profits and assets gained as result of involvement in criminal activities, corruption included. The establishment of an anti-corruption desk within the Directorate of Special Operations is an important mechanism for dealing with high-level corruption cases.

While SAPS is searching for new anti-corruption organisational forms and methods, other departments are seeking to establish dedicated integrity or internal anti-corruption units (e.g. the National Prosecuting Authority, Department of Justice, SARS, etc). This trend is particularly welcome in the law enforcement and justice sectors to give credibility to the efforts and

to deal with corruption in a resolute and effective manner. Law enforcement and criminal justice must be seen to be corruption-free in order to increase the credibility of Government's efforts to fight corruption within its own ranks and outside. If credible and skillful, these sectors will facilitate the prevention and investigation of corruption within other government departments, and of equal importance, to the reporting of corruption and the provision of protection of those who report it.

The National Public Service Anti-Corruption Strategy

Achieving good governance and fighting corruption are among the most important challenges facing South Africa and its Government. Indeed, a number of anti-corruption initiatives were undertaken post-1994, culminating in the adoption of the Public Service Anti-Corruption Strategy. Among the many anti-corruption initiatives, of particular importance for the development of strategic anti-corruption partnership and guidance were:

- * 1997: adoption of the Code of Conduct for the Public Service; the establishment of an Inter-Ministerial Committee on Corruption tasked with the development of a national anti-corruption campaign
- * 1998: Moral Summit held by the religious and political leaders and the adoption of the Code of Conduct for leadership; the Public Sector Anti-Corruption Conference which adopted the key points for fighting corruption in a partnership manner
- * 1999: The National Anti-Corruption Summit which adopted parameters for the development of South Africa's National Anti-Corruption Programme; the first meeting of the Cross Sectoral Task Team on Corruption; hosting of the 9th International Anti-Corruption Conference
- * 2000: Government and UNODC/ROSA holding jointly the International Anti-Corruption Expert Round Table
- * 2001: Government and the UNODC/ROSA signed an agreement on the United Nations Support to the National Programme against Corruption; Public Service Anti-Corruption Workshop with main stakeholders on the development of the anti-corruption strategy; launch of the tripartite (Government, Business and Civil Society) National Anti-Corruption Forum
- * 2002: Cabinet adopted the Public Service Anti-Corruption Strategy

The Public Service Anti-corruption Strategy contains nine considerations which are inter-related and mutually supportive. These are:

Firstly, review and consolidation of the legislative framework: this requires the existing Corruption Act to be replaced with an effective and modern anti-corruption law, and other related legislation to be refined. The legal framework must provide for:

- * A new Prevention of 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, and 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
- * Prohibition of corrupt individuals and businesses

Secondly, increased institutional capacity: this requires an increase in anti-corruption capacity for courts, existing national institutions that have anti-corruption mandates and departmental anti-corruption capabilities. In particular, it proposes that:

- * The efficacy of existing departments and agencies be improved through the establishment of appropriate mechanisms to co-ordinate and integrate anti-corruption work;
- * Departments create a minimum capacity to fight corruption.

Thirdly, improved access to report wrongdoing and protection of whistle blowers and witnesses: this focuses on improving application of the protected disclosures legislation, witness protection and hotlines.

Fourthly, prohibition of corrupt individuals and businesses: this proposes that mechanisms be established to prohibit corrupt employees from employment in the public sector and corrupt businesses from doing business with the Public Service.

Fifthly, improved management policies and practices: this requires specific improvements to procurement systems, employment arrangements, the management of discipline, risk management, information management and financial management. These 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.

The sixth consideration is about management of professional ethics: this requires a renewed emphasis including the establishment of a generic ethics statement for the Public Service that is supported by extensive and practical explanatory manuals, training and education.

Partnerships with stakeholders constitutes the seventh area of consideration. Here, partnership is emphasised as the cornerstone for the establishment of a National Anti-Corruption Strategy.

In particular:

- * The National Anti-Corruption Forum will be used to promote partnership with the Business and Civil Society sectors to curb corruption;
- * Public Service unions will be mobilised to advocate professional ethics to their members.

Social analysis, research and policy advocacy is the eighth area that needs to be addressed: this consideration proposes that all sectors be encouraged to undertake ongoing analyses of the trends, causes and impact of corruption and to advocate preventive measures.

Lastly, awareness, training and education to support the above developments and launch of a public communication campaign. It is proposed that the campaign 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.

It is envisaged that the implementation of the Strategy will be completed by April 2004.

Legislative Framework

South Africa has a relatively sophisticated and comprehensive framework, which deals with transparency in procurement and financial management. The new Prevention of Corruption Bill rectifies the shortcomings of the Corruption Act of 1992. The Bill is clear and explicit in its definitions and provides tools for investigation and prosecution as well as more severe penalties. It also provides for extra-territorial jurisdiction over offences, which is essential for compliance with international best practice and the practical issues of enterprises, which do business outside South Africa.

There is powerful legislation to seize and forfeit assets by civil law procedures where the assets are the proceeds of crime or were used to commit a crime. There is also a well-developed legislation, which regulates the financial management of the public sector in line with international best practice in this regard. However, there are capacity constraints in complying with this legislation.

South Africa has unique legislation, which empowers the general public to require information from the public sector (and to a lesser extent from the private sector) and to challenge administrative decisions under the Promotion of Administrative Justice Act and the Promotion of Access to Information Act. These laws greatly enhance transparency and contribute to clean government. The Protected Disclosures Act provides state-of-the-art protection to whistle blowers in a workplace, but it requires guidelines on policy and procedure for implementation to be effective.

The corporate sphere is less regulated, but there are efforts underway to provide adequate regulation, which will strike a balance between protecting the public interest and providing an environment in which business can flourish.

South Africa has a relatively comprehensive and practical legislative framework which provides a very good basis on which to combat and prevent corruption in all aspects of the public sector, including good financial management and administration. South Africa's transparency legislation, with its well-defined legal review program, is among the best in the world. This legislative framework will be greatly enhanced with the

promulgation of the Prevention of Corruption Bill, which will result in effectiveness in investigating and prosecuting corruption. A range of agencies have been created to investigate and prosecute corruption and provide recourse for the public to report corruption. Whistle blowers and witnesses are protected by law.

However, there are serious weaknesses and shortcomings in the capacity and will of public sector bodies to implement and to comply with the laws. For example, certain public bodies view some of the legislation (e.g. Access to Information) as too demanding of resources. There are overlapping mandates, which affect the law enforcement agencies and the constitutionally created bodies. Proper legislative changes are needed to better define the mandates and facilitate co-ordination in the fight against corruption. The legislation is focused on the public sector and does not deal adequately with the private sector. Thus legislative efforts are needed to provide for the inclusion of certain corporate governance measures. Finally, promulgation of adequate legislation and regulatory mechanisms for the private funding of the political parties and political campaigns is expected.

Capacity to Combat Corruption

The public sector has uneven capacity to enforce and comply with the legislation. The courts are overloaded and struggle to retain experienced prosecutors. This leads to backlogs, delays and withdrawals in corruption cases, and it may contribute to the perception of the prevalence of corruption within some organisations. However, the Integrated Justice System Project and other measures are beginning to address the problems of delays and withdrawals in courts. The Special Commercial Court Unit is performing well and serves as a useful model for corruption cases. It is already being rolled out to venues outside Pretoria.

The legislative mandates of some law enforcement and other agencies overlap. However, this should be resolved by organisational and structural means, clarification of roles, and improved co-operation and co-ordination.

The investigation and prosecution of corruption is intrinsic to the functions of the South African Police Service (SAPS), the Directorate for Special Operations (DSO) and the National Prosecuting Authority (NPA). The strengthening of employee integrity, financial management and the quality of administration within the public service, which are central to the prevention and detection of corruption, are part of the core business of the

DPSA, the National Treasury, the Public Service Commission, the Public Protector and the Auditor General.

There are a number of anti-corruption structures, although there is a need to clarify their respective legislative mandates. Asset forfeiture through the civil process, is a powerful weapon in the fight against corruption. The Asset Forfeiture Unit and the Special Investigating Unit (SIU) have used this weapon effectively. The Office of the Auditor General, the Public Protector and the Independent Complaints Directorate are in line with global best practice. Court procedural problems are under consideration, and efforts are being made to address these. The experience gained from the Special Commercial Courts illustrates some of the options that are available. Many government departments have introduced Anti-Corruption Units and efforts are underway to address delays in disciplinary cases.

However, some key developments are required to make both the legislation and enforcement infrastructures more effective. These include:

- * The improvement of the efficiency of the courts;
- * The improvement of the skills of investigating officers;
- * The need for far better coordination of anti-corruption strategies, initiatives and investigations;
- * The grave shortage of information management, a prerequisite for formulating an accurate picture of the incidence and form of corruption. It is also not possible to measure the effect of anti-corruption strategies and measures. The capacity to collate statistics and information on corruption (and the associated offences of fraud and theft of state assets) in both the public and private sectors must be developed;
- * Departments of national and provincial governments have in most cases not adequately complied with the risk management and fraud prevention requirements. This needs to be addressed as a matter of priority;
- * The existing Fraud Prevention Plans usually deal mainly with internal audit issues: they do not address employee and vendor integrity in sufficient detail;
- * Mandates and resources of the agencies that have anti-corruption mandates have to be clearly defined; - An institutional learning mechanism must be developed;

- * The Anti-Corruption Strategy must be extended to local government and to other public bodies; and
- * The accountability for the prevention of fraud and corruption is correctly placed with line management in government departments. Their capacity to act should be enhanced. Departments with good experience and capacity should be tasked with, and resourced to provide assistance in the prevention of corruption rather than to be called to act only once corruption becomes prevalent in a particular department or province.

Three Pronged Approach

Without wide, but targeted anti-corruption prevention and public education programmes, neither the legislation nor the enforcement structures will be successful in fighting corruption. The "three pronged approach" - prevention, public education, and investigation/prosecution - is today considered best practice in the area of anti-corruption. South Africa has for now adopted a more decentralised but co-ordinated organisational framework, but this does not mean that the "three pronged approach" cannot be pursued within such an organisational arrangement.

While much work in South Africa has been carried out in the area of strategic considerations and increased law enforcement capacity (investigation/prosecution), the same cannot be said about the prevention of corruption and public education in this regard. This constitutes one of the major weaknesses of the present South African approach to corruption. Adequate organisational and budgetary arrangements should be put in place urgently, in order to implement far more structured anti-corruption prevention and public education programmes. While the existence of dedicated legislation, structures and budget are no guarantee for success in the fight against corruption, without such elements the programme has a scant likelihood of being implemented, monitored and evaluated. It is in the area of public education in particular, that the partnership with business and civil society is particularly important.

Managerial Policies

Managerial policies and rules play a crucial role in the prevention and detection of corruption. The legislative framework for the financial and general management of the public service is both strong and comprehensive. However, the survey of the provincial governments has

revealed that the ability to implement risk management procedures is uneven and limited. Support is required for the implementation of risk assessments and risk management throughout the public service.

The public sector has started to blacklist suppliers that take part in corrupt practices. This strategy forms part of the ongoing procurement reform within the South African public sector. A blacklist of corrupt public servants also needs to be developed.

Further work is required to ensure that procurement systems are effectively controlled, especially within the area of preferential procurement, where opportunities exist for the discretionary award of contracts.

It would constitute a major step forward if information could be shared on corrupt officials, corrupt suppliers, incidents of corruption, weaknesses and loopholes in controls and administration, as well as possible remedies. Where corruption is linked to organised crime activities, it is crucial to ensure that the entire picture is available to investigators. A capacity to collate statistics and information about corruption (and the associated offences of fraud and theft of state assets) is thus required in both the public and private sectors. An institutional learning mechanism is crucial and does not currently exist. The lack of comprehensive and effective management information systems is a serious deficit in the campaign to ensure effective controls and to prevent and detect corruption.

Reporting and Whistle Blowing

Whistle blowing is crucial to the detection of fraud and corruption. Internal and external audits are not intended to detect or prevent corruption and fraud. For a whistle blowing mechanism to be effective, there must be effective protection of the identity of the whistle blower and there must be effective follow-up of all bona fide disclosures. Most government departments do not have policies and procedures in place to comply with the Protected Disclosures Act.

Few departments have a hotline, and even fewer have effective procedures to operate it effectively, and yet, this is the only whistle blowing mechanism that departments rely on. Installation of such hotlines is often not properly supported by investigation capacity, policies and evaluation. There is a need for the establishment of a well functioning hotline system.

Debate is also needed on whether it should be a central system for government or left to departments to operate in a decentralised manner. A data management system should be established for all hotlines to provide a coherent recording of disclosures.

A specific training course is needed to support the specialised staff working on hotlines. A standard investigating procedure should be developed for the Hotline Investigation Units. The responsibility for the day-to-day operation of the hotline system must be at the appropriate management level, to ensure buy-in of senior managers and staff within the organisation. Government should publicise the Promotion of Administrative Justice Act and the Promotion of Access to Information Act and encourage the public to play a more active role in using these laws to combat maladministration and corruption in the public and private sector.

Incremental Improvements

Cabinet has decided against establishing a single anti-corruption agency. Instead, it has decided to implement incremental improvements to the existing agencies as proposed in the Public Service Anti-Corruption Strategy. As a result, the Anti-Corruption Co-ordinating Committee has been established. This Committee is sufficiently senior, authoritative and representative to be able to effectively co-ordinate the work of the agencies. It has established work streams which provide focused input into various aspects of the Public Service Anti-Corruption Strategy, but it must ensure that cooperation between the law enforcement agencies involved in the investigation of corruption is also good.

However, it is still too soon for an informed and objective evaluation of the functions of the Committee to be made. For the Committee to function effectively, it is of utmost importance that it avails itself of all the information and statistics on corruption in both public and private sector, as well as on the effectiveness of anti-corruption measures. Thus, there is a need for monitoring the elements contained in this Report.

Partnership

Attempts to develop anti-corruption partnerships between Government and civil society have not been very successful. The National Anti-Corruption Forum, which is a partnership between Government, Business and Civil Society, has met a few times. Its composition and procedures should be

reviewed. The experience of the Provincial Anti-Corruption Forum and the Network Against Corruption in the Eastern Cape shows that careful thought and planning must be given to partnership initiatives, in order to ensure their success.

Conferences of civil society organisations on corruption do not appear to have achieved much. In general, civil society and business have not played the active and effective anti-corruption role, which they could play. A few Non Governmental Organisations (NGOs) are playing an active monitoring role, and a few are carrying out useful research on corruption. There is a need for far more targeted research on corruption, its incidence, its causes and opportunities. Active monitoring by NGOs should be encouraged.

The labour movement is playing a minor role in anti-corruption initiatives. Union members are often aware of corrupt practices and are able to pinpoint those involved. However, there does not appear to have been a debate within the labour movement to make workers aware of their duty in this respect and also, of the Protected Disclosures Act. The labour movement should play a far more active role in this regard. These points apply equally to professional associations, which are in a position to be aware of corruption and malpractice, and to take measures to combat and prevent such corruption. However, this does not appear to be happening to any great extent.

Special consideration should be given to the role of the political parties within the ambit of partnership and politics in the anti-corruption arena. The anti-corruption agenda within political party programmes and statements needs to be accompanied by adequate political support of the anti-corruption initiatives. Political parties have an enormously important role to play in the development and practise of the civic anti-corruption culture. Such a role will be greatly facilitated with the promulgation of adequate legislation and control mechanisms over private funding of political parties and political campaigns.

Ethics Framework

An ethical framework forms the basic set of standards for behaviour in society or any sector. The existence of such a programme would mean that people would know what is right and what is wrong because they are able to measure conduct against a formal or informal set of ethical

standards. An ethics framework constitutes an important foundation for anti-corruption campaigns in all sectors.

The Public Service Anti-Corruption Strategy calls for a renewed emphasis on managing ethics, including the establishment of a generic ethics statement for the public service that is supported by extensive and practical explanatory manuals, training and education. A Code of Conduct for the public service has been issued by the Minister for the Public Service and Administration. Extensive training in the code has taken place, and a manual has been issued to public service members. The Public Service Commission surveyed ethics management in the Public Service, Business and Civil Society. The survey found that although professional ethics are well understood at senior management level, many South African organisations have not been able to integrate ethics management practices into their existing management processes. Unless this situation is rectified, their good intentions and existing ethics practices may prove futile. The political parties, public service unions, professional associations and religious bodies should play a leading role in mobilising their members around a code of ethics and the civic anti-corruption culture and practice.

INTRODUCTION

Why this country assessment on corruption? It is five years since the South African government launched its fight against corruption. The time has come to take stock of the extent of corruption within the country, and to assess the efficacy of what has been done, and is being done, to fight corruption in the country.

Information about corruption in South Africa has never been systematically collated and analysed in the past. The prevailing view on corruption is based primarily on various opinion surveys: these are mostly perception-based. Although important, perceptions are not the most reliable basis for the analysis of corruption.

Information on the large number of anti-corruption initiatives in South Africa has never previously been collated, analysed nor reported. This may have created the impression that not much is being done. In fact, a great deal of energy is being expended on proactive and reactive anti-corruption initiatives. It is important that perceptions are addressed, so that a skewed and inaccurate picture of the problems that exist in this regard, is not presented either domestically nor internationally.

With South Africa's rating of 4.8 out of a score of 10 on Transparency International's Corruption Index, it is clear that the country is perceived as having fairly high levels of corruption. There is a general perception within the country too, that corruption is rife. Many people believe corruption has increased in the post-apartheid era during the period of political and economic transition.

Unfortunately, the tools and surveys that have been used to measure levels of corruption are primarily based on perceptions. The media has also been influential in emphasising the incidence of corruption, which is of utmost importance but with a lesser focus on the steps that have been taken to prevent and combat corruption.

Perceptions and media have thus come to form the foundation for understanding the prevalence of corruption. It is important to recognise that perceptions do not necessarily reflect the actual experience of corruption in the country. The premise that levels of corruption in South Africa are high, needs to be tested.

The Country Corruption Assessment reveals the gap that exists between perceptions and the results of in-depth studies about the actual experience of corruption. It also includes the results of perception surveys and focus groups. Cognisance is taken of the limitations of these surveys.

What is the expected outcome of an assessment of corruption in the country? Clearly, the intended outcome is improved service delivery. Such service delivery should be unhampered by corruption and negative consequences of perceptions about corruption.

This assessment provides South Africa with the following:

- * a platform for public education (both nationally and internationally) about the problem and the actions against corruption;
- * a first, comprehensive review of the efficacy of the anti-corruption efforts of the South African Government, and other sectors of South African society;
- * an assessment of both the strengths and weaknesses of the South African systems;

- * a tool for anti-corruption policy review and policy improvement: it identifies a programme of action for all sectors of society;
- * a baseline from which progress on fighting corruption can be monitored and evaluated; and
- * an opportunity to share South Africa's experience globally, thereby strengthening the global fight against corruption.

In order to examine the progress and effectiveness of national anti-corruption initiatives, it is important that this assessment is repeated regularly.

PART ONE: A CONTEXTUAL OVERVIEW

This chapter highlights the major regional and international anti-corruption initiatives over the last decade and the context, which led to corruption being addressed as a major issue of globalisation and development. This analysis is by no means exhaustive: It serves to provide a broad contextual framework for the Country Corruption Assessment.

Concerns about corruption have intensified globally in recent years. Corruption affects all sectors of society adversely: It corrodes national cultures and undermines development by distorting the rule of law, the ethos of democracy and good governance: It endangers stability and security and threatens social, economic and political development: It drains governments of resources and hinders international investments.

Whilst corruption is a universal problem, it is particularly harmful in developing countries. These countries are hardest hit by economic decline. They are also the most reliant on the provision of public services, and the least capable of absorbing additional costs associated with bribery, fraud, and the misappropriation of economic wealth.

The global focus on corruption has become intensive. During the past decade, numerous anti-corruption instruments have been negotiated internationally under the auspices of various multi-lateral organisations. The next section of the report provides a brief overview of these instruments.

1.THE INTERNATIONAL & REGIONAL ENVIRONMENT

1.1 International Initiatives

1.1.1 The United Nations

In December 1996, the UN General Assembly adopted two important instruments in the fight against corruption:

- * The Code of Conduct for International Public Officials was adopted to provide Member States with a tool to guide their efforts against corruption through a set of basic recommendations that national public officials should follow in the performance of their duties.
- * The Declaration against Corruption and Bribery in International Commercial Transactions.

Although neither of these instruments is binding, they are politically relevant as they represent a broad agreement by the international community on these matters. The Declaration includes a set of measures that each country can implement at national level, in accordance with its own constitution, fundamental legal principles, national laws and procedures, to fight corruption and bribery in international commercial transactions.

In early 1999, the Centre for International Crime Prevention (CICP) of the United Nations Office on Drugs (UNODC) and Crime (then the United Nations Office for Drug Control and Crime Prevention), together with the United Nations Interregional Crime and Justice Research Institute (UNICRI), introduced the UN Global Programme against Corruption (GPAC).

While the programme was developed to serve a number of different purposes, its key objective is to increase the risks of involvement in corruption by raising the probability of detection and the cost of participation in corrupt activities. This objective will be achieved by providing reliable and current information on corruption trends and on strategies to reduce and control corruption. Technical assistance is provided to Member States to prevent, detect and fight corruption. The Country Corruption Assessment is designed within the framework of the

GPAC: It is one of the key assessment and monitoring tools stipulated in the Programme.

At a regional level, the UN Global Programme against Corruption (GPAC) aims to provide assistance for the development and implementation of the regional anti-corruption legislation and implementation programmes (such as the SADC Protocol against Corruption). The programme supports the establishment of the regional co-ordinating mechanisms (such as the Southern African Forum against Corruption). It also supports the development and implementation of regional anti corruption monitoring instruments: It facilitates regional participation and contributions to the development of international anti-corruption legal instruments; it liaises with and provides advice to regional organisations; it organises and participates in regional seminars and training courses (First Regional Seminar on Anti-Corruption Investigating Strategies with particular regard to Drug Control for SADC member states); it assists in the establishment of the civil society anti-corruption network and it assists in co-ordinating donors, regional organisations, governments and NGO's active in anti-corruption activities.

On 15 November 2000, the General Assembly adopted the United Nations Convention against Transnational Organised Crime, which includes several provisions related to corruption. In particular, the Convention focused on:

- * The establishment of corruption as a criminal offence for both offenders and accomplices in acts of corruption;
- * The liability of legal persons corrupting public officials;
- * The promotion of the integrity of public officials; and
- * The provision of sanctions.

Other noteworthy UN initiatives in the fight against corruption, include the 1999 Conclusions and Recommendations of the Expert Group Meeting on Corruption and its Financial Channels, and the Report of the Tenth UN Congress of the Prevention of Crime and the Treatment of Offenders, which took place in Vienna in 2000.

In its Resolutions 55/61 (4 December 2000) and 55/188 (20 December 2000), the United Nations General Assembly called for the establishment of an effective international legal instrument against corruption. It is

envisaged that the instrument would deal with issues such as the prevention and combating of corrupt practices and the illegal transfer of funds and their repatriation to the countries of origin. The implementation of these resolutions got underway with the Intergovernmental Group of Experts Meeting on the Preparation of Draft Terms of Reference for the Negotiation of the Future Legal Instrument against Corruption which took place in Vienna from 30 July to 3 August 2001.

The following key issues emerged from the Expert Group Meeting:

- * Definitions must be clear, with a broad scope that extends to both the public and private sectors;
- * There must be a balanced focus on prevention and enforcement involving all sectors;
- * Mutual legal and technical assistance will be required to implement the convention;
- * Strong monitoring mechanisms will be necessary;
- * There must be clarity on transfer of funds of illicit origin;
- * The issue of the criminalisation of acts of corruption must be addressed;
- * Sovereignty and regional initiatives must be recognised and respected; and lastly,
- * The convention must also address jurisdiction, sanctions, and compatibility of legal systems and international enforcement co-operation.

The formal meetings of the Ad Hoc Committee have begun in Vienna. To date four meetings have been held. It is expected that the Convention will be ready for adoption by the end of 2003.

Participation in the Convention's negotiation process offers the domestic advantage of giving effect to the expressed commitment of government to fight corruption and the promotion of good governance principles on the domestic, regional and global level. It is also important that high global standards are set.

1.1.2 The World Bank

Global concerns about corruption have intensified in recent years. Evidence of how corruption undermines development, has also accumulated. In 1996 the President of the World Bank, James D. Wolfensohn highlighted the concerns of many world leaders and others when he vowed to fight the "cancer of corruption" that undermines development. The 1996 and 1997 World Development Reports discussed the issue of corruption.

In 1997 the Bank's procurement guidelines were amended to specifically address corruption in World Bank projects. In September 1997 the Board approved a comprehensive anti-corruption framework. Since the adoption of this framework, the World Bank has encouraged and supported more than 600 anti corruption programmes and governance initiatives developed by member countries.

1.1.3 The Council of Europe

In Resolution 97 of 24 November 1997, the Committee of Ministers of the Council of Europe agreed to adopt the twenty guiding principles for the fight against corruption, that were elaborated by the Multidisciplinary Group on Corruption (MGC). The principles represent the fundamental directives that Member States are called on to implement in their efforts against corruption both at national and international levels.

In November 1998, the Committee of Ministers of the Council of Europe adopted the text of the Criminal Law Convention on Corruption.

In November 1999, the Council of Europe's Civil Law Convention on Corruption was opened for signature. This was the first attempt to define common international rules in the field of civil law and corruption.

In May 1999, the representatives of the Committee of Ministers of Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Lithuania, Luxemburg, Romania, Slovakia, Slovenia, Spain and Sweden established the Group of States Against Corruption (GRECO). GRECO aims to improve its members' capacity to fight corruption by monitoring the compliance of States with their undertakings in this field through a peer review mechanism.

On 11 May 2000, the Committee of Ministers of the Council of Europe adopted a recommendation on codes of conduct for public officials. The

appendix thereof includes a Model Code of Conduct for Public Officials. The Code specifies the standards of integrity and conduct to be observed by public officials. It also informs the public of the conduct that is expected from public officials.

1.1.4 The European Union

On 26 July 1995, the Council of the European Union adopted the EU Convention on Private Finance Initiatives (PFI) drawn up on the basis of Article K.3 of the Treaty on European Union, which is aimed at protecting the European Communities' financial interests. It calls for the criminal prosecution of fraudulent conduct injuring those interests.

The First Protocol of the EU Convention on PFI was adopted by the Council on 27 September 1996. The Protocol is primarily aimed at acts of corruption which involve national and community officials and which damage, or are likely to damage, the European Community's financial interests. The Second Protocol to the Convention was adopted on 19 June 1997. It is directed at the liability of legal persons, confiscation, money laundering and the co-operation between Member States and the Commission for the purpose of protecting the European Community's financial interests and of protecting personal data related thereto.

On 26 May 1997, the Council of the European Union adopted the Convention on the Fight Against Corruption. This Convention aimed to ensure the criminalisation of all corrupt conduct involving Community officials or Member States' officials.

In December 1998, the Council adopted the EU Joint Action, which was directed specifically at combating corruption in the private sector on an international level.

1.1.5 The Organisation of American States

The Inter-American Convention against Corruption (OAS Convention) came into force on 6 March 1997. The purposes of the Convention are:

- * To promote and strengthen the development of mechanisms needed to prevent, detect, punish and eradicate corruption;
- * To promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to

prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance.

1.1.6 The Organisation for Economic Co-operation and Development

The Organisation for Economic Co-operation and Development Members adopted a Recommendation on Bribery in International Business Transactions in 1994. In 1997, the OECD Working Group on Bribery reviewed the 1994 recommendation and proposed the Revised Recommendation on Combating Bribery in International Business Transactions: This was adopted by the OECD Council on 23 May 1997. The Revised Recommendations bring together analytical work on anti-corruption measures and commitments undertaken over the previous three years to combat bribery in international business transactions.

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention) was signed on 17 December 1997. The Convention was prepared by 29 OECD member countries, and five non-members (Argentina, Brazil, Bulgaria, Chile and the Slovak Republic). The OECD Convention came into force on 15 February 1999.

The Convention provides a framework for criminalising corruption in international business transactions. Countries party to the Convention pledged to punish those accused of bribing officials in foreign countries, for the purpose of obtaining or retaining international business. They also pledged to punish officials guilty of such corruption even from countries, which are not party to the Convention.

The Convention seeks to ensure a functional equivalence amongst measures taken to sanction bribery of foreign public officials, without requiring uniformity or changes in the fundamental principles of a country's legal system.

1.1.7 Other entities

- * Other entities, which have undertaken work in the fight against corruption, include:
- * Basel Committee on Banking Security;
- * Financial Action Task Force on Money Laundering;

- * Global Coalition for Africa;
- * Global Forum on Fighting Corruption; and the
- * Group of Eight

1.2 Regional Initiatives in Africa

In 1997 an African Regional Ministerial Workshop, organised by the Centre for International Crime Prevention (CICP) of the then United Nations Office for Drug Control and Crime Prevention (UNODCCP), was held in Dakar. The workshop unanimously adopted the Dakar Declaration in which Ministers expressed their concern about the increase and expansion of organised criminal activities, corrupt practices and bribery in international commercial transactions. In order to assist in the implementation of the new United Nations agenda for the development of Africa, especially in relation to the intensification of the democratic process and the strengthening of the protection of civil society, the UN urged African states to combat corruption and organised crime.

In 1998, the Second Pan African Conference was held in Rabat, Morocco. Here, the African Public Service Ministers adopted the Rabat Declaration, which called for a number of measures to be taken at a national level to regenerate professionalism and ethics in public administration. The Conference also called for increased international assistance in the development and modernisation of public administration.

On 5 February 2001, the African Public Service Ministers meeting at the Third Pan African Conference of Public Ministers in Windhoek, unanimously adopted the Charter for the Public Service in Africa. The Charter affirmed the professional values of the public service in Africa. It redefined its objectives and specified the conditions required for strengthening its role, competence, ethical values and image. Measures included a code of conduct for African public service employees. The signatories reaffirmed their political commitment made at Rabat. They agreed to subject themselves to a monitoring system for the Charter's implementation.

1.2.1 SADC Protocol Against Corruption

On 14 August 2001, Heads of State in the SADC region adopted the SADC Protocol against Corruption in Blantyre, Malawi. Three member

states, including South Africa, ratified the Protocol. However, for the Protocol to be effective, it needs to be ratified by nine member states.

The SADC Protocol followed in the wake of the Inter-American Convention Against Corruption of 1996, the 1997 European Convention on the Fight Against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the same year.

The purpose of the SADC protocol is threefold:

- * To promote the development of anti-corruption mechanisms at the national level;
- * To promote co-operation in the fight against corruption by state parties;
- * To harmonise national anti-corruption legislation in the region.

The Protocol's preventive mechanisms include:

- * Development of code of conduct for public officials;
- * Transparency in public procurement of goods and services;
- * Easy access to public information;
- * Protection of whistle blowers;
- * Establishment of anti-corruption agencies;
- * Development of systems of accountability and controls;
- * Participation of the media and civil society; and the
- * Use of public education and awareness as a way of introducing zero tolerance for corruption.

Article VI of the Protocol criminalises the bribery of foreign officials. This is in line with the OECD Convention on Combating Bribery of Foreign Officials in International Business Transaction.

The Protocol addresses the issue of the proceeds of crime by allowing for their seizure and confiscation, thereby making it more difficult to benefit from proceeds of corruption. It makes corruption or any of the offences

under it an extraditable offence, thereby removing the "safe haven" for criminals in SADC countries.

The Protocol can serve as a legal basis for extradition in the absence of a bilateral extradition treaty. The SADC Protocol also provides for judicial co-operation and legal assistance among state parties. This is important since corruption often involves more than one country.

1.2.2 Southern African Forum Against Corruption

Within the SADC region, the Southern African Forum Against Corruption (SAFAC) was established in June 2000. SAFAC aims to be the designated authority to implement the Protocol at regional level. The Forum seeks to enhance co-operation amongst the anti-corruption institutions within SADC countries. The Constitution still needs to be adopted, and its relationship with SADC defined.

SAFAC recognises that a major short-coming of all anti-corruption campaigns throughout the SADC region is the absence of training facilities and structures focused on the unique range of skills and abilities required of personnel engaged in anti-corruption campaigns or employed by anti-corruption bodies.

SAFAC's key objectives are to:

- * Strengthen networking amongst member organisations, update members on appropriate legislation and relevant international instruments on corruption;
- * Facilitate the upgrading of skills relevant to fighting corruption through training.
- * Cooperate and facilitate trans-boundary investigations and prosecution of corruption cases;
- * Identify and share experiences on best practices on combating corruption.
- * Share relevant information on corruption and intelligence;
- * Implement the provisions of the SADC Protocol Against Corruption

On 14 and 15 June 2002, the SADC Council of Ministers directed the SADC Secretariat, in collaboration with the SADC Legal Sector, to develop

a regional anti-corruption programme. Council will consider the proposal in August 2003.

1.2.3 African Union Initiatives

At the first session of the Assembly of the African Union in Durban in July 2002, a Declaration relating to the New Partnership for Africa's Development (NEPAD) was adopted. This Declaration calls for the establishment of a co-ordinated mechanism to combat corruption effectively. In response to this (and in response to various other decisions and declarations, the Draft African Union Convention on Preventing and Combating Corruption was developed.

In September 2002, two conferences were held in Addis Ababa to examine and finalise the Draft African Union Convention on Preventing and Combating Corruption.

2. GOVERNMENT'S PROGRAMME AGAINST CORRUPTION

In the post apartheid era, achieving good governance and fighting corruption are amongst the most important challenges that the country faces. Since 1994 the new government has introduced numerous anti-corruption programmes and projects.

This section documents the chronology of events which led to the adoption of the Public Service Anti-Corruption Strategy to fight corruption: It also provides an overview of the current state of the South African government's programme against corruption. Government's anti-corruption initiatives are primarily taking place within the context of the Public Service Anti-Corruption Strategy.

2.1 A Chronology of National Initiatives

March 1997: the Government Ministers responsible for the South African National Crime Prevention Strategy (NCPS) established a programme committee to work on corruption within the Criminal Justice System.

June 1997: the Code of Conduct for the Public Service had become part of the regulations governing every public servant and was the subject of an ethics promotional campaign by the then Public Service Commission.

September 1997: the South African NGO Coalition (SANGOCO) took the initiative to develop a Code of Ethics: This challenged other sectors to identify their core values relating to issues of governance, accountability and management.

October 1997: an Inter-Ministerial Committee on Corruption consisting of the Ministers of Justice, Public Service and Administration, Safety and Security and Provincial Affairs and Constitutional Development, was appointed on the strength of a cabinet decision. Its mandate was to consider proposals for the implementation of an anti-corruption campaign at both the national and the provincial level. After research and consultation with numerous role-players, an Inter-departmental Committee appointed by the Ministers finalised a report containing proposals for an effective national campaign against corruption.

The Committee's proposals included, inter alia, the following key issues:

- * The extension of areas of investigation of possible corruption;
- * The appointment of a task team to review existing and new cases and to expedite the investigation and prosecution of some high impact cases;
- * The establishment of a project team to carry out a feasibility study for an anti-corruption agency and the rationalisation of existing bodies;
- * The establishment of a working group to review the legislation and to draft new legislation in view of the unsatisfactory nature of the Corruption Act of 1992;
- * The appointment of the Inter-departmental Committee on Corruption to work on a national strategy against corruption and a monitoring system;
- * Announcement of a clear commitment from the President and from all political parties not to tolerate corruption; · The holding of a National Summit on Corruption;
- * The extension of the witness protection programme to include permanent relocation; and

- * The development of a risk assessment "early warning" system and the development of a clear system of accountability for the prevention of corruption in departments.

September 1998: the proposals set out by the Inter-departmental Committee on Corruption were endorsed by the Cabinet Committee for Social and Administrative Affairs and approved by Cabinet on 23 September 1998 as part of a National Campaign Against Corruption.

October 1998: in response to what they described as the "deep moral crisis", the country's religious leaders called a Moral Summit in October 1998. A Code of Conduct for people in leadership positions and a humanitarian ethics pledge was adopted by President Nelson Mandela among others.

Leaders committed themselves to the following principles:

- * Integrity
- * Incorruptibility
- * Good faith
- * Impartiality
- * Openness
- * Accountability
- * Justice
- * Generosity
- * Leadership

November 1998: the Public Sector Anti-Corruption Conference was held in Parliament, Cape Town from 10-11 November 1998: This Conference was attended by over 200 delegates. The aim of the conference was to develop a concrete plan of action to combat and assist in the prevention of corruption within the public sector.

Attendees included the Deputy President, Ministers, heads of agencies and parastatals, and a broad spectrum of senior government officials, including delegates from Parliament, the public service, local government

and organised labour in the public sector. The media and donors attended as observers.

In his speech, then Deputy President Thabo Mbeki, emphasised Government's duty to take a firm stand against corruption and to adopt a zero tolerance approach to offenders.

Deputy President Mbeki expounded a ten-point ethical management framework for the public sector:

- * Ethics in the workplace should be reinforced urgently as a new cultural trait of the public service;
- * Political will and a shared commitment should inform the reinforcement process;
- * Transparency and accountability should be given their rightful place; Rules of procedure should be clearly articulated;
- * The practice of whistle blowing should be institutionalised;
- * Steps to reward exemplary conduct should be taken;
- * Managers should give moral leadership by example;
- * Misconduct should always be subject to disciplinary sanctions;
- * Integrity training and ethics education should receive priority; and lastly,
- * The public interest should, as a rule, be placed above other particularistic interests.

Outputs for the Summit were:

- * To develop a clearly articulated national strategy to fight corruption in all sectors of society;
- * To create a common understanding of corruption in all its facets;
- * To obtain a commitment from all stakeholders to deal with corruption;
- * To affirm key principles necessary for the establishment of effective and co-ordinated anti-corruption structures;
- * To provide guidelines for a programme of anti-corruption actions;
- * To recommend legislative measures to give muscle to anti-corruption structures;

- * To send a clear message that corruption will not be tolerated by government or any other role-players in our new democracy.

The Conference Resolution, which was adopted, dealt with the following key issues:

- * Definition of corruption;
- * Restoring a public service ethos;
- * The role of civil society ;
- * The responsibility of public sector managers;
- * The management of conduct;
- * Financial management and controls;
- * Co-ordination of anti-corruption structures.

January 1999: a strategic co-ordination meeting of most governmental agencies was convened in response to the call for closer cooperation made at the Public Sector Conference.

April 1999: the National Anti-Corruption Summit was held in Cape Town on 14-15 April 1999. The purpose of the Summit was to discuss the importance of eliminating corruption in both the public and private sectors; to develop recommendations to improve investigation and prosecution procedures; to implement effective and co-ordinated anti-corruption structures; to review legislation; to enhance business's role in the fight against corruption.

More than 300 representatives, including government leaders, businesses, organised religious bodies, the NGO sector, donors, the media, organised labour unions, academics, professional bodies and the public sector participated in the Summit.

Through its recognition of the social nature of corruption, and its acknowledgement that the fight against corruption requires a national consensus and the co-ordination of activities, the National Anti-Corruption Summit created a powerful platform for the National Campaign Against Corruption.

The Conference Statement adopted at the Summit sets parameters for, and forms the basis of Government's national anti-corruption programme. Participants resolved to establish a cross-sectoral task team within six to eight weeks after the Summit's close, to develop this strategy. It was decided that the task team would report directly to Parliament.

The Summit was a success for the following reasons:

- * A broad range of interest groups was represented, emphasising that corruption is not a problem of the public sector only;
- * A sound basis was laid for a national vision and strategy to deal with corruption in the short, medium, and long term;
- * A management structure and delivery process was agreed upon to ensure that the process did not end with the Summit; and
- * Instead of creating a centralised and formal government anti-corruption structure, the summit was driven by a desire to create flexible anti-corruption structures based on South African conditions.

Political parties were not invited to participate in the Summit: This averted the possibility of political parties using the occasion to score political points. The down side, however, is that political parties were not a party to the Summit's outcomes. The non-participation of political parties also impoverished debate. Issues such as electoral fraud and corruption related to political funding were not dealt with.

The Resolutions, which were adopted at the Summit, relate to combating corruption, preventing corruption, building integrity and raising awareness.

The table below serves as a status report on progress with the implementation of the resolutions.

Resolution	Status report
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Combating Corruption	
A review and revision of legislation.	New Prevention of Corruption Bill has been developed
Establishment of a whistleblowing mechanisms	Protected Disclosures Act promulgated on 16 February 2001, but guidelines for practical implementation do not exist.
Speedy enactment of the Open Democracy Bill	Promotion of Access to Information Act, 2000 assented to on 3 February 2000. Privacy element of Open Democracy Bill currently with SA Law Commission.
Establishment of special courts to adjudicate on corruption cases	A Specialised Commercial Crimes Court and Prosecuting Unit was established as a pilot in Pretoria in 2000, and a second pilot site was established in Johannesburg in 2002.
Establishment of Sectoral Coordinating Structures (broadly classified as Public Sector, Civil Society and Business)	
Establishment of a National Coordinating Structure to lead, coordinate, monitor and manage the National Anti-Corruption Programme	National Anti-Corruption Forum was established in June 2001.
Preventing Corruption	
Blacklisting of individuals, business and organisations who are proven to be involved in corruption	A central database of corrupt businesses has been established and departments cannot utilise businesses that appear on the blacklist. The blacklist is accessible on the National Treasury's Web site.
	Government has in principle approved that corrupt employees are blacklisted from employment in the public service: this system will be implemented once the legal issues have been resolved.
Establishment of Anti-Corruption Hotline	Established in all nine Provinces.
Establishment of Sectoral and other Hotlines	Established for specific industries in the Business Sector.
Disciplinary action against corrupt persons	Disciplinary codes for public service to be revised. Efficacy of application still to be measured.

Consistent monitoring and reporting on corruption	To a limited extent done by political parties, NGO and media. No Public Service mechanisms established yet.
Promotion of and implementation of sound ethical, financial and related management practices.	New Public Service Regulations and Public Finance Management Act of 1999 contain elements. Honesty and integrity is a defined competency identified for the Senior Management Service (SMS) of the public service. Ethics and Fair Dealing is one of five pillars in newly established Procurement Guidelines.
Building Integrity and raising Awareness	
Promotion and pursuance of social research and analysis and policy advocacy to analyse causes, effects and growth of corruption	First step is the completion of the Corruption Country Assessment.
Enforcement of Code of Conduct and Disciplinary Codes in each sector	Public Service Code of Conduct, new Disciplinary Code and practical guideline on the Code of Conduct are in place.
Inspiring the youth, workers and employers towards intolerance for corruption	No particular strategy in place as yet.
Promotion of training and education in ethics	Workshops on the Code of Conduct were conducted by the PSC in all provinces. Ethics incorporated in public service training offered by the South African Management Development Institute
Sustained media campaigns to highlight aspects of the strategies	Limited Government media campaign is visible

August 1999: the Public Service Commission convened the first meeting of the Cross Sectoral Task Team on Corruption. Comprised of representatives from government, business and civil society. This body was tasked with implementing the Resolutions from the National Summit and engaging all sectors in the fight against corruption.

October 1999: the South African government co-hosted the 9th International Anti-Corruption Conference in Durban with Transparency International from 10-15 October 1999. The conference was attended by more than 1600 delegates from over 135 countries. Delegates were drawn from government, business, civil society and international organisations.

Deputy President, Jacob Zuma, announced that South Africa would examine the possibility of adhering to the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions that came into effect in February 1999.

Resolutions were adopted calling for enforceable international conventions to curb money laundering; to increase transparency in public procurement; to support independent anti-corruption agencies, and to develop more effective civil law processes to enable the proceeds of corruption to be identified and recovered.

February - June 2000: on 23 February 2000 President Mbeki established the Investigating Directorate: Corruption (IDCOR) as a new unit within the Directorate of Special Operations of the National Director of Public Prosecutions. The unit was given a broad mandate to deal with "offences related to corruption".

At the request of the National Director of Public Prosecutions, the Regional Office for Southern Africa of the United Nations Office on Drugs and Crime organised and held the International Anti-Corruption Expert Round Table in South Africa from 31 May to 2 June 2000. The discussions were designed to assist in IDCOR's operational and jurisdictional development.

About 50 delegates participated in the Round Table discussions. Delegates included heads or representatives of all the national anti-corruption agencies and major NGOs, as well as international experts from Botswana, Hong Kong (China), Italy, USA and ODC.

October / November 2000: Cabinet instructed the Department of Public Service and Administration (DPSA) to develop and implement a comprehensive and holistic anti-corruption strategy: The strategy would form the basis for a national anti-corruption programme. The DPSA established a multi-agency task team (Public Service Task Team on Corruption) comprised of experts, to assist in the task.

March 2001: following a prolonged period of negotiation, the South African Government signed a project agreement with the UN Office for Drug Control and Crime Prevention (now Office on Drugs and Crime - UNODC) on 9 March 2001, to support the national anti-corruption programme. The DPSA is the designated implementing department. This project agreement

was made possible under the UN Global Programme against Corruption (GPAC).

March 2001: the Minister of Public Service and Administration opened a three-day strategic planning workshop, convened by the Department of Public Service and Administration (DPSA), to design a national strategy for the public sector to fight corruption. This strategy session, attended by 28 permanent participants and expert speakers from civil society and the UNODC, was part of a process to assist the DPSA to finalise the development of a Public Service Anti-corruption Strategy by July 2001.

The main objectives of the session were to:

- * Ensure a common understanding of corruption and related issues by session participants;
- * Develop the final strategy framework and selected content issues; and to
- * Complete an implementation plan for the development and submission of the strategy.

June 2001: on 15 June 2001 the National Anti-Corruption Forum was launched in Langa, Cape Town. The Founding Charter requires members to:

- * Establish a national consensus through the coordination of sectoral anti-corruption strategies;
- * Advise government on the implementation of strategies to fight corruption;
- * Share information on best practices in sectoral anti-corruption work; and
- * Advise all sectors on the improvement on sectoral anti-corruption strategies.

Regional and domestic developments to date were reviewed at the launch. A progress report was given on the implementation of the Resolutions of the National Anti-Corruption Summit.

July-December 2001: during July 2001 Cabinet considered the draft Public Service Anti-Corruption Strategy: The draft strategy was referred to an inter-Ministerial Committee for refinement. During this period, there were ongoing consultations with all stakeholders.

August 2001: the Public Service Commission completed an audit of national departments and agencies, which had an anti-corruption mandate in place. The findings from this report fed into the Public Service Anti-Corruption Strategy.

June-December 2001: the Public Service Commission commissioned research into the functioning of hotlines, risk management by provinces, blacklisting of businesses and financial disclosure. The research findings and recommendations were revealed to Parliament in May 2002.

January 2002: a draft discussion document on the Public Service Anti-Corruption Strategy was prepared and presented to the Cabinet Lekgotla in January 2002, where it was adopted. The strategy document proposes a holistic and integrated approach to fighting corruption. The approach combines a strategic mix of preventive and combative activities and a consolidation of Government's institutional and legislative capabilities.

The Public Service Anti-corruption Strategy contains nine considerations: these are inter-related and mutually supportive.

The considerations include:

- * Firstly, review and consolidation of the legislative framework: this requires that the existing Corruption Act be replaced with an effective and modern anti-corruption law. Other related legislation needs to be refined where necessary.

The legal framework must provide for:

- * A new Corruption Act that provides a workable definition of corruption; reinstate the common law crime of bribery; create presumption of prima facie proof to facilitate prosecution; extend 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

Secondly, increased institutional capacity: this requires an increase in courts' anti-corruption capacity, as well as increased institutional capacity for existing national institutions which have anti-corruption mandates and departmental anti-corruption capabilities. In particular, it proposes that:

- * The efficacy of existing departments and agencies be improved through the establishment of appropriate mechanisms to co-ordinate and integrate anti-corruption work; and that
- * Departments should create a minimum capacity to fight corruption.

Thirdly, improved access to report wrongdoing and protection of whistle blowers and witnesses: this focuses on improving application of the protected disclosures legislation, witness protection and hotlines.

Fourthly, prohibition of corrupt individuals and businesses: this proposes the establishment of mechanisms to prohibit corrupt employees from employment within the public sector. It also prohibits corrupt businesses from doing business with the Public Service.

The fifth consideration is for improved management policies and practices: practices pertaining to procurement systems, employment arrangements, the management of discipline, risk management, management information and financial management are to be improved. 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.

The sixth area that has been identified is the need to manage professional ethics: this requires a renewed emphasis on managing ethics, including the establishment of a generic ethics statement for the Public Service that

is supported by extensive and practical explanatory manuals, training and education.

A seventh consideration is the need for partnerships with stakeholders: partnering is envisaged as a major cornerstone of the establishment of a national anti-corruption strategy.

In this regard:

- * The National Anti-Corruption Forum will be used to promote partnership with the Business and Civil Society sectors to curb corruption;
- * Public Service unions will be mobilised to advocate professional ethics to their members.

The eighth consideration, is the need for social analysis, research and policy advocacy: This consideration proposes that all sectors be encouraged to undertake ongoing analysis of the trends, causes and impact of corruption: All the sectors are required to advocate preventive measures.

Lastly, a need has been identified for awareness, training and education to support the above developments and launch of a targeted public communication campaign: It is proposed that the campaign be aimed at the promotion of South Africa's anti-corruption and good governance successes both domestically and internationally. Domestically, the campaign will be hinged on the promotion of Batho Pele initiatives and the development of a sense of pride amongst employees.

The strategy's implementation is expected to be completed by April 2004.

The Cabinet Lekgotla also established new arrangements to manage Government's anti-corruption work. Cabinet designated the implementation of the strategy as a priority programme of the Governance and Administration cluster of Cabinet.

The Public Service Anti-Corruption Strategy should be used as the guiding framework to benchmark the progress of Government's anti-corruption reform efforts, as it consolidates existing anti-corruption initiatives and in part, replaces the work done in terms of the resolutions adopted at the various summits and committees.

3. UN SUPPORT FOR THE ANTI - CORRUPTION PROGRAMME

3.1 The United Nations Global Programme Against Corruption

In 1999 the Centre for International Crime Prevention (CICP) of the United Nations Office on Drugs and Crime (UNODC), together with the United Nations Interregional Crime and Justice Research Institute (UNICRI) introduced the UN Global Programme against Corruption (GPAC). The UN Global Programme was developed to serve a number of different objectives.

At the international level, the programme prioritises the development of common strategies and the exchange of information, experiences and good practices. In order to examine the progress and effectiveness of national anti-corruption initiatives, it is important that the Country Assessment is repeated on a regular basis. The results, combined with objective indicators of corruption levels, types, costs, causes, effects and remedies, will contribute to an analysis of global corruption trends that is being undertaken by the (UNODC).

The analysis of global trends in corruption will provide valuable information to countries for the development of strategies and the monitoring of action plans. It will serve as the basis of discussion for the UN member states in the elaboration of an international instrument against corruption. It will also, facilitate the identification of best practices in pilot countries and elsewhere around the world. The Programme aims to support the development of the UN Convention Against Corruption. At the regional level the programme aims to enhance regional co-ordination mechanisms (e.g. SAFAC), adoption of the regional normative framework and assistance in the implementation and monitoring of regional initiatives (SADC Protocol against Corruption)

The Programme has the following principal objectives at a national level:

- * Assessment and monitoring;
- * Capacity building for the prevention and control of corruption;

- * Providing assistance in the development of criminal justice and preventive measures;
- * Training;
- * Support for partnerships among government, business and civil society.

3.1.1 Assessment / Monitoring of Corruption

The Global Programme Against Corruption's research component provides information on trends. The programme assists countries to review phenomena in this regard on a regular basis: It also assists them to monitor the efficiency of anti-corruption measures at a national level.

A comprehensive assessment / monitoring tool has been developed to provide appropriate and up-to-date background information and to support and sustain the technical co-operation measures.

The long-term objectives of assessment include promoting reform in legislation; the establishment of dedicated anti-corruption structures; raising levels of awareness; the convening of integrity workshops, and providing other forms of technical assistance.

The research instrument serves as a monitoring tool to measure the impact of follow-up initiatives.

3.2 The United Nations Global Programme in South Africa

During his missions to South Africa in April and October 1999, the Executive Director of the then UN Office for Drug Control and Crime Prevention identified the fight against corruption as one of the areas for international assistance. The call for international assistance was highlighted at the Ninth International Anti-Corruption Conference. In fact, as early as 1997, the Ministry for Justice in South Africa, through the United Nations Resident Coordinator in South Africa, requested technical advice in the design and implementation of a comprehensive programme to control corruption.

The project aims to assist the South African Government in its efforts to strengthen its institutional capacity to prevent, detect and fight corruption

and to promote integrity, transparency, accountability and the rule of law within the country.

The project is intended to provide institution-building and direct support to the Government of South Africa. Measures include:

- * A country assessment of the corruption situation and anti-corruption measures;
- * Support in the preparation of a national anti-corruption strategy and action plan: this would be followed by a donor meeting to seek co-ordinated international assistance;
- * Support in drafting anti-corruption legislation;
- * Enhanced capacity for the prevention, investigation and prosecution of corruption in selected departments of public sector;
- * Assistance with specialised investigating and prosecutorial anti-corruption structure of the criminal justice system; and
- * Assistance in the development and implementation of anti-corruption initiatives in two selected provinces in South Africa.

Based on various analyses and discussions with governmental agencies, civil society and the private sector, several priorities were identified.

Priorities include:

- * The provision of analytical instruments to collect, analyse and monitor trends in types of corruption and the efficacy of adequate anti-corruption measures;
- * Assistance in the preparation of the National Anti-corruption Strategy and the promotion of an efficient legislative framework; and
- * Assistance in enhancing investigative capacity and the capacity to prosecute;
- * The prevention and management of corruption in public administration at national and provincial levels.

3.2.1 Technical Assistance

The principle of providing technical assistance to countries wanting to improve their ability to combat corruption has been supported and stressed

at the various sessions of the decision-making bodies within the United Nations.

The CICP agreed to provide the services of its officials and international experts and to work in close co-operation with the South African Government, the National Anti-corruption Forum, civil society and the private sector, in supporting initiatives in line with the Global Programme against Corruption.

The CICP/UNODC undertook to manage and co-ordinate the project and to provide expertise, advisory and technical services, and financial support for a two-year period. UNICRI agreed to co-operate in research / assessment related project activities.

It was agreed that the South African government would undertake to do the following:

- * Offer advice in the planning and implementation of the project;
- * Contribute in kind to the implementation of the programme;
- * Ensure the co-operation and involvement of all relevant line departments;
- * Ensure continuity by committing itself to support the activities at the termination of the project.

In addition, the South African government undertook to ensure that all government institutions involved in the project, particularly the Department of Public Service and Administration, had the requisite technical capacity to provide necessary government inputs for the project.

Furthermore, Government undertook to ensure that all institutions that were involved in the project had the capacity to plan, monitor and co-ordinate relevant activities pertaining to the project. A Steering Committee was established for this purpose.

The project established South Africa as a country in Africa for piloting anti-corruption measures within the framework of the Global Programme against Corruption.

3.2.2 Methodology

The South African Country Corruption Assessment is based on the methodology prescribed by the GPAC.

The GPAC framework provides a standardised assessment to document:

- * public administration and "street"-level corruption where citizens interact with civil servants;
- * business-level corruption, particularly where medium-sized companies interact with government administration; and
- * high-level financial and political corruption.

Within this framework, the following areas were identified as particularly relevant for the South African country assessment:

Firstly, field work: entail surveys of:

- * The public;
- * Business;
- * Public administration;
- * Other surveys/data; and
- * and Mass-media content and coverage analysis.

Secondly, focus groups. Here, participants included:

- * Organised labour;
- * Members of Parliament;
- * Media;
- * Prosecutors; and
- * Magistrates.

Thirdly, desktop analysis which required an assessment of the legal and institutional framework. The following areas were included:

- * Legislative analysis;

- * Specialised anti-corruption bodies;
- * Criminal justice data;
- * Departmental data and capacity;
- * Codes of ethics; and
- * Training and awareness.

Fourthly, the societal context. The following was included:

- * Activities of civil society; and an
- * Analysis of political party programmes

The assessment is structured and reported upon in relation to the Public Service Anti-Corruption Strategy.

4. Conclusion

Strengths:

- * A wide range of anti-corruption instruments has been adopted internationally and in Africa;
- * Led by Government, South Africa has taken steps to comply with the requirements of the international standards;
- * A comprehensive Public Service Anti-Corruption Strategy has been adopted.

Weaknesses:

- * No comprehensive assessment of South Africa's efforts to combat and prevent corruption, or of the actual levels of corruption has ever been undertaken in the past.
- * This Country Corruption Assessment focuses on the national and provincial levels of government. Although adversely affected by corruption, local government and other public bodies have not been included.

PART TWO: THE NATIONAL RESPONSE TO CORRUPTION

Overview

In general South Africa has a comprehensive legal framework to deal with corruption. This framework is fragmented in places, and in some instances, the mandates for public institutions overlap. New anti-corruption legislation as well as legislation dealing with private funding of political parties, corporate governance and the corporate sector is required.

However, the legal framework provides:

- * A definition for, and criminalisation of corruption;
- * Transparency for the budgeting of public funds; effective risk management and financial management of public funds and other public assets; and a strengthening of accountability for resources; internal and external auditing of and proper reporting by public and private entities;
- * Procurement by public bodies from vendors, including preferential procurement from previously disadvantaged individuals, and preferential employment of previously disadvantaged individuals as public officials;
- * The establishment of Rules of Conduct and Disclosure of Assets and Financial Interests for public officials and political office bearers;
- * Transparency, accountability and administrative justice in public administration and access to certain information of private entities;
- * Recourse by the public in the event of corruption or maladministration;
- * The investigation and prosecution of persons involved in corruption;
- * The jurisdiction and independence of the courts and the prosecuting authority;
- * The civil forfeiture of assets which are associated with or derived from racketeering, organised crime activities or corruption;
- * The criminalisation of money laundering and financial intelligence;
- * International co-operation;
- * The protection of whistle blowers and of witnesses in criminal trials;

- * Tax legislation; and
- * The framework for the funding of political parties.

There is far more legislation that deals with public sector corruption than legislation for corruption within the private sector. In the light of the extensive corruption that has emerged within the corporate sector in a number of countries (e.g. recently in the USA), private sector legislation needs to be reviewed.

These issues are dealt with in the legislation, which regulates South Africa's financial services industry, the securities exchanges and companies. However, there are several examples of corrupt corporate practices in South Africa, and the legislation and its application, should be reviewed.

Corporate governance requirements are currently contained in the King Report; these only provide for voluntary compliance. The Johannesburg Stock Exchange (JSE) has compulsory requirements in respect of new listings.

According to a survey conducted by Deutsche Bank in October 2002, there is an incentive for good governance. South African companies that investors believed enjoy good corporate governance, achieved a premium of 59% on a price to earnings (PE) basis. The National Treasury is currently taking steps to entrench aspects of the King Report within legislation.

1. LEGISLATIVE FRAMEWORK

1.1 Main Legislation

The Public Service Anti-Corruption Strategy was approved by Cabinet during January 2002. The Strategy in its Strategic Consideration provides a review and consolidation of the existing legislative framework.

This section documents the current and proposed legislative framework that addresses corruption. The listing is neither complete nor in-depth. This section only covers legislation that applies across disciplines. The emphasis is on legislation that impacts on the public sector.

1.1.1 Corruption Act (No 94 of 1992)

Before this Act was promulgated, corruption and/or corruption related offences were prosecuted in terms of the Prevention of Corruption Act 6 of 1958. Alternatively, they were prosecuted as common law crimes. Offenders, who should have been prosecuted for corruption, were prosecuted for charges such as theft or fraud. Parliament passed Act 94 of 1992 and repealed all previous legislation that dealt with corruption and related offences. The Act also abolished the common law crime of bribery. Hindsight suggests this was a mistake.

The police have continued to charge suspects with fraud and theft because of the serious difficulties experienced in obtaining convictions in terms of the Act. The 1997 Report to Cabinet on a National Anti-Corruption Campaign included comments from a wide-range of senior law enforcement and prosecution officials: they all concurred that the requirements of proof of corruption set out in the Act were very difficult to comply with, and that the removal of common law crime of bribery was a serious setback to law enforcement.

As a result of the introduction of Act 94 of 1992 there have been very few prosecutions of corruption cases.

1.1.2 The Prevention of Corruption Bill (April 2002)

The development of a new Corruption Act is of primary focus points in Strategic Consideration of the Public Service Anti-Corruption Strategy.

The Prevention of Corruption Bill provides a workable definition of corruption. It reinstates the common law crime of bribery; it creates a presumption that acceptance of a favour is corrupt in order to facilitate prosecution; and it extends the scope of the Act to all public officials, private persons and their agents.

The Bill is currently being discussed in Parliamentary Portfolio Committee for Justice and Constitutional Development hearings and is expected to be passed during the next parliamentary session in 2003.

Rather than make piecemeal amendments to the Corruption Act of 1992, the Bill aims to give effect to recommendations emanating from a complete

review of the 1992 legislation. As explained in (above / previous) Section of this report, the provisions contained in the Bill follow the trend in modern international legislation to unbundle corruption. Using this approach, specific corrupt actions and corrupt practices are defined and prohibited.

The provisions of the Bill are in part based on the provisions of the Nigerian Corrupt Practices and Other Related Offences Act of 2000.

The Nigerian legislation is based on international best practice. It is informed to a large extent by similar legislation enacted in Malaysia, Singapore, Hong Kong, India and Lesotho. The recent legislation enacted in Kenya follows the same trend.

The specific provisions of the Corruption Act of 1992 and the Prevention of Corruption Bill of 2002 are discussed below.

1.1.3 The Criminalisation of Corruption

Corruption is a statutory offence in South Africa and bribery will once again be regarded as a common law offence.

The Prevention of Corruption Bill creates new offences within the broad category of corruption. It also, reinstates the common law offence of bribery. The Bill criminalises corrupt actions undertaken outside South Africa by any South African citizen; anyone domiciled in South Africa, or by any foreigner, if:

- * The act is an offence under the law in force in that country;
- * The foreigner is found to be in the RSA; and
- * The foreigner is for one reason or another not extradited.

(See section on the extraterritorial application of the Act below).

Defining corruption is problematic and often disputed. The Public Service Anti-Corruption Strategy highlights some of the difficulties in defining corruption:

"Corruption appears in permutations and in degrees of intensity, varying from the occasional acceptance of bribes to systematic corruption where

bribery is the accepted way of "doing business" and large-scale looting of a country's resources. 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."

Another key definitional issue, which is highlighted in the Strategy, relates to understanding what corruption is not. Often, problems such as maladministration, incapacity and inefficiency (especially in relation to the use of public resources) are identified as acts of corruption.

The Corruption Act (94 of 1992) defined corruption as the abuse of (public) power for illegitimate or illegal gain or profit. According to the definition contained in this Act there are four criteria which have to be met:

- * There must be an offer and/or receipt of a benefit;
- * The benefit must not be legally due;
- * It must be for a person holding office; and lastly,
- * The purpose for which the benefit is given and/or received, must be to influence a person in the exercise of his/her power to do something or not to do something.

In terms of this definition, it is not essential that the benefit assumes a monetary form, it may also be payment in kind.

The Act makes provision for instances where the benefits are offered to persons other than the official him/herself. Section 1 of the Act makes provision for corruption in respect of "any person", whether a legal or a natural person, a private person or public official. Sections 1(1)(a) and (b) seem to restrict the offence to action or inaction in the area of the official or agent's strict sphere of duty.

The Public Service Anti-Corruption Strategy developed a working definition of corruption 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 others". The Strategy makes provision for the development

of a revised legal definition of corruption by the Ministry of Justice and Constitutional Development.

This revised legal definition was presented in the Prevention of Corruption Bill of 2002. The provisions contained in the Bill follow the trend of modern international legislation to unbundle corruption.

The offences, which are listed, include:

- * The offence of corruptly accepting gratification;
- * The offence of corruptly giving gratification;
- * The offence of corruptly accepting gratification by, or giving gratification to, an agent;
- * The offence of fraudulent acquisition of a private interest; · Offences in respect of tenders;
- * Bribery of public officers; · Corruption of witnesses;
- * Bribery of foreign public officials
- * Bribery in relation to auctions;
- * Bribery for giving assistance in regard to contracts;
- * The offence of corruptly using office or position for gratification;
- * Corruption in relation to sporting events;
- * The offence of dealing with, using, holding, receiving or concealing gratification in relation to any office;
- * Offences relating to the corrupt accepting and giving of gratification;
- * Additional offences; · Intentional obstruction of investigation of an offence; and
- * Possession or control of property corruptly acquired by a public officer.

Additional provisions in terms of the Prevention of Corruption Bill 2002

According to the Prevention of Corruption Bill 2002:

- * It is an individual's duty to report corrupt transactions: it is an offence not to report attempted or actual corrupt transactions.

- * In terms of the Court's jurisdiction, the Bill provides that any magistrate's court has jurisdiction to impose any penalty mentioned in the Act.
- * As far as extra-territorial application is concerned, clause 21 sets out the extraterritorial application of the Act. According to this provision, any act which constitutes an offence in terms of the Prevention of Corruption Act is also an offence if it is committed outside South Africa by any South African citizen, anyone domiciled in South Africa or by foreign persons (subject to certain conditions in the latter case) if found in South Africa.
- * Conspiracy or incitement to commit an offence as well as being an accessory after the offence is deemed to be an offence and is deemed to have been committed at every place where the conspirator or accessory acted. Persons may be charged in South Africa if that is where the conspiracy took place, irrespective of where the actual corrupt acts were carried out.
- * Both public and private sector corporations trade more and more globally, and the accountability of corporations for corrupt practices outside South Africa will become an important issue.
- * *Presumptions:* clause 3(3) of the Act provides that when a public or private sector official or an agent acting for the official accepts or agrees to accept any gratification from another who is seeking to obtain a contract, licence, permit, employment or anything else from the organisation which the official represents, or who is likely to be concerned in any business transactions with that organisation, the acceptance or agreement to accept such gratification is presumed to be corrupt unless evidence is produced to the contrary which raises a reasonable doubt.
- * *Penalties:* unlike the 1992 Act, the Prevention of Corruption Bill sets out specific penalties for each offence. The net effect is to introduce much harsher penalties. For example, a person convicted of an offence in relation to a tender is liable to a fine or to imprisonment for a period not exceeding 15 years or to both.

1.1.4 Public Finance Management Act 29 of 1999

The Public Finance Management Act (PFMA) and the Municipal Finance Management Bill set out comprehensive requirements for the financial management of public funds, including the clear assignment of accountability. Both statutes emphasize the need for prevention and risk management.

The Public Finance Management Act gives effect to Sections 213, 215, 216, 217, 218 and 219 of the Constitution (Act 108 of 1996) for the National and Provincial spheres of government. These sections require national legislation to establish a National Treasury, to introduce generally recognised accounting practices, to introduce uniform Treasury norms and standards, to prescribe measures to ensure transparency and expenditure control in all spheres of government, and to set the operational procedures for borrowing, guarantees, procurement and oversight over the various National and Provincial revenue funds.

The Act adopts an approach to financial management, which focuses on outputs and responsibilities, rather than the rule-driven approach of the old Exchequer Acts. The Act is part of a broader strategy to improve financial management within the public sector.

The emphasis in the Act is on the prevention of mismanagement and unauthorised expenditure, rather than on detection after the event and remedial action. The Act applies to National and Provincial government institutions and the entities under their control.

All State revenue, except as specified in the Act, accrues to the National or Provincial Revenue Funds. Funds from the National Revenue Fund may only be spent by a national government department if funds have been appropriated to that department by Parliament for a specified purpose. Exceptions in the case of emergency are strictly regulated by the Act.

The Act empowers the National Treasury to determine a banking and cash management framework. Banks may be required to provide information on the accounts of National and Provincial institutions.

The Act gives effect to Section 213 of the Constitution on the management of the National Revenue Fund. It also deals with the management of provincial revenue funds.

Chapter 4 of the PFMA sets out the budget process and gives effect to Section 215 of the Constitution which stipulates that national, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector. Section 216 of the Constitution requires national legislation to establish a National Treasury and to

prescribe measures to ensure transparency and expenditure control in each sphere of government.

This will be effected by introducing:

- * generally recognised accounting practices;
- * uniform expenditure classifications; and
- * uniform treasury norms and standards.

Chapter 5 of the Act ensures that all National and Provincial institutions and entities have Accounting Officers. It spells out their responsibilities and the disciplinary sanctions that will apply in the event of negligence in fulfilling these responsibilities. Accounting Officers are required to produce monthly and annual financial reports for their political heads (Executive Authority). The Act outlines the responsibilities of political heads and Accounting Officers to prevent over-spending on budgets. The shifting of funds between programmes (or the main divisions within a Vote) is regulated by the Act.

Chapter 10 of the Act defines financial misconduct and deals with the procedures for disciplining public officials found guilty of financial misconduct. Provision is made for criminal prosecution in the event of gross financial misconduct.

Chapter 11 establishes an Accounting Standards Board, which has the power to determine generally, recognised accounting practices for the public sector.

The Accounting Officer for a department, trading entity or constitutional institution must ensure that that organisation maintains effective, efficient and transparent systems of financial and risk management and internal control; a system of internal audit under the control and direction of an Audit Committee; an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective; and a system for properly evaluating all major capital projects prior to a final decision on the project.

The Accounting Officer is responsible for the effective, efficient, economical and transparent use of the resources of the organisation. This

individual must take effective and appropriate steps to prevent unauthorised, irregular, fruitless and wasteful expenditure and losses resulting from criminal conduct. Unauthorised, irregular or fruitless expenditure must be reported in writing to the National Treasury.

The Accounting Officer must take effective and appropriate disciplinary steps against any official who contravenes the Act or undermines the financial management or internal control systems of the organisation. Appropriate disciplinary steps must also be taken against official who makes or permits unauthorised or irregular expenditure. An Accounting Officer may delegate certain powers and the delegation must be in writing.

The regulations published in terms of the Act specify how an Accounting Officer must prepare a risk assessment and a risk management framework.

The Act also deals with the control of public entities that are not government departments.

A recent survey conducted by the National Treasury to assess the level of compliance with the PFMA and Treasury Regulation by public entities revealed that public entities are lagging behind in the implementation of certain basic aspects. This survey formed the basis of a Report that was submitted to Cabinet on 26 June 2002.

Cabinet resolved that Directors-General need to take effective steps to ensure the oversight over public entities and their compliance with the PFMA. National Treasury will conduct surveys on an on-going basis to monitor and assess compliance as well as to report the results thereof to Cabinet.

1.1.5 Municipal Finance Management Bill (2002)

The Municipal Finance Management Bill of 2002 (MFMB) is currently before the Parliamentary Portfolio Committee of Finance. Public comments have been considered and a complete redraft of the Bill has been effected. The Committee is discussing this redrafted version. This Bill is intended to replace the Local Government Transition Act of 1993: It will serve as the most important legislative control for local government. The provisions in the MFM Bill echo the spirit of the PFMA.

The MFM Bill makes provision for transparency, accountability and sound management of revenue, expenditure, assets and liabilities of the local government institution. It states that the Municipal Manager is the Accounting Officer for the Municipality.

The duties of the Municipal Manager and other Municipal officials are to:

- * To ensure that there is a system of financial management and internal control established within the area of responsibility;
- * To take effective and appropriate steps to prevent, within the manager's area of responsibility, any irregular or unauthorised expenditure and under-collection of revenue;
- * To comply with provisions of the Act; and the
- * Management, including safeguarding, of assets and the management of liabilities within the area of responsibility.

A municipal official to whom a power or duty is delegated commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power properly or perform that duty. Financial misconduct is ground for dismissal or suspension.

A municipal official to whom a power or duty was delegated is guilty of an offence if that official wilfully or in a grossly negligent manner contravenes or fails to comply with a condition of that delegation.

1.1.6 The Auditor-General

In terms of section 188 of the Constitution, the Auditor-General must audit and report on the accounts, financial statements and financial management of all national and provincial state departments and administrations; all municipalities; and any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.

In addition to the duties prescribed in subsection (1), and subject to other legislation, the Auditor-General may audit and report on the accounts, financial statements and financial management of: any institution funded from the National Revenue Fund or a Provincial Revenue Fund or by a

municipality; or any institution that is authorised in terms of any law to receive money for a public purpose.

The Auditor-General Act (12 of 1995) further sets out the powers and functions of the Auditor-General. Following the adoption of the 1996 Constitution, the Office of the Auditor-General recognised a need to review the Auditor-General Act of 1995. A task team was appointed to undertake the review process. The Auditor-General Act is currently being reviewed with a view to:

- * Align it with the Constitution and with any other relevant, newly promulgated legislation;
- * Improve specific operational provisions; and
- * Bring the provision of services into line with the latest trends in international public sector auditing.

The PFMA provides for certain additional functions of the Auditor-General. For example, section 58(3) states that a public entity must consult the Auditor-General on the appointment of an auditor. National Treasury and the Office of the Auditor-General reached agreement that the current provisions in Chapter 6 of the PFMA regarding External Auditors should be covered in the Auditor-General's Amendment Bill. This Bill will be submitted to Parliament in the near future.

The proposed amendments contained in the Auditor-General's Bill will provide the Auditor General with an appropriate mandate to audit and report on the accounts, financial statements and financial management of public entities.

The Audit Arrangements Act (122 of 1992) as amended by the Audit Matters Rationalisation and Amendment Act (53 of 1995) established the Office of the Auditor General (OAG) as the link between the OAG and the Auditor-General. This Act clearly demonstrates that the OAG is separate from government: It has its own decision-making processes as well as the means to generate revenue. The Audit Arrangements Act is being reviewed to align it with the new Auditor General Act, the OAG's strategy, and the new professional environment.

1.2 Values and Principles

The Constitution (Section 195) lays down the values and principles that govern public administration. These values and principles include:

- * A high standard of professional ethics;
- * Efficient, economic and effective use of resources;
- * Public administration must be development-orientated;
- * Services must be provided impartially, fairly, equitably and without bias;
- * People's needs must be responded to, and the public must be encouraged to participate in policy making;
- * Public administration must be accountable;
- * Transparency must be fostered by providing the public with timely, accessible and accurate information;
- * Good human resource management and career development practices must be cultivated;
- * Public administration must be broadly representative of the South African people, with employment and deployment based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

In addition to the above values and principles, the Constitution contains further requirements related to employment and procurement.

Section 197(3) states that no public service employee may be favoured or prejudiced because an employee supports a particular political party or cause.

Section 217(1) requires all organs of state in the national, provincial and local spheres of government or any other institution identified in national legislation to contract for goods or services in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

Subsection (2) allows organs of state or institutions to implement a procurement policy, which provides for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

1.2.1 The Public Finance Management Act (1 of 1999, amended by Act 29 of 1999)

As set out above, the PFMA requires Accounting Officers of public institutions and public enterprises to put in place fair, equitable, transparent, competitive and cost effective systems for procurement. The Act also specifies measures to be taken in respect of unauthorised or irregular expenditure.

1.2.2 Municipal Finance Management Bill (2002)

As set out above, the MFM Bill contains similar requirements to that of the PFMA with regards to procurement and provisioning at local government level.

1.2.3 The Preferential Procurement Policy Framework Act (5 of 2000)

The Preferential Procurement Policy Framework Act of 2000 gives effect to Section 217(3) of the Constitution by setting out a framework for the implementation of a preferential procurement policy which provides for preferential procurement from certain categories of persons. The National Treasury is formulating a preferential supply chain policy strategy for government. The strategy will establish short and medium term national targets for preferential procurement policies.

1.2.4 Public Service Act (103 of 1994)

The Public Service Act (PSA) confers powers on the Minister for Public Service and Administration to make policy, and to set a framework of norms and standards relating to employment, including the promotion of broad representivity, human resource management and development, compensation and labour relations. The norms and standards are extensively covered in the Public Service Regulations that deal with all employment matters.

Executing authorities (Ministers and Members of Executive Councils) have powers regarding recruitment, appointment and other employment practices, but these are exercised in terms of the PSA and the policy and framework of norms and standards issued by the Minister for the Public Service and Administration.

Chapter IV of the PSA specifically arranges appointment, promotion and transfers, and requires due regard for equality and values and principles enshrined in the Constitution. Employment is based on equal opportunity, training, skills, competence, knowledge and the need to establish representivity.

The PSA empowers the Minister for the Public Service and Administration to issue regulations regarding the management of matters of conduct: A Code of Conduct has been issued in terms of this provision. The Minister issues such codes on the advice of the Public Service Commission.

The Minister for the Public Service and Administration has access to official documents or may obtain information from employees as may be necessary for the performance of any function under the PSA or any other law.

The Constitution established the so-called Chapter 9 institutions, including the Auditor-General and the Office of the Public Protector. The constitution also provides for the appointment and removal of the Public Protector.

1.2.5 The Public Service Commission

The PSC derives its mandate from Section 196 of the Constitution of the RSA. The Public service Commission is protected by legislation to ensure its independence, impartiality, dignity and effectiveness. No person or organ of State may interfere with the functioning of the PSC.

The powers and functions of the PSC are to:

- * Promote the Constitutional values and principles governing public administration;
- * Investigate, monitor and evaluate the organisation and administration, including personnel practices, of the public service;
- * Propose measures to ensure effective and efficient performance within the public service;
- * Give directions aimed at ensuring that personnel practices relating to recruitment, transfers, promotions and dismissals comply with the constitutional values and principles of public administration; and

- * Either of its own accord or on the receipt of a complaint, to investigate and evaluate the application of personnel and public administration practices and to monitor the adherence to procedures in public administration.

1.3 Transparency, Accountability and Administrative Justice

Chapter 10 of the Constitution lays down basic values and principles governing public administration. The democratic values enshrined in the Constitution require the public administration to be accountable. Further, in terms of s 33 of the Constitution, all South African citizens have a right to administrative action that is lawful, reasonable and procedurally fair. Where rights have been adversely affected by administrative action, it is their right to be given written reasons for the decision. The principles apply to administration in every sphere of government and organs of state.

The need for transparency in government is laid down as a basic value in Chapter 10. The Constitution states that transparency must be fostered by providing the public with timely, accessible and accurate information. In terms of S 32 of the Constitution everyone has the right to access any information held by the state, and any information held by another person that is required for the exercise or protection of any rights.

1.3.1 Promotion of Access to Information Act (2 of 2000)

The Promotion of Access to Information Act (PAIA) gives effect to the right of access to information enshrined in Section 32 of the Constitution, namely: that everyone has the right of access to:

- * Any information held by the state; and to
- * Any information that is held by another person and that is required for the exercise or protection of any rights.

The constitutional entrenchment of a right to access to information legislation is unique: This is undoubtedly a reaction to the secretive and bureaucratic tendencies of the apartheid state. The entrenchment of this right is intended to ensure that a secretive and unresponsive culture in both public and private sectors does not develop. Such a culture is often

associated with the abuse of power, human rights violations and corruption. The Act over-rides other legislation which provides for secrecy.

The Act promotes good government and good corporate governance. It will foster a culture of transparency and accountability in public and private bodies.

The PAIA provides the public with a statutory right of access (on request) to any record held by the state, with certain limited exceptions. Requests for public sector records in terms of the Act do not have to be motivated. However, if a request for access is declined, the public body must motivate reasons for its refusal.

The PAIA also provides a similar statutory right of access to records held by private bodies, where there is an overriding public interest or where the rights of the requester are affected. Such requests must be motivated. Refusal of access can be challenged in court.

1.3.2 Promotion of Administrative Justice Act (3 of 2000)

For most of South Africa's past, administrative decisions have been shrouded in secrecy. The public did not know the decisions that were taken against them. The 1996 Constitution and the Promotion of Administrative Justice Act (PAJA) have made provision to reverse this culture and to promote an efficient, accountable and transparent Administration.

The PAJA was passed to give effect to the constitutional rights to lawful, reasonable and procedurally fair administrative action and the right to be given reasons for administrative action. Additionally, it contains provisions limiting those rights in the interests of administrative efficiency and good governance. Since coming into operation on 30 November 2000, the PAJA has become the legislative foundation of the general administrative law of South Africa.

The PAJA:

- * Sets out the rules and guidelines that administrators must follow when making decisions. It provides that administrative decisions by public bodies, which may include certain decisions of a Cabinet Minister or even the President, must be lawful, fair and reasonable;

- * Requires administrators to inform people about their right to review or appeal and their right to request reasons;
- * Requires administrators to give reasons from their decisions (Officials must explain the way in which they have used their power and must be able to justify their decisions by giving reasons in writing); and
- * Gives members of the public the right to challenge the decisions of administrators in court.

1.3.3 The Public Service Commission

The Public Service Commission may, on receipt of a complaint, investigate and evaluate the application of personnel and public administration practice.

1.3.4 The Public Protector Act 23 of 1994

The Public Protector is a functionary to whom the public has recourse. This functionary is guaranteed independence by the Constitution. The Public Protector is required to be impartial and to exercise his or her powers and functions without fear, favour or prejudice. No person or organ of state may interfere with the Public Protector. Organs of state must protect and assist the office of the Public Protector.

The President appoints a suitably qualified person to this office, based on the recommendation of the National Assembly. The appointment is not renewable and it is for a period of seven years. The Public Protector Act (23 of 1994) provides for matters incidental to the Office of the Public Protector, as contemplated in the Constitution.

In terms of section 182 of the Constitution, the Public Protector has the power as regulated by national legislation to:

- * Investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
- * Report on that conduct; and
- * Take appropriate remedial action.

The Act provides for matters necessary to establish and operate the Office of the Public Protector as contemplated in the Constitution. Section 6, for example, sets out the powers of the Public Protector. In terms of this section, any person can approach the Public Protector with information, which could form the subject of an investigation.

In terms of section 6(4) the Public Protector is competent to investigate, on his or her initiative or on receipt of a complaint, any alleged:

- * Maladministration in connection with the affairs of government at any level;
- * Abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;
- * Improper or dishonest act, or omission or corruption, with respect to public money;
- * Improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or
- * An act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person.

Furthermore, it is at the sole discretion of the Public Protector to resolve any dispute or rectify any act or omission by:

- * Mediation, conciliation or negotiation;
- * Advising, where necessary, any complainant regarding appropriate remedies; or
- * Any other means that may be expedient in the circumstances.

At a time prior to, during or after an investigation:

- * If the Public Protector is of the opinion that the facts disclose the committing of an offence by any person, to bring the matter to the notice of the relevant authority charged with prosecutions; or
- * If he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting therefrom or make any other appropriate recommendation he or she deems expedient to the affected public body or authority.

Section 7 sets out how the Public Protector carries out his or her investigations. In terms of Section 7(1), the Public Protector will take the specific circumstances of each case into account in determining the procedure to be followed. The Public Protector may exclude anyone whose presence is not desirable during the investigation.

Section 7 (2) provides for the confidentiality of documents in the possession of a member of the office of the Public Protector or the records of any evidence given before the Public Protector, Deputy Public Protector, or any other person contemplated in Section 3(b) during an investigation.

Section 7(3)(a) gives the Public Protector the power to enlist the assistance (under his or her supervision) of any person at any level of government performing a public function and otherwise subject to the jurisdiction of the Public Protector in the performance of his or her functions. Section 7(3)(b) allows the Public Protector to appoint another person to conduct an investigation or a part of an investigation on his or her behalf.

Section 7(4) and (5) give the Public Protector the right to subpoena any person to submit an affidavit or affirmed declaration or to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and to examine such a person.

1.3.5 The Promotion of Administrative Justice Act (No 3 of 2000)

The Act gives a member of the public the power to require reasons in writing from an administrator in the public sector who makes an administrative decision, which affects the rights of that person. The

member of the public may then request the court to review such a decision. The court has the power, inter alia, to amend the decision or to send it back for further consideration.

1.4 Investigation and Prosecution of Persons Involved in Corruption

The SA Police Service is empowered by s205 of the 1996 Constitution to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

Policy for the national police service is developed by the Minister for Safety and Security. The President appoints the National Commissioner of the SAPS. The SA Police Service Act 68 of 1995 (amended by the SA Police Service Amendment Act 83 of 1998) governs the way in which the SAPS operates. In terms of this Act, the SAPS investigates crimes including corruption and bribery.

In terms of the South African Police Service Act, an Independent Complaints Directorate (ICD) has been established. Its principal function is to ensure that deaths in police custody or through police action, and complaints in respect of offences and misconduct allegedly committed by members of the South African Police Service (SAPS), are investigated in an effective and efficient manner.

Under the Act, complaints of alleged misconduct may be referred to the Commissioner of the SAPS. The ICD can investigate or take over police investigations in certain matters. The ICD can make recommendations, for example, it may recommend that disciplinary action be taken against a particular member as a result of an investigation. However, the SAPS is not bound by ICD recommendations: The ICD has no power to enforce its recommendations.

1.4.1 The Directorate of Special Operations

On 25 June 1999 the President announced to Parliament that a special and adequately staffed and equipped investigation unit would be established to deal with all national priority crimes, including police corruption.

Three investigating directorates within the National Prosecuting Authority (NPA) were established in terms of the National Prosecuting Authority Act 32 of 1998. Their mandate covers Serious Economic Offences, Organised Crime and Public Violence, and Corruption. The National Prosecuting Authority Amendment Act (61 of 2000) consolidated the directorates into one Directorate of Special Operations (DSO), headed by a Deputy National Director of Public Prosecutions.

The Directorate's primary objectives are to:

- * Gather intelligence regarding, and investigate offences which are identified in terms of the proposed legislation as being committed in an organized fashion;
- * Ensure that the preparation for the prosecution and the prosecution itself, in respect of these offences, are carried out in the best possible manner.

At present, the DSO consists of the following operational desks:

- * Organised crime;
- * Serious and complex financial crimes;
- * Co-ordination of money laundering and racketeering;
- * Public integrity and corruption.

1.4.2 Special Investigating Units and Special Tribunals Act

The Special Investigating Units and Special Tribunals Act (74 of 1996 as Amended by Act No 2 of 2001) provides for the establishment of Special Investigating Units to investigate serious malpractices or maladministration in State institutions, State assets and public money, as well as any conduct which may seriously harm the interests of the public.

The Act provides for the establishment of Special Tribunals to adjudicate civil matters arising from investigations by Special Investigating Units. As a result of the introduction of this legislation, serious allegations can now be investigated comprehensively and swiftly. Delays, which may ordinarily have arisen in ordinary courts, are averted.

In terms of section 2 of this Act, the President of the Republic may establish and refer to a Special Investigating Unit, a matter arising from any alleged:

- * Serious maladministration in connection with the affairs of any State institution;
- * Improper or unlawful conduct by employees of any State institution;
- * Unlawful appropriation or expenditure of public money or property;
- * Unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing on State property;
- * Intentional or negligent loss of public money or damage to public property;
- * Corruption in connection with the affairs of any State institution ; and
- * Unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public or any category thereof.

Section 4 of the Act sets out the functions of an Investigating Unit, which include, among others, the investigation of all allegations regarding the matter in question, and collecting and presenting evidence before a Special Tribunal. The powers of such a Unit are set out in sections 5 and 6. Powers include the power to summon and question persons, to call for documentation and objects, to enter and search premises and to institute civil proceedings in a Special Tribunal.

1.4.3 The National Intelligence Agency

The National Intelligence Agency (NIA) is mandated in the Constitution under certain conditions to pro-actively, professionally and impartially manage and provide the Government with domestic intelligence and counter-intelligence, in order to enhance national security and defend the Constitution, the interests of the State and the well-being of the people of South Africa.

The NIA is a statutory body established in terms of section 3 of the Intelligence Services Act 38 of 1994. The Act regulates the establishment, organisation and control of the National Intelligence Agency and the South African Secret Service.

The National Strategic Intelligence Act 39 of 1994 mandates the NIA to gather departmental intelligence at the request of any interested department of State, and, without delay, to evaluate and transmit such intelligence and any other intelligence at the disposal of the Agency and which constitutes departmental intelligence, to the department concerned.

The Act defines the functions of members of the national intelligence structures; regulates the objects, powers and functions of the intelligence services, including any intelligence division of the defence force or police service; provides for the establishment of a National Intelligence Co-ordinating Committee, and defines its functions in respect of intelligence relating to the security of the Republic.

In terms of this Act, the NIA is authorised to:

- * Gather, correlate, evaluate and use crime intelligence in support of the functions of the South African Police Service as contemplated in section 215 of the Constitution; and
- * Institute counter-intelligence measures within the South African Police Service, in order to supply crime intelligence relating to national strategic intelligence.

1.4.4 The Commissions Act (8 of 1947)

The Commissions Act (8 of 1947) makes provision for the conferring of certain powers on commissions appointed by the President for the purposes of investigating matters of public concern, including corruption. Commissions are empowered to require persons and documents to appear before them.

1.4.5 The Prevention of Organised Crime Act (121 of 1998)

The Prevention of Organised Crime Act (POCA) introduces measures to combat organised crime, money laundering and criminal gang activities, which are often the source of corruption. The POCA prohibits certain activities relating to racketeering, including corruption. It also prohibits money laundering and criminalises gang membership.

Section 8 of the POCA provides that any person convicted of an offence in terms of Section 4 of the Act is liable to a fine not exceeding R100 million or imprisonment for a period not exceeding 30 years. The Act seeks to

deprive all persons of any ill-gotten gains and hence allows the State to seize those assets.

1.4.6 Criminal Procedure Act (51 of 1977)

Numerous provisions in the Criminal Procedure Act (CPA) are applicable to a person who has been charged with any form of corruption and who is being tried by a court of law.

The CPA was amended in 1995 to bring the provisions dealing with bail in line with the new constitutional dispensation. Section 60, for example, sets out guidelines, which the judiciary must take into consideration when deciding a bail application. These provisions are intended to preclude a presiding officer from granting bail in cases of serious offences. Some of the serious offences which have been listed for the purposes of this Act include: "any offence relating to exchange control, corruption, extortion, fraud, forgery, uttering or theft", especially if it is alleged that the offence was committed by a law enforcement officer.

1.4.7 Criminal Law Amendment Act (105 of 1997)

The Criminal Law Amendment Act (amended by Act 17 of 2001) provides for the imposition of minimum sentences in respect of certain serious offences, including corruption. For example, in terms of this Act a first offender for corruption, where a case involves amounts of more than R500 000; or where a case involves amounts of more than R100 000 if committed by a syndicate or group of persons; or where a case involves more than R10 000 if committed by a law enforcement officer; must, (generally speaking), be sentenced to a minimum of 15 years imprisonment. A second offender in the same circumstances must, generally, be sentenced to a minimum of 20 years imprisonment, and a third or subsequent offender, to a minimum of 25 years imprisonment.

1.4.8 Interception of Communication and Monitoring of Conversations

The Interception and Monitoring Prohibition Act (127 of 1992as amended) prohibits the interception of communications and the monitoring of conversations, except when this has been authorised by a judge of the High Court after considering the necessity thereof on the strength of an affidavit from a high ranking police officer or high ranking officer from the National Defence Force or high ranking official of the Secret Service.

These authorisations may only be given in respect of certain prescribed serious offences, such as the offences referred to in Schedule I to the Criminal Procedure Act, 1977. Offences include offences committed over a lengthy period of time; offences committed on an organised basis; offences committed on a regular basis by the person or persons involved therein; offences which may harm the country's economy; and offences related to dealing in drugs.

The Act is being 'overhauled': it is in the final stages of the parliamentary process. The proposed Bill, namely the Regulation of Interception of Communication and Provision of Communication Related Information Bill, intends to bring the legislation dealing with the interception and monitoring of communications that has a bearing on serious crime, including corruption, in line with the latest communications technology.

This draft legislation will extend the ambit of the existing legislation in this regard to cellular networks.

1.5 The Courts and the Prosecuting Authority

1.5.1 The Courts

Cases of corruption are tried in Magistrates Courts. The jurisdiction of these courts is prescribed in the Magistrates' Courts Act, (32 of 1944), and in the High Courts, the jurisdiction of which is prescribed in the Supreme Court Act, (59 of 1959).

There are two levels of Magistrates Courts: District Courts and Regional Courts. The penal jurisdictional limits of District Courts are R60 000 or three years imprisonment. The limits for Regional Courts are R300 000 or 15 years imprisonment.

Most cases are tried in the Regional Courts or in the Specialised Commercial Courts, which have been set up in a few centres. These courts are presided over by magistrates.

In terms of section 162 of the Constitution, the judicial authority of the Republic is vested in the courts. The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice. No person or organ of state may interfere

with the functioning of the courts. Organs of state, through legislative and other measures, must assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness.

An order or decision issued by a court binds all persons to whom it applies: it also binds all organs of state to which it applies. These constitutional provisions give effect to the principle of the separation of powers, the so-called trias politicas, making the courts independent of the Executive and the Legislature.

In terms of the Constitution, judges are appointed by the President on the advice of the Judicial Service Commission. This Commission is established by section 178 of the Constitution. Its functioning is regulated largely by the Judicial Service Commission Act, (9 of 1994).

The Judicial Service Commission consists of the Chief Justice of South Africa. The chief justice is head of the Constitutional Court, President of the Supreme Court of Appeal, Judge President of the High Courts, designated by the Judges President of the High Courts, the Cabinet member responsible for the administration of justice, representatives of the legal profession and members of Parliament, among others.

Judges may only be removed from office by impeachment. The Magistrates Commission plays a role in the appointment and removal of magistrates from office.

1.5.2 National Prosecuting Authority

The National Director of Public Prosecutions is appointed by the President in terms of the National Prosecuting Authority Act 32 of 1998, and reports to Parliament.

Section 179 of the Constitution of South Africa provides for a single prosecuting authority. The prosecuting authority is the only institution with the power to institute criminal proceedings on behalf of the state. The National Director of Public Prosecutions also has the power to delegate the authority to prosecute to either private individuals and/or other public entities. Thus, all investigations of corruption cases, whether investigated by the South African Police Service or any other agency, have to be referred to the prosecuting authority for criminal prosecutions.

The Directorate of Special Operations ("the Scorpions") established in terms of the National Prosecuting Authority Amendment Act of 2000 to investigate and prosecute crimes committed in an organised fashion also has a mandate to deal with cases of serious corruption.

South African law does not provide any individuals or organisations special grants of immunity from indictment, prosecution, or preventive custody (e.g. Members of Parliament, judges, prosecutors, etc).

1.6 The Civil Forfeiture of Assets

The Prevention of Organised Crime Act 121 of 1998 (POCA) which has been described earlier, prohibits money laundering and provides for the forfeiture of criminal assets that have been used to commit an offence or assets that are the proceeds of unlawful activities.

Section 4 of the POCA provides that any person "who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or performs any other act in connection with such property, whether it is performed independently or in concert with any other person, which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere to avoid prosecution or to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence, shall be guilty of an offence."

1.6.1 Special Investigative Unit and Special Tribunals Act (74 of 1996)

In terms of the Act, the Unit and tribunals have a specific anti-corruption mandate. The SIU is a mechanism, which the Executive can use to recover public monies. The Act makes provision for the establishment of Special Tribunals to adjudicate civil matters emanating from investigations conducted by the SIU. These matters do not need to compete for space on court rolls and so can be dealt with quickly. The ability to use civil

procedures to recover assets, and the Unit's access to Special Tribunals, provides a powerful framework to combat corruption.

1.6.2 The Financial Intelligence Centre Act (38 of 2001)

This Act makes provision for the establishment of the Financial Intelligence Centre and a money laundering Advisory Council in order to combat money laundering activities, and to impose certain duties on institutions and other persons who might be used for money laundering purposes.

Collectively, the Financial Intelligence Centre Act, 2001, the Prevention of Organised Crime Act and the International Co-operation in Criminal Matters Act, 1996 produced an anti-money laundering regime which complies in all material respects with the forty recommendations of the Financial Action Task Force on Money laundering (FATF).

FATF is the de facto international co-ordinating body for anti money laundering practices. South Africa will seek close working relationship with and affiliation to the FATF and thereby complete the Republic's compliance with its international obligations regarding money laundering.

1.7 Protection of Whistle Blowers and Witnesses

1.7.1 Protection of Whistle Blowers

The Protected Disclosures Act 26 of 2000 (PDA), which came into operation on 16 February 2001, is binding on both public and private sector organisations. It is designed to empower, enable and encourage employees to disclose information regarding unlawful or irregular behaviour when it occurs in the workplace.

The Act assists organisations to create a workplace culture which facilitates disclosures by employees in a responsible manner by providing comprehensive guidelines for disclosures (including the creation of alternative reporting lines and procedures) and for the protection of employees from victimisation and occupational detriments which may occur as a result of their disclosures.

The amendments to the Labour Relations Act 12 of 2002 (LRA) also include regulations for the resolution of disputes concerning occupational detriments in respect of the PDA.

If whistle blowers perceive a serious risk to themselves, they are far less likely to report problems. The PDA makes provisions for alternative reporting lines to ensure that employees do not have to report to supervisors who may be acting in collusion with those suspected of fraud or corruption. This allows employees who wish to make a protected disclosure to jump the normal lines of reporting by using stipulated alternative reporting lines, both internally and outside of the organisation.

In order to allow for alternative reporting lines, Section (1) (ii) of the PDA provides 'five doors' through which a whistleblower must walk if he or she is to be protected by the PDA. These are:

- * A legal advisor;
- * An employer;
- * A member of Cabinet or of the Executive Council of a province;
- * A person or body in accordance with section 8 of the Act (which includes the Public Protector or the Auditor-General); or
- * Any other person or body in accordance with section 9 of the Act (which typically includes bodies such as the SA Police Service, the DSO, auditors or journalists).

Hotlines are intended to encourage people to blow the whistle on corruption, albeit anonymously, and are a fairly common form of alternative reporting lines. There are, however, a number of policy issues in relation to such hotlines, including the danger that they will provide a "cloak for the malicious".

1.7.2 Witness Protection

It is often difficult to prosecute cases of corruption successfully due to the refusal of witnesses to testify because of the fear of intimidation.

The Witness Protection Act (112 of 1998) provides for the protection of witnesses through witness protection programmes, which are administered by a Central Office for Witness Protection. Offences in respect of which a witness or related person may be placed under witness protection and which have a bearing on corruption directly or indirectly, include:

- * Any offence relating to dealing in dependence-producing substances if the value thereof is more than R10 000, or if the value thereof is less than R5 000 and the offence is committed by a group of persons or by a syndicate or if the offence was committed by a law enforcement officer;
- * Any offence referred to in section 1 or 1A of the Intimidation Act, 1982;
- * Any offence relating to exchange control, corruption, extortion, fraud, forgery, uttering or theft, involving amounts of more than R50 000, or involving amounts of more than R10 000 if the offence is committed by a group of persons or by a syndicate or if the offence was committed by a law enforcement officer;
- * Any offence referred to in the Prevention of Organised Crime Act, 1998;
- * Any conspiracy, incitement or attempt to commit any offence referred to in the Schedule to the Act;
- * Any other offence which the Minister has determined by regulation;
- * Any other offence in respect of which it is alleged that the offence was committed by a person, group of persons or syndicate in the execution or furtherance of a common purpose or a conspiracy or by a law enforcement officer, and in respect of which the Director of the Witness Protection Programme is of the opinion that the safety of a witness who is or may be required to give evidence or who has given evidence in respect of such offence, warrants protection.

1.8 Tax Legislation: The SA Revenue Service Act

The South African Revenue Services Act (34 of 1997) gives SARS the mandate to perform the following tasks:

- * Collect all tax revenues that are due;
- * Ensure maximum compliance with the legislation;
- * Provide a customs service that will maximise revenue collection, protect the border and facilitate trade.

The Act empowers the SARS to assess individuals and businesses for tax liability, including such things as lifestyle audits.

1.9 The Corporate Sector

The Minister of Finance informed Parliament in August and September 2002 that the launch of the second King Commission proposals ("the King II Report") is welcomed: it places South Africa at the forefront of the global move toward more socially responsible business practices.

The launch of the King II Report has occurred at a time when the US corporate landscape is being redefined and important confidence-building efforts are now underway globally in reaction to recent corporate scandals.

The Minister also stated that the King II Report places emphasis on an integrated approach to corporate governance and differs from the earlier King Report (King I Report) in that it focuses on social and environmental factors in addition to economic considerations.

The King I Report, which was issued in 1994, recommended legal backing for, and monitoring of, compliance with generally accepted accounting standards. Government has taken up the challenge and is in the process of giving effect to the King I Report through the Legal Reporting Bill, which will enshrine the legal backing of accounting standards. It is envisaged that this Bill, when implemented, will provide the markets with confidence that accounting standards are uniform, internationally recognised and universally adhered to, with the appropriate sanctions for those who transgress the law.

The crux of the King II Report relates to the role of directors. Directors are required to be responsible and accountable for their actions and the general performance of the company. The King II Report promotes essential elements of corporate governance such as discipline, transparency, independence, accountability, responsibility, fairness and social responsibility.

Good corporate governance is not something that can easily be legislated, because it attempts to apply legal standards to what is essentially a way of doing business, which should be honest, fair and in the best interests of all stakeholders involved.

The responsibility for implementing the recommendations contained in the King II Report rests with both the public and private sectors. The Code of Corporate Practices and Conduct contained in the King II Report on

Corporate Governance for South Africa, 2002 also applies to enterprises and agencies that fall under the Public Finance Management Act, 1999 and the Municipal Finance Management Bill. These enterprises and agencies include any department of State or administration in the national, provincial or local sphere of government.

The King II Report acknowledges that certain forms of State enterprises and agencies may not lend themselves to some of the principles set out in the Code. It is recommended that the principles should be adapted appropriately by such enterprises and agencies.

In this regard, the National Treasury in conjunction with the Office of the Auditor-General is currently in the process of scrutinising the Report with a view to making it user-friendlier for government institutions to facilitate its practical implementation.

The Treasury Regulations issued in terms of section 76 of the PFMA were updated in May 2002 to include principles of the King II Report, especially on matters relating to internal controls, internal audit and audit committees. The Treasury Regulations that were updated in May 2002 require public entities to disclose the emoluments of all directors and executive members of the entities itself as well as those of its subsidiaries.

The National Treasury and the Office of the Auditor-General reached agreement that the current provisions in Chapter 6 of the PFMA regarding "External Auditors" should be covered in the Auditor-General's Amendment Bill which will soon be submitted to Parliament. The proposed amendments contained in the Auditor-General's Bill will provide the Auditor-General with an appropriate mandate to audit and report on the accounts, financial statements and financial management of public entities.

Government recognises that corporate upheaval affects investor confidence and that the self-regulation of certain industries, particularly services provided by the accounting and auditing professions, may not be adequate to protect public interest demands.

The Treasury is currently undertaking steps to review the draft Accountancy Profession Bill, 2002. The Bill is considered inadequate in terms of its proposals to improve the accountability of the auditing and accounting professions, and consequently the reliability of the financial statements that they prepare.

The Department of Trade and Industry, as the responsible department for implementation and ensuring compliance with the Companies Act, 1973, is considering implementing a King Report recommendation that the Companies' Registrar should keep a register of delinquent directors. This register would list persons who have been disqualified from acting as directors in terms of the Companies Act, 1973.

Issues of corporate governance are important and need thorough consideration and debate. The end product should be simple and transparent: a balance needs to be struck between protecting the public interest and providing an environment in which businesses are able to flourish. This desirable outcome can only be possible through a process of consultation.

In 2002 the Department of Public Enterprises circulated a "Protocol on Corporate Governance in the Public Sector". It is intended to introduce some uniform rules of corporate governance for the state owned enterprises (SOE) which form a significant portion of vital industries that drive the economy by providing factor inputs, especially in electricity, transportation and telecommunications, which are dominated by SOE's. These enterprises have been the subject of restructuring to inculcate efficiency while ensuring that social and infrastructural goals are met.

Improved corporate governance is one of the cornerstones of the strategic vision of restructuring. The Department of Public Enterprises, which leads the restructuring process, has developed the Protocol. It is Government's intention that the principles should apply to all public entities and their subsidiaries. The 2002 Protocol builds on, and substantially improves, the first Protocol circulated in 1997. It is based on the 'new' King Report and international developments.

According to the Protocol, Corporate governance "embodies processes and systems by which corporate enterprises are directed, controlled and held to account". Corporate governance must take into account the SOE's unique mandate which includes the achievement of Government' socio-politico-economic objectives. The Protocol seeks to amplify, but not to supersede nor conflict with the principles in the King II report.

The Protocol sets out the duties of the Executive Authority of each SOE (usually a Minister) and the directors of the SOE. The shareholder (the

State) provides the Board with a charter setting out its mandate and responsibilities, which include inter alia the determination of policy and process to ensure the integrity of risk management and internal controls, director selection, orientation and evaluation, and ensuring that the required standards of disclosure are met.

The Protocol deals in detail with the duties of the Board, the CEO and the Company Secretary. The Protocol makes provision for the entire Board's performance to be assessed, and for directors to be disqualified.

It also deals with the Board's sub-committees. Provision is made for regular reviews of the shareholders charter and for keeping the shareholder fully informed. Measures include quarterly, six monthly and annual reports on various aspects.

Principles and duties for financial management, compliance and accounting and auditing procedures are set out, as well as requirements for a code of ethics and public awareness.

1.10 Framework for Funding of Political Parties

The funding of political parties is arranged by the Public Funding of Represented Political Parties Act (103 of 1997). This Act provides for the establishment of a fund through which political parties receive funds. The fund is credited by monies appropriated by Parliament, contributions and donations from any source and interest. Political parties must account for monies allocated from the fund and report on the management and administration of the fund is presented to Parliament on an annual basis.

There is no duty on political parties to disclose the identity of donors of funds they receive directly, nor how they raise funds.

1.11 International Co-operation

The International Co-operation in Criminal Matters Act (75 of 1996) introduces a procedure to obtain evidence from foreign states. In terms of this Act, the court is entitled to issue a letter requesting assistance in obtaining evidence in a foreign state. This procedure may be used to obtain evidence that is needed in the course of a trial, or in the course of any other proceedings before a court or tribunal to determine whether any conduct constitutes an offence by any person. It may also be used to

obtain information for use in an investigation related to an alleged offence. The Act allows for a request for a video recording be made of the examination proceedings. Evidence obtained in this manner must be admitted as evidence in the proceedings in so far as it is not inadmissible. Reciprocity is an important aspect in terms of the Act.

According to the Act, effect may be given to foreign requests for assistance to obtain information or evidence. This can be done provided that the Director-General: Department of Justice and Constitutional Development is satisfied that criminal proceedings are pending or that an investigation is being conducted in respect of an alleged offence.

The Act enables a court in South Africa to require assistance from a foreign state in the execution of a fine or compensatory order imposed by that court. It provides for the reciprocal procedure to execute a foreign sentence or compensatory order in South Africa.

Section 19 of the Act allows a court in South Africa to require assistance from a foreign state in the execution of a confiscation order in respect of the value of the proceeds of the relevant offence. The Act also provides for the receipt of a foreign order aimed at confiscating the proceeds of crime and the registration of such an order by the clerk of the court of the relevant magistrates' court. When it is registered, it has the effect of a civil judgment in respect of the property or the amount mentioned in the request.

Depending on any agreement or arrangement between the requesting state and South Africa, the Director-General: Justice must transfer the amounts realised in the execution of the order to the requesting state. Section 23 enables a court to issue a letter of request requesting assistance in enforcing a restraint order and section 24 provides for the receipt of a foreign order restraining any person from dealing with the property mentioned in the order, and for the registration of such an order by the registrar of a division of the High Court.

2. Conclusion

Strengths:

- * South Africa has a comprehensive and practical legislative framework, which provides a very good basis on which to combat

and prevent corruption in all aspects of the public sector including good financial management and administration. The effective investigation and prosecution of corruption will be increased with the promulgation of the Prevention of Corruption Act.

- * A range of agencies have been created to investigate and prosecute corruption, and as a recourse for the public to report corruption.
- * Whistleblowers' position is regulated and protected.
- * South Africa's transparency legislation is amongst the most powerful in the world.
- * There is a well-defined legal review programme.

Weaknesses:

- * There are serious weaknesses and shortcomings in the capacity and will of public sector bodies to use the legislation and to comply with the laws.
- * Some bodies view some of the legislation (e.g. Access to Information) as too demanding of resources
- * There are overlapping mandates, which affect the law enforcement agencies and the constitutionally created bodies.
- * The legislation is focused on the public sector and does not deal adequately with the private sector.
- * The 1992 Corruption Act is difficult to use and ineffective. (Therefore the major legislative change required is the passing by Parliament of the Prevention of Corruption Bill, and the inclusion of certain corporate governance issues in legislation.)
- * Legislation on private funding of political parties is lacking.

2. INSTITUTIONAL CAPACITY TO FIGHT CORRUPTION

INTRODUCTION

The Public Sector Anti-Corruption Strategy calls for increased institutional capacity to fight corruption and focuses on the following three areas:

- * the capacity of courts to preside over corruption cases,

- * improved coordination and effectiveness of departments and agencies that have national anti-corruption mandates, and
- * improved capacity of all departments to themselves focus on anti-corruption.

The Strategy refers to the need to increase the institutional capacity of existing institutions that are involved in combating and preventing corruption (Public Sector Anti-Corruption Strategy - Strategic Consideration 2: Increased Institutional Capacity).

The current situation pertaining within these institutions and the programmes aimed at increasing capacity, are reviewed. This is based on the Review of South Africa's National Anti-Corruption Agencies by the Public Service Commission published in August 2001. It is also based on the findings of other reports.

The Review does not deal with local government nor public bodies other than government departments.

The Public Service Anti-corruption Strategy refers implicitly to the departments of national and provincial government. It does not explicitly address the situation as regards the local government, nor does it deal explicitly with public bodies.

In order to fully understand the capacity requirements for the national anti-corruption agencies and for the anti-corruption efforts of national and provincial departments, consolidated statistics for corruption, fraud and theft of public assets are required. It is unfortunately impossible at this stage to assemble consolidated statistics of cases of corruption handled by the various agencies, which are tasked to fight corruption.

There is no central body that collects statistics of this nature. This function has only recently been assumed by the DPSA, in part, to assist with the development of a learning database. The cases are dispersed throughout the agencies; and they are also classified in different ways and under various different headings, particularly fraud or theft. Even within agencies, it is difficult to obtain consolidated statistics.

Statistics from the various agencies are presented below where available and relevant.

2.1 National Capacity to Investigate and Prosecute Corruption

This section will briefly discuss the role and mandates of the agencies responsible for the investigation and prosecution of corruption, the recovery and taxation of assets and the proceeds of corruption, and the prevention of corruption.

2.1.1 South African Police Service

The South African Police Service is a national police service with some 130 000 employees: It is charged by the Constitution with the maintenance of law and order. The SAPS investigates cases of corruption in general, including corruption within the SAPS. It investigates corruption through the Commercial Crimes Unit, the Organised Crime Units and the Detective Branch. The SAPS' Anti-Corruption Unit has recently been disbanded: and the Organised Crime Units and the Detective Branch have absorbed its work.

The SAPS Commercial Crime Unit investigates all cases of commercial crime, including offences in terms of the Corruption Act 94 of 1992. The Unit had 990 police members and 121 civilian administrative staff in 2001. The unit has experienced difficulties in retaining experienced staff.

A new training curriculum has had some effect, but the staff turnover, restricted budget, heavy caseload and long case duration has reduced its effectiveness in securing convictions. The unit sometimes makes use of contracted suppliers for forensic investigations. The unit's future has not been resolved in the SAPS restructuring process. Uncertainty remains in terms of the demarcation of cases of fraud, which are investigated by the SAPS and those that are to be investigated by the DSO.

The SAPS Commercial Crime Unit investigated some 125 cases in terms of the Corruption Act in 2000, 149 cases in 1999 and 88 in cases 1998. These cases represented less than 0.25% of the cases investigated by the Unit. However, this may be misleading, since the SAPS prefers to frame corruption charges as fraud or theft if possible, due to the difficulties experienced in securing convictions under the Corruption Act 94 of 1992.

2.1.2 The Directorate of Special Operations

The Directorate of Special Operations (Scorpions) of the National Prosecuting Authority was established in terms of the National Prosecuting Authority Amendment Act 61 of 2000. The Head of the DSO is a Deputy National Director of Public Prosecutions and reports to the NDPP. The National Director reports to Parliament on the NPA and the DSO. Policy guidelines for the DSO are set out by a special Ministerial Committee. The DSO is intended to serve as an investigation force that operates along the lines of the Federal Bureau of Investigations. In most instances, investigation teams are prosecutor led.

The DSO is required to investigate and combat organised crime, serious economic crime and crimes against the state. Its key statute is the Prevention of Organised Crime Act 121 of 1998 (the POCA).

The DSO has established a unit to focus on organised corruption, with a focus on corruption associated with organised crime activities. The DSO usually takes on corruption or fraud cases that are larger and more complex than those handled by the SAPS Commercial Crime Units. Because it is allowed to be selective, it is able to control its workload.

The DSO pays salaries that are higher than those found in the public service generally. Substantial resources have been devoted to training inside and outside South Africa. The DSO has enjoyed strong support particularly from the US and UK.

The DSO's staff complement was as follows (in October 2002):

- * 9 senior managers
- * 435 operational staff
- * 71 Administrators

The following tools are available for criminal investigations:

Tool	Who can authorize the use of the tool
Wiretap	In terms of the Interception and

	Monitoring Act of 1992 and its pending amendments, a designated Judge of the High Court may authorise the use of the wiretap. Senior member of the SAPS or the SANDF or Intelligence Service or the DSO need to make the necessary application.
Electronic surveillance	Authorized by a senior member of the SAPS or the SANDF or Secret Service or DSO, electronic surveillance has to be in line with the Constitution. If electronic surveillance amounts to the use of a wiretap, then authority from a Judge of the High Court is required
Search and seizures	A Magistrate or Judge may authorise search and seizures after an application has been made by a member of the SAPS or DSO (Criminal Procedure Act)
Use of undercover agents	In terms of Section 252A of the Criminal Procedure Act, the use of undercover agents must be authorised by a Director of Public Prosecutions or Head of the DSO.
Require a person to provide evidence or require documents to be provided in the course of an investigation by an Investigating Director of the NPA	The Investigative Director of the Directorate for Special Operations (Section 28 of the NPA Act as amended)

The evidence gathered through the use of these tools is generally admissible in court.

2.1.3 The National Intelligence Agency

The NIA provides support to the law enforcement agencies. The NIA is mandated by the National Strategic Intelligence Act 39 of 1994 to pro-actively, professionally and impartially manage and provide the government with domestic intelligence and counter intelligence. The

provision of intelligence is for the purpose of enhancing national security, defending the Constitution, and for the interests of the State and the well being of its people.

The NIA regards corruption in the public service as a threat to national security: It is actively involved in the collection and analysis of intelligence, which has a bearing on corruption.

The NIA is currently investigating a large number of government officials who are suspected of being involved in corruption. In some instances, the NIA is investigates whole components of official structures in order to determine the extent of corruption within those institutions. The is also involved in joint investigations with other law enforcement agencies and departments: It occasionally receives information requests from other agencies related to corruption. The NIA is responsible for security clearance of certain government officials.

The NIA is not a law enforcement agency and must therefore; refer cases for prosecution to the NPA through the SAPS or the DSO.

2.1.4 Asset Forfeiture

Although legislation dealing with drug trafficking previously made provision for the forfeiture of the proceeds of crime, this has really only become a viable tool for law enforcement with the passing of the Prevention of Organised Crime Act. The Act makes provision for the freezing of assets and final forfeiture through civil actions.

The Special Investigating Unit also has very powerful tools to recover state assets lost through corruption. It can use civil law to recover or prevent the loss of assets by means of cases presented to the Special Tribunal. In terms of civil law, cases only have to be proved on the balance of probabilities, rather than beyond a reasonable doubt.

2.1.5 The Asset Forfeiture Unit

The Asset Forfeiture Unit (AFU) is a unit within the NPA, and it reports to the NDPP.

Although the Unit's main priority is the forfeiture of assets associated with organised crime activities and especially drug trafficking, it has specifically

given a very high priority to the forfeiture of assets associated with corruption. This is in line with the high priority, which the NDPP has given to corruption cases. The AFU is also part of the NDPP's team to deal with money laundering.

The staff complement of the AFU in September 2002 was as follows:

Lawyers (advocates)	34
Investigators	5
Accountants	1
Administrative staff	13
Total	53

After some initial setbacks in court, the Unit has established the principles and legal precedents of forfeiture. The Unit has established a very good record of successful court actions: It has successfully pursued several high profile corruption actions.

In terms of process, the AFU first applies for an order to preserve assets, and then proceeds with an application for final forfeiture of the assets. All applications take place in terms of civil law procedures: and matters are decided on the balance of probabilities.

The AFU has established good cooperation with both the SAPS and the DSO and works closely with them. It's financial tracking expertise provides an important support function for criminal investigations.

The AFU and the SIU's mandates overlap: and the two units have worked very closely. The AFU's powers of forfeiture are wider and quicker than those of the SIU: the SIU is required to await proclamation of its matters. However, the AFU acts in terms of the POCA and therefore cannot automatically take on cases of illegal enrichment by public servants, which the SIU is mandated to deal with.

As at 30 September 2002, the AFU reported the following statistics:

Indicator	Year to date (April 2002 - September 2002)
Success Rate	89 %
Monetary	
Seizures	R20m

Forfeit started	R57m
Cases completed	R32m
Number of cases	
Seizures	60
Forfeit started	31
Cases completed	21

2.1.6 The Special Investigating Unit and the Special Tribunals

The Tribunals can issue an order for the return of money or property. They are also able to issue an interdict to stop the potential loss of money or property, following investigation by the SIU. This process is quick and can be very effective. Significant amounts of money have been recovered in this way.

2.1.7 The SA Revenue Service

The SA Revenue Service Act 34 of 1997 and the Customs and Excise Act 91 of 1964 as amended, empower the South African Revenue Service (SARS) to collect all revenues due to the state, to ensure maximum tax compliance, and to provide a customs service.

These Acts give SARS very wide powers to carry out searches and to seize documents and goods. SARS is also empowered to carry out lifestyle audits in order to ensure tax compliance. Tax revenue has exceeded targets every year following the restructuring and transformation of the SARS. In recent years, the organisation has improved its skills, strategies and organisation substantially.

Although SARS is bound by strict confidentiality requirements, it is able to receive information from other agencies. SARS undertakes tax audits of individuals believed to be benefiting from the proceeds of crime, including corruption. SARS has good skills for financial investigation and the tracking of funds.

SARS has adopted a zero tolerance approach to internal fraud and corruption. The organisation is institutionalising its integrated risk management. A new disciplinary procedure has been implemented: and this has reduced the turnaround time.

SARS has an Anti-Corruption Unit which co-ordinates investigations and cooperates in joint investigations with law enforcement agencies on tax and customs corruption. A standard criminal investigation process has been developed: and completed dossiers are handed over to the NPA.

SARS has undertaken an extensive study of customs and excise fraud within the electronics industry, involving collusion and corruption by customs officers. This study has resulted in major fines and 27 convictions. The process is being rolled out to other industries.

2.2 Non-criminal Investigations

The KPMG Fraud Survey (2001) and work undertaken by Transnet, has shown that most fraud and corruption is revealed through whistle blowing or internal management controls. Management controls in some parts of the State are still weak, especially in local government, some provincial governments and some organs of State. Although the work of internal and external auditors is not generally intended to reveal corruption, various agencies in South Africa are mandated to audit or investigate unauthorised expenditure and allegations of corruption.

This section deals with the investigative role of the various agencies. Their role in the prevention of corruption is dealt with in a later section. It is clear from this section, that there are substantial overlaps in the powers and duties of the various agencies to investigate corruption.

2.2.1 The Auditor General

The Auditor General is empowered by the Constitution and Auditor General Act 12 of 1995 to audit and report on the accounts, financial statements and financial management of public sector agencies, including all national and provincial government departments, all municipalities and other institutions or accounting entities required by national or provincial legislation to be audited by the Auditor General. The Auditor General may also audit and report on any institution funded from the National Revenue Fund or a Provincial Revenue Fund or a municipality, or any institution which is authorised in terms of any law to receive funds for a public purpose. The Public Finance Management Act 1 of 1999 states that a public entity must consult the Auditor General on the appointment of an external auditor if the entity is not audited by the Auditor General.

The Auditor General is appointed by the National Assembly for a non-renewable term of between five and ten years. The Auditor General reports to Parliament through the Standing Committee on Public Accounts. The Constitution guarantees its independence. The Office of the Auditor General (OAG) has its own arrangements for generating revenue from its audit clients. However, this has come under pressure because of the difficulty of recovering audit fees from local authorities, which often face serious financial difficulties.

Provincial Auditors General are appointed in each province: They act on behalf of the Auditor General. All staff members in the Office of the Auditor General are screened for security reasons.

The OAG does not see itself as an anti-corruption agency. Its primary role is the prevention of corruption through good governance, sound financial management and sound procurement. The OAG has a small Forensic Unit. Private sector forensic auditors are occasionally briefed by the Auditor General to act on its behalf.

The Auditor General Act 12 of 1995 and the Audit Arrangements Act 122 of 1992 are currently being reviewed to bring them in line with the 1996 Constitution and the latest international trends in public sector auditing.

Regular compliance and financial audits include tests to ensure that procurement and other expenditures have been carried out in line with legislation and regulations. The OAG may from time to time also carry out special audit investigations, such as the investigation into strategic defence packages.

The OAG collaborates with the law enforcement agencies when there is a need to initiate a criminal investigation and prosecution as the result of an audit. It refers its findings to the appropriate agencies for further action where necessary, for example, breaches of ethics may be referred to the Public Protector.

2.2.2 The Public Protector

The Constitution guarantees the Public Protector. The Public Protector is required to be impartial: his or her powers and functions must be exercised without fear, favour or prejudice. No person or organ of state may interfere

with the Public Protector. By law, organs of state are compelled to protect and assist the office of the Public Protector.

The President appoints a suitably qualified person to the office based on the National Assembly's recommendations. The non-renewable appointment is for a period of seven years. The Public Protector reports to Parliament annually and may from time to time submit reports on specific investigations. Twenty special reports were issued during the period 1995 to 2001. The Public Protector may take or recommend remedial action.

All reports issued by the Public Protector, are public documents unless there are special circumstances, which require that a report remains confidential.

The Public Protector is empowered to investigate, inter alia, maladministration, abuse of power, unfair or improper conduct, dishonesty or corruption, improper or unlawful enrichment, or promise or receipt of any improper advantage, or any act or omission which results in unlawful or improper prejudice to any person. The Public Protector's scope is very wide: it encompasses the entire public sector, including any institution in which the State is a majority or controlling shareholder.

The Public Protector has noted to Parliament that his office is under-resourced, despite the fact that the Public Prosecutor's budget has increased every year. In 2001 there were 62 investigators and 52 administrative staff in the office of the Public Protector. Regional offices have been established in six of the nine provinces. A strict integrity framework applies to all staff. Security clearance is required for staffs who are involved in sensitive investigations.

The Public Protector receives a large number and a wide range of complaints from the public: this impedes its ability to focus on corruption. During the period 1995 to 2001, 48 017 complaints were handled. The turnaround time is between six to nine months. There is a current backlog of some 6 000 matters.

The Public Protector is not a key role player in investigating corruption. The Public Protector is essentially an ombudsman. Only about 5% of the complaints referred to the Public Protector relate to corruption and maladministration. Generally cases of corruption are referred to other agencies for investigation. The Public Protector is required to bring matters to the NPA's attention when it is of the opinion that the facts suggest an offence has been committed.

The Public Service Commission Review recommends that the Public Protector selects cases for further investigation more carefully, based on a clear public interest: as this will allow it to use its limited resources more productively.

2.2.3 The Special Investigative Unit and the Special Tribunal

The Unit and the tribunals were established in terms of the Special Investigating Units and Special Tribunals Act 74 of 1996: and they have a specific anti-corruption mandate. The ability to use civil procedures to recover assets, and the Unit's access to Special Tribunals, provides a powerful framework to combat corruption.

The Unit was previously involved in some controversy: It has since been linked more closely to the NPA and is functioning well. The Head of the Unit is appointed by the President and reports directly to the President. The current head is a Deputy National Director of Public Prosecutions.

The Special Investigative Unit (SIU) is a mechanism, which the Executive can use to recover public monies. The Unit carries out investigations referred to it by the President by proclamation in the Government Gazette.

After receiving information, the SIU submits an application to the Minister of Justice for a matter to be proclaimed by the President. The Unit then investigates the matter and collects the necessary evidence.

The Act makes provision for the establishment of Special Tribunals to adjudicate civil matters emanating from investigations conducted by the SIU. These matters do not have to compete for space on court rolls: Thus they can be dealt with very quickly. The SIU presents evidence before the Tribunal. Evidence, which points to an offence, must be referred to the NPA.

Authorised to do so by a magistrate or judge, the members of the Unit can enter and search premises and seize documentation on a reasonable suspicion that it would assist an investigation. The unit can summons persons and compel them to answer questions. It has broad powers.

The SIU has accumulated a significant backlog of work: which may take up to three years to complete. During the 1999/2000 financial year, eighty-two

cases were completed through the Special Tribunal. A Special Report of the Auditor General verified that the SIU saved, recovered or protected the loss of state assets and funds to the value of R1, 3bn during the financial year to March 1999. Audited figures for the period 1 April 1999 to 31 March 2000 indicated that the Unit recovered, saved or prevented the loss of some R168 million, of which R112 million was in cash recoveries.

The Unit's functioning was recently reviewed. The report notes that the SIU has nine skilled multi-disciplinary teams with substantial expertise. However, it concluded that the team's effectiveness was hampered by taking on too many less serious matters, which added unnecessarily to their workload. Many matters could have been dealt with elsewhere. The inflow of work and the prioritisation of matters are now being handled far better.

2.2.4 The Public Service Commission

The Constitution mandates the PSC to investigate and evaluate the application of personnel and public administration practices in the public service, and to report to the relevant executing authority and legislature. The Office of the Public Service Commission has established a Chief Directorate for Special Investigations: This Directorate has carried out investigations into alleged corruption in various provincial and national departments.

2.3 Criminal Prosecution

All investigations of corruption, whether investigated by the South African Police Service or any other agency, have to be referred to the prosecuting authority for criminal prosecutions.

2.3.1 Prosecuting Corruption

The 1997 report prepared for the Cabinet on a National Anti-Corruption Campaign found that the difficulties arising from the structure and wording of the Corruption Act has meant that the police prefer to lay charges of theft or fraud. Therefore corruption is often prosecuted as fraud or theft since these offences are easier to prove.

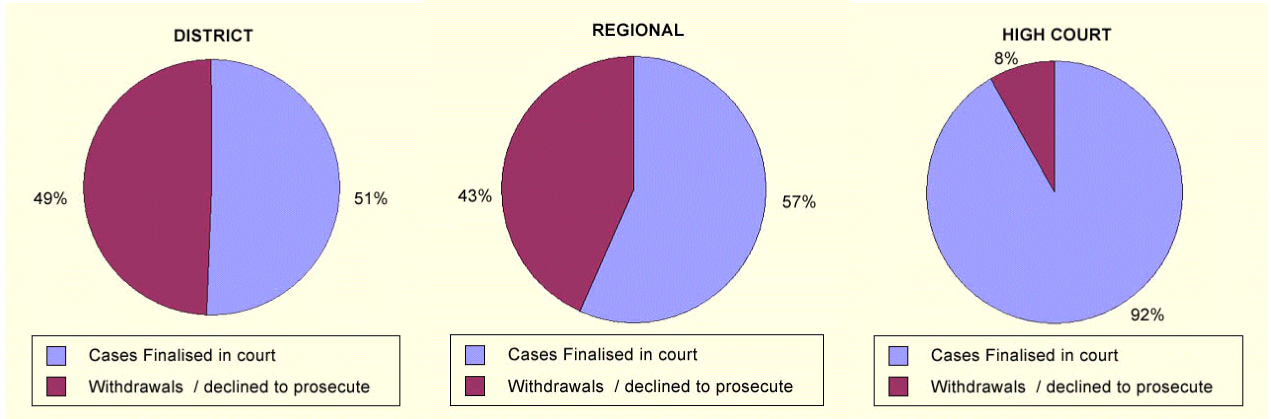
Long delays in court have conveyed the message that corrupt officials can act with impunity. There is also a high rate of withdrawal of cases in the lower courts (regional and district courts), which compounds this message.

The delays and withdrawals are caused by a number of factors, including:

- * Very full court rolls in the regional courts;
- * Very heavy case loads for prosecutors;
- * A relatively high turnover of prosecutors, which has reduced the number of experienced prosecutors able to handle complex white collar crime cases;
- * A lack of specialized expertise among prosecutors and judicial officers to deal with white collar crime;
- * A lack of coordination between prosecutors and investigating officers, which often results in cases being postponed in court and referred back for further investigation, so creating a longer cycle time for each case.

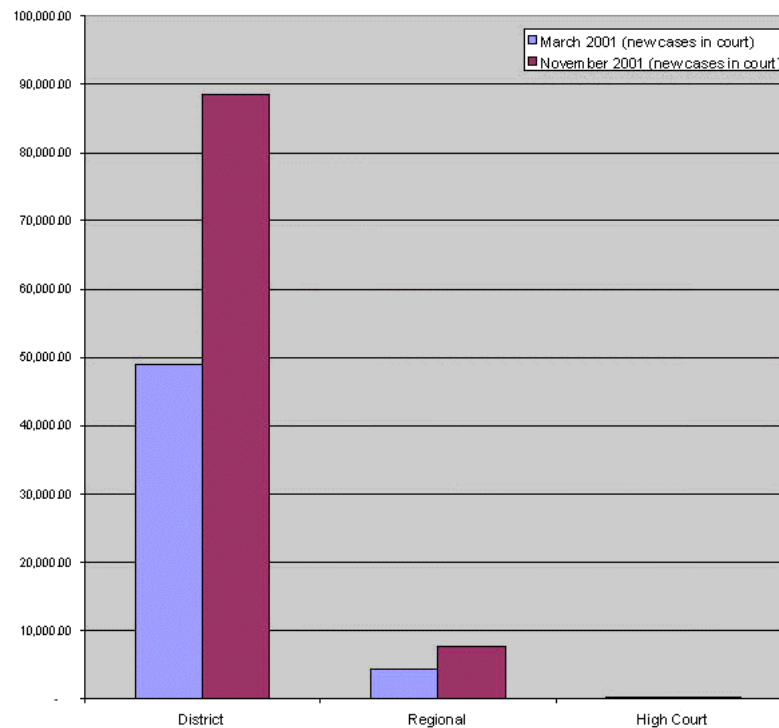
In June 2002, the National Prosecuting Authority presented statistics to the Parliamentary Portfolio Committee on Justice and Constitutional Development for all cases which come to court, not only corruption cases. The statistics illustrate the problem of overloading and withdrawals.

Court	Cases finalized in court	Conviction rate for cases finalized in court	Withdrawals/declined to prosecute
District	275 478	82%	269 025
Regional	33 758	65%	25 895
High Court	1 392	77%	127



In the National Prosecuting Authority's Annual Report for 2001/2, tabled on 28 October 2002 in Parliament the following statistics recorded shows that the caseload has doubled in the period of 7 months only (all cases):

Court	March 2001 new cases in court	November 2001 new cases in court
District	49040	88465
Regional	4280	7715
High Court	183	288



In the National Prosecuting Authority's Annual Report for 2001/2, tabled on 28 October 2002 in Parliament the following statistics recorded shows that the caseload has doubled in the period of 7 months only (all cases):

Statistics for cases involving charges under the Corruption Act reveal the difficulty of achieving a conviction. The new offences introduced under the proposed Prevention of Corruption Bill are intended to make it easier to convict for a range of corruption-related offences.

Cases of corruption reported to the SAPS (1998-2000):

Year	Corruption Cases Reported	Investigation finalised	Cases referred to court	Cases judgement made
1998	822	838	465	414
1999	899	858	529	476
2000	1046	1013	607	557

Cases referred to court:

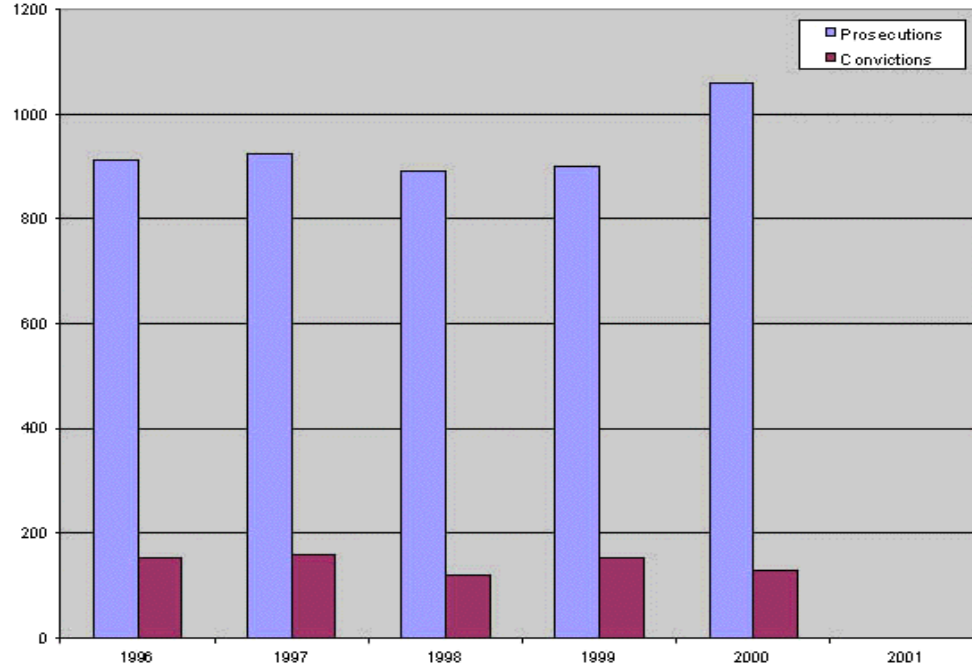
Year	(Total) Cases referred to court	Guilty	Not Guilty	Withdrawn in court	Finalised otherwise	Missing data
1998	465	123	63	195	32	52
1999	529	155	58	239	23	54
2000	607	151	59	297	50	50

Source: SA Police Service

Prosecutions and convictions under the Corruption Act:

Year	Prosecutions	Convictions
1996	912	153
1997	924	160
1998	819	121
1999	900	153
2000	1060	128

Source: SA Police Service (SAPS) Crime Information Management Centre July 2001:



Conviction rate for corruption cases under the Corruption Act over a five-year period range from 17-12 % of the prosecutions. This again illustrates the deficiencies of the existing Corruption Act which compounds the problems which the courts and prosecutors currently experience.

This creates a perception that cases of corruption, which are referred to the criminal justice systems, are delayed or not properly investigated.

2.3.2 Witness Protection

Effective witness protection is essential for the success of many cases, particularly those associated with corruption and organised crime. The Witness Protection Programme is operated by the NPA's Witness Protection Unit (WPU). The programme provides support services for vulnerable and intimidated witnesses in judicial proceedings in terms of Act 112 of 1998. The WPU provides a service to the SAPS, the DSO, the AFU and other investigating agencies, commissions and tribunals. Its Head Office is in Pretoria: and it has six regional offices and three satellite offices.

Thirty-one NPA personnel and sixty-one SAPS personnel are attached to the WPU. All of its activities are classified as top secret. The Witness Protection Programme provides for both temporary and permanent placement of witnesses. The programme provides allowances for unemployed witnesses and salary replacement for those who are employed, as well as the cost of accommodation, schooling, and transport.

In most cases, witnesses are discharged from the programme six weeks after providing evidence in court. A total of 49 witnesses were under the Witness Protection during the period 1 January 2002 to 30 June 2002. These 45 cases achieved an 82% conviction rate. The WPU has developed effective protection services for whistle blowers in corruption cases.

2.4 Increasing Capacity

A Specialised Commercial Crime Court and Prosecuting Unit were established in Pretoria in 2000 by the National Prosecuting Authority and the Department of Justice as a pilot project. This pilot project provides specialised prosecutors and judicial officers. Investigations are carried out by members of the SAPS Commercial Crime Unit who reside with the Special Court Unit. Some prosecutions are carried out by members of the Bar who are specially authorised by the National Director of Public Prosecutions.

The court has been very successful at hearing cases involving commercial crimes up to tens of millions of rands. A success rate of 89% has been recorded for cases coming to trial. The cycle time for cases is substantially lower than that in the normal courts.

Business Against Crime, which has assisted government to establish the court, has listed the following achievements of the special court unit in the period from its establishment to date:

- * Dedicated specialized / investigators, prosecutors and magistrates have been permanently assigned;
- * Process and system improvements have been developed, including the documentation of all procedures;
- * Management and staff training strategies and processes have been developed and implemented;
- * The mentorship and skills development scheme is in progress and is a key focus of current activity (this includes the concept of privately funded prosecutions).

Performance improvements during the implementation include:

- * Court utilisation of the specialised court exceeds the national average by 22% (i.e. working time);
- * 45% of cases registered during the first year have been completed;
- * 119 convictions were obtained in the first year versus a total of 15 in the Johannesburg courts in 1997
- * 50% of accused have pleaded guilty, resulting in a reduction of case process time;
- * Appropriate sentences are being passed - 33% being with no option of a fine; and
- * Staff turnover of prosecutors was only 7.5%, which is much lower than the national average.

The presentation to the Parliamentary Portfolio Committee in June 2002 noted that 725 cases were being dealt with by the unit as at December 2001.

The success of the Pretoria pilot project has led to the establishment of a second specialised commercial court unit in Johannesburg in September 2002, with planning under way for a third unit in Durban.

SCCU Cumulative Statistics: 8 November 1999 to 19 September 2002-10-25:

	1999	2000	2001	2002	Total
Cases enrolled in the SCC	13	270	253	207	743
Acquittals	1	10	22	8	41
Convictions by the SCC	5	119	171	147	442
Sentences by the SCC	4	102	174	132	412
Total cases finalised	5	112	196	140	453
Conviction Rate	83,33%	92,25%	88,6%	94%	91,51%

Source: SCCU

2.4.1 Improving Court Performance

The National Prosecuting Authority and the Department of Justice have instituted focused programmes to improve court performance. The NPA has established a management information framework, which has enabled it to identify the factors that contribute to delays and withdrawals. Systematic steps have been taken to mitigate these factors.

In order to reduce the backlog of cases, during the period February 2001 to December 2001, court sittings were held on Saturdays. This initiative meant some 14884 cases could be dispensed with. Proposals for improving cooperation with the SA Police Service have already been discussed. Joint working groups, facilitated by Business Against Crime, have been established in several areas, to identify and remove blockages in the courts in those areas.

The efficiency and effectiveness of the criminal justice system as a whole, and particularly that of the courts, is being addressed by the Integrated Justice System Programme. The Programme includes the Court Process Project. Substantial progress has been made to streamline the criminal justice the system. Particular attention is being paid to court processes and the underlying information requirements of the entire criminal justice system.

The forensic component of the Office of the Auditor General is currently investigating the reasons for the backlog in the investigation and prosecution of economic crime. Questionnaires have been sent to a range of investigating and prosecuting agencies.

THE COURT PROCESS PILOT PROJECT IN DURBAN (Kwa Zulu Natal)

(Kwa Zulu Natal) The Court Process Project is the first pilot project of the Integrated Justice System initiative launched in late 2000. The Court Process System is an automated information system, re-engineering business processes. It is capable of tracking the complete life cycle of a criminal case throughout its various stages involving different criminal justice agencies without unnecessary duplication of data collection, data storage, or data entry. The system connects police, court, correctional services and welfare officials.

THE CONTRIBUTION OF THE COURT PROCESS SYSTEM TO THE FIGHT AGAINST CORRUPTION

At the most basic level, the court process system uses technology to allow the seamless sharing of information. The information shared includes all criminal justice related data, including photographs, fingerprints, case records, court calendars, electronic messages and documents.

An immediate result of the system is improved quality of data. This has been a significant motivation to support thereof. Initial data entered is supplemented with additional information at various decision points to form a complete record. This record is available at all times.

AUDIT TRAILS

Information is the most valuable resource of the Court Process System and requires responsible use by the justice community. It is critical to ensure that information is adequately protected from loss, misuse, unauthorised access or modification and undetected activities. Ultimately system users are responsible to safeguard the integrity, accuracy and confidentiality of information.

The Court Process System addresses the following security aspects:

- * **User Identification and Authentication** - controls used to identify or verify the eligibility of a system user prior to allowing access to information. Such controls include the use of passwords, certificates and biometrics.
- * **Audit Trails** - controls that provide a transaction monitoring capability to retain a chronological record of system activities.

Information system audit trails are the most recognised and widely used forms of security monitoring. Audit trails contain records of those activities considered relevant to security, correct operation and use of a system. It provides a record of events performed in the past, which ensures that users can be held accountable for their actions in relation to the use and operation of an information system or process. Each record within the audit trail may contain a description of an event/activity, the date and time of the event/activity, the identity of the person or sub-system responsible for the event/activity, the location of the individual/system at the time of the event/activity and details of what transpired as a result of the event/activity. In an age of electronic business this can be referred to as 'proof of business process'.

LOST CASE FILE OR RECORD

Criminal cases are scheduled on police dockets which contain the elements of the police investigation and the evidence necessary for a

successful prosecution. One of the weaknesses in the criminal justice process is the willful destruction or sale of dockets.

This is no longer a problem with cases registered on the Court Process System. All related data and information is electronically stored and can be electronically re-produced at any given time.

The following statistics are drawn from the Court Process System in Durban for the period 1 September 2001 until 31 October 2002:	
No of cases on electronic court roll	5548
No of lost dockets recovered from system	18 (16 eventually used in court)
No of lost charge sheets recovered	21 (21 eventually used in court)

CONCLUSION

Corruption is an obvious result of institutional inefficiency. The Court Process Pilot Project, although in its early stages of pilot implementation has already proven preventative measures that draw on technology are needed in addition to investigation and prosecution of corrupt practices. This project has brought about benefits in terms of efficiency of business processes.

2.5 Managing Corruption

The Department of Justice, in conjunction with the Office of the Auditor General, has recently uncovered a large number of cases of corruption associated with cash handling in the bail, maintenance and deceased estates accounts. Some cases of magistrates and other court officials, who have misused state assets, have also been uncovered: officials have been prosecuted. A study of court's corruption has not been undertaken.

2.5.1 The Independent Complaints Directorate

The Independent Complaints Directorate reports to Parliament through the Minister of Safety and Security. The directorate is mandated by the SA Police Act 68 of 1995 (as amended) inter alia to investigate allegations of misconduct offences against members of the SAPS. The ICD is also required to investigate all deaths, which result from police action. During the 2000/2001 financial year, the ICD received 671 notifications of deaths in police custody and as a result of police action. The cases reported in

2001/2002 amounted to 585. This represents a decline of 86 cases compared to the previous year.

Some 45 personnel in total were deployed across the nine provinces to investigative deaths, and other criminal offences. A tight budget, coupled with a heavy caseload, means the ICD has very limited capacity to investigate cases of police corruption. As a result, the ICD has not prioritised corruption investigations. Nevertheless, it sometimes investigate allegations of corruption: and there has been an overlap with the functions of the SAPS Anti-Corruption Unit in this respect. The ICD has occasionally requested the ACU to investigate cases on its behalf, however it continues to monitor such cases.

2.5.2 The SAPS Anti-Corruption Unit

According to data based on public perceptions, (surveys and focus groups carried out for this report), the police are the most likely public servants to be regarded as corrupt. These perceptions appear to be grounded in reality. Statistics of the cases handled by the SAPS ACU are as follows:

Cases	1999	2000
Enquiries received	3568	3912
Case dockets received	1102	1301
Members charged/arrested	609	754
Members convicted	480	-
Cases withdrawn/acquitted	312	-

Source: SAPS ACU response to audit questionnaire

The Integrity Management Unit of the National Prosecuting Authority

DSO recruits are carefully screened. The NPA has established an Integrity Management Unit, which is responsible for the conduct of all NPA staff.

2.6 The Prevention of Corruption Within the Public Sector

The prevention of corruption in the public sector is primarily the responsibility of the directors and managers of each public body. The PFMA spells out accountability in this regard. However, the various national anti-corruption agencies also have an important role to play in

developing and supporting preventive strategies and plans. These are dealt with in this section.

2.6.1 The Auditor General

The Office of the Auditor General (OAG) is well positioned to identify weaknesses in controls. The Forensic Auditing Unit aims inter alia to determine the nature and extent of economic crime and the adequacy and effectiveness of controls. It has a pro-active strategy for overall awareness about fraud, the need for strong financial systems, effective internal controls and acceptable standards and conduct.

2.6.2 The Public Service Commission

The Public Service Commission plays a key role in promoting public service values and an awareness of the Code of Conduct for public servants. The PSC also advises the Minister for the Public Service and Administration on the Code of Conduct for the Public Service.

2.6.3 The Department of Public Service and Administration

The DPSA administers the Public Service Act 103 of 1994. It has been tasked by Cabinet to develop and implement the Public Sector Anti-Corruption Strategy and to co-ordinate anti-corruption work at policy level. Although there is no legislative mandate to deal explicitly with corruption, the Act and regulations govern the conduct of public service officials. Reference is made to efficient management, discipline and the proper care and use of state property. The Department reports to Parliament through its Director General.

The Department assists the Minister for Public Service and Administration to make policy and to devise regulations, which impact on the way in which the Public Service operates. Measures include policy and regulations inter alia on conduct, organisational matters, HR management, performance management and evaluation, leadership development, reform and transformation.

The DPSA is also charged with driving the Batho Pele Programme to 'put people first'. It is working with the Department of Justice to link this to the effective implementation of the Promotion of Administrative Justice Act. These matters have a direct bearing on the Public Service's ability to

ensure employee integrity, an aspect that is central to the prevention of corruption. The Department has established a Unit for Anti-Corruption and High Profile Cases to develop policy in the area of public sector anti-corruption.

2.7 Measuring Success in Fighting Corruption

No central database of incidents of corruption, nor of disciplinary or criminal cases related to corruption exists in South Africa. Most agencies that deal with corruption have not collated their information: Thus they are unable to state the detected or suspected level of corruption that exists within their organisations. They are also unable to systematically learn from the incidents.

A central database is essential for two reasons:

- * Government must be in a position to measure the incidence of corruption, even if only within the public sector. This is necessary in order to be able to evaluate whether or not current anti-corruption strategies (both preventive and reactive) are having any effect.
- * Government, business and civil society should be able to learn from incidents of corruption - how they take place, when and where they occur, the risk factors, systemic problems and so on. This aspect should form a key component of an Anti-Corruption Strategy.
- * Government needs to be able to evaluate its risk profiles and take appropriate remedial steps.

The measurement of corruption should not be based solely on cases reported. Although such indicators are important to measure the effectiveness of reactive strategies, they reveal little about the effectiveness of the integrated strategy. A combination of preventive measures, reactive measures and "societal health" measures are important indicators of the prevalence of corruption. At present, such indicators are based almost entirely on perceptions: these are notoriously difficult to evaluate.

Corruption is dynamic: its form, appearance and modus operandi change constantly. As one loophole is closed and controls strengthened, corrupt persons and officials find other avenues. The database and learning process therefore also need to be dynamic. A system of continuous improvement and evaluation is a prerequisite.

2.8 Improving Effectiveness

2.8.1 The Organizational Issues

The Public Service Commission Review of national Anti-corruption Agencies briefly looked in detail at the possible centralisation of both reactive and preventive functions into a single national agency. Countries such as Hong Kong and Botswana have used this model very successfully.

Within the SADC region, dedicated anti-corruption bodies have been established in Zambia, Tanzania, Malawi, Botswana, Swaziland and Mauritius.

Most of the agencies interviewed for the Review felt that to the functions of the current agencies should be retained, despite the overlap in mandates and functions. They felt that the functioning of existing agencies should be streamlined and their activities co-ordinated. There was consensus that Inter-agency co-operation protocols needed to be completed or strengthened.

The Review recommended that agencies' performance could be improved through better coordination and co-operation. It concluded that a single anti-corruption agency would not be appropriate at present. Central co-ordination was not the only measure that would result in improved performance: In this regard, legislative reform, spearheaded by the Department of Justice, was crucial to improve the efficacy of the agencies, some of which are hamstrung by a lack of resources and an unmanageable caseload.

The absence of central coordination is therefore not in itself sufficient motivation for the establishment of a single anti-corruption agency. The strategic role of such an agency needs clarification.

The investigation and prosecution of corruption are intrinsic to the SAPS, the DSO and the NPA. The strengthening of employee integrity, financial management and the quality of administration within the Public Service, are central to the prevention and detection of corruption. These responsibilities are part of the DPSA, the National Treasury, the Public Service Commission and the Auditor General's core business. Public

service managers within these entities are charged with these responsibilities in terms of the PFMA, the MFM Bill and the PAJA. It is not clear whether a central agency would enhance the readiness and commitment to improving organisational integrity and taking accountability for efforts to prevent corruption within each agency.

The ability to share information regarding corrupt officials, corrupt suppliers, and incidents of corruption, weaknesses and loopholes in controls and administration, as well as successful solutions would represent a major step forward. This information would be particularly pertinent in instances where corruption is linked to organised crime. This issue is being addressed by one of the work streams within the Anti-Corruption Co-ordinating Committee.

The issue of the creation of a single anti-corruption agency needs to be put in perspective. The 'problems' which reduce the effectiveness of anti-corruption efforts are far wider than this issue alone. The Public Service Anti-Corruption Strategy points out that 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.

Of all these agencies, only the SIU has an exclusive (albeit narrow) anti-corruption mandate. None of the existing mandates promote a holistic approach to fighting corruption. The initiatives to fight corruption are fragmented and hampered by the number of agencies and institutions that deal with corruption as part of a broader functional mandate.

Fragmentation, insufficient coordination, poor delineation of responsibility and assimilation of corruption work impacts on the resourcing and optimal functioning of these agencies and institutions in terms of their anti-corruption role.

The Strategy therefore lists the following measures to improve effectiveness:

- * A clear definition of the roles, powers and responsibilities of the 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;
- * Establishment of formal co-ordinating 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.
- * Well-defined accountability arrangements for all the institutions (departments and agencies).
- * Increased institutional capacity of institutions (departments and agencies), in particular the competencies of employees and a focus on prevention.

2.8.2 Co-ordinating Mechanisms

Cabinet is accountable overall, for the outcomes of the anti-corruption programme. In order to assist Cabinet, a co-ordinating mechanism, the Anti-Corruption Co-ordinating Committee (ACCC), has been established: this measure is in keeping with the Public Service Anti-Corruption Strategy. The Anti-Corruption Co-ordinating Committee, co-ordinates and integrates all anti-corruption work within the Public Service.

The establishment of the Anti-Corruption Co-ordinating Committee takes cognisance of the fact that corruption is both governance and a criminal justice issue: Cabinet recognises that these issues need to be tackled through the development of a dedicated and holistic strategy.

Cognisance is also taken of the fact that the co-ordination and integration of anti-corruption work is across a range of levels from that of co-operating institutions to the National Executive.

The ACCC recognises that as far as possible, additional structures do not need to be developed as part of an Anti-Corruption Strategy. As far as the compilation of reports is concerned, the Committee recognises the need to provide integrated reports that take cognisance of the contribution of individual departments and agencies.

An important tenant to ensure the Committees ongoing success is the empowerment of this entity with the necessary authority to enable it to allocate tasks and to co-ordinate implementation.

The ACCC is a formal structure that is convened by, and chaired by the Director-General of Public Service and Administration. The Committee is composed of senior representatives from key departments and agencies involved in anti-corruption work. These individuals are all in a position to participate in decision-making: they are also charged with the necessary mandates to be able to do so.

The following role-players are currently included in :

- * Defence;
- * Government Communication and Information Service;
- * Justice and Constitutional Development;
- * National Intelligence Agency;
- * National Prosecuting Authority;
- * National Treasury;
- * Office of the Public Service Commission;
- * Provincial and Local Government;
- * Public Enterprises;
- * Public Service and Administration;
- * South African Police Services;
- * Special Investigating Unit; and
- * South African Revenue Services

The ACCC has the authority to co-opt other departments and agencies to participate in its work streams:

The ACCC's key responsibilities are to:

- * Ensure that the fight against corruption is co-ordinated and integrated, with proper use of the synergies between the elements of prevention, detection, investigation, prosecution and monitoring, as well as synergies between different spheres of governance;

- * Ensure implementation of the Public Service Anti-Corruption Strategy;
- * Advise Government on regional and anti-corruption co-operation including co-ordination of representation in international inter-governmental forums;
- * Establish a system for information collection, co-ordination, dissemination and management; and
- * Formulate proposals on a national anti-corruption strategy.

The ACCC works according to work streams. Each work stream has a lead department and consists of a work group. The DPSA provides the Secretariat. The DPSA is responsible for arranging meetings; preparing the agenda and minutes of ACCC meetings; and collecting, recording and distributing work plans and projects of implementing departments and work streams.

Co-operation between the NPA, SAPS and NIA requires a dedicated but separate arrangement for co-operation at case or project level. This will not be managed within the ACCC. Experience from case and project work will feed into the ACCC's Information Systems and Risk Management work stream to identify risk areas and trends.

Departmental representatives and leaders of work streams report to the ACCC on their progress at monthly ACCC meetings. Consolidated monthly progress reports are submitted to the chairperson of the Forum for South African Directors-General (FOSAD) Governance and Administration cluster for distribution. Every six months, (before the Cabinet Lekgotla), the ACCC drafts a composite report which is submitted to Cabinet Lekgotla and the Cabinet Governance and Administration cluster.

The DPSA presents progress reports to the Parliamentary Portfolio when required to do so. The Committee on Public Service and Administration will suggest annual joint sittings with the Portfolio Committees dealing with Safety and Security and with Justice and Constitutional Development, in order to report on progress. Implementing departments report to the relevant Minister for department-specific outputs and through the cluster system, for the crosscutting programmes on anti-corruption.

Implementation monitoring of the Public Service Anti-Corruption strategy takes place in the ACCC according to specific programming of activities.

Work Stream	Work Areas	Lead Department
Implementation of Public Service Anti-Corruption strategy	Programming of outputs and activities Report preparation "Response unit" Communication	DPSA
National Roll-Out	Roll out of strategy to local government and public entities Support to the government sector of the NACF	DPSA
Information Systems and Management	Data collection, collation and distribution Risk identification Information systems Monitoring and evaluation Indicator development	SAPS
Regional and International Co-operation	NEPAD implementation SADC initiatives Africa initiatives United Nations initiatives Commonwealth initiatives	DPSA
Capacity Building	Initiating and managing capacity building for national agencies, courts and departments	DPSA

Lead departments are required to ensure the delivery of outputs and to involve partner departments as required. They are required to convene meetings and managing their partners' work plans. Lead departments report to the ACCC on progress and outputs at every monthly meeting.

The FOSAD Governance and Administration Cluster evaluates and channels the ACCC's integrated outputs to the Governance and Administration Cabinet Committee. It also provides the ACCC with strategic direction.

The Cabinet Committee on Governance and Administration receives reports on anti-corruption work and provides political direction to the FOSAD and the Anti-corruption Co-ordinating Committee (ACCC).

Responses to allegations of corruption

During 1998 the South African Government adopted a package approach to the acquisition of naval, air force and army equipment, which

subsequently became known as the Strategic Defence Packages (SDP). Late in 1998, the Office of the Auditor-General identified the procurement of the SDP as a high-risk area from an audit point of view and decided to conduct a special review of the procurement process.

Following the meetings with SCOPA and the agencies, a joint investigation was launched. The Office of the Auditor-General subsequently conducted the audit and the Auditor-general signed the Special Review on 15 September 2000. The Special review, which dealt with issues such as independence of role players, technical evaluations, performance guarantees, procurement policy and sub-contracting, was the subject of public hearings and deliberations by the Parliamentary Standing Committee on Public accounts (SCOPA). On 2 November 2000 the National Assembly adopted the report of SCOPA on the matter.

The public hearings and public debates on the SDP continued to question the integrity of the SDP process. SCOPA suggested a multi-agency meeting to discuss the framework for an independent and expert forensic investigation on matters raised by the Special Review as well as from other information/sources.

How then did the system of governance in the country respond to the challenge of addressing independence. It was decided that the Directorate of Special Operations of the National Prosecuting Authority would focus on allegations and suspicions of criminal conduct, that the Office of the Auditor-General would conduct an extensive forensic investigation and that the Public Protector would look into the quality of the SDP contracts and unethical conduct by any of the public officials. The joint investigation also included a public phase. Each of the three bodies exists separately in terms of the Constitution, with specific Constitutional and other legislative mandates. The Joint Report on the SDP, dated 14 November 2001, puts forward the findings and recommendations of the three bodies.

The Joint Report found no evidence of any improper or unlawful conduct by the Government, or any irregularities that could be ascribed to the President or Ministers involved. The Joint Report does point to irregularities and improprieties in the conduct of certain officials in departments, and these are being or have been addressed in appropriate processes. Where possible criminal conduct is involved, investigations are ongoing. The Joint Report identified various weaknesses and experiences from the SDP processes, and these have been/are being rectified.

2.9 Departmental Anti-corruption Capacity

This section deals with the internal capacity of government departments to deal with corruption.

Several surveys have been conducted regarding Government's capacity to combat and prevent corruption. The previous sections have dealt with the agencies' capacity to deal with corruption. An audit has also been undertaken of some departments' anti-corruption capabilities. This should be read together with research that has been undertaken on the effectiveness of hotlines in the Public Service, as well as on the capabilities of the internal audit functions within the Public Service.

The audit was completed in two phases. Phase 1 consisted of a desk-bound assessment of the anti-corruption capabilities of departments, based on a questionnaire: 85 Departments participated in Phase 1. The questionnaire focused on 17 areas. The table below sets out a summary of the areas and the findings:

Area	Extract/summary of findings
1. Number of departments with dedicated Anti-Corruption Unit, or a unit that does similar work	Some 57% of Government Departments have a dedicated Anti-Corruption Unit
2. Existence of whistle blowing policy and mechanism	42% of departments have a mechanism in place, 35% have only a policy in place and 30% of departments have a mechanism and policy in place
3. Experience of Unit Head	Of the departments that have units, 71% of Unit Heads have relevant experience; 18% don't have any relevant experience; and 10% failed to answer this
4. Reporting lines of unit	Of the departments with units, 90% have clear reporting lines. question
5. The effectiveness of the Anti-Corruption Unit (self-assessment)	Some 8% of respondents rated the units as completely effective; 61% rated the units as mostly effective; 16% rated the units as mostly ineffective; and 4% rated the units as completely ineffective.

Phase 2 of the audit consisted of a more detailed assessment of a sample of 23 departments selected from the 85 departments that participated in Phase 1. The table below sets out a summary of the findings, which focuses on 10 areas and relates to 20 departments.

Area	Extract/summary of findings
Departmental policy or mandate on anti-corruption	Some 40% of departments have a fairly comprehensive mandate or policy of reasonable quality, together with evidence of implementation, in place. The remaining 60% don't have a policy or mandate in place, or if there is one in place, it is either very basic, or of a poor quality.
Fraud Prevention Plan	15% of the departments have Fraud Prevention Plans of excellent quality, together with evidence of implementation and integration. Some 40% of departments have fairly good policies in place; whilst the remaining 45% either don't have these plans in place, or alternatively, if they are in place, they are of a very poor quality
Strategic objectives related to fighting corruption	Some 10% of departments have clear written objectives: these are well integrated with other objectives. There is also evidence of planning and monitoring against the objectives. Some 45% of departments have written objectives from which the strategy can be deduced. Remaining 45% have poorly formulated and applied objectives (5%), or no strategic objectives in place (40%).
Investigative Procedures	Some 15% of departments have advanced investigative capacity and 25% a basic capacity. Of the remaining departments, 30% have a

	basic procedure but little awareness, while 30% have no clear investigative procedure.
Effectiveness of reporting lines	Some 20% of departments have clear reporting lines, accountability structures and regular monitoring of effectiveness; 20% have basic reporting lines with evidence of effectiveness and good accountability; 50% have basic reporting lines but no evidence of effectiveness, and 10% of the departments have no reporting lines whatsoever.
Whistle blowing policy	Some 25% of departments have whistle blowing mechanisms and policies in place, with evidence of effectiveness; 25% have either a policy or mechanism, but no indication of effectiveness; while some 50% have no policy or mechanism in place.
Public Service Regulations regarding corruption and fraud and staff awareness thereof	Some 30% of departments have these available and assess these regularly; 45% have these but there is no evidence of assessment; 25% do not have these regulations available.
Anti-Corruption Workshops	Some 20% of departments have held anti-corruption workshops; 60% indicated they have held workshops but provided no evidence; and 20% have never held Anti-Corruption Workshops.
Cooperation with Agencies	40% of departments have documented arrangements; 50% indicated that co-ordination arrangements existed but could not provide proof; and 10% have no such arrangements in place
Systematic approach to fighting corruption	Some 50% of departments are addressing corruption in a systematic way; 40% have

	attempted to do so, but are experiencing substantial shortfalls. Some 10% have not adopted a systematic approach.
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2.10 Conclusions

Strengths:

- * The law enforcement agencies have a clear mandate to combat all forms of corruption.
- * Asset forfeiture through civil process is a powerful weapon in the fight against corruption. The AFU and the Special Investigating Unit have used this weapon effectively.
- * The institutions of the Auditor General, the Public Protector and the ICD are in line with global best practice.
- * Problems surrounding court process are being addressed.
- * Many government departments have established Anti-Corruption Units.
- * The SCCU is operating very effectively.
- * Delays in disciplinary cases are being addressed.

Weaknesses:

While South Africa now has an excellent legal framework and institutions in place to fight corruption, some areas still need to be addressed. These include:

- * The investigation of and the court process for corruption cases are very slow.
- * Corruption cases are often handled by investigating officers and prosecutors who are inexperienced and/or overworked.
- * All of the agencies experience a lack of resources. The mandates of the Public Protector and the ICD, in particular, require them to handle such a wide range of cases that they are unable to focus on corruption.
- * There is a need for far better coordination of anti-corruption strategies, initiatives and investigations. (This is being dealt with to some extent, by the ACCC).

- * There is a serious lack of management information to enable an accurate picture of the incidence and form of corruption to be formulated. It is also not possible to measure the effect of anti-corruption strategies and measures.
- * Departments of national and provincial government have in most cases not adequately complied with the PFMA's risk management and fraud prevention requirements
- * The existing Fraud Prevention Plans usually deal primarily with internal audit issues: they do not address employee integrity and vendor integrity in sufficient detail.

2.11 Recommendations

1. The role definition, mandates and resources of the agencies, which have an anti-corruption mandate, need to be improved.
2. A capacity to collate statistics and exchange information about corruption and the associated offences of fraud and theft of state assets, needs to be developed for both the public and private sectors.
3. An institutional learning mechanism needs to be developed.
4. Departments of national and provincial government have not adequately complied with the risk management and fraud prevention requirements of the PFMA, must do so.
5. The Anti-Corruption Strategy must be extended to local government and to other public bodies, which also experience capacity problems.
6. Accountability for the prevention of fraud and corruption is rightly placed with line management in government departments. Their capacity to act should be enhanced. A department or departments with good experience and capacity should be tasked and resourced to provide assistance in the prevention of corruption.

3. MANAGEMENT POLICIES AND PRACTICES IN THE PUBLIC SERVICE

INTRODUCTION

Strategic consideration 5 in the Public Service Anti-Corruption Strategy relates to improved management policies and practices, specifically with

regard to procurement systems, employment arrangements, the management of discipline, risk management, management information and financial management.

Strategic Consideration 4 relates to the prohibition of corrupt individuals and businesses, through a process of blacklisting. This Section of the Country Corruption Assessment report deals with management policies and practices.

Section 195 of the Constitution of the Republic of South Africa, 1996, establishes principles for public administration. Flowing from these principles, the Regulations promulgated in terms of the Public Service Act make provision for the implementation of a management framework for the public service, based on the principles of effective planning and accountability. The PFMA further sets out the framework for accountability, risk management, financial budgeting and financial management in public bodies.

3.1 Procurement Reform

At the start of the procurement reform process in 1995, it was recognised that a consistent legislative framework would be required to give effect to government's procurement reform policy objectives. As an interim measure, it was recognised that procurement reforms would have to be limited to those measures that could be implemented within the ambit of existing legislation. A 10 Point (Interim Strategies) Plan was adopted during November 1995. The 10 points consist of 10 strategies designed to impact positively on the participation in the bidding system of small, medium and micro enterprises, with a special emphasis on the disadvantaged and marginalised sectors, and a focus on the creation of employment opportunities.

A Green Paper on Public Sector Procurement Reform in South Africa was published in April 1997. The Green Paper recognised that public sector procurement could be used by government as a mechanism to also achieve certain broader policy objectives such as black economic empowerment, local economic development spin-offs for small and medium sized business, skills transfer and job creation. To achieve this, institutional and economic reform was necessary within two broad themes: firstly the need to establish principles of good governance within the area of supply chain management was recognised, and secondly, the need to

introduce a preference system to achieve certain socio-economic policy objectives was noted.

Section 217(1) of The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) provides the basis for procurement. Section 217(3) of The Constitution, 1996 confers an obligation for national legislation to prescribe a framework that provides for preferential procurement to address the social and economic imbalances of the past.

The Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and its accompanying Regulations, were promulgated to prescribe a framework for a preferential procurement system. This Act and its Regulations incorporate the 80/20 and 90/10 preference point systems.

Sections 215-219 of The Constitution, 1996 further require that the National Treasury introduce uniform norms and standards within government, to ensure transparency and expenditure control measures, which should include best practices related to supply chain management.

The PFMA was promulgated to regulate financial management with national and provincial government. National Treasury is responsible for establishing coherent financial management within all organs of state. Considerable powers are assigned to accounting officers and accounting authorities to enable them to manage their financial affairs within the parameters that have been established. The PFMA requires National Treasury to monitor the compliance of these prescribed norms and standards.

In September 2001 the Cabinet approved further initiatives to reform the procurement process based on the principles of value for money, open and effective competition, ethics and fair dealings, accountability and reporting and equity.

3.1.1 The PFMA and Draft Procurement Framework

In order to give effect to the legislative requirements and the Cabinet-approved reform process, the National Treasury has issued a draft Framework for Supply Chain Management with draft Policy Guidelines. The Framework and Policy Guidelines is scheduled to take effect in April 2003.

The draft Framework deals with ethics, fair dealings and the combating of corruption, including vetting of members of bidding committees, declaration of conflicts of interest, restricted bidders and the rejection of proposals by bidders who have engaged in corrupt practice.

The draft Policy Guidelines will apply to the acquisition and disposal of all goods, services, construction and road works and immovable property of all organs of State, including constitutional institutions and public entities as defined in the PFMA, national and provincial departments.

The Policy Guidelines' objectives are to:

- * Give effect to the Constitutional and legislative provisions;
- * Transform the procurement and provisioning functions in government into an integrated supply chain management function;
- * Introduce a system for the appointment of consultants;
- * Create a common understanding and interpretation of government's preferential procurement policy objectives; and
- * Promote consistency in respect of supply chain policy and other related policy initiatives in government

The onus of responsibility for supply chain management is placed on the accounting officers/authorities, thereby giving effect to section 38(1)(a)(iii) of the PFMA.

3.2 Blacklisting of Corrupt Businesses

The Public Sector Anti-Corruption Conference in 1998 resolved that vendors who defrauded the Public Service or who engaged in corrupt practices should be blacklisted. The South African Government intends promoting a high standard of professional ethics within the Public Service by determining the requirements for the blacklisting of business, organisations and individuals involved in corrupt and unethical behaviour.

The first step towards establishing a blacklist for corrupt business and persons was taken when the National Treasury published a list of names of persons and suppliers that have been restricted by the State Tender Board from contracting with Government. Departments are required to consult the list before tenders or quotations for goods or services are awarded. In September 2002, the National Treasury commenced with a

process to expand the national list of restricted suppliers with information of restricted suppliers on the lists of provincial treasuries and tender boards.

In April 2002, the Public Service Commission released research on vendor blacklisting. The PSC research found that the areas of Government activity most vulnerable to corruption and fraud of various kinds, are procurement, revenue collection, appointments and nepotism, and "kickbacks" on contracts and sub-contracting consultancies. The research report makes several recommendations for areas to be addressed in the short to medium term.

Recommendations include:

- * The establishment of an Anti-Corruption Pact between Government and vendors, including contractual undertakings not to receive, nor to offer bribes; and Codes of Conduct for both Government and vendors;
- * Improved protection of whistle-blowers.
- * The launch of a public information campaign on procurement and corruption; and
- * The establishment of a blacklisting system.

The research report concluded that a systematic program of blacklisting was extremely ambitious. Furthermore, the initial implementation could be litigious. For this project to succeed, the National Treasury would have to ensure that the facility becomes a workable reality. It would also need to be prepared to face court challenges in terms of the Constitution and the Promotion of Administrative Justice Act.

In order for blacklisting to function optimally, the report concluded that the following areas would need to be addressed:

- * The Constitutional right to economic activity needs to be taken into account;
- * A blacklisted supplier could easily re-appear under another name. The blacklist would therefore need to apply as much to the owners or directors of an enterprise as to the enterprise itself;
- * The list and information on it must be constantly updated;

- * Information obtained illegally may not be used (for example, where information was obtained by means which breach the constitutional right to privacy or the Criminal Procedure Act);
- * The use of false, misleading or incorrect information could prejudice the existence of an entity, which is not corrupt and could lay the State open to action for damages; and
- * There is presently no system of communication between Government Departments, provinces, local authorities and other public bodies by which a blacklist could be circulated and enforced.

3.3 Employment Practices

The integrated human resource management system is grounded in the values and principles contained in the Constitution, specifically those provisions that set the values and principles of public administration. These include fair labour relations and the requirement for a single Public Service that function within a uniform set of norms and standards.

In practice, these parameters are given effect mainly through the Public Service Act, 1994 (PSA), the Public Service Regulations (PSR) issued in terms of the PSA, a variety of collective agreements with unions, and related employment frameworks such as the legislation regulating labour relations, minimum working conditions, training and development and employment equity.

The Minister for Public Service and Administration sets policy on matters of employment: and establishes the framework of norms and standards within which human resources are managed. The Minister's powers and responsibilities are defined in the PSA.

The Public Service Regulations (PSR) regulates matters such as work organisation, job evaluation, compensation, procedures for appointment, promotion and termination, including the verification of all employment information, performance management, training and education, conduct, disclosure of financial interests, conflict of interest and contain detailed arrangements for senior managers.

When appointments are made training, skills, competence and candidates' knowledge are evaluated and mediated in order to redress the imbalances of the past, and to create a broadly representative Public Service.

Employment processes are transparent and fair and conflict of interest arising from employment decisions is specifically regulated in the PSR.

Although departments have flexibility to administer many of the human resource practices, these take place within the framework of norms and standards set in terms of the PSR. Departments report on critical employment decisions as part of annual reporting to the relevant legislatures. The Public Service Commission evaluates the application of employment practices. The public service unions ensure that legislative requirements are adhered to.

Lessons Learnt

By definition, the banking industry is the ideal environment that creates opportunities for employees to perpetrate fraud, either by participating in fraud syndicates, or for own gain or other dishonest purposes. Experience has also shown that in many cases, perpetrators of fraud or dishonesty in one bank repeat that behaviour or offence in subsequent banks, especially if they believe that they escaped any serious penalty in the first instance. In order to combat this and to create a deterrent for staff tempted to indulge in dishonest activities, the banking sector implemented an employment reference system called the "RED database" (which stands for Record of Employees Dismissed for dishonesty) in 1999.

It was critical to ensure that RED could be created and maintained within the existing legal and Constitutional framework. To this end, the industry obtained comprehensive legal opinion and consulted widely within the banking industry and with the predominant labour union. Legal opinion was clear: while the RED database impact on employee the rights, this impact is mitigated and justified by the counter-balancing rights of the employer/bank. RED can work so long as the participating banks fulfil certain obligations to strengthen their legal defence should they be challenged.

These can be summarised as follows:

- * All employees must be made aware of the existence and purpose of RED.
- * New and existing employees must consent (in their letters of appointment/contract or conditions of service) to their names being

- listed on RED in the event of their discharge from the service of the bank for any dishonesty-related conduct.
- * If prospective employees' names appear on RED during the screening process, applicants must be given an opportunity to explain the circumstances around the listing. No application for employment may be summarily rejected on the basis of a RED listing, without first discussing it with the applicant.
 - * Listing on RED can only take place after a proper disciplinary hearing (including in absentia where the employee resigns to avoid the hearing and refuses to attend the subsequent hearing) which finds the employee guilty of dishonest conduct and recommends dismissal for such behaviour or offence.
 - * Banks must ensure that details about appeals against the finding or dismissal are recorded and maintained on RED.
 - * The application of RED must be industry specific (i.e. ring-fenced to a logical sector) and not span over the total employment sector.
 - * The necessary arrangements must be made with the relevant labour unions.

The RED system came into operation in November 1999 and has proved to be a critical tool when screening prospective employees, most of whom neglect to disclose a prior dismissal from another bank for dishonesty-related activities.

Names remain on RED unless there is an appeal to an outside adjudication process (e.g. the Commission for Conciliation Mediation and Arbitration (CCMA) or Labour Court) which overturns the original finding and decision of the disciplinary hearing. The system is very user-friendly, accessed via the Internet and protected against unauthorised access through passwords and security screens. Presently there are 17 participating banks on the RED system.

The following statistics highlight the success of RED in the last couple of years:

- * For the period December 1999 to July 2002, the participating banks listed 2 404 names, while during the period March 2000 to July 2002 they made 52 061 enquiries on the system of which 768 were

'matched' (in other words, the person being enquired about is listed on RED).

Only the RED System Administrator can delete a name on RED, and this will only happen when proof is supplied that an appeal was successful in favour of the employee. From December 1999 to July 2002 a total of 36 names have been deleted from RED after successful appeal.

3.4 Strengthening Management Capacity and Integrity

Given the pivotal role of senior managers in the delivery of services, the Minister for the Public Service and Administration established the Senior Management Service (SMS) with effect from 1 January 2000.

The SMS system is intended to:

- * Improve the recruitment, selection and retention of senior managers;
- * Establish a more appropriate employment framework;
- * Introduce greater mobility of senior managers to be deployed across departments;
- * Improve training and development; and
- * Promote a high standard of ethical conduct and establish an appropriate labour relations framework for managers.

Within the context of addressing corruption, the Competency Framework and the disclosure of financial interests by senior managers, is particularly important. The SMS Competency Framework consists of eleven generic competencies: Strategic Capability and Leadership, Programme and Project Management, Financial Management, Change Management, Knowledge Management, Service Delivery innovation, Problem Solving and Analysis, People Management and Empowerment, Client Orientation and Customer Focus, Honesty and Integrity and Communication. Departments utilise a combination of these competencies, usually five, to assess the competencies of senior managers both for purposes of appointment and for performance measurement.

A set of Regulations and Protocols are being developed on aspects of conduct in relation to political activity, declaration of interest and disclosure/use of official information after leaving the Public Service. The

system for disclosure of financial interest is in place: senior managers are required to disclose shares, partnerships, directorships, remunerated work outside of the public service, consultancies, retainerships, sponsorships, gifts and hospitality and ownership of land and property. Disclosures are made to the executing officers of departments and are submitted to the Public Service Commission (PSC). The PSC evaluates the disclosures to determine whether conflicts of interest exist. Where conflicts of interest exist, or could arise, remedial action is taken. The disclosures are confidential.

3.4.1 Managing Discipline

The Public Service Anti-Corruption Strategy requires early signs of a lack of discipline to be managed progressively. Managers are held accountable for managing discipline. The Strategy also calls for the establishment of a cadre of well-trained senior managers to manage complex disciplinary cases.

While some 75 senior managers have received advanced disciplinary training, mostly to preside over complex cases, capacity building is ongoing. The South African Management Development Institute (SAMDI) has trained 575 employees in disciplinary and dispute resolution procedures in 2001, and 850 employees in hearing procedures, general industrial relations skills and arbitration in 2002.

The Public Service Commission has studied dismissals from the Public Service as a result of misconduct between 1996-1998. Of 2247 disciplinary cases in the Public Service, 1077 were finalised. Almost 90% of those officials were found guilty and 238 were dismissed. Of the finalised cases, 281 were corruption-related. Some 43% (102) of the individuals dismissed, were dismissed for corruption related offences. Only 9 individuals were dismissed for bribery, demonstrating the difficulty of proving that bribery has taken place.

The system for managing discipline is regulated by collective agreement (Resolution 2 of 1999) with public service trade unions.

The following areas are being addressed:

- * Definitions;
- * Validity and time limits of sanctions;

- * Differentiating between employers and supervisors;
- * Time limits for suspensions;
- * Constituting hearings;
- * The validity of pronouncement on dismissals, and
- * Appeals.

3.5 Risk Management

Risk management acknowledges that all activities within an organisation involve an element of risk. Management must therefore decide what constitutes an acceptable level of risk (given the cost and other social factors). This can be done by objectively assessing the factors (risks) that may prevent a particular activity from meeting its objective.

Elements of risk management include assessing the nature and extent of the risks associated with the institution's operations; deciding on an acceptable level of loss or degree of failure; deciding how to manage or minimise the risk; and monitoring, reporting and, from time to time, reassessing the level and implications of risk exposure. In terms of the Treasury Regulations, accounting officers must ensure that a risk assessment is conducted regularly to identify emerging risks of the institution. A Risk Management Strategy must include a Fraud Prevention Plan: this should be used to direct the internal audit effort and priority, and to determine the skills required of managers and staff to improve internal controls and to manage these risks.

The National Treasury recently conducted a survey to establish the progress that has been made by departments in terms of the implementation of the Public Finance Management Act, 1999 and related Treasury Regulations. The survey revealed that only 52% of national and provincial departments have complied with the requirement that certificates be furnished to the relevant Treasury to the effect that risk assessments have been completed and that Fraud Prevention Plans are operational.

The development of Risk Management Strategies must include a Fraud Prevention Plan. The development of such strategies took effect from 27 May 2002. Such strategies are also applicable for public entities in the national and provincial spheres of Government.

Risk management is dealt with in Sections 38-42 of the PFMA and Chapter 3 of the Treasury Regulations for public institutions. These imperatives deal specifically with the financial and fraud risk categories. Risk management processes, responsibilities and even punitive measures for non-compliance, are incorporated in the responsibilities allocated to accounting officers and audit committees with an extension thereof to all managers in terms of Section 45 of the PFMA.

The extension of the general responsibilities in terms of Section 45 is a cornerstone in the institutionalisation of risk management in the public service. It establishes accountability for risk management with all levels of management: responsibility is not limited to the accounting officer or Internal Audit Units. In this regard, risk management is an important mechanism to support financial planning and accounting activities within departments.

Chapter 3 of the Treasury Regulations to the PFMA (amended in March 2001) sets out the roles and responsibilities of the accounting officer and internal audit in relation to risk management.

It can be summarised as follows:

- * The responsibility for facilitating a risk assessment to determine the material risk to which the institution may be exposed and to develop the strategy to manage that risk is vested with the accounting officer;
- * The accounting officer must provide a certificate to the relevant treasury by no later than 30 June 2001, indicating that a risk assessment has been completed and that a fraud prevention plan is operational.

The Internal Audit Unit must prepare in consultation with, and for approval by the Audit Committee, a rolling three-year Strategic Internal Audit Plan based on its assessment of risk for the institution. The Plan must take cognisance of its current operations, the proposed Strategic Plan and its Risk Management Plan.

3.5.1 Risk Management in Provincial Governments

During 2001, the Public Service Commission conducted consultative risk management workshops in seven of the nine provinces. Workshops were carried out in partnership with the KwaZulu-Natal Provincial Treasury.

Some 224 senior and middle managers attended the workshops. As a result of these workshops, the PSC issued a report entitled "Report on Risk Management: A Provincial Perspective". The report was published in February 2002: It is a reflection of the status of risk management practices in the provinces and provincial departments.

The following recommendations were made by the OPSC to address the current levels of awareness and institutionalisation of risk management within provinces:

- * All stakeholders should develop a national framework, guiding the implementation of integrated risk management processes collectively. A Consultative Forum to address the framework, risk assessment format and training interventions is proposed;
- * Effective monitoring and evaluation systems should be developed to determine the institutionalisation of new management practices in general and risk management in particular to all the management levels of public institutions;
- * Existing transversal management training programmes should be adjusted to ensure that the benefits of integrated risk management processes are realised and adopted at all institutional levels in the public service; and
- * The possibility of including risk management as part of the performance agreements of all senior managers should be investigated.

3.5.2 Management Information Systems

The Public Service Anti-corruption Strategy requires a management information system in order to collect, track and analyse information on corruption, and general improvements to existing systems (such as the financial management system, and the salary administration system). This area requires analysis, and an audit of existing systems has commenced: the study will be completed during the course of 2003.

3.6 Conclusions

Strengths:

- * Strong frameworks exist for financial, procurement risk and human resource management in the public service.
- * The accountability for financial management is clearly assigned to accounting officers and accounting authorities: these individuals are and given extensive powers to manage.
- * A major reform of the procurement process has been approved: this will improve value for money, open and effective competition, ethics, fairness, accountability, reporting and equity.
- * Blacklisting of corrupt or fraudulent vendors is in place in many departments.
- * An early response to discipline problems is required by the Public Service Anti-Corruption Strategy, and some senior managers have been trained to preside in complex disciplinary cases.

Weaknesses:

- * Potential loopholes created by preferential procurement.
- * No uniform procedure and policy for blacklisting corrupt vendors or public servants.
- * A slow and cumbersome disciplinary process
- * A lack of skills and understanding to ensure good risk management in many parts of the public service. Only 52% of departments have provided certificates to the relevant Treasuries as required by the PFMA and Treasury Regulations.
- * The lack of comprehensive and effective management information systems is a serious deficit in the campaign to ensure effective controls and to prevent and detect corruption.

3.7 Recommendations

- * It is essential that the accountability for the prevention of corruption be cascaded down to every public service manager, and not be left to reside with internal audit or forensic or security units in government or in any department.
- * Further work is required to ensure that procurement systems are effectively controlled, especially in the area of preferential procurement, where opportunities exist for discretionary award of contracts.

- * Support is required for the implementation of risk assessments and risk management throughout the public service.
- * A central information system is required for corruption in the Public Service.

4. REPORTING CORRUPTION

Strategic Consideration 3 in the Public Service Anti-Corruption Strategy : 'Improved Access to report wrongdoing and protection of whistleblowers and witnesses,' focuses on improving application of the protected disclosures legislation, witness protection and hotlines.

4.1 Whistle Blowing

Contrary to popular belief, most cases of corruption are not detected by internal or external audit, but rather by accident. For example, when a long-term employee goes on leave and someone else has to take over a function or system, and through tip-offs and reports from staff members or from customers and trading partners. Given the importance of whistle blowing as a source of information about corruption, it follows that every large organisation should allocate substantial energy and resources into creating conditions in which bona fide whistle blowing is encouraged and valued.

It must be noted, however, that whistle blowing is very susceptible to adverse factors:

- * If whistle-blowers perceive a serious risk to themselves, they are far less likely to report problems. Their identity must therefore be protected;
- * If they perceive that little or nothing is done about their reports, they will balance effect against risk and decide not to report; and
- * If they perceive that management is sceptical of whistle-blowers, or is reluctant to take action against all or any section of the organisation, whistle blowing will be discouraged.

In order to foster a culture of vigilance and constructive reporting, both employees and the public must be convinced that:

- * Their reports will be taken seriously;
- * Their identities will remain confidential ;
- * They do not have to report to supervisors who may be acting in collusion with those suspected of fraud;
- * Their reports will be effectively followed up by management or by the Minister, Board, Public Protector or whichever agency they report to;
- * Internal disciplinary action will be quick and effective; and
- * Criminal investigations and prosecutions will be quick and effective. They will not have to go to court for months or years to give evidence, only to see the case withdrawn.

4.1.1 The Protected Disclosures Act (26 of 2000)

The Protected Disclosures Act came into effect in February 2001. The need for legislative measures to protect persons who disclose information relating to criminal/ irregular conduct in their places of work was recognised in the Open Democracy Bill, 1998 (which was finally promulgated as the Promotion of Access to Information Act, 2000). This concept was contained in Part 5 of the Bill, which dealt with the protection of "whistle blowers". Parliament was of the view that it was not apposite to include a chapter on "whistle blower" protection in legislation dealing with the right of access to information and decided to redraft the chapter into separate legislation, namely, the Protected Disclosures Act, (26 of 2000).

The principal objects of the Act are to make provision for procedures in terms of which employees in both the private and the public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers; and to provide for the protection of employees who make disclosures which are protected in terms of the Act.

The Act requires that a disclosure must be made in accordance with one of five possible procedures: a legal representative (section 5); an employer (section 6); a Minister or provincial Member of the Executive Council (section 7); a specified person or body (section 8); or to any other person as a general protected disclosure in terms of section 9 of the Act. Each procedure contains certain requirements, which must be complied with.

A disclosure in terms of section 5 must be made to a person whose occupation involves the giving of legal advice, and the information must be given for the purpose of obtaining legal advice.

A disclosure to an employer must be made in good faith. Section 6 of the Act also requires that the disclosure concerned must be made in accordance with a prescribed procedure, if one exists in the workplace.

Section 7 provides that a disclosure may be made to a Minister or a Member of the Executive Council ("MEC") of a province, provided that the disclosure is made in good faith and the whistle blower's employer is: an individual appointed by that Minister or provincial MEC in terms of legislation; a body appointed by that Minister or MEC in terms of legislation; or an organ of state falling within the area of responsibility of that Minister or MEC.

A disclosure in terms of section 8 of the Act must be made to a specified person, namely, the Public Protector or the Auditor-General. The relevant requirements are that the disclosure must be made in good faith, the impropriety must in the ordinary course be dealt with by that person and the information and allegation contained therein must be substantially true.

A general protected disclosure may, in terms of section 9 of the Act, be made to any other person (for example a member of the press). The relevant requirements for this procedure are that the disclosure must be made in good faith, the employee making the disclosure must reasonably believe that the information is true and one or more of the following should also be present:

- * The employee must believe that he or she will be subjected to an occupational detriment if the disclosure is made to the employer;
- * The employee must believe that the employer will conceal or destroy evidence relating to the impropriety if the disclosure is made to the employer;
- * No action was taken in respect of a previous disclosure to the employer; or
- * The impropriety is of an exceptionally serious nature.

Employees are protected from "occupational detriments" in relation to the working environment for making a protected disclosure. In terms of the Act an occupational detriment is defined as:

- * Being dismissed, suspended, demoted, harassed or intimidated;
- * Being refused transfer or promotion;
- * Being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
- * Being denied appointment to any employment, profession or office; or
- * Being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security.

Section 4 of the Act deals with the remedies at the disposal of an employee. If an employee is subjected to an occupational detriment in contravention of the Act, that employee may approach any court (including the Labour Court established by section 151 of the Labour Relations Act, 1995 (Act 66 of 1995)) or tribunal having jurisdiction for protection. A dismissal or other occupational deficit which takes place because the employee made a protected disclosure is automatically an unfair labour practice in terms of the Labour Relations Act.

Any employee who has made a protected disclosure and who reasonably believes that he or she may be adversely affected on account of having made that disclosure, must, at his or her request and if reasonably possible or practicable, be transferred from the post or position occupied by him or her at the time of the disclosure to another post or position in the same division or another division of his or her employer or, where the person making the disclosure is employed by an organ of state, to another organ of state.

The terms and conditions of employment of a person so transferred may not, without his or her written consent, be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer.

The implementation of the Act in a workplace requires that policies and procedures be established which provide for such things as:

- * Alternative reporting lines;
- * How to decide if a disclosure is bona fide or should get the benefit of the doubt;
- * Awareness and training of managers and employees;
- * Disciplinary action against persons who breach the protection aspects of the Act; and
- * Following up on disclosures.

A number of outstanding issues were identified during the deliberations on the Protected Disclosures Bill, 2000. Parliament requested that these issues be investigated.

The ambit of the Act is confined to the relationship between employer and employee in both public and private sectors. The request was that the possible extension of the ambit of the Act beyond the purview of the employer/employee relationship should be investigated and also the possibility of extending the provisions of the Act to:

- * Enable a worker to make a protected disclosure in connection with the conduct of a person other than his or her employer;
- * Exclude any criminal or civil liability for making a protected disclosure;
- * Introduce a new course of action for an employee who has suffered any loss or damage as a result of having been victimised; and
- * Create certain new offences in the Act, (for example, an employer would be committing an offence by unlawfully subjecting an employee to an occupational detriment).

The above matters have been referred to the South African Law Commission for investigation.

The effect of the legislation will have to be monitored over a period of time. It is easy to victimize an employee while citing reasons, which are not related to whistle blowing. Constructive dismissal and transfers against the employee's wishes are fairly easy to engineer, unless there is strong workplace organisation and representation. Directors and top management must commit themselves to the protection of whistle blowers and the effective implementation of the Act and to effectively pursuing bona fide disclosures. The effective implementation of the Act using both internal

and external reporting channels should be regarded as an essential part of good corporate governance.

4.2 Hotlines

Hotlines offer an attractive option for policy-makers who wish to be seen to be taking action against corruption. They demonstrate both action and intent, and they are relatively easy to present and package to the public.

According to the Department of Trade and Industry (DTI), the purpose of the hotline is:

- * To deter potential fraudsters by making all employees and other stakeholders aware that the DTI is not a soft target, as well as encouraging their participation in supporting and making use of the whistle-blowers programme;
- * To raise the level of awareness that the DTI is serious about fraud;
- * To detect incidents of fraud through encouraging whistle-blowers to report incidents which they witness;
- * To assist the DTI in managing the requirements of the Protected Disclosures Act by creating a channel through which whistle-blowers can report irregularities which they witness or which come to their attention; and
- * To further assist the DTI in identifying areas of fraud risk in order that control measures for preventive and detection can be improved or developed.

The fundamental question that underlies any exploration of the effectiveness of hotlines is whether the management and infrastructure of the hotline are adequate to achieve the desired outcomes. Based on international experience as well as an analysis of the South African experience, it is clear that to be effective, hotlines require an extensive operational infrastructure.

A number of hotlines have been established in government since the National Anti-Corruption Summit held in April 1999, both in the provinces and in national departments. The Public Service Commission has produced a comprehensive report in order to explore the effectiveness of existing hotlines with a view to informing its approach to the establishment of a well functioning hotlines and support systems.

4.2.1 The PSC Report on Hotlines

It was found that there is scope for improvement as far as the management of hotlines at national and provincial level is concerned. The following problems were identified in the report:

- * Eight National Departments, have established hotlines;
- * Six provinces have established hotlines. Provinces with the most efficient hotlines are those which have sufficient resources;
- * One department has established International Best Practice on Hotlines;
- * In Gauteng Province the reported cases are captured and compiled monthly. The status report released in late 2000 estimates that 54% of the reported cases, which came through hotlines, were solved;
- * In Northern Cape Province the reported cases are captured and callers are given the option of remaining anonymous. Calls are not recorded;
- * In Mpumalanga Province the reported cases are captured. 3600 calls were received in 2001. Twelve criminal charges were laid against individuals; and in the Western Cape Province there were a total of 83 recorded calls, while 27 disciplinary or criminal charges were laid against individuals.

The PSC made the following recommendations:

- * The establishment of a well functioning hotline system;
- * A data management system should be established for the national hotline to provide a coherent recording of disclosures;
- * A specific training course is needed to support the specialized staff working on hotlines;
- * A Standard Investigating Procedure should be developed for the Hotline Investigation Unit;
- * There is a need for the implementation of International Best Practice; and

- * The responsibility for day-to-day operation of the hotline systems must be at the appropriate management level, to ensure buy in of senior managers and staff in the organization.

4.3 Witness Protection

In the context of reporting, it is important to note that witness protection is not the same as the protection of whistle blowing. Witness protection is intended to protect witnesses in criminal trials.

4.4 Feedback from Civil Society

Civil society and organisations representing the interests of civil society have applauded the strong legal framework to fight corruption that Government has introduced post 1994. However, civil society organisations such as the ODAC (Open Democracy Advice Centre), IDASA (Institute for Democracy in South Africa) and Black Sash, believe implementation of the legislative framework is weak.

The Promotion of Access to Information Act provides a mechanism for citizens to request and to obtain information from Government. The access to information legislation gives effect to a section of the Constitution and overrides other laws. It is internationally recognised as being of a high standard.

However, according to a recent survey undertaken by ODAC, there has been little implementation or awareness of the Act by public bodies in particular. Very few government departments and public sector bodies complied with the requirement in the Act that they produce a manual to assist the public to request information. A large percentage reported that they were unaware of the Act, or were aware of it but had not done anything to comply.

The Black Sash has been monitoring the enforcement of the provisions spelt out in the Promotion of Administrative Justice Act of 2000, which requires government departments and public bodies to provide reasons for decisions that adversely affect the rights of individuals. The principle driving the legislation is that government is accountable for the decisions that it makes and citizens are entitled to question the process and grounds upon which those decisions were made.

According to civil society organisations there has been little or no implementation of the legislation by public bodies. The Department of Justice has been driving a process to make departments aware of the law: a Compliance Strategy has been produced to assist them. The Department of Justice has worked with three national departments and two provinces to pilot the Compliance Strategy and training materials. Justice College and the University of the Witwatersrand have developed and presented training for administrators. Most departments still regard the Act as an "add on" to their core business and not a minimum standard for all their administrative actions.

4.5 Conclusions

Strengths:

- * The Protected Disclosure Act is an important mechanism to encourage whistle blowing;
- * Some national departments and provinces have established hotlines;
- * A reliable witness protection system is in place.

Weaknesses:

- * Most organisations do not have the policies and procedures in place to be able to implement the Protected Disclosures Act effectively.
- * Many departments do not have hotlines.
- * Even those, that do, often do not have the management systems in place to communicate about them effectively and to investigate and follow up on disclosures. As a result, many hotlines do not serve their intended purpose effectively.
- * There is too much reliance on hotlines, and departments have not implemented other alternative reporting systems consistent with the Protected Disclosures Act.
- * Departments are not yet effectively complying with the Administrative Justice and Access to Information Acts.

4.6 Recommendations

- * Attention should be given to other forms of alternative reporting lines.
- * Departments must develop policies and procedures for compliance with the Protected Disclosures Act.
- * Hotlines must be supported by management systems to investigate and follow up on disclosures.
- * Departments must work on compliance with the Administrative Justice and Access to Information Acts.

5. PARTNERSHIPS IN THE FIGHT AGAINST CORRUPTION

Government has been proactive in initiating and driving the anti-corruption programme. It is reasonable to ask what role business and civil society have played in combating and preventing corruption, particularly in light of strategic consideration 7 in the Public Sector Anti-Corruption Strategy, which provides for partnerships with stakeholders, including a strategy for the revitalisation of the National Anti-Corruption Forum.

5.1 The National Anti-corruption Forum

The National Anti-Corruption Forum was launched on 15 June 2001 in Langa, Cape Town. The NACF is based on a resolution of the National Anti-corruption Summit which says that the fight against corruption requires a national collaborative effort. The resolution, recognised corruption is a problem of that requires a societal response. Whilst Government has specific responsibilities in this fight (such as criminal investigation and prosecution), the responsibility rests on all sectors of society to do their part, especially on prevention.

The founding charter of the Forum requires members to:

- * Establish a national consensus through the co-ordination of sectoral anti-corruption strategies;
- * Advise government on the implementation of strategies to fight corruption;
- * Share information on best practices on sectoral anti-corruption work; and

- * Advise all sectors on the improvement on sectoral anti-corruption strategies.

At the launch, the Minister for the Public Service and Administration spelled out her vision for the NACF. She stated that it should not be a "fancy talk shop, but rather a very powerful body...an institution (which) will reflect new ways of organising networks..." The first year of the Forum has proved disappointing.

The NACF includes representatives of business, government and civil society, with ten members drawn from each of the three sectors. Civil Society is represented in the Forum amongst others by representatives drawn from unions, NGO's and religious leaders.

The NACF only managed to convene three times. The Minister for the Public Service and Administration has devised a strategy for the NACF's revitalisation. The reasons for the non-functioning of the Forum are important as they help direct the remedial action that is required. It appears that the delays are the result of a confluence of circumstances, most notably the following:

- * Practical difficulties to synchronise suitable dates for meetings;
- * A lesser capacity within especially the Civil Society Sector to organise its membership to the Forum;
- * Transformation initiatives within the Business Sector;
- * Lack of a full quota of permanent members for the Business and Civil Society Sectors; and
- * Composition and size of the Executive Committee.

The NACF is a partnership arrangement, and the three sectors operate as equal partners. Therefore responsibilities rest on all three sectors to develop and implement sectoral strategies to fight corruption. The Public Sector has developed and commenced with implementation of its sectoral strategy, but the same cannot be said for the other sectors. The NACF's functioning is not a pre-condition for the development of sectoral strategies. A duty rests upon each sector to get its own house in order. Insufficient efforts have been undertaken in terms of developing sectoral strategies other than by government.

5.1.1 Provincial Experience

Two Provincial structures were established to contribute towards the fight against corruption. The Provincial Anti-corruption Forum (the Forum) was established on 18 April 2000. It is perceived and intended as a tool of the Provincial Executive. The Network Against Corruption (NAC) was established by the Speaker of the Provincial Legislature on 12 October 2000. The functioning of both structures has been questioned by stakeholders, and indeed, by the Executive and Legislature. Apparent duplication of functions has arisen, as well as a degree of tension between the principals of the two structures.

Membership of the Network Against Corruption (NAC) was drawn from representatives of the legislature, including the Presiding Officers, Chairpersons of Committees, Chairpersons of Standing Committees, Head of the Petitions Office as well as representatives of all other stakeholders which have an interest in fighting corruption.

The NAC was an attempt to involve NGO's and oversight / anti-corruption bodies (the Special Investigating Unit, the Auditor General of the Eastern Cape etc.) in ensuring that the legislature effectively deals with corruption. It provides an interesting model of CSO intervention at a provincial level and may justify further research to ascertain if it would prove an effective model at local government level.

The model for the Forum reflects developments in the early stages of the National Anti-corruption Forum (NACF), based on the National Anti-corruption Summit's resolution to create a structure in which all sectors of society take co-responsibility to fight corruption, and the realisation that corruption is not a problem unique to the public sector. This is reflected in the founding document.

However, participants in the NACF process reached the conclusion that a separation exists between the role of the Executive and a structure that involves stakeholders from all sectors. A structure of this nature can, for example, never take on the Executive's responsibility to devise policy or investigate and prosecute corrupt individuals, organisations and businesses.

A structure of this nature cannot assume responsibility to co-ordinate and to implement the Executive's work. These considerations resulted in a model that culminated in two different functions: the function of co-

ordinating and integrating anti-corruption work within the Executive, and that of co-ordinating and integrating the anti-corruption work of all sectors.

The Executive is responsible for devising policy, co-ordinating, implementation, and the monitoring and evaluation of such policies. This, of course, does not exclude all other sectors from making inputs on the policy process, nor the establishment of partnership arrangements to implement and/or monitor implementation, but it vests the responsibility to devise and implement policy with the Executive.

The function of integrating and co-ordinating the anti-corruption work of all sectors of society can also be translated into structure in various manners.

An evaluation of the Forum and the NAC has been carried out, leading to the following main recommendations:

- * That a structure be created under the auspices of the Provincial Executive, and chaired by the Provincial Director-General, to assist the Executive to formulate policy on anti-corruption to ensure and monitor implementation of such policies and to co-ordinate and integrate the anti-corruption work of public sector departments and agencies.
- * That a Forum be established where the public sector, civil society and business can engage to address matters of mutual concern regarding corruption and where the spirit of the National Anti-corruption Summit's resolutions related to co-responsibility and addressing corruption as societal problem are reflected. The work of the forum should be made public.

5.2 Moral Regeneration Movement

The Moral Regeneration Summit was held on 18 April 2002. 1300 people from every sector and province, together with Ministers, Premiers and leaders from the religious, political, business, NGO, labour and other fields participated. One of the outcomes of the Summit was the launch of the Moral Regeneration Movement (MRM). The Movement is tasked with networking, facilitating and supporting moral regeneration initiatives at provincial and local level.

The key issues discussed and recorded by both national and provincial breakaway groups at the summit were as follows:

- * Every province recorded a concern about the breakdown of family life and the weakening of family structures;
- * Poverty and riches are both seen as a threat to moral regeneration;
- * The education system inherited structures which are inherently immoral, designed to enhance the education of one race group;
- * The young are discouraged in many ways, including the lack of role modelling by parents, the poor morale of teachers, and the difficulty of finding jobs;
- * The perceived alienation between media and society must be addressed; - Issues of religion must be addressed; and
- * Leaders must set the standards of morality.

An Action Plan was formulated in respect of each issue, including such things as the formulation of a Code of Ethics for leaders, and the need for a moral audit of leadership (similar to a lifestyle audit, where there are reasons to suspect unexplained enrichment). The Moral Regeneration Movement is to be registered as a Section 21 (not for profit) company.

Key challenges are to integrate moral regeneration into the programmes and projects within government departments; to provide a focal point to co-ordinate and collate programmes at provincial and local government level; to mobilise resources, and to establishing a monitoring mechanism. The Department of Arts, Culture, Science and Technology is the lead department.

5.3 Civil Society Organisations (CSO)

"Civil Society must be educated to regard itself as an equal partner with the public sector institutions, and citizens must jointly take steps to uphold the moral fabric of our society."

Since the Public Sector Anti-Corruption Conference in 1998, Government's commitment to the eradication of corruption has gained substantial credibility. Corporate governance issues have become a central issue for the business sector, and there is an incentive for good corporate governance because of the premium investors will pay.

Civil Society which has been a major force in the past two decades, has lagged behind in setting the anti-corruption agenda in South Africa - measured at least against government sponsored anti-corruption initiatives.

Many CSO's have had to struggle with defining a new role post-1994. In particular, civil society has had to confront the issue of how to be critical of a government which led the liberation struggle and how to confront allies now in government who are involved in corrupt activity without being seen to question the integrity of the ruling party. CSO's, as well as the media, are confronted with the dual challenges of promoting dialogue with government to increase transparency, while being at the same time a critical partner in the dialogue.

Civil Society can play both a creative role in promoting democracy by educating and socialising citizens into a democratic modus operandi which includes for example, ethics training, and remaining critical and vigilant of the state apparatus lest it abuses its monopoly of power.

An obvious role for civil society actors in fighting corruption, includes a critical monitoring "watchdog role" to promote public sector accountability and service delivery. The media is particularly well placed as an organ of civil society to do this. CSO's may also choose to "expose" corrupt practice by either the public or private sector (or a combination of both) by working closely with the media to ensure that 'the story is told'.

The international research community as part of civil society has played a crucial role in fighting corruption in this area. Service Delivery Surveys (SDS) which monitor consumer satisfaction with basic services such as housing, healthcare, transport, water, crime victim surveys have been conducted in a number of countries to monitor the nature and extent of corrupt practices which occur within these systems.

Often civil society has resources and capacity that the state does not. This resource dependency is drawn from a situation where government relies on specific expertise which a CSO has - often not monetary by nature but rather reflective of their close association with a particular community, understanding of very specific local context or independent research expertise. These are 'skills' which the public sector can choose to tap into should it wish to increase its capacity in fighting corruption.

South Africa is fortunate to have a number of CSO's which have as their primary focus, or one of the their top focus areas, that of promoting transparency and accountable governance. It has been suggested that in the past one of the challenges facing these actors is that they often do not know who is doing what and possibly indicates the need for more active networking amongst these organisations working in the following areas.

Advocacy

The South African 'Promotion of Access to Information Act' (PAIA) and the 'Protected Disclosures Act' (PDA) have given SA what is considered 'state of the art' whistle blowing legislation. The Open Democracy Advice Centre (ODAC) was established during 2001 to offer training and advisory services on this important new legislation. This legal advice centre is an initiative of the Institute for Democracy in South Africa (IDASA), in partnership with the University of Cape Town Law Department and the Black Sash Trust. Civil Society activists involved in establishing ODAC made substantial contributions to the drafting of the Act through a parliamentary submission process. ODAC offers training and assistance on the why, how and what of putting in place a Whistleblower Policy, as well as tailor-made training on the PDA and PAIA. ODAC is currently under contract to assist, and to offer training to the Public Service Commission nationally on the PDA.

The Public Service Accountability Monitor (PSAM), based at Rhodes University is a provincial initiative, which follows individual cases of reported misconduct in the public sector in the Eastern Cape and makes its findings public, particularly through its publicly accessible website. Since its inception in 1999, PSAM has developed a searchable internet-based database, which is regarded as an innovative approach and has drawn much attention both locally and abroad as a model to emulate. Although respected by many in the provincial government, much of the whistle blowing and subsequent monitoring activity is regarded with suspicion by some members of the public sector in the Eastern Cape.

As part of an international network of NGO's working to promote systemic reform, Transparency South Africa (T-SA) is the only national NGO with anti-corruption efforts at the core of its activities. T-SA has played an important role in bringing together CSO's concerned with corruption related issues, most recently at the Civil Society Anti-Corruption Summit. This followed provincial workshops which took place in 2001 and which identified areas in which CSO's could make a valuable contribution in

combating corruption. The Summit which also sought to inform some of TSA future activities, focused on too many broad issues, providing a veritable 'wish list ' of themes associated with achieving socio-economic justice in South Africa that few if any CSO in South Africa would have the capacity to successfully tackle (including the abolition of the Bretton Woods Institutions). T-SA has excellent potential to play a key role in mobilising CBO's and NGO's active at a local level to become "watchdogs". This would no doubt be welcomed by many organisations. T-SA has access to international good practice from other NGO's, a board of directors and patrons who are influential in shaping the anti-corruption debate, and a good network particularly amongst CSO's.

Research

The Centre for the Study of Violence and Reconciliation (CSVr) conducts research including a specific focus on corruption in the South African Police Service (SAPS).

Although academic institutions and CSO's such as T-SA (in co-operation with the Community Agency for Social Enquiry -CASE) have undertaken sporadic research work, the Institute for Security Studies (ISS) is the only applied policy research organisation with a dedicated anti-corruption programme which also has a regional focus.

The Organised Crime and Anti-Corruption Programme has undertaken an expert panel survey on the perceived nature and extent of corruption in South Africa as well as authoring a review of anti-corruption agencies in South Africa and numerous papers with relevance to combating corruption in SA. The ISS also regularly proposes strategies for the public sector to combat corruption more effectively including comment (and submissions where relevant) on policy and proposed legislation.

Currently implementing a three year donor funded project with a focus on anti-corruption diagnostics, the ISS is also establishing an electronic resource centre which will hopefully contribute to the capacity of NGO's to ensure both effective advocacy work, but also promote research into corruption both in South Africa, the SADC region and possibly elsewhere on the continent.

5.3.1 Faith-based Organisations

Central to community life in many parts of South Africa, faith based organisations have been involved in some of the networking initiatives amongst CSO's. Faith-based organisations were well represented at the government-initiated Moral Regeneration Summit, which took place in May 2002 and focused on the need to combat corruption. The Summit, which also saw the launch of the Moral Regeneration Movement (MRM), followed the Moral Summit on 28 October 1998, where former President Nelson Mandela spoke of the moral crisis facing South Africa and the need for an 'Reconstruction and Development Programme (RDP) of the Soul'.

5.3.2 Membership Organisations

Organised labour the world over has a rich history of promoting whistle blowing amongst its membership. In South Africa it appears that very little is being done to educate workers on the role they can play in whistle blowing and the protection afforded them by recent legislation. Unions have the potential to become a key partner in CSO anti-corruption work. Unions have an organised membership that accounts for a large percentage of this country's workforce employed in the formal sector - they are a key partner to involve.

The South African National NGO Coalition (SANGOCO) has over 2000 members. It is the largest membership-based NGO body. Other than developing a specific code of ethics for NGO's, it has also adopted resolutions at an NGO week in January 2001 which promote the idea of an anti-corruption hotline specifically for NGO's. According to SANGOCO there has unfortunately been little follow-up on these statements of intent and it has thus far also been impossible to monitor the implementation of the NGO code of ethics.

5.3.3 'Other' Actors

Singling out the handful of CSO's with a specific focus on anti-corruption issues is an easy task, but may only give part of the picture. There is likely to be good work which is being done in the field about which little is known. A recent IDASA/Co-operative for Research and Education (CORE) survey of 'the State of Civil Society in South Africa notes that some 62% of respondents run programmes and projects in an area defined as "Transparency and Governance". This was three percent less than those working specifically with "democracy" related issues and performed substantially better than "Land"(44%) and "Housing" (43%). The experiences of such CSO's may provide rich material of good practice from

other organisations in South Africa and the region to draw on. These organisations could also be included in an organic database, managed by the NACFas this would provide a structured approach towards sharing information of what is happening in the field.

5.4 The Media

Perhaps the single biggest source of whistle blowing, the South African media, continues to play an important watchdog function, exposing abuse of power by the private and public sector in particular. Often accused of only seeking to sensationalise a story to ensure newspaper sales, South Africa is fortunate to have a free press. Increasingly also, and perhaps reflective of what is happening on the ground, the press are reporting on "good-governance" related stories. The Media Institute of South African (MISA) reports that journalists are often under pressure from both interest groups as well as those who are alleged to be involved in corrupt activity to report the "right angle". Political pressure is likely to exacerbate the practice of not following up on stories (i.e. a 'sensationalist' style of reporting on allegations of corruption).

Diversity of representation in the media, both in terms of the gender/race/class make-up of commentators but also in the terms of promoting alternative voices, is essential to ensure that the next generation of journalist are well-balanced and informed, as well sufficiently independent to be critical of corrupt practice. In a telephonic interview, MISA indicated that it would welcome efforts to build the capacity of journalists to responsibly report on corruption related issues.

5.5 Sectoral Initiatives

Two CSO's National Anti-Corruption Summits as well as a number of regional workshops organised by T-SA in the run-up to the most recent Summit have been held. Broad resolutions were accepted at the most recent Summit: deliverables will be difficult to measure. Sectoral initiatives have the potential to be a catalyst for developing a network of CSO's active in combating corruption. These organisations share experience and actively co-operate in reaching mutually defined goals. This however requires a level of commitment from CSO's and a shared vision of clearly defined goals, which are to be achieved.

5.5.1 Mobilising and Monitoring

The fall-out from the multi-billion dollar South African arms procurement deal has clouded the South African political landscape. With perhaps the exception of a few NGO's, the allegations of corruption were never seriously picked up as an issue by Civil Society.

Civil society also lacks cohesion in its approach to corruption. Exacerbated by a concern of being seen as overly critical (by government) this seldom leads to any sustained action on the issue by civil society. The allocation of resources is central to securing social justice in South Africa. This alone, should be reason enough for the issue of corruption to be one of the major rallying points for CSO's, as is the case in many other countries.

Corruption threatens democratic gains, impedes development and further skews the divide between rich and poor.

Although performing a watchdog function, CSO's are often afflicted by corruption from within. News like this is less likely to receive media attention than high profile cases involving public sector officials, with some exceptions. Generally, however, these stories are perceived, as being less newsworthy, possibly enabling CBO's to act with less fear of media scrutiny.

CSO's are in part regulated by the requirements of the Non Profit Organisations (NPO) Act as well as voluntary codes such as the SANGOCO code of ethics adopted in September 1997. There is however little indication of what percentage of CSO's has implemented effective mechanisms to minimise internal corruption (such as an internal reporting structure and mandatory code of ethics). An additional suggestion made within SANGOCO is the establishment of a Civil Society Ombudsperson's office to act as a resource for NGO activists wishing to raise allegations of corruption.

5.6 Donors

Generally donors support governance programmes, including programmes which promote transparency and democracy. However, little information exists about the extent of support for anti-corruption work in CSO's by donors, and even less information exists about the extent of corruption within donor programmes and how donors address this issue. Considering

the extent of donor support to the public sector and civil society, there is a need to research this area and to install sufficient mechanisms to deter corruption in such programmes.

5.7 Unions, Professional Associations and Political Parties

The potential for professional associations and trade unions to play an active role has not been developed. These are crucial, active and organised constituencies. Like the business constituency, they have greater capacity to play a role than most sectors of civil society.

In South Africa, as in any modern democracy, the role of organised political actors in providing for the free expression of political interests is of crucial importance. Among those political actors, the political parties stand out as the most powerful agents. They provide for the articulation of political and social interests and values of diverse components of the population. Through elections, they represent the people at different levels of the societal political organisation (e.g. the Parliament, the national and provincial governments and local administration). Thus, political parties have an enormous role to play in promoting and implementing the anti-corruption agenda.

Moreover, the anti-corruption position and reaction of any political party to the incidents of corruption, particularly when it involves its own membership, is considered in public opinion as the real test of the degree of commitment to anti-corruption. This equally applies to the parties in power as to those in opposition, although somewhat higher expectations are placed on the shoulders of the political parties in power. These parties have a particular responsibility to provide for a political guidance and strong support to the Government's anti-corruption initiatives since the Government is composed of them and usually they have the majority in the Parliament.

The political reaction to alleged or proven corruption cases involving the party's members must be decisive, timely and with a very clear "zero tolerance" message. While this might not be a "political problem" when it comes to the proven and legally sanctioned corrupt acts on the part of the party's members, it often becomes an issue when only allegations of corruption are reported. The complication stems from a political dilemma to react promptly (e.g. temporary suspension from the post occupied in the

party political structure or in the government representative body) or to take a "softer" political approach drawing on the principle of legality (e.g. presumed innocent until proven guilty by the authoritative legal entity). Further complication stems from the realities of political power struggles in which unfounded allegations might be used to weaken the political position of the party or the individual in question, particularly if incumbent of a leadership position. While there is no proper "moral and political" recipe for such a dilemma, it is of fundamental importance that political parties exhibit strong a commitment to anti-corruption through various manifestations and full involvement and support to the national anti-corruption initiatives and programmes.

5.8 Conclusions

Strengths:

- * A National Anti-Corruption Forum has been established to bring civil society and business into the campaign against corruption.
- * There is a strong and active civil society, which developed during the struggle against apartheid.
- * The media are more active and are not restricted from exposing corruption at any level.

Weaknesses:

- * The NACF has not been active: there appear to be serious structural problems.
- * Key parts of civil society - the trade unions and professional associations, are not actively involving themselves in the struggle against corruption.
- * Universities and others have not sufficiently become involved in applied and concrete research into corruption and how to fight it.
- * Reduction in budgets has led to a shortage of experienced investigative reporters in the media. With some exceptions, the media as a result tend to dwell on easy public sector corruption stories without analysis.
- * Corruption occurs frequently in civil society organisations, which undermines their ability to act as watchdogs.

- * There is little evidence of what many NGO's and CBO's are doing at a local level to combat corruption.

5.9 Recommendations

Many civil society organisations have made a positive impact in their efforts to combat corruption. This can be seen in their contribution to policy discussions, research expertise, monitoring, raising awareness and assistance in keeping the issue of corruption on the public agenda, despite a host of pressing competing needs. However, in spite of their good contributions, CSO's could play a far more active role in combating corruption.

In an ideal situation, CSO's serve as watchdogs. They also attempt to engage with, and are welcomed by, the public and private sectors concerning broader systemic approaches to combating corruption. Beyond what may be considered a long-term goal, the following recommendations may promote CSO participation in combating corruption in South Africa:

Combating corruption is central to any broad developmental goals and CSO's should be encouraged to include anti-corruption measures in their activities. Combating corruption effectively will require the political will from CSO's to do so: this is a necessary requirement to ensure broad ownership of the issue, and not only a few 'expert' organisations.

Research is required outlining what NGO's and CBO's are doing at a local level to combat corruption and this information must be shared amongst other CSO organisations. The HSRC/TSA database could provide the foundation for an organic database, which could be managed by the NACF providing an overview of all the CSO actors are active in this field. Good practice is a tool, which can stimulate CSO's into considering new approaches to combating corruption.

Whistle blower training, media workshops and information regarding new anti-corruption initiatives (i.e. blacklisting guidelines and prevention of corruption legislation) should be encouraged. CSO's have great potential to act as 'multipliers' throughout society. CSO's can make an important contribution to raise public awareness of what can be done to combat corruption.

NGO's and CBO's in co-operation with donors should be encouraged to ensure that internal anti-corruption measures are effectively implemented.

CSO's need to utilise existing networks to ensure that corruption retains its position on the national agenda as well to encourage co-operative research and advocacy campaigns. Nationally CSO's have a role to play in ensuring that initiatives such as the NACF are functioning effectively.

The measure of success for any new piece of legislation (such as the Prevention of Corruption Bill) or policy document (such as the Public Sector Anti-Corruption Strategy) must be effective monitoring of implementation by civil society institutions. This is not only to give real effect to these documents, but also to lend them a sense of legitimacy, as they become instruments with which the public actively engages.

An effective long-term anti-corruption strategy will depend on South Africa's policy-makers being sensitive to, and understanding the changing demands for anti-corruption initiatives domestically. Equally South Africa will have to continue to learn from international good practice. In this respect Civil Society provides research expertise which can bolster government's limited research capacity. CSO's need to jointly develop a research agenda and researchers should be sensitive to the research needs of the public sector.

The NACF should play a key role in ensuring that business and civil society develop their role in the national campaign against corruption. The NACF is currently ineffective and may need to be renewed.

The potential of professional associations and trade unions are crucial, active and organised constituencies. Like the business constituency, they have greater capacity to play a role than most sectors of civil society and their ability to play a more active role must be developed.

The role of political parties in the prevention and fight against corruption is crucial. Anti-corruption political culture must be embraced by the political parties' programmes and practice in dealing both with corruption in its own ranks as well as in governmental representative bodies and business sector.

6. ETHICS AND AWARENESS

INTRODUCTION

It cannot be expected of public sector officials or others that they are vigilant in combating corruption unless there is a commonly accepted set of ethics, which serve as the ground rules. All sectors of society have a duty to ensure that children and adults alike know what is right and what is wrong. A national system of ethics must be clear on what constitutes corruption.

An Ethical Framework is essential for social and economic development. It is common knowledge that corruption promotes the wrong developmental and investment choices. It encourages competition in bribery, rather than competition in quality and in the price of goods and services. It inhibits the development of a healthy marketplace and distorts economic and social development. Moreover, evidence shows that if corruption is not contained, it grows exponentially. As soon as a pattern of successful bribery is institutionalised, corrupt officials demand larger bribes resulting in market inefficiency.

Strategic consideration 6 in the Public Sector Anti-Corruption Strategy deals with the management of professional ethics and emphasises that coherent processes and mechanisms to manage professional ethics are essential in the fight against corruption. Specifically, this consideration calls for a renewed emphasis on managing ethics, including the establishment of a generic ethics statement for the Public Service that is supported by extensive and practical explanatory manuals, training and education.

This Chapter provides an overview of the current ethical framework which informs organisational behaviour in South Africa, including the Code of Conduct for the Public Service that is issued by the Minister for the Public Service and Administration. It also assesses the programmes, which have been initiated to improve professional ethics in both the public and private sectors, and highlights some of the challenges which organisations are grappling with.

6.1 Ethics Frameworks

In 2001, the Office of the Public Service Commission, in conjunction with KPMG and Transparency South Africa, undertook a national ethics survey,

" Ethics in practice". The purpose of the survey was to measure the extent to which South African organisations (public service, private corporations and civil society) have succeeded in establishing certain basic ethics management practices. It was the first survey ever designed to provide a snapshot of current ethics practices in South Africa.

It was not intended to be a comprehensive measurement of either the quality or success of these practices. No judgement can therefore be made about the general "state of ethics" in South Africa since the sample comprised of 166 respondents - 30 respondents representing the public sector, 76 respondents representing the private sector and 60 respondents representing civil society.

The survey focused on assessing:

- * Initiatives in managing for ethical practice such as ethics documents, ethics related evaluations, responsibility for the ethics function in the organisation, resolution of ethics problems, reporting mechanisms, conducting ethics training, performance evaluation and risk assessments;
- * Future ethics management; and
- * Specific public sector issues.

In summary, the survey revealed that although professional ethics are well understood at senior management level, many South African organisations (spanning all sectors) have not been able to integrate ethics management practices into their existing management processes.

The main findings can be summarised as follows:

- * Most respondents stated that they have a basic ethics infrastructure (such as codes of conduct and whistleblower protection) in place in the organisation. 84% reported the existence of written documents that outline the organisation's values and principles. However, it is important to note that several disturbing trends show that this infrastructure is too basic and therefore ineffective;
- * Some 54% of respondents indicated that their organisation has a confidential reporting mechanism; and

- * It appears that many organisations do not acknowledge the importance of assigning a senior level manager to have ethics responsibility for the ethics programme.

More broad-ranging ethics management strategies and procedures are lacking:

- * Ethics training is too brief to be effective and also is not focused on important groups of employees, such as new entrants and managers;
- * Some 27% of the respondents indicated that new employees are trained in the application of the organisation's code of ethics;
- * Some 13% said that new employees are taught ethical decision-making skills;
- * Some 12% indicated that new employees are assisted in integrating ethics into their everyday activities; and
- * Many organisations have not assigned a senior manager to handle the ethics responsibility.

These trends imply that some organisations pay lip service to ethics, since these results reveal little commitment to ethical practice. The existence of a Code of Conduct means very little until employees know how to use it.

- * In most cases, ethics criteria do not form part of performance, reward or promotion criteria;
- * Ethics-related evaluations are present in about 50% of the organisations. One can expect that this will increase when the full implications of both King II (private sector), and the Public Finance Management Act (public service) and the civil society codes of ethics such as the code of ethics of the South African Non-Governmental Organisation Coalition (SANGOCO) become more apparent. The need for meaningful ethics practices, for example, is stressed in the King Report on Corporate Governance. The report's emphasis has shifted from merely requiring a code to clearly communicating how organisational integrity is achieved. While compliance with a code is important, it is only one element of a much bigger process;
- * Ethics was reported to be part of organisational risk assessment in just more than half (56%) of the participating organisations. From the

- survey, it is clear that financial risks still override reputational risks when it comes to determining ethical priorities;
- * Approximately 50% of the respondents indicated that their organisations have an explicit strategy focused on promoting ethical values and practice in day-to-day activities. This indicates that a lot of work remains to be done in convincing organisations of the importance of integrating ethics management practices as an integral part of all processes within the organisation.

The survey also reveals the issues with which organisations are grappling the most. Fraud and theft, security of information, financial management procedures, racial discrimination and workplace safety are seen as the most critical ethical issues facing organisations.

6.2 Codes of Conduct

The White Paper on the transformation of the Public Service (1994) made provision for the development of Codes of Conduct in the workplace in order to uphold the values which had been agreed upon as essential in promoting high standards of professionalism in a free and participatory democracy. Subsequently, the Constitution (1996) endorsed this view by prescribing the values and principles of public administration.

The then Public Service Commission developed a Code of Conduct, which was promulgated in 1997. It was intended that this Code of Conduct would be made known through an intensive workshop programme throughout the public service, and so would be the vehicle to operationalise professional ethics in the public service.

The PSC conducted workshops with national departments and a workshop programme for Provincial Administrations, which involved Premiers, MECs, and Directors-General. The primary purpose of the workshops was to inform managers about the contents of the Code of Conduct and to generate practical ideas for its implementation. The workshops were attended by well over 800 managers, who were responsible for cascading the outcomes to all levels of the departmental administrations. Evaluations of the workshop programme found a high level of satisfaction amongst participants with the quality of the workshops.

At each workshop the Commission also assessed the progress already made by the participating departments in the implementation of the Code

of Conduct. In terms of the surveys, some 80% of departments indicated that they had already implemented the Code of Conduct. The majority of departments had implemented the Code by taking the following measures:

- * General discussion sessions, workshops and seminars
- * In-service training;
- * Distribution of brochures, pamphlets, placards and newsletters;
- * Conducting road shows and radio and TV discussions; and
- * Officials sign for the receipt and acceptance of the Code of Conduct. Thereafter, copies are placed on each official's personal file.

The positive way in which the code has been received at both provincial and national levels of governance is indeed indicative of the impact which professional ethics has made generally and in the public sector in particular.

Successful training events and workshops specifically tailored to deal with anti-corruption issues have been conducted throughout the country and the code has been translated into all the official languages, and into Braille. An explanatory manual on the code was produced in 2001.

The training of managers in corruption prevention has taken place at the University of Pretoria. Over 50 managers/trainers participated in the programme devised in collaboration with the OPSC.

Explanatory Manual on the Code of Conduct for the Public Service

The Explanatory Manual on the Code of Conduct for the Public Service was produced by the Public Service Commission to explain more fully the contents of the Code of Conduct. It serves as guide to employees to understand and resolve ethical dilemmas in their daily work. It has five focus areas:

- * Serving government;
- * Serving the public;
- * Professionalism and integrity;
- * Conflict of interest; and
- * Working in the service

One million pocket-sized booklets have been produced by the Public Service Commission for distribution to all public servants.

The Explanatory Manual aims to promote practical understanding of the stipulations in the Code of Conduct. The manual will also serve as an aid in the development and teaching of short courses for employees, particularly at the induction stage.

Copies of the Manual have been sent out to all the departments with a directive that they should:

- * Conduct training on the Explanatory Manual to enhance a spirit of ethical awareness;
- * Ensure that each public servant receives his or her individual copy of the Explanatory Manual for which the acceptance and adherence form are signed; and
- * Place completed forms in employees' personal files for record purposes.

6.3 Ethics Framework for Parliament

The South African Parliament has established a Joint Committee on Ethics and Member's Interest, whose functions are to:

- * implement a code of conduct for members;
- * develop standards of ethical conduct;
- * serve as an advisory and consultative body, both generally and to members, and
- * review the code of conduct.

The Joint Committee has issued a Code of Conduct as well as a system for the disclosure of members' interests. The disclosure system provides for public disclosure of shares and other financial interests, remunerated employment outside of Parliament, directorships and partnerships, consultancies and retainerships, sponsorships, travel, land and property, gifts and hospitality, benefits and pensions.

6.4 Ethics Training

The South African Management Development Institute (SAMDI) is primarily responsible for public service training. SAMDI has integrated ethics training into all their training programmes, and will present specific ethics training for managers as from 2003 as part of the Presidential Strategic Leadership Development Programme.

The Public Service Commission, in conjunction with the University of Pretoria, has developed a training programme on corruption prevention, with a focus on Ethics. This programme has been presented in 2001 and 2002 respectively. The majority of the employees who attended were senior managers from the South African Public Service, the private sector and civil society.

6.5 Conclusions

The Code of Conduct and the Explanatory Manual, the National Ethics Survey which the Public Service Commission undertook in collaboration with KMPG and Transparency South Africa and the research on the existence, functioning and management of hotlines, which was conducted in 2001 and 2002, illustrate the impact of professional ethics awareness on the public service. The development of whistle blowing mechanisms and the management of the asset register are indicative of the meaningful contribution this ethics principle is making to professional integrity and excellence.

However, managing discipline in the public service, reluctance by some senior managers to take disciplinary action against employees who have violated ethical standards, lack of encouragement of employees to blow the whistle on unethical conduct in the workplace, and poor integration of ethics management practices as an integral part of all processes within the public service have become major weaknesses.

Strengths:

- * The National Public Sector Anti-Corruption Strategy emphasises the need for more active ethics management;
- * Most public and private organisations have some form of Ethics Code;

- * A Code of Conduct for the Public Service has been developed and communicated, with training and manuals. Most departments have implemented it;
- * An Ethics System and Code of Conduct for Parliament has been implemented.; and
- * Senior management members in the Public Service are required to disclose their interests.

Weaknesses:

- * Many organisations have not integrated ethics management into their existing business and management processes.
- * Financial risks are still given far more attention than reputational risks.
- * There is a lack of full disclosure of interests both in Parliament and in the public service.
- * Reluctance to enforce ethics codes is a problem in the public service.
- * These measures do not include local government and many organs of state.

6.6 Recommendations

- * Public service unions must be mobilised to advocate professional ethics to members.
- * It is essential that the employer as personified by executing authorities at the political level and public service managers at all levels create an appropriate environment in which values are established and exemplary models set for emulation by all employees.
- * Management support is crucial because management attitudes play a significant part in shaping the organisational ethos of a work environment.

7. RESEARCH AND ANALYSIS

INTRODUCTION

This Country Assessment is the first in a series. It is intended to provide a baseline against which the progress of the National Anti-Corruption Campaign can be measured. In the first instance, the focus will be on the outputs and outcomes of the Public Sector Anti-Corruption Strategy. In order to be able to combat and prevent corruption effectively, it is necessary to know as much as possible about it:

- * Where it occurs
- * How it occurs
- * Who is involved
- * Why is there an opportunity for it to occur?
- * What the trends are

As has been pointed out earlier, there is no central database of detected corruption incidents or cases, or of suspected corruption, or of studies of systemic weaknesses.

Almost all of the work that has been done on the quantification of corruption has been based on perceptions - of households, of business, of elite groups, of experts. Little has been done to relate perceptions to actual experience. Perceptions are often unreliable. For example, the perception of public safety in a locality is strongly influenced by the extent to which the area is well managed, municipal services are delivered efficiently, by-laws are enforced and there is generally a sense of order.

It is very likely that similar factors influence the perception of corruption. In a country with a relatively low level of corruption, perceptions of corruption, like those of crime, are often based on what happened to a friend of a friend, rather than on direct experience. Most people interviewed aren't able to cite an example where they were themselves subject to corruption. Further, the perception surveys do not capture the extensive work, which has been done to establish a comprehensive and effective legal database, or to strengthen departmental capacity to deliver services and to deal with corruption.

The Government now intends to focus on relating experience to perceptions, in order to make the measurements more meaningful. The work streams of the NPSACS identify the collation of information as a

priority. As a start, the DPSA with the ODC commissioned four surveys for this report:

- * A Household Survey;
- * A Business Survey;
- * Public Administration Survey; and
- * Client Satisfaction Survey

A series of Focus Groups were also conducted with specific interest groups. The surveys have revealed interesting results about the incidence of corruption. They have also revealed where there are serious gaps in knowledge. From the analysis in this section of the report, conclusions may be drawn regarding which parts of the Country Assessment should be repeated regularly (and how often) in order to be able to realistically map the trends in corruption. It is important to understand which sectors of the economy and society should be surveyed regularly, and where work should be done on the actual experience of corruption.

It is difficult in this first Country Assessment to identify any trends with any significant level of confidence.

Some studies of corruption have already been carried out by the Criminal Justice System, by Government, by NGOs and research organisations, and by Universities. The report attempts to assess what lessons have been learnt: as well as areas where further research is required.

7.1 Methodology

While the Country Corruption Assessment certainly provides a more comprehensive, baseline analysis of corruption in South Africa than previous surveys, it is subject to certain limitations.

Cognisance needs to be taken of the following:

- * There may be discrepancies between survey respondents' perceptions and the factual reporting on corruption. While this report provides some depth to the perception surveys, it was not in the position to study in depth actual cases of corruption, nor particular sectors.

- * It is important to take into account the loss of some indicators through missing responses. The potential for questions being misunderstood needs to be noted, particularly in the areas where self-administered questionnaires were used.
- * The attempt to present a comprehensive assessment was severely hampered by a lack of information from the business and civil society sectors, resulting in a strong public sector bias in the assessment.

In the light of the above limitations, the report has drawn broader trends from the data as opposed to drawing too much inference from single, stand-alone variables. Further in-depth research needs to be undertaken to promote a better understanding of some of the issues raised within this study, and to fill some of the gaps identified by this study.

7.2 The Experience and Perception of Households

7.2.1 The National Victims Survey

The National Victims of Crime Survey carried out in 1998 by Statistics SA for the Department of Safety and Security, asked 4000 individual respondents over the age of 16 in 4000 households whether they had personally experienced a range of crimes, including corruption by public officials, during 1997.

Approximately 2% of the respondents had personally experienced corruption by public officials during 1997. Of those who responded positively to this question, some 25% had experienced more than one incident of corruption. In the five-year period 1993-1997, some 4.2% of the respondents had personally experienced corruption by a public official. Given that corruption often involves both a member of the public and a public official, it is likely that these results under-state the real incidence level.

7.2.2 The International Crime Victims Survey

The International Crime Victims Survey (ICVS) carried out under the auspices of the United Nations Interregional Crime and Justice Research Institute (UNICRI) in more than seventy countries world wide, was administered by UNISA in 1993, 1996 and 2000. The survey was administered in Johannesburg. The respective samples were 988, 1006

and 1400. In all three surveys, corruption emerged as something that had been experienced by respondents.

Rates for victimisation are:

1992	1996	2000
6.7%	7.6%	13.3%

In all three surveys, police officers were perceived as being the public officials who were the most vulnerable to incidences of corruption. Moreover policemen were also perceived as the public officials most likely to be involved in corruption.

Reporting levels of corruption have increased in South Africa during the period 1996 - 2000. Reporting corruption to police has increased from some 3% to 6% when it comes to reporting to the police; and from 2% to 9% in terms of reporting corruption to other public agencies.

Nevertheless, more than half of the respondents contend that it is now more difficult to "get the right official to deal with a problem" or to "get a fair treatment".

7.2.3 The Markinor Omnibus Survey 2001

During October 2001 a number of corruption questions were included in the Markinor Omnibus survey. This sample consists of respondents: 2000 metropolitan and 1500 rurally based. The results were weighted and projected onto an adult sample of South Africans over the age of 16.

Respondents were asked:

During the past 12 months, has any government or public official asked or otherwise made it clear to you or anyone in your family, that he/she expected money, a present or a favour (i.e. more than the official charge) in order to get the following:

	Category	Yes	No	Don't know
	Any	10.8%		
1	Job	4.4%	91.6%	4.1%

2	Pension or other welfare payment	2.3%	93.5%	4.2%
3	Electricity or water	3.2%	92.5%	4.4%
4	Housing or land	2.6%	92.2%	5.1%
5	Medical care	1.0%	93.9%	5.1%
6	Schooling	1.7%	93.8%	4.5%
7	ID document, passport, birth or death certificate, other documents or licences	3.2%	92.2%	4.6%

The overall positive response of 11% is higher than that found in the National Victims of Crime Survey in 1997 (2%), but is not directly comparable since it refers to the experience of anyone within the respondent's family. It also is not clear whether respondents would have distinguished between bribery in order to obtain a public sector job, rather than a private sector job. (There is some bribery of personnel officers within the private sector to obtain jobs, especially with respect to unskilled or semi-skilled jobs).

The table shows that the most common requests for bribes occur in job seeking, in obtaining municipal services (electricity and water) and in the services provided by the Department of Home Affairs (identity documents etc.) This concurs with media reports of corruption as well as some regional surveys.

The respondents who provided positive answers to this question were most likely to be male, African, single with some high school education, aged under 45, living in a rural area. These results are not surprising given the very high unemployment and relative scarcity of municipal services in non-urban areas and historically disadvantaged urban areas.

Respondents who provided a positive answer to the previous question were asked: Did you or anyone else report this incident to any public agency, for example the police?

Yes	11.2%
No	79.3%
Don't know	9.4%

Of the respondents who had experienced corruption, some 11.2% reported the incident to the police. The reasons for not reporting corruption, were not recorded.

Respondents were asked: "How likely is it that a person in need of services from Government to which he/she is entitled to would have to offer money, a present or a favour (i.e. more than the official charge), to get it from:

	Category	V. Likely	Likely	Unlikely	V. Unlikely	Don't Know
1	Customs official	6.6%	16%	23%	32.5%	21.9%
2	Police officer	14.7%	22.4%	20.3%	29.5%	13.2%
3	Home Affairs	9.6%	17.6%	22.4%	31.9%	18.6%
4	Local Govt official	9.4%	18.8%	21.1%	32.2%	18.6%
5	Tax/revenue	4.2%	9.4%	24%	37.2%	25.2%
6	Doctor/nurse	4.2%	11%	25%	42.5%	17.4%
7	Teacher/Professor	4.4%	12.7%	25.4%	40.9%	16.5%
8	Official in court	9.8%	16.4%	20.2%	34.3%	19.3%

The perception of the likelihood of corruption is considerably higher than the actual experience of corruption by public officials. Police officers, local government officials, officials of the Department of Home Affairs and court officials are perceived to be the most likely to be corrupt. Doctors, nurses, tax officials and teachers are perceived to be the least corrupt.

A further question was asked which bears on the same issue:

What is your interpretation of the seriousness of corruption in South Africa? With which one of the following statements do you agree most?

Statement	Agree
South Africa has a lot of corruption and it is one of the most serious problems the country is confronted with	41.1%
South Africa has a lot of corruption, but this country is confronted with other, more serious problems	39.1%
South Africa does not experience a lot of corruption, but it is still one of the most serious problems the country is confronted with	11.6%
South Africa does not experience a lot of corruption and it is not among the serious problems the country faces	2.9%
Don't Know	5.2%

Some 41% of respondents felt that corruption is a very serious problem in South Africa. Respondents who were of this opinion, were likely to be aged above 35 (44%), employed (45%), with a tertiary education (48%), from the Indian (54%) and White communities (54%) and earning in the bracket R8000-12000 per month. This is consistent with the pessimistic view, which is commonly found in these communities in surveys on crime and police effectiveness. Those who believe that there is a lot of corruption, but there are more serious problems are likely to be young (16-24: 43%), with a tertiary education (43%) unemployed (40%) or earning above R12000 per month. Still some 80% of respondents think that there is a lot of corruption in South Africa.

Respondents were asked:

How well would you say government is handling the following?

	Total very / fairly well	Total Not very / at all well	DK
-			
Reducing the Crime Rate	36.4%	62.3%	1.3%
Fighting Corruption in Government	35.3%	57%	7.7%
Maintaining Transparency and Accountability	35.1%	46.2%	18.7%

A majority of respondents (62.3%) do not think government is handling the crime rate well. Respondents who expressed this opinion are mainly above 50 years (67%), employed (65%), with a tertiary education (85%), white (93%); or Indian (93%) and in the highest income bracket (95%).

Approximately 35% of respondents feel Government is doing a good job fighting corruption in Government, and 57% believe they are not. Almost 20% of respondents were not able to express a decisive opinion on the issue of transparency and accountability which appears to be more complicated for evaluation than the issues of crime reduction and corruption.

Opinion 99 (an election consortium consisting of Idasa, SABC, Electoral Institute of SA and Markinor) asked a similar question:

	9/98	10-11/98	4/99	10/01
Fighting Corruption in Government				
Very Well / Fairly well	26%	37%	44%	35.3%
Not very/ not at all well	58%	60%	52%	57%
Maintaining Transparency and Accountability				
Very well/fairly well	31%	47%	59%	55%
Not very well/not at all well	44%	47%	40%	38%

There is a high degree of consistency between these survey results.

The results of the Markinor Omnibus Survey, read with the National and International Victims of Crime surveys, therefore imply that there is a fairly low actual experience of corruption by individuals, but there is a perception that corruption is a serious problem and that Government is not doing enough about it. Older members of the White and Indian communities are more likely to be pessimistic.

7.3 Business Survey on Corruption

A survey of corruption amongst businesses was conducted for the Country Assessment during April and May 2002. A computer-aided telephonic interviewing approach was used. The survey covered a nationally representative sample of businesses in South Africa, stratified according to economic sector (determined by contribution of that sector to GDP). One thousand interviews were carried out. A 95% confidence level was used.

Some 48% of those interviewed were directors and general managers, 31% were financial managers, some 14% were in risk or security management, and some 6% of respondents were in the area of Human Resources. 1% of respondents fall into the category, "other". The number

of interviews conducted in Limpopo, the North West, the Northern Cape and the Free State are fewer than 50: the number of respondents is too low to obtain statistically valid predictions. They are thus used as indicative statistics.

The interviews focused on crimes, which had occurred at the business or premises in 2001. There was a particular emphasis on fraud, theft and bribery or extortion. Extortion or protection rackets are often operated by ethnic criminal groups against businesses in their own communities, or against places of entertainment by "bouncer gangs" or security companies which serve a front for criminals. As such, they do not directly bear on the issue of corruption and bribery used in the previous section (corruption of a public official).

Some 52% of those interviewed gave the state of the economy as the most important obstacle, while some 39% named crime as the greatest obstacle (mainly those in the Limpopo and North West Provinces, which have relatively low levels of crime). When prompted, 80% of respondents mentioned crime as a major obstacle, while some 64% mentioned corruption and fraud.

Some eighty four percent of the businesses that formed part of the survey had experienced some form of crime in 2001. Employee theft was the most common (49%). This was particularly prevalent among companies within the manufacturing sector.

Thirty four percent of respondents had experienced fraud by employees, some 24% fraud by an outsider, 15% had been approached to pay a bribe, and 7% had to pay a bribe. Only 4% reported extortion. Both bribery and extortion (usually "protection") are likely to be under-reported because of the implications for the person being interviewed.

The construction industry reported significantly higher incidence of being approached for a bribe, but it reported relatively low figures for the actual payment of a bribe. This is likely to be the result of under-reporting. Relatively high levels of crime in the sector "agriculture, forestry and fishing" may reflect problems experienced within the fishing industry: Organised criminal groups have had a major effect on the industry with the collusion of some Government Fishing Inspectors.

In terms of a UNICRI/UNISA survey conducted in 1998, which focused mainly on wholesalers, retailers and manufacturers, results revealed that some 68% of respondents had experienced theft, 52% theft by employees, 25% fraud by outsiders, 24% fraud by employees and 11% bribery. Although the samples and methods are different and so the results cannot be directly compared, the conclusions are similar. The results for the UNICRI/UNISA survey are based on some 691 questionnaires.

Sixty-one percent of those interviewed in the 2002 survey believed that crime had decreased or remained unchanged over an unspecified period, some 39% of respondents believed crime had actually increased. The UNICRI/UNISA survey indicated that 54% of respondents thought crime had increased in 1998. This is consistent with actual figures for serious crime.

Some seventy-five percent of the businesses polled reported that they were insured against criminal loss or damage. The insurance industry reports that fidelity cover (insurance against fraud, theft by employees or misrepresentation by employees) is under-utilised, which probably means that many companies choose to deal with it quietly to avoid damage to their reputations and make it a calculated part of their risk management assessment.

Respondents were asked to estimate the cost of crime for all cases that they had experienced. (particularly in cases of white-collar crime, these estimates may be inaccurate).

The cost of having to pay a bribe can be relatively high, with 15% over R100 000 and 2% (i.e. 1 respondent) over R1.1 million. 31% of the cases of employee fraud exceeded R100 000: 7% were over R1.1 million, and 23% of outsider fraud cases exceeded R100 000. There were 6 cases, which involved over R1.1 million. Extortion or protection were reported to cost more than R100 000 in 11% of cases (4 cases), with 7% involving over R1.1 million.

12% of respondents stated that they had refrained from making a major investment due to fear of corruption.

Sixty-two percent of businesses agreed that bribery is becoming an accepted business practice. Some 90% of respondents agreed that once employed, bribery opened a company to further demands. Forty-nine percent felt that it is fairly easy to find a government official who will bend

the rules for a bribe. 39% of respondents felt that bribery is a necessary evil for doing business in South Africa, 31% felt most government officials do not accept bribes, and only 14% reported that their company had been approached for a bribe during the past year.

Further research needs to be undertaken to establish a link between the high percentage of respondents who believe that bribery is becoming a necessary part of business in SA, and their actual experience of bribery.

Respondents identified the clearing of goods through customs (75%) and the procurement of goods for government (74%) as activities that are likely to involve bribery. Obtaining business licences or permits was raised by some 68% of respondents; residence and work permits (from the Department of Home Affairs) was cited by some 65%; police investigations were cited by 60%; and procurement of goods for private companies by some 51% of respondents.

As was the case in the Markinor Omnibus Survey, there was the perception that police officers were likely to solicit a bribe (36% of respondents held this view); some 31% of respondents cited customs officials; some 37% cited local government officials; 34%, local government councillors; 32% senior government officials; 29% Home Affairs officials; and 29% by managers or employees from other companies as most likely to solicit a bribe.

Most businesses dealt internally with the majority of crimes involving an employee or occurring internally (i.e. white-collar crime). Some 15% reported a bribe to the SAPS while 6% reported being approached for a bribe. Some 17% of respondents reported extortion or protection to the SAPS; 45% reported employee fraud and some 41% reported outsider fraud. The most common reasons for not reporting, which are similar to those cited in the National Victims of Crime Survey in 1998, are:

- * Not worth reporting (which may reflect lack of confidence in the criminal justice system);
- * Dealt with internally; and
- * Lack of proof

Too few cases of bribery and extortion were reported to the Scorpions or the Public Protector to allow analysis, hence the analysis was limited to the SAPS.

As far as employee fraud or theft is concerned, a lack of follow-up by the SAPS was cited as the major reason for dissatisfaction.

The most common corrective measure proposed by business, is for an improvement in personnel quality and attitude within the SAPS: this was proposed by some 43% of respondents.

The frequency of measure for good corporate governance in the respondent companies is set out below.

Internal corporate governance measures	% of total sample (n=1000)
Executive committee	76
Internal audit function	74
Code of conduct for employees' and managers' interaction with public officials	72
Code of conduct for employees' and managers' interaction with representatives of other businesses	68
Remuneration committee	58
Audit committee	58
Risk committee	57
Non-executive directors	47
Compliance officer	46
Evaluation of directors' performance	38
Specific policy or guideline dealing with bribery or corruption of other companies or the public sector	31
None of the above	1

Only 31% of respondent companies have a specific policy or guideline in place, which deals with bribery or corruption. This is lowest within the construction sector. It is likely to become a serious problem for companies operating outside SA: they may be blacklisted for offering bribes or facilitation payments.

The mining sector is the most advanced as regards codes of conduct.

Ninety-one percent of the businesses have some form of anti-fraud, bribery and corruption measures in place. All measures are under-represented in smaller companies, which employ between 50-100 employees. Internal audit (74%) and risk assessment (67%) are the most common measures. Internal audit and fraud awareness training are under-represented in the manufacturing sector: this sector appears to under-estimate the impact of fraud and employee dishonesty. Construction sector companies are less likely to have Fraud Prevention Plans in place, or Fraud Awareness Training.

Other than the mining and financial service industries, less than half of companies have any form of protection for whistle-blowers, despite the existence of the Protected Disclosures Act. Less than half have a whistle blowing service. Only 48% of respondents had a Fraud Prevention Plan.

Companies with risk management measures in place experienced an average of four crimes in 2001; companies with no risk management measures experienced an average of three crimes. This is probably because the latter were not aware of much white-collar crime occurring. This however, may also be related to company size.

It is clear from the survey that business regards crime as a serious problem: some 64% of respondents cited corruption as problem.

7.4 Corruption in Service Delivery

In May 2002 a study was carried out for the Country Assessment to look at levels of service and corruption within the Public Service. Service delivery sites of the Department of Health and Home Affairs and the SA Police Service in Gauteng and KwaZulu Natal, were visited and service users (clients) and public officials were interviewed. A total of 951 service users were interviewed by enumerators (a response rate of 93%) and 734 public officials completed self-administered questionnaires across the 24 sites (a response rate of 13%). In-depth interviews were conducted with 12 site managers and 12 "higher" office managers representing financial, procurement and human resource units within the departments.

The majority of the clients at the site were Black women: on average, they were 36 years of age. Clearly, this was swayed by the number of women at the health sites. Similarly, the majority of the public officials who completed the questionnaires were also Black women: this was influenced

by the predominantly female occupation of health service provision. These respondents were experienced in the provision of public services, as the majority had been employed for more fifteen years in the Public Service. The bias, which is introduced by the low response rate (13%) to the self-assessment questionnaires, is difficult to evaluate.

7.4.1 Client Responses

The overall impression of service received was positive. More than four-fifths of the respondents indicated that they had come to the site with a seemingly straightforward case. Their case was handled in a just, transparent and fair manner. There was, however, the perception that the service was somewhat slow, particularly in the Home Affairs sites. SAPS appears to offer services of a slightly higher quality compared to that provided by the Departments of Health and Home Affairs. Less than 4.2% of the SAPS respondents interviewed indicated that quality of service was poor, compared to some 12.2% of the respondents surveyed at the Department of Health and 12.9% of those polled at the Department of Home Affairs. Conversely, more than one-fifth (22.4%) of the SAPS respondents versus 14.4% of Health and 16.4% of Home Affairs respondents were of the opinion that services were of a "very good" quality.

Satisfaction with the service was significantly higher than that recorded in surveys among the general population. It is clear then that clients asked about the service they received are much more positive than those who are asked about perceptions not based directly on experience are. This has important implications for corruption surveys based solely on perceptions: most surveys to date have been perception based. The surveys described earlier in this chapter noted that police officials were widely thought to be corrupt, which is not in accordance with these on-site results.

The respondents of the KZN Home Affairs sites were substantially more critical than usual when asked whether or not they perceived the departments to be sensitive or insensitive in the handling of their case. In this instance, some 17.6% of respondents stated that their case had been handled insensitively. Slightly more than one-in-seven (13.1%) of the Gauteng Home Affairs respondents stated the same. The KZN SAPS were rated highly: 96.8% of the respondents believed their cases were handled sensitively. Similarly, close to one-fifth (18.9%) of the respondents who

visited the Home Affairs sites, indicated that they perceived the handling of their case, and the service they received as both rigid and inflexible.

The second biggest concern of the respondents at the Gauteng Department of Home Affairs sites, was the perception that the department was disorganised. Slightly more than one-fifth (21.9%) of these respondents indicated that they believed the department site they had visited had been disorganised. In contrast, the KZN respondents surveyed at Home Affairs sites were less critical, with only 10.1% respondents holding this view. The SAPS sites were viewed as better organised, with more than 93% of the respondents indicating that the department was well organised.

Attitude and an absence of order pose risks: these factors must be addressed in any Corruption Prevention Strategy.

7.4.2 Attitudes of Officials

Despite the apparent lack of equipment and resources to enable officials to carry out their work, more than two-thirds of officials were satisfied that they were doing the best job possible under the circumstances. Public officials, two-thirds of whom indicated that a client had praised them in the past seven days, mirrored the levels of client satisfaction. Both the clients and public officials conveyed the perception that the Department of Home Affairs is struggling more than the Department of Health and SAPS to provide high levels of service.

7.4.3 Procedure Manuals and Rules

The rules and regulations pertaining to the workplace of the officials may be seen as somewhat problematic in that only two-thirds of the respondents consistently stated that there are written down and well defined, implemented on a daily basis and appropriate to their work environment. By the same token, there appears to be a strong perception, particularly in Gauteng, that personnel are employed, promoted and receive pay increases according to criteria that are more strongly associated with their family, political, cultural and personal relationship ties as opposed to good performance, education and ability. It is important to note that there was a group of officials who indicated that they are undecided in their opinions on such issues.

7.4.4 Motivation for Working in the Public Service

The strongest motivating factor for officials in the Public Service was the ability and dedication to serve the public. This was followed closely by the issue of secure employment. There was recognition that work in the private sector is scarce, and that the Public Sector offers a more secure livelihood, despite the reported lack of satisfaction with the salary packages received. However, detracting from this positive sentiment, is that more than one-third of the officials interviewed, admitted that potential access to unofficial funds was a motivating factor. A quarter of the respondents admitted that the chance to gain information, establish connections and experience for use later within the private sector, played a role in their decision to work within the Public Sector at present.

7.4.5 Officials' View of Clients

Within such an environment, there is the perception among more than two-fifths of officials that clients are constantly seeking "back-door" solutions to their problems. This is especially the case in the Department of Home Affairs where more than half of the officials interviewed, expressed this opinion.

More of the Home Affairs as well as Gauteng respondents were of the opinion that clients frequently give gifts in exchange for the provision of quicker service. Similarly, more officials from Home Affairs than the other departments were of the opinion that their colleagues accept these gifts. More than one-third of officials admitted to having been approached by a client wanting to give them a gift in exchange for their services: slightly more than one in ten admitted to accepting this gift. These figures may be biased by the officials low response rate of only 13%.

7.4.6 Corrupt Behaviour

Very few clients admitted to engaging in behaviours that could be considered corrupt. However, depending on their location, clients estimated that between 15% (KZN) and 29% (Gauteng) of public officials are corrupt. More than 10% of the clients indicated that they believe officials expect payment, other than official payment, for services rendered.

When asked whether or not they considered an official doing a family member, relative or friend a favour unethical or corrupt, close to nine-

tenths (88.6%) indicated that they thought it was corrupt to do so. There were no significant variations between the provinces or departments in this regard. Similar trends were apparent when asked whether or not it would be unethical or corrupt if an official did a favour for a stranger in return for money. Ninety-two percent of respondents considered both of these acts equally unethical and corrupt.

The most commonly acknowledged act of bribery as far as a member of the SAPS was concerned, occurred when clients offered bribes in an attempt to prevent an arrest being effected. In this instance, 23 (2.4%) of the respondents admitted to doing so, while some twenty-two, or 2.2% of respondents, admitted that either they or a family member had offered a bribe to misplace a docket.

7.4.7 Reporting of Bribes

While there is a definite willingness to report colleagues and superiors suspected of engaging in corrupt activities, there is a perception that whistle-blowers are not afforded adequate protection: this is clearly a disincentive for fighting corruption. Similarly, there does not appear to be a comprehensively implemented system of reporting corruption within the department. By the same token, clients were not aware of any system for reporting corruption. In fact, most clients claimed that they would approach the SAPS with complaints of corrupt behaviours, sometimes even when the complaint was about SAPS itself.

When asked whom they would report acts of corruption to outside the organisation, the majority of Home Affairs (73.5%) and Health (66.4%) officials indicated that they would approach the SAPS. Even within the SAPS itself, one-fifth (19.6%) of the officials thought they would approach the SAPS to report corruption, although similar numbers stated that they would go to the Anti-Corruption Unit (22.8%) or the Independent Complaints Directorate (ICD) (20.7%).

Suspensions of colleagues accepting bribes appears to indicate a largely individualistic ethos, especially within the Department of Home Affairs, where the preference among officials is for individual assessments as opposed to team assessments. Linked to this, is the fact that there is a strong perception among officials that poor performers are carried along without remedial steps ever being taken. Clearly, there is a reluctance to be evaluated in a team, as poor performers would reflect poorly on themselves. The majority of the officials claim to be somewhat satisfied

with their workplace, although one-third were not at all satisfied. Despite the many difficulties faced, three-quarters of all the officials stated that they were proud to be public servants.

7.4.8 Client Suggestions

Managers have recognised the inadequacy of easy to understand well-defined, regularly updated and circulated rules and regulations governing workplace activities. There is recognition for the need to encourage client feedback. Efforts to implement suggestion boxes have failed thus far, largely due to the theft of the paper and pencils. Site managers indicated that staff needs to be trained and skilled in customer liaison: the standard of infrastructure, including seating, refreshment vendors, toilets and cleanliness were also cited as areas that required attention.

7.4.9 Systems Improvements

Particular effort in replicating good systems aimed at improving service levels and curbing corruption need to be replicated. Examples that need to be replicated include the SAPS POLFIN system used to track daily operating expenditures, and the SAPS PAS procurement system, credited with reducing opportunities for unauthorised interference in the procurement procedure. The Department of Home Affairs has installed a stock control system, which has reduced thefts at all levels.

Certain clinic managers have implemented an unofficial "check-point" system. In terms of this system, managers make unannounced visits to the waiting room to check on clients and staff members. Speed queues for repeat visits or simple cases have reduced waiting times and increased the pace with which services are rendered. Report card systems, a free-call hotline, and real time mechanisms for reporting, feedback and monitoring should be investigated.

7.4.10 Managers' Perceptions of Corruption

When asked whether corruption was problematic within their own institution, all managers believed this was the case. Estimates of untrustworthy staff ranged from 20% to 75%. All respondents believed low-level corruption in the form of bribery was the main activity. Some managers cited cases of higher-level corruption, including theft of stock,

vehicles, and unusual tendering activities contravening procedural guidelines and other forms of nepotism and cronyism as problems.

All respondents were aware that there was supposed to be a National Anti-Corruption line and fax number in place. However none could provide the contact number nor provide an indication of its impact. This suggests that the impact of such a measure has been limited.

Inadequate protection of whistle-blowers, exceptionally slow investigations, cover ups and collusion between staff, unions and politicians reduces the ability to implement charges against acts of corruption.

7.4.11 Labour relations

An area of great frustration for managers, is their own lack of understanding and unfamiliarity with the Labour Relations Act. The fear of exceeding their own authority and contravening the Act, as well as conflicting relations with union representatives, has led to a situation where there is a reluctance to take action against incompetent or poorly disciplined staff or even those suspected of corruption. By the same token, managers were of the opinion that unions need to stop protecting their members at all costs. Instead, they should assist to punish those individuals who contravene the rules and regulations guiding workplace activities and responsibilities.

When asked whether rules and regulations are always strictly enforced regardless of who violated them, some 44.5% of all the officials who responded, were of the opinion that this was not the case. A further quarter (26.8% in KZN and 25.6% in Gauteng) was uncertain, while approximately one-fifth in both Gauteng and KZN respectively agreed with the assertion.

7.4.12 Remedies

While numerous limitations and frustrations are evident in the delivery of services across the three departments, the opportunity to intervene and to improve job satisfaction, morale and the general institutional environment exists. While enhanced control mechanisms and better security efforts will assist in the fight against corruption, it is necessary to engage both client and worker.

According to the officials' perspective, rules and regulations must be updated and circulated in an appropriate format to all staff. Reward for good performance should be instituted, and channels created in which to air grievances. Career path reward systems for select officials should be outlined to ensure staff retention.

7.5 Transparency International (TI) Perception Indices

TI publishes an annual Corruption Perception Index. The 2002 index ranks 102 countries. The index is a poll of polls: it reflects the perceptions of business people and country analysts, both resident and non-resident. As such, it is perception-based. The 2002 Index draws on 15 surveys from nine independent institutions.

South Africa appears at number 36 (out of 102 countries), with an integrity score of 4.8 out of a possible 10. As such, South Africa is ahead of Tunisia, Mauritius, South Korea, Greece, Brazil and Poland, but behind Namibia, Taiwan, Italy, Hungary and Malaysia. A score under 5 is deemed problematic.

South Africa was rated 38th with a score of 4.8 in the 2001 Index. The TI Index appears to be slightly more pessimistic in its evaluation of SA, than local business in SA. The business survey carried out for the Country Assessment is more closely linked to experience, and so presents a far more balanced picture.

A survey in South Africa initiated by Gallup International in 2002 interviewed 57 senior executives from the private sector such as the bank groups, chartered accountants, and foreign and major national companies. More than half of these individuals (54.4%) stated that the level of corruption had increased mainly due to the deterioration of the rule of law, and inadequate controls on money laundering. These respondents believed that medium and smaller companies (less than R500 million turnover) are most likely to rely on bribery in order to gain or retain business in South Africa (58%). If they had to address corruption, they would start with the SAPS (40%) and South African courts (18%).

7.6 Focus Groups

For the Country Corruption Assessment, five focus groups were conducted with representatives from:

- * The media;
- * Trade unions;
- * Legal sector - magistrates;
- * Legal sector - prosecutors; and
- * Members of Parliament.

A Discussion Guide was used to elicit spontaneous responses from individuals on certain issues. The results are based on the comments made by respondents during the Focus Group sessions, and must be interpreted as possible trends and patterns. Due to the small number of respondents involved, these results cannot be viewed as representative of all sectors.

Each discussion began with respondents raising what they believe are the major concerns facing South Africa today. The table below summarises the main issues mentioned and the order in which they were ranked by each group of respondents.

Parliamentarians	Prosecutors	Magistrates	Media	Trade Unions
HIV/AIDS	Education/ training	Unemployment/jobs	Poverty	Poverty
Poverty	HIV/AIDS	HIV/AIDS	Health/AIDS	Unemployment/ jobs
Crime	Unemploy- ment/ jobs	Corruption (Emphasis on staffing and other measures to combat it)	Unemploy- ment/Ability to be employed	HIV/AIDS
Unemployment/ job creation	Housing	Education/training	Service delivery	Housing
Corruption	Crime Se- curity/safety	Crime	Racism	Maladministration
Corruption	Ethics	Education	Crime/white collar crime	Fraud
Health care (general)	Crime	Restructuring of governmental systems	Lack of con- fidence in government	Moral decay
Housing	Lack of con- fidence in government	Lack of IT to keep track of transgressors who disappear		

Clearly, issues such as poverty, HIV/AIDS, and unemployment are perceived to be far more pressing than corruption. Many people expressed the opinion that once these issues have been addressed, crime and corruption will no longer be so prevalent.

Some media and trade union representatives said they would not rank corruption among their top 5 concerns for the country.

7.6.1 Definitions of Corruption

Respondents in the various groups suggested a number of definitions of corruption, but the common thread that ran through all the definitions, is that corruption always involves some degree of dishonesty and it is engaged into for the purpose of self-enrichment. Most agreed that corruption appears to be driven by greed and often involves an abuse of power (position).

Parliamentarians added that corruption could involve "deliberate omission" and that the reward need not necessarily be monetary, but could also be favour, power or position. They also said, "It is difficult for one individual to be corrupt (in isolation)". Some media group participants said corruption could be about "making the system work for some people and not for others".

Respondents in the trade union, media and prosecutor groups, said providing a clear understanding of what constitutes corruption is complicated by the fact that what is acceptable and commonplace in business, can be viewed as unacceptable when taxpayers' money is involved.

Parliamentarians expressed a similar belief and said the difference is that "the mandate of the private sector is different to the mandate of the public sector". Private sector companies may offer prospective clients business trips in order to curry favour and to clinch a deal. However, it is considered unacceptable for public officials to be 'courted' in this way. In the first instance, it is the company that would stand to benefit, while in the latter case, the individual public servant would stand to benefit.

One person may view nepotism as an act of corruption, while another may regard it as a benevolent act of taking care of a brother.

An extensive list of examples of corruption was provided across all of the groups. Examples include:

- * Nepotism and favouritism, especially in political circles / the appointment of unqualified people, sometimes for a cut of their salary (Parliamentarians)(Trade Union)(Media)
- * Grants to welfare organisations are used by clerks for their own needs / misuse of taxpayers' money / misadministration / personal use of trade union funds (Prosecutors)(Parliamentarians)(Trade Union)
- * Bribery / bribes to have sentences reduced / to have traffic fines squashed / to have case dockets lost (Prosecutors)(Trade Union)
- * Theft/taking government property for personal use/stealing/if somebody takes something that is not theirs it is wrong (Trade Union)(Parliamentarians)
- * Sexual abuse/sexual favours in exchange for employment (Prosecutors)
- * Fraudulent qualifications and certificates (Parliamentarians)
- * Ghost workers (Parliamentarians)
- * Passing on sensitive/classified information (Parliamentarians)
- * White-collar crime/fraud (Trade Union)(Media)
- * Kick-backs in business/taking government officials on golf days to get preferential consideration for tenders (Prosecutors)(Media)
- * A lack of transparency (Parliamentarians)
- * The abuse of power/where one family member is enriched because of the position of another (Parliamentarians)(Prosecutors)
- * Private use of state vehicles as taxis, etc. (for personal profit) (Trade Union).

7.6.2 Perpetrators of Corruption

For magistrates and prosecutors, taking bribes to manipulate the system can become quite tempting because it is possible to get away with it: it entails a 'judicial decision'.

"They arrange for a case not to go a certain way. They manipulate the system. Where a person is supposed to get straight imprisonment, the person will get a suspended sentence, or a caution and reprimand where they clearly know that there must be a conviction" (Magistrate).

The magistrates admitted that this is less likely to occur in a regional court: in cases where more serious crimes had been committed, the passing of a

light/suspended sentence would immediately be questioned. There are also mechanisms in place to report this sort of corruption and such cases would be referred for Special Review in the High Court.

Sometimes specific categories of people are implicated in specific types of corruption:

Taxi bosses:

"You are talking big syndicates. You are talking big money. You're talking R200 000 to R500 000" - "They use state organisations and officials to reach their aims. It's an organised thing" (Magistrate)

Policemen accept bribes/co-operate with syndicates:

"People who steal cars have serious connections up to the highest officials in the SAPS. They tell them about roadblocks so they know where to cross the border" (Trade Union)

Traffic officials:

"If you have a R1 000.00 traffic fine, you know it is going to cost you a bottle of brandy" (Trade Union)

Trade union representatives:

Often feel that when defending union members who stand accused of "alleged corruption", they like to win the case in spite of the probability that the accused "may not be so innocent".

All members of Parliament and delegates serving on different committees can exercise influence in the decision-making process at all levels. Parliamentarians do have access to different people in senior positions, so they do have a lot of influence that could be misused and abused.

7.6.3 Extent of Corruption

Respondents agreed that corruption has become very widespread in South African society. There are many grey areas since there is not any clear definition of the rules about what constitutes corruption. There also

appears to be an unwillingness to declare for oneself where right ends and wrong begins, resulting in a pervasive attitude that "the first opportunity that they get to take part in (corruption), they will". Some trade union representatives said that in the public service it is regarded as "okay" to do wrong things. "Certain levels of corruption are acceptable".

There is also a view that corruption has become part of the "national psyche". Most people are very aware of corruption and have developed their own agenda in terms of either:

- * Turning a blind eye to corruption because they are doing the same;
- * Trying to prove the government is using corruption as a political move;
- * Wanting to be informed as it is the 'in'-thing to do; and
- * Self-enrichment

In a number of groups, respondents said high and low-level corruption of civil servants is prominent in the news: they said it is something that the public was keen to know about. It is easy to report on, since few journalists are qualified to look into white-collar crime and the average reporter doesn't have the time to investigate.

The media is often alerted to cases where civil servants are involved in corruption by a colleague or member of the public who has evidence of their involvement and chooses to pass this on to the media rather than report it internally.

"It is easy to write about (public service corruption) because they give it to you with documentation and everything" (Media)

"There is nothing juicier than a government scandal" (Prosecutors)

"The moment it is corruption with public money, then everyone is interested" (Parliamentarians)

Parliamentarians were of the opinion that when corruption takes place within the private sector, it is within a company and is often dealt with at that level - "it is found out, action is taken and that's it". They accused the media of "deliberate negative projection of the public sector", and of creating the impression that corruption is a daily thing in the public sector.

In their opinion corruption is spoken about a lot and is widely reported on, but they do not personally see a lot of corruption.

"There is more for the ear than for the eye when it comes to corruption" (Parliamentarians).

In terms of their own positions as members of Parliament, a few said with good planning, it would be possible to exert influence on certain Committees and so sway decisions. Those who feel they aren't being paid sufficient, might be tempted to find ways to supplement their income by accepting bribes. Respondents suggested that it is 'the cabinet members who are most likely to be "exposed to a lot of things that form corruption"'.

The general consensus is that rules and regulations such as the Register of Members' Assets and the Ethics Committee aren't working particularly well. The onus is on each individual to declare all business interests, but "certain people do not report and don't put everything into it".

Members of Parliament who are aware of corruption within the ranks feel, that they are supposed to act, but all too often when a corrupt official is exposed, party discipline is imposed. Nonetheless, Parliamentary Oversight is believed to have the power and (to use it) to investigate reports of corruption at all levels.

In theory, Portfolio Committees have the power to conduct their own investigations, but Parliamentarians complained that they often don't have the capacity to do so.

"We have absolutely no help. We have no researchers that report to the committee" (Parliamentarians)

In terms of corruption within media circles, most of the people in this group said it is not a problem. A few mentioned being taken on outings by government officials so that they would report favourably on them. Sometimes reporters are threatened with legal action for defamation of character, but generally, it appears that the media likes to believe that they are playing a positive role in exposing corruption.

Prosecutors were asked whether they are aware of bribery or corruption taking place within their own environment. Some said, "Yes", in the form of traffic fines that are squashed or case dockets that disappear. Where such

cases are reported, most believe that those involved are being disciplined. While prosecutors are well-placed to accept bribes, the general feeling is that they wouldn't have an incentive to defeat the ends of justice.

"I couldn't imagine why a prosecutor would take a bribe. Prosecutors aren't badly paid. They are all well educated" (Prosecutors).

From time to time, liquidators have been known to make "special donations" to the staff of the Master's Office and some prosecutors believed this practice is designed to influence appointment of liquidators: some described it as one of the grey areas for prosecutors.

7.6.4 Causes of Corruption

The main factors perceived to be at the root of the problem in South Africa were listed as:

- * Poverty: people who are struggling to survive may easily be drawn to corruption as a means of survival. Many also commented that it is easier to bribe someone, who is not earning enough, as they see it as a means of supplementing their income.
- * Mind-set: there is evidence of decay of moral values in general, within society. In a number of groups, respondents said the way in which the average South African views corruption, allows corruption to be practiced. Corruption is often condoned, rather than reported. Trade union representatives said they believed the average man on the street would buy stolen goods offered at a good price and actually feel good (even boast) about getting a bargain.

"All of the stolen cars ... somebody buys them" (Trade Union)

The situation is exacerbated by the fact that the emphasis is generally on the person who accepts the bribe: its is seldom on the person that offers it. Some said that because of media coverage, the public sees a case of a government official receiving a bribe in a very serious light. Placing the blame on the businessman concerned, might cause a serious outcry.

"If somebody bribes a policeman and you prosecute the guy that bribed... and not the policeman, you will never hear the end of it. So you prosecute the poor policeman and use the other guy as a witness. In fact he is not better than the policeman" (Prosecutors)

"You're reinforcing this belief that the guy doing the bribing is not so bad, that is business. Taking the bribe, that is criminal" (Prosecutors)

- * Lack of effective control mechanisms to combat corruption. If people are not caught and prosecuted, they will continue with the practice and others will follow suit. People believe they can manipulate the system and get away with it: they often manage to beat the system and get away with it.
- * Magistrates said they experience some difficulty in prosecuting at times when the prosecutors and investigating officers assigned to handle cases are not trained sufficiently to deal with the cases effectively. The entire process can thus become bogged down and ineffectual.
- * Prisoners awaiting trial have free access to all manner of contraband and frequently escape as a result of corruption in prisons. Court dockets are "misled" when prosecutors are bribed and many misdemeanours are simply never brought to trial and punished

7.6.5 Fighting Corruption

Respondents in each of the groups came up with ideas that they believe would effectively fight corruption if they could be implemented.

Trade Union Representatives

A few of the participants in this group had been involved in an initiative aimed at stamping out corruption a few years ago: they described the initiative as "quite successful". These trade unionists said that any meaningful reform "needs to start from the top", and that lower level workers will only be thinking twice about corruption when the people they look up to are setting the right example. They tended to blame government officials more than anyone-else for setting a bad example.

"If you don't deal with it from the top, it's no use even trying to deal with it" (TU)

Trade unionists also suggested the following ways of fighting corruption:

- * Eliminate the market for resale of stolen goods;

- * Deal decisively with those convicted of corruption and make an example of them;
- * Educate people not to engage in crime because of the negative results;
- * Government should play a clear role by cleaning up its own house first;
- * Put a system in place that works for reporting corruption and make sure that hotline numbers for reporting offenders work. At present, one respondent said there are expensive posters "on every single notice board in the public service that display a telephone number that doesn't work"; and
- * Embark on a national advertising campaign with a message about the positive effects of reducing corruption so that people see less corruption as having a positive impact on themselves.

Some also said there is a need for transparent channels for dealing with officials suspected of corruption. A case was cited where, being part of an investigating team, one member was told, "Don't investigate that person because that person is politically connected and nothing is going to happen, or you will get death threats".

7.6.6 Media

These respondents believe a strong press has a role to play in combating corruption, particularly where reporters have gained the trust of whistle-blowers and there is an established track record of credibility. This was mentioned particularly in the light of the distrust within in the police force.

"People believe that if you tell the police about authorities it's covered up. It would be much better if you could encourage a strong press" (Media)

When asked whether Government should be playing a stronger role in this regard, media representatives seemed somewhat disillusioned and said, "how are they going to do anything feasible in this country with so many other needs?" and "I am reluctant to give the government more mandates for social management". One of the main reasons for their disillusionment, is the fact that when syndicates are uncovered, or corrupt politicians exposed, and the press passes the information on to the police, the evidence may end up being investigated by a junior officer who bungles the case. Political parties also tend to protect their own members.

They concluded that Government needs to address this culture. Legislation exists and there are enough people to do the job, but the problem lies with implementation. A few examples were cited where high profile members of Parliament were tried for corruption with very unsatisfactory results.

Respondents emphasised the need for a positive approach to make people believe in the country and to look after it, so that they would ultimately protect its core values. In the opinion of Media representatives, "you cannot legislate core values". Such a worthy cause needs a high profile individual to champion it. In addition, respondents suggested translating the impact of corruption into benefits being lost to the general public:

There is a role for the media in exposing corruption, but these respondents expressed the following concerns:

- * They may be threatened with litigation for defamation;
- * Internal pressure may be put on them to drop certain 'sensitive' stories;
- * Good investigative reporters are expensive and few and far between;
- * Whistle blowers will only leak information to a reporter that they trust (and building trust takes time).

7.6.7 Prosecutors

In order to address corruption among prosecutors, respondents in this group suggested that anyone known to be accepting bribes should be exposed to "public humiliation" and should lose their job. There is a feeling at present that such cases are hushed up.

A three-dimensional approach to fighting corruption was suggested:

- * education about what constitutes corruption,
- * investigation of all reported cases, and
- * expeditious prosecution and discipline for those convicted.

Most believe these steps would help to restore integrity within their own profession. A few mentioned that a Hotline has been set up to report those suspected of corruption: there is also an Anti-Corruption Unit to investigate these cases. A case was cited where a magistrate was reported. Although under investigation for corruption, this magistrate was not suspended. Prosecutors felt this sent out the wrong message.

When it comes to corruption cases, most believe prosecutors are adequately trained to handle these cases. The more complicated cases would normally be handled by more experienced prosecutors. There is a specialised unit that prosecutors can contact for assistance.

In general, prosecutors believe the agencies that present them with information, for example, the police, are doing a good job. Cases are investigated and well prepared. Suggested improvements to systems include:

- * Write the laws in an English that we all understand - "as it is now, I have enormous difficulty in understanding".
- * Reduce the delays in prosecuting corruption cases once dockets have been handed over

Some prosecutors said at times there may be political pressure placed on a prosecutor or magistrate to rule in a particular manner, but this has always been the case. It is not seen as a major issue.

7.6.8 Magistrates

When asked whether corruption exists within the Department of Justice, magistrates said that they believe it exists mainly among interpreters and prosecutors. They said Magistrates felt honour-bound by the oath they have taken.

Magistrates are not considered above approach for bribery or intimidation. Respondents admitted that it is not easy dealing with a case where a colleague in the Department of Justice is suspected, as "it is very difficult to get an investigation going". The whistle-blower would be required to submit a written statement of charges against a colleague, yet would probably have to continue working alongside the accused while the matter was being investigated.

Colleagues are often placed in a very difficult position when they act against those suspected of committing offences. Even when members of the public make complaints against court officials, they are seldom prepared to offer testimony against the official.

"They are aware that this thing is happening but they are not free to speak because they know that they are going to be victimised and they are threatened with transfers or whatever other thing that will make them keep quiet" (Magistrates)

Magistrate felt many prosecutors are too inexperienced to handle corruption cases, The problem arose because they were not sufficiently well remunerated to stay on as Prosecutors. Once they had served their prescribed time, they tend to leave.

The situation was exacerbated by the fact that some police officers were not up to standard when it came to preparing cases for prosecution. Police often have far too many cases to give adequate attention to any individual case. Prosecutors on the other hand, may not necessarily take the trouble to read the docket properly before proceeding with the case.

The feeling among magistrates is:

"I don't think there is a general perception out there that you can easily approach a magistrate", but "businessmen with a lot of money taxi bosses and gangsters do think they can approach magistrates".

One respondent spoke from personal experience of being approached to put pressure on a magistrate in another district in a case involving a taxi boss' brother.

These respondents said there are mechanisms being put into place at present that aim to screen all candidates prior to appointment as magistrates. In theory, new Rules of Disclosure have also been put into place to deal swiftly and efficiently with any cases of corruption among magistrates that do come to light, but in practice, the wheels of justice turn too slowly.

"Sometimes we are bound to sit and wait for the outcome and in the meantime we feel our hands are tied. Investigations take time. Criminal trials take time and we sit and wait without doing anything to that person. It

has a very negative impact on the public because it looks like we don't do anything" (Magistrates)

The magistrates said the media has a role to play where they may have access to information that might otherwise not be made available to investigate allegations of corruption. They criticised the media for being "very sensational and too hasty to report ... and the public are not given a true reflection of what actually happened".

7.6.9 Parliamentarians

Parliamentarians said they believe the new legislation that will clearly define exactly what corruption is, will make it far easier to prosecute offenders. In addition, Anti-Corruption Units need to be seen to be achieving results to assure whistle-blowers that action will be taken.

"On the hotlines there have been quite a number of cases that have been reported, ... but somehow those cases just die"

Parliamentarians listed the limitations of the current initiatives to curb corruption as:

- * The person heading up the investigation is in a junior position and must often report on very senior officials. It will be very difficult for that person to report these cases;
- * People reporting matters such as cheques stolen from the Department of Welfare, or Tenders being awarded without going through the prescribed process, should be given access to authorities at the highest level, even the Independent Directorate-where the person receiving the claim will understand exactly what is at stake;
- * The decisions taken at Anti-Corruption Conferences are never implemented; and
- * Hotlines exist and the public is generally aware that they can phone these numbers, but there is a problem with implementation. There is also insufficient protection for whistle-blowers at present and as a result the culture of reporting is not being reinforced.

7.6.10 General Suggestions

Suggestions for Government to act decisively on corruption included:

- * Give high profile corruption maximum publicity. Concentrate on the top and it will filter down and be seen to be taking decisive action;
- * Government should send out the following message: "Every time you steal from government, you steal from other people - it adds to inflation. Poor people suffer more" (Media);
- * Tighten up the control in Government departments where lack of control is the main reason why corruption was taking place. This includes improvements to the administrative and budget process;
- * Government should adopt a policy of "Zero Tolerance" (Magistrate);
- * Magistrates said there is scope to have the Ethics Committee visit all magistrates with a programme to sensitise them to what constitutes corruption and that severe sentences will be imposed on anyone being found guilty of any such action;
- * Write it into the conditions of employment that if there is ever a question of dishonesty you will suspend the person;
- * The Anti-corruption Unit must be adequately staffed. One person cannot deal with a number of cases to be investigated;
- * A line for reporting people suspected of involvement in corruption/make the public aware of where to report corruption;
- * Train civil servants to do their jobs properly;
- * Have a special court where corruption cases can be dealt with expeditiously;
- * Offer protection for people reporting cases of corruption;
- * Young people grow up with the wrong mindset and that is where we should start educating young people by sensitising them to what is right and what is wrong;

Parliamentarians said that in 95% of cases, parliament is strong enough to keep Executive Branches on their toes to avoid corruption. Despite the work of the Ethics Committee, there will always be room for malpractice and corruption, especially when family members of political leaders or committee members are involved. For the remaining 5%, political parties must put their own house in order, and act internally on corruption. However, as in the Justice System, the individual reporting the corruption does face the risk of losing a job or being victimised. They expressed the need to eliminate the perception that the law that applies to the little guy does not apply to the big guy.

Most of participants said current legislation is able to adequately deal with corruption, but a few parliamentarians thought legislation needed to be improved. More important, however, is that existing legislation should be implemented. Although most magistrates and senior prosecutors have the required skills and knowledge to deal with corruption cases effectively, the success of the case largely depends on the efficient teamwork among all the role players.

The process of fighting corruption is very difficult at times because:

- * "It is extremely difficult to prove there is a link between the benefit and what the person gets. There is often just a passive agreement between the two. I will wash your hands if you wash mine" (Prosecutor);
- * If money is involved, it's usually paid into the individual's account at an auto-teller: linking it to an auto-teller transaction is very difficult;
- * Whenever a police officer is investigated, it is difficult to obtain information from other police officers: they are loyal to one another, and in many instances, are friends; furthermore,
- * Political interference can influence decisions.

Measures were also suggested to offer greater protection for the whistle-blowers. Parliamentarians felt strongly that the 'whistle-blowers', especially those in junior positions, should be protected. A media representative thought it was a good idea to set up a post-box where information such as photographs could be delivered.

Trade union representatives recommended the introduction of an Ombudsman as a measure against corruption. The creation of a Helpline would enable callers to report incidents anonymously. The approach of the Scorpions was applauded.

7.7 Expert Panel Studies

As part of the ISS Expert Panel Survey in 2000, 154 respondents were asked which of the ministries, departments and agencies in National Government were perceived as having the highest levels of corruption.

Safety and Security and Home Affairs stood as the departments that were perceived to be the most corrupt national departments. Safety and Security

or the Police Services accounted for almost one-fifth (19%) of the responses; Home Affairs accounted for 15%.

A further cluster of departments, ranging between 6% and 7% of the responses, were identified by the experts as being the most corrupt. These included Housing, Public Works, Justice or the Attorney General, Welfare and Population Development (7%) and Correctional Services and Public Service and Administration (6%). A mere 16% of the respondents, accounting for some 7% of the total responses, reported that they did not know which Department, Ministry or Agency was the most corrupt.

Corruption within the Criminal Justice System is clearly of concern: Safety and Security, Justice and Correctional Services featured among the top five departments perceived as having the highest levels of corruption. Together, these departments account for some 32% of the total responses.

ISS EPS: which of the ministries, departments and agencies in the national government are considered to have the greatest levels of corruption?

Safety and Security 19%
Home Affairs 15%
Housing 7%
Public Works 7%
Justice 7%
Welfare 7%
Correctional Services 6%
Public Service and Administration 6%
Don't know 16%

During 2000 the Stellenbosch Elite Study attempted to establish general perceptions about corruption, defined as "inducement [as of a public official] by means of improper considerations [such as bribery] to commit acts which are a violation of duty." Respondents were asked to indicate their opinion of the general levels of corruption in the following institutions: central government administration, provincial government administration, local government administration; and the judicial system.

Opinion-leaders perceived Provincial Governments as corrupt. There were significant increases in the perceived levels of corruption among the Democratic Party (DP) and New National Party (NNP) supporters over the period 1995 to 2000 and a slight drop among ANC supporters. It appears

that even the African National Congress (ANC), which controls seven of the nine provinces, is cynical about the situation in the provinces. For ANC supporters the mean on the scale decreased slightly from 5.3316 to 5.0476 in 2000. This is in any event still very high relative to the perceived levels for the central government, which were 4.2286 in 2000.

When supporters of the three parties had to provide an indication of the number of officials/people they thought were involved in corruption within the different institution, in the 2000 survey, some of the patterns described above were confirmed. The ANC indicated the top four institutions with the highest number of corrupt officials/people as follows (means for the four point scale are in brackets - high means indicating a low number of officials/people involved in corruption): Business (2.6429); Traditional leaders (2.6753); Opposition parties (2.8153); and Local Government (2.8289). The institution which houses the least number of corrupt officials, according to ANC supporters, is the "Office of the President" (3.7047). The average New National Party and Democratic Party supporter still believed the judicial systems was the least corrupt, while local government was regarded as the most corrupt sphere.

Party means (seven-point scale) by perceived level of corruption in institutions.

	Central Government		Provincial Government		Local Government		Judicial System		Number	
	1995	2000	1995	2000	1995	2000	1995	2000	1995	2000
1.1.1.1 ANC	4.6413	4.2286	5.3316	5.0476	5.3012	5.1866	3.7491	4.3619	134	210
NNP	4.7326	5.4412	5.2783	5.8824	5.2141	5.9412	3.1360	4.4706	251	34
DP	5.0825	4.4000	5.4536	5.6707	5.6186	5.7073	2.8866	3.8780	97	82

7.7.1 Conclusions

Corruption is seen as an important and serious concern, but perhaps not as pressing as problems such as poverty, unemployment, HIV/AIDS and crime in general.

People understand that all corruption involves something that is morally wrong or dishonest. Corruption is something that people engage in for the purpose of self-enrichment. It is driven by greed and arises mainly as a result of the abuse of power. Some practices that are acceptable in the private sector, constitute corruption when practiced within the Public

Sector since taxpayers' money is involved. Besides a need for a clear legal definition to make prosecution easier, corruption needs to be fully understood by the man in the street.

Although corruption takes place within the private and public sector, South African society tends to emphasise corruption within the Public Sector.

What are the primary causes for corruption both in the private and the public sector?

- * Inefficient control mechanisms;
- * Not enough training is provided to those individuals assigned to deal with corruption;
- * Personal greed;
- * Poverty; and the
- * Decay of moral societal values.

Respondents provided an extensive list of examples of corruption of which they are aware. Corruption is not always for financial reward: special favours, power and position can also be seen as rewards. The main categories of corruption mentioned were:

- * Bribery of police, parliamentarians and Department of Justice officials;
- * Theft and misuse of State funds and /or property;
- * So-called 'jobs for pals' which include nepotism and the appointment of unsuitable and unqualified employees;
- * White-collar crime;
- * A lack of transparency in government; and
- * The abuse of power.

Poorly paid public servants and those in positions of power are thought to be the ones most likely to become involved in corruption. The media has a role to play in exposing corruption, but more balanced reporting about the exposure of corruption in both the private and public sector would be helpful in enlightening the general public about what constitutes corruption.

Currently, some action is being taken against most of the corrupt cases that reach the courts, but the speed of the proceedings could be improved. There is currently a feeling that there is insufficient transparency, and that guilty individuals are protected.

Measures to improve corruption control include:

- * Improve legislation and use existing vehicles to implement decisions and bring both guilty parties to justice and not just those who receive the bribe;
- * Government departments and political parties should make a serious effort to combat corruption 'in their own homes', since these are the people that should lead the South African society by example of fair and honest practice;
- * Those accused of corruption should not be protected from prosecution. Public servants who are under investigation, should be suspended so as to convey a clear message that corruption will not be tolerated; and
- * Whistle-blowers, especially those at the lower levels, should be protected. People in all sectors of society should be made aware of the channels that exist for reporting corruption.

7.8 Media Analysis of Corruption

Since the majority of citizens, including policy makers, report that they receive their information about corruption from the media, it is important to analyse the type of information about corruption that is available within the public domain.

This section presents findings from research conducted since 1997 to analyse the way in which the media in South Africa have reported on corruption and related issues. The following reports are reviewed:

- * CASE/Transparency - South Africa
- * JP Landman and Associates

7.8.1 CASE/Transparency South Africa

The use of the media to trace cases of corruption is one step towards developing a profile of corruption. In mid-1997, Transparency International

- South Africa commissioned the Community Agency for Social Enquiry (CASE) to produce a 1997 media profile on corruption. The profile does not report on actual levels of corruption in South Africa, but rather presents an overview of how newspapers focus on incidences of corruption.

The profile is not a barometer or measure of corruption in South Africa as such, since what is reported in newspapers, often involves allegations about corruption. The media might also publish articles for particular political reasons, or simply to feed into a sort of sensationalism that attracts readers' attention. With these caveats in mind, newspaper coverage on corruption is analysed across sectors and levels of society, as well as in terms of allegations.

When the 24 different newspaper sources are analysed, slightly more than half of all media coverage on corruption targets the public sector as compared to some 16% which focuses on the private sector. Some 15% of the coverage involves corruption that affects the public and private sectors combined, while only 4% of the corruption newspaper coverage targets civil society.

These figures tend to reinforce the general sense in South African society that corruption is more prevalent within the public sector. This interpretation is misleading for four reasons: firstly, many of the incidents classified in newspapers as being about corruption in the public sector point to a lack of administrative skills among public servants rather than to corruption per se; secondly, it is plausible that many cases involving corruption within the private sector and civil society are not newsworthy and thus are not reported; thirdly, compared to corruption within the public sector, cases involving corruption in the private sector and civil society tend to be more hidden, because the public sector faces far greater scrutiny by the Auditor General and other agencies, as well as by the public; fourthly, since the term corruption invites a plethora of interpretations, it is possible that many incidents are not categorised as such by the media.

Among all the cases involving public sector corruption, government departments were mentioned most, followed by public servants and government agencies. The majority of cases on corruption within the private sector, involved business entities and professionals. Civil society corruption cases involved mostly political parties, non-governmental organisations, community-based organisations and sports organisations.

Of the newspapers reviewed, only the Star and Sunday Times reported fewer corruption cases linked to the public sector than the overall average, and more cases implicating the private sector. In contrast, the Citizen, Pretoria News and Volksblad were substantially above average in linking their reported corruption cases to the public sector. None of the corruption cases reported by Volksblad were linked to the private sector or civil society. This simple breakdown of newspapers shows that political agendas may influence the way in which corruption is reported.

The largest proportion (43%) of reported cases involved corruption at the national level: this was followed by (one third of all) cases, which involved corruption at a provincial level. Cases of corruption at local level accounted for some 21% of all newspaper reports. Almost two thirds of all cases of reported provincial corruption involved the public sector.

If the figures are taken at face value, Mpumalanga and Gauteng are among the most corrupt provinces. Combined, they account for some 50% of the total provincial corruption reported. Mpumalanga faced two incidents of alleged corruption that were covered extensively by several newspapers: the drivers' licence scandal involving the National Assembly Speaker and the Motheo Construction Housing scandal involving the Minister of Housing.

Instances of fraud and mismanagement were the most commonly reported allegations of corruption. In broad terms, mismanagement tended to be concentrated in the public sector, at a provincial level, while fraud affected mostly the private sector, civil society, and cases involving a combination of private and public sectors. These cases all occurred at national level.

In some 84% of the reported corruption cases, some form of anti-corruption action was taken. Approximately one third of the anti-corruption action (34%) took place at national level, 30% at provincial level, and some 18% at local level. In the majority of the reported corruption case (87%), anti-corruption action meant the formation of Commissions of Inquiry to investigate allegations of corruption. Restructuring was only necessary in some 5% of reported corruption cases.

7.8.2 JP Landman and Associates

This study focused on newspaper reports of corruption in South Africa over the period November 2000 until December 2001.

The purpose of the study was to look at ways in which cases of corruption had been reported in the media over the 14-month period. It was originally intended as a control study of a similar study conducted on articles published during the 17-month period immediately prior to this (June 1999 to October 2000), but has since adopted a wider focus.

The two questions guiding the analysis asked:

- * Who was most responsible for exposing corruption in South Africa?
- * What happens once a case of corruption had been uncovered (even if it is only alleged and has not yet been proven?)

A broad definition of corruption was adopted, referring to all cases where a person(s) used a position of power, influence or access to public resources for personal gain. This included activities ranging from accepting bribes in exchange for favours, to nepotism or fraud.

The aim of the study was threefold: firstly, the study aimed to identify the individual cases of corruption that the media reported on over the 14-month period; secondly, it wanted to establish which agent (for example an official process, investigative journalist, civil society actor or whistle-blower) was responsible for bringing the corruption into the public sphere; lastly, it wanted to identify which agents were called in to take follow-up steps on these now public cases of, often only alleged, corruption. The results of the study were intended to clarify what makes a case of corruption appear in the print media, and why have these cases come to light, and not others, and what makes a case of corruption newsworthy.

A total of some 1705 articles from the South African print media published during the period in question, were analysed. Reports were included from 25 sources in the South African print media. Sources included all the national and provincial newspapers. Articles that were used appeared in English and in Afrikaans.

Only individual instances of corruption that were reported on for the first time by the media were included. Reports on follow-up steps on older (i.e. pre-November 2000) cases, or new developments in such "older" cases were not counted.

The study looked at the way in which corruption was exposed, leading to media reports. Sources included official processes, investigative journalists, civil society and whistleblowers. The analysis was heavily dependent upon the information provided by the media. It can be well conceived that, in some instances, another agent, such as a whistleblower, brought the corruption to the attention of the authorities before it was even brought to the attention by the media. For example, a whistleblower within the SAPS could have alerted the SAPS Anti-corruption unit to the irregularities. However, if it was through the Anti-Corruption Unit that the incident was made public in the media, the SAPS anti-corruption unit, and not the whistleblower, will be logged as the agent responsible for making the corruption public. The media does not provide information about whistleblowers.

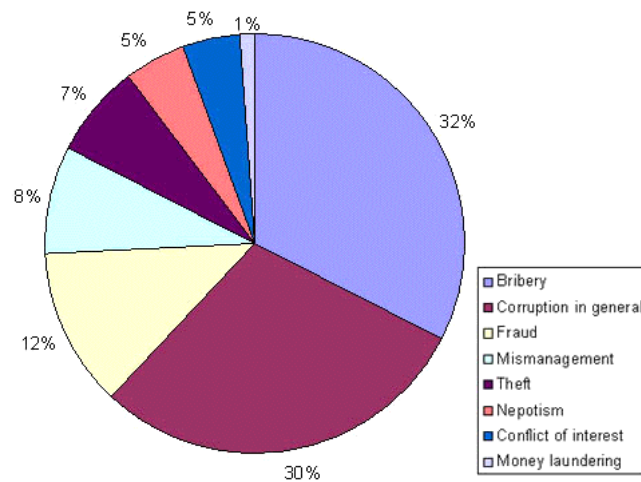
The print media reported on 268 "new" cases of corruption during the period November 2000 to December 2001 (inclusive). These cases were classified into two categories: firstly, instances where corruption took place within the public sector (also referred to as state structures). This includes corruption within government departments (national or provincial), local municipalities, parastatals and incidents where judges or magistrates were involved (they form part of the broader judicial sphere.) In this category some 239 cases were logged.

Secondly, there were instances where corruption took place within the private sector or civil society, such as political parties or community organisations. In this category some 29 cases were logged.

The table below sets out the nature of the crimes reported, based on the descriptions of each case. The broad categories are fraud, bribery, corruption in general (this includes cases where the media reports did not specify the nature of the offence, or cases where two or more of the other crimes named here, were committed simultaneously), mismanagement, theft, nepotism, a severe conflict of interest (such as cases where an official has strong business interests in a company which had won a contract with the official's department) and money laundering.

Types of corruption uncovered within the public sector

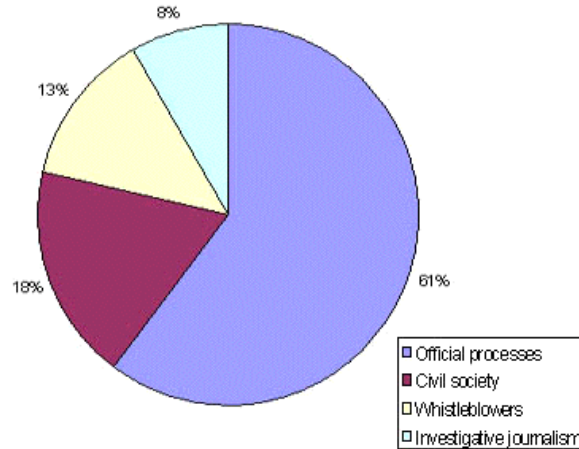
Type of corruption	N	%
Bribery	78	32.6%
Corruption in general	71	29.7%
Fraud	29	12%
Mismanagement	20	8.3%
Theft	18	7.5%
Nepotism	11	4.6%
Conflict of interest	11	4.6%
Money laundering	1	0.4%
TOTAL	239	100%



The breakdown of agents responsible for exposing corruption within the public sector were as follows:

Agents responsible for uncovering corruption in state structures

Agent	N	%
Official Processes	144	60.2%
Civil society	44	18.4%
Whistleblowers	31	13.0%
Investigate journalism	20	8.4%
TOTAL	239	100%



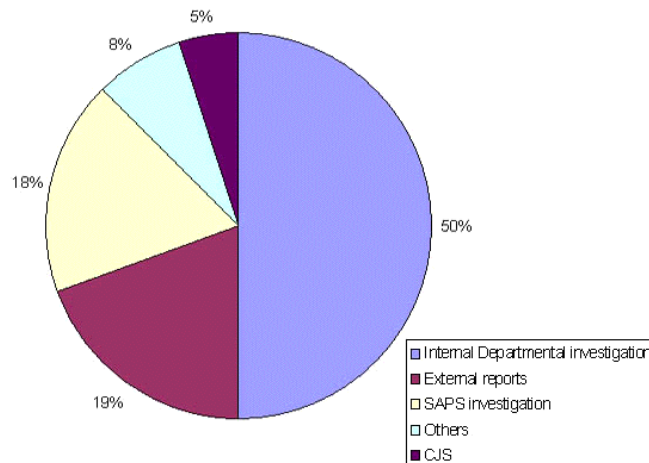
In the overwhelming majority of cases (60% or 144 instances), corruption was exposed through official processes. These processes are instituted, maintained and controlled by the State. Civil society was responsible for uncovering 18 % (44 cases) of the exposed corruption, whistleblowers for 13 % (31 cases) and investigations by journalists for a mere 8% (20 cases.)

The State is clearly the agent most responsible for bringing corruption within its own ranks into the public sphere. However, it should still be remembered that it is not known how much corruption remains hidden. What is important to note, is that the official processes in place are able to pick up corruption.

The 144 cases made public by official processes can be categorised and this sheds some light on the specific nature of this state-generated and controlled process:

Official processes exposing corruption

Code	Category	N	%
1	Internal departmental investigation	72	50%
3	External reports	28	19.4%
4	SAPS investigation	26	18%
5	Others	11	7.6%
2	CJS (Criminal Justice System)	7	4.8%
	TOTAL	144	100%



Some 50% of cases (72 of 144) came to the attention of the public as a result of the media following a departmental investigation. The first category includes investigations by the SAPS Anti-corruption unit, because these are investigations by the Police into irregularities within their own ranks. Some 28 cases (19.4%) were exposed by external reports, generated by actors outside the department where the corruption took place. Examples of such actors are the Auditor-General, outside bodies such as the Automobile Association and other departments.

The category of actors responsible for uncovering the second largest number of corruption cases, was civil society. Civil society also consists of a variety of actors, existing within the sphere between the state and the

family. The following table sets out the number of cases exposed by the various actors in the civil society sphere.

Civil society actors exposing corruption

Code	Category	N	%
2	Community and interest groups	23	52%
1	Political party	10	23%
3	Trade Unions	9	20%
4	Individual in positions in community	2	5%
	TOTAL	44	100%

The analysis showed that official processes were also the agent most successful at exposing corruption within the private sector and civil society. Here, official processes exposed 12 cases (41.4%), whistle-blowers exposed 9 cases (31%), civil society made five cases public (17.3%) and investigating journalists three cases (10.3%).

However, the gap between the success of whistle-blowers (31%) and official processes (41%) in exposing corruption is much smaller than is the case with corruption in the public sector where whistle-blowers uncovered a mere 13%. There is a possible explanation for this observation: state-generated official processes uncovering corruption in the state machinery probably often act on tip-offs by whistle-blowers within these departments. The corruption thus only became public through the State's public relations capacity, which related these events to the media. Within the private and civil society sectors, whistle-blowers often have to speak directly to the media, since the intermediary processes and mechanisms are not yet in place.

Agents responsible for uncovering corruption in private sector and civil society

Agent	N	%
Official Processes	12	41.4%
Whistleblowers	9	31.0%
Civil society	5	17.3%
Investigative journalism	3	10.3%
TOTAL	29	100%

A sector analysis grouped all the cases into sectors. These sectors include cases from all three levels of the state - local, provincial or national.

Corruption in state sectors

Sector	N	%
Police, Safety and Security	34	14.2%
Transport and Traffic	26	10.9%
Housing	20	8.4%
Public Works and Enterprise	20	8.4%
Education	20	8.4%
Legislature/ Council	17	7.1%
Health	16	6.6%
Justice	16	6.6%
Correctional Services and Prisons	12	5%
Finance	9	3.8%
Welfare and Social Work	8	3.3%
Office of the Premier/President	8	3.3%
Home Affairs	7	2.9%
Environment and Tourism	5	2.1%
Agriculture	5	2.1%
Trade and Industry	4	1.7%
Telecommunications	4	1.7%
Sport	3	1.3%
Culture, Arts and Science	2	0.8%
Labour	1	0.4%
Mineral and Energy	1	0.4%
Defence	1	0.4%
TOTAL	239	100.0

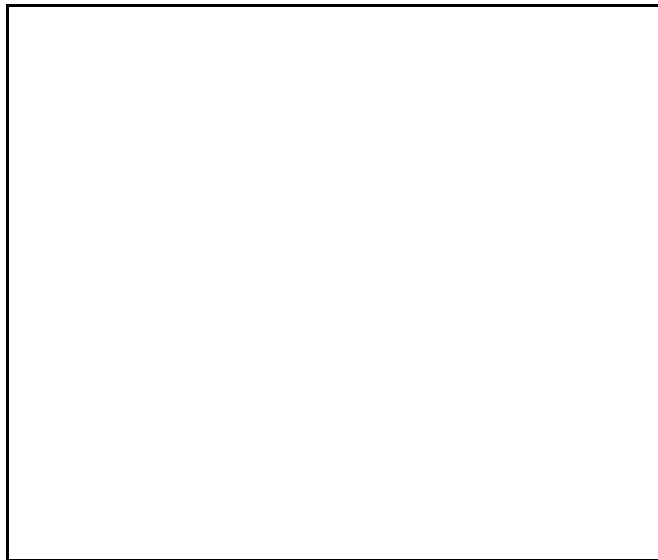
Corruption concerning the awarding of general contracts by Tender boards etc. (which are not within a specific department) also fall under the Public Works and Enterprise sector. The Transport and Traffic sector includes drivers' license scams and acts of corruption perpetrated by traffic officials. Irregularities in the South African Revenue Service, as well as the payment of 'ghost' workers where various departments are involved, are grouped under the Finance sector.

A further breakdown of corruption on the provincial level showed the Eastern Cape (with 25 cases) as the province where the most corruption at

the provincial level was exposed, followed by KwaZulu-Natal with some 19 cases.

Corruption in provinces

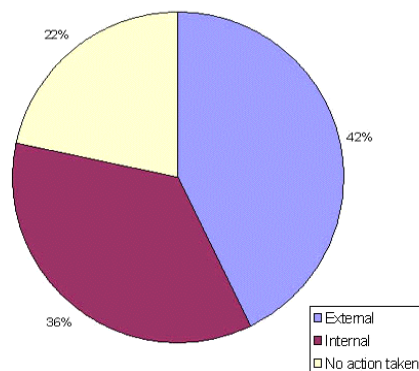
Province	N	%
Eastern Cape	25	30%
KwaZulu Natal	19	23%
Gauteng	10	12%
Northern (Limpopo)	9	11%
Mpumalanga	7	8%
North West Province	5	6%
Western Cape	4	5%
Free State	3	4%
Northern Cape	1	1%
TOTAL	83	100



The State could respond to reports of corruption in two ways: firstly, it could deal with reports internally. In this response, the body (e.g. department) where the corruption occurred could appoint a Departmental Investigation into the matter or charge the suspects to appear in front of a Disciplinary Hearing. The other option is to request external agents. Although external to the Department or Unit, these agents could still fall under the broader umbrella of the state.

Follow-up steps taken in response to corruption within state structures

Follow - up steps	N
External	113
Internal	94
No action taken	57



In the cases where follow-up steps were reported to have been taken, it is clear that bringing in an external agent to take charge of the matter, is the preferred approach. However, sometimes irregularities only became public after an internal investigation had been instituted in response to rumours of such irregularities. In these cases, the internal investigation, which led to the exposure of corruption, would be classified as the 'official process' exposing corruption, rather than as the immediate follow-up step. Departmental investigations exposed some 50% of all incidents of corruption. This, coupled with the relatively high number of internal responses to corruption, reveals a high level of action taken by Government Departments and State Structures themselves regarding corruption within their own ranks.

The official Criminal Justice System (CJS) is by far the most popular external body to which to refer corruption within the Public Sector. In these 88 cases (78%), arrests or court appearances had already been made by the time the incident was reported, or shortly after the incident had been reported. In a further seven cases (6%), the Scorpions specifically, and the Public Prosecutor were asked to investigate.

The results of this study are compared with an earlier study by the same group below:

Comparison of 2000 and 2002 study

Agent uncovering corruption	2000 study	2002 study
Official processes	125 (75%)	144 (60.2%)
Civil society	16 (10%)	44 (18.4%)
Whistleblowers	7 (4%)	31(13.0%)
Investigative Journalism	19 (11%)	20(8.4%)
TOTAL	167 (100%)	239 (100%)

There is a remarkable increase (almost 10%) from the 2000 study in the success of whistle-blowers to make public irregularities within the State machinery.

The study showed that the media are not effective in tracking cases of corruption once they have become public, unless cases involve high profile individuals. The media would thus report on corruption exposed, but then offer no follow-up reporting on events once exposed. When reporting about a new irregularity, reporters seldom refer to the specific departments' past experiences (or 'track record'). Such information would be useful in that it would enable the public to keep track of Government's general performance concerning corruption. It would also enable the general public to contextualise "new" individual instances of corruption.

7.8.3 Conclusion

According to the analysis, investigative journalists are the agents least likely to expose corruption. On the other hand, the State is overwhelmingly the most successful agent in making public sector corruption public through official processes, which are then reported on by the media. This raises the existence of a widespread culture of so-called "press-release" journalism, where the media are largely unwilling (or unable) to expose corruption pro-actively and on own initiative, preferring to wait for a cue from the State.

7.9 Southern African Regional Context

At present, there is no regionally accepted standard methodology for the measurement and monitoring of corruption and anti-corruption. It is hoped that a standard survey instrument will soon be developed within the SADC region to assist in the implementation of the most important regional anti-corruption instrument: the SADC Protocol Against Corruption.

It should be acknowledged from the outset, therefore, that surveys carried out at a regional level were not carried out in the same time period: they are thus not all based on the same research methodologies and sampling practices. Despite these limitations, these surveys nevertheless, provide the most complete data on corruption in Southern Africa that is currently available.

A recent SAHRIT survey examined the perceptions and experiences of Southern African respondents (1694) with regard to corruption in the SADC region. The data indicates that, overwhelmingly, corruption is believed to be a serious problem in the region (75%) and throughout the African continent (87%). Some 42% of respondents believed corruption was also a serious problem in Europe and the USA.

The vast majority of respondents (93%) considered corruption a very/serious problem at the national (country) level, while some 80% thought the same held true in their own local communities. This was true for all ages, men and women, rural and urban residents, as well as at all levels of education.

In terms of the seriousness of corruption within the region, the Afrobarometer found that South Africans were most likely to be concerned about the issue: some 10% believed corruption was a "most important problem that government ought to address". For citizens of other Member States covered by the survey, these figures were considerably lower: some 5% of Malawians followed by 4% of Zimbabweans stated that corruption is a "most important problem". Only 3% and fewer, respondents from Botswana, Zambia, Lesotho and Namibia considered corruption a serious problem.

The Afrobarometer (July 1999 - June 2000) found that popular perceptions of Government corruption are extraordinarily high in some Southern African countries: there are however, important regional variations.

Approximately 62% of Zimbabweans believed "all/almost all/most of" their public officials were involved in corruption. This is far higher than perceptions of public official's venality in South Africa (48%), Zambia (46%) or Malawi (40%). Less than one third in Botswana and about one fifth in Lesotho and Namibia held such negative views towards their public officials.

Perceptions of corruption in the public sector (% of respondents)

	Zimbabwe	South Africa	Zambia	Malawi	Botswana	Lesotho	Namibia
Officials in the Government	69%	50%	51%	43%	32%	28%	20%
Civil servants, or those who work in government offices and ministries	65%	50%	50%	46%	32%	30%	24%
People in parliament	63%	45%	40%	31%	29%	20%	19%
Officials in your local government	51%	46%	42%	NA	20%	11%	17%
Average Across Types of Government	62%	48%	46%	40%	28%	22%	20%

According to the latest Afrobarometer release (April 2002) about one-half of survey respondents thought corruption among public officials was common (52%), although some 35% considered corruption among public officials, rare. As in the previous findings, the perceived corruption of public officials was the highest in Zimbabwe (70%), but significantly lower in Botswana, Lesotho and Namibia. Yet, by any standard even the "lower" manifestations in those countries cannot be considered "low". It appears there is a widespread belief among the citizens of southern Africa that the public sector is typically vulnerable to corruption.

Using information collected from the participants (criminal investigators and prosecutors) in the Regional Seminar on Anti-Corruption Investigating Strategies, with particular emphasis on the Drug Control for SADC Member States (Gaborone, Botswana, October 2001), as a basis, the following were identified as the corruption prone sectors:

Corruption Prone Sectors

Customs	Licences and permits
Procurement	Judiciary
Narcotics trafficking	Revenue Collection
PoliceHealth	Immigration and border control Employment
Education	

The Afrobarometer found that across the seven countries, local government or parliamentarians are seen as less corrupt than national government officials and civil servants. This suggests that citizens tend to make distinctions between levels of government when identifying the presence of corruption.

For example, in Lesotho, some 30 % of respondents indicated that "all or most civil servants" are corrupt, while some 11% claimed this was true within their local governments. Similar, though more subtle differences in citizens' views of corruption within the differing levels of Government can be seen in Malawi and Zimbabwe. Only in South Africa and Namibia do citizens appear to hold a relatively undifferentiated view of corrupt practices within national or local governments.

Perceptions of corruption seem to be only tenuously linked with actual experience. The Afrobarometer data revealed that, on average, perceptions of Government corruption were four times higher than the average actual experience of corruption in Namibia. In Botswana, perceptions were forty times higher than actual experience of corruption.

These discrepancies suggest that perceptions may be shaped more by news media reports of a small number of high profile incidents, or the accounts of friends or neighbours, or an overall low level of confidence in the ethics of the public sector than any direct personal experience. However, the Afrobarometer found that citizens in Zimbabwe (12%) were more likely to actually experience corruption on average than citizens in Namibia (6%), South Africa and Zambia (4%), Malawi and Lesotho (3%) and Botswana (1%).

The International Crime Victim Survey also asked citizens whether they experienced corruption first hand at the city level. As indicated below, responses were varied:

Experience of corruption in Southern Africa (ICVS: elaborated by UNICRI))

Southern Africa	Year	Victimisation rate%
Maputo(Mozambique)	2002	30.6
Gaborone (Botswana)	2000	5.7
Harare (Zimbabwe)	1996	7.2
Johannesburg (South Africa)	2000	13.3
Lusaka (Zambia)	2000	34.4
Maseru (Lesotho)	1998	19.2
Mbabane (Swaziland)	2000	16.5
Windhoek (Namibia)	2000	5.4

Because the Afrobarometer and the ICVS surveys do not coincide in terms of question content, the time period in which surveys were carried out, and other methodological concerns, it is very difficult to compare the levels of corruption identified by these surveys. Furthermore, it is unjustifiable to draw conclusions based on the results of only one survey.

It is recommended therefore, that SADC member states agree to and adopt a standard methodology for measuring the nature and extent of public perceptions and experiences with corruption.

An indicator of public confidence in Government anti-corruption initiatives is based on citizens' willingness to report corrupt practices to law enforcement officials. Because instances of corruption often involve at least two parties, rates of reporting corruption are generally low. The party that is dissatisfied with the outcome of a transaction usually decides to report the case.

In order to increase reporting rates, a set of protective and confidence building mechanisms needs to be developed. Such measures might include a whistle blowing and victim/witness protection programmes. With the exception of South Africa, these measures aren't in place in most of the SADC region.

Furthermore, if citizens are to feel comfortable about reporting corrupt practices, they must trust the police and other dedicated anti-corruption entities. If a perception exists that the police force and the criminal justice officials are corrupt, or that the anti-corruption agency is ineffective or

dependent on other Government Agencies for its existence, reporting levels will remain low.

The ICVS data confirms that the levels of reporting corruption are low among SADC member states. Reporting rates range from 4% in Lesotho, to 15% in South Africa and 16% in Botswana.

In most SADC countries, the Police constitute the main reporting agency. In countries where dedicated anti-corruption entities exist, the number of citizens reporting cases of corruption is on the rise (e.g. South Africa, Zambia and in particular Botswana where two thirds of the cases were reported to the Directorate on Corruption and Economic Crime).

The current data on the incidence of corrupt practices in government and civil society, or the public perception of such practices, is limited and frequently draws upon different survey methodologies and samples: this makes it difficult to fully examine the extent of these practices and the impact within the SADC region.

Notwithstanding these severe limitations, certain conclusions can be drawn:

- * Corruption is increasingly perceived as a serious problem within the region, though it remains secondary to the issues of poverty and HIV/AIDS. While recorded levels of public perceptions of corruption and first-hand experience of corrupt practices are not the highest in the region, South Africans remain the most concerned about these issues in the SADC region .
- * From an international perspective (based on two international sources i.e. the ICVS and TI), SADC as a region fares much better than Africa as a whole.
- * There appears to be a huge gap between perceived levels of corruption and actual experience of corruption. There are many explanations for such discrepancies, but these should not detract from the importance of addressing the high levels of perceived corruption. Confidence in Government transparency is of particular importance for any democracy.
- * Citizens perceive parliamentarians as being less corrupt than government officials, and local government officials are believed to be less corrupt than national officials.
- * However, citizens believe public servants are more corrupt than individuals employed in other sectors. Business leaders are also

- considered corrupt by more than half of those surveyed. While, traditional leaders are perceived as being the least corrupt, a significant number of respondents still believe corruption exists within the ranks of tribal leadership.
- * The public sector is seen as disproportionately more vulnerable to corruption than the private sector. Urban areas are considered especially prone to corruption, and men are regarded as more susceptible to corrupt practices than women. More research is required on corruption within the private sector.
 - * For citizens, corruption within the public sector appears to be centred around law enforcement and the delivery of basic services such as water and electricity and housing. For criminal justice personnel, corruption resides in customs, procurement, police (including drug law enforcement) and immigration/border control.
 - * Citizens on average, feel that their governments aren't sufficiently committed to combating corruption. Despite low reporting rates of corruption, the existence of dedicated anti-corruption entities (if perceived as non-corrupt, efficient and independent) has improved public willingness to come forward with information on criminal activity. The complex discourse on citizen confidence in the Government's capacity for bringing about anti-corruption reforms must be rooted within the context of the political history of each country concerned. Public and political recognition of corruption as a problem does tend to create an impression that corruption is on the rise.

Criticism is often directed against surveys that are primarily based on the perceptions (and to a limited extent people's experience) of corruption. Indeed, the data that is provided is limited and to some extent biased.

The development of a standard SADC approach to the measurement of corruption and the monitoring of anti-corruption reforms is a priority. However, public perceptions will remain part of any standardised methodology, since citizens' input provides an important measure of anti-corruption efforts and trends. Once the gap between the perception of corruption and any direct experience of it (which today appears to be high) decreases, it will present an indicative measure in itself of the levels of success and effectiveness of anti-corruption policies, programmes and interventions.

7.10 Conclusions

It is clear from what has been reviewed above, that there are serious dangers in basing anti-corruption assessments and strategies solely on perception-based surveys. The surveys carried out for this Country Assessment have provided a solid base for further studies. These studies should go into more depth about systems' weaknesses, which provide the opportunity for corruption, organisational culture and attitude problems, and general employee integrity systems. There is also a need to study cases, to understand them and draw lessons from them.

Strengths:

- * The Public Service Anti-Corruption Strategy recognises the need for reliable information about corruption.
- * A great deal of information is available on perceptions of corruption.
- * The three surveys commissioned for the Country Corruption Assessment provide a useful baseline for further work.
- * Most public servants appear committed to good governance and are prepared to report corruption among their colleagues.
- * The result of surveys of those who have received service from the SAPS are more favourable to SAPS than the response of the general public.
- * There is sufficient trust in the SAPS for most public servants and others to report corruption.

Weaknesses:

- * The information on corruption may be seriously biased due to its reliance on perceptions.
- * It is difficult to find a measure of data that is consistent about the experience and occurrence of corruption.
- * The majority of people feel that corruption is not being addressed adequately by Government.
- * The majority of businesses feel that bribery is becoming an accepted business practice.
- * Households and businesses identified police as mostly likely to solicit a bribe. Local government, Customs and Home Affairs officials were also identified.

- * Civil society organisations are not playing a sufficiently active role in reporting corruption.
- * Lack of official data on corruption incidents prevents a comprehensive analysis of corruption trends based on a variety of data sources.

7.11 Recommendations

- * A need for regular monitoring of perceptions and experiences of citizens, clients, business and public officials with corruption based on uniformly accepted methodology
- * A need for the establishment of comprehensive, reliable and timely criminal justice statistics on corruption cases
- * A need for the establishment of comprehensive, reliable and timely departmental statistics on corruption cases
- * A need for the regular analysis of media presentation of corruption cases
- * A need for the establishment of comprehensive, reliable and timely statistical information on corruption in the business sector and civil society
- * A need for a certain level of consistency and compatibility among different methodologies and statistical data bases
- * A need to encourage the establishment of a research anti-corruption resource network to advance anti-corruption studies and analysis as well as exchange of information and experience at the national, regional and international levels including South Africa's participation in the international (UN and others) comparative anti-corruption research and studies
- * A need to provide for a wide international presentation and dissemination of the results of the South Africa Country Corruption Assessment Report and/or relevant components thereof
- * A need to promote methodological assistance to other countries in the region based on the experience gained with the methodology of the South Africa Country Corruption Assessment