



NEW ANTI-CORRUPTION GOVERNMENTS: THE CHALLENGE OF DELIVERY

# SOUTH AFRICA

A CASE STUDY

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# South Africa

## 1. Executive summary

In ten short years, South Africans have managed to leap across the deep divide that separates an oppressive racist state characterised by corruption and political patronage to a modern constitutional democracy. This leap of faith was not achieved without compromise. This peaceful transition, always shadowed by the prospect of civil war, heralded more than only a new anti-corruption government. Rather it was the beginning of a profound process of transformation of the state, which has as a consequence equipped the country to deal with corruption. Progressive laws have been drafted by a democratic assembly, and a number of agencies mandated to combat corruption have been established. In addition, civil society and the media play an important role in maintaining the momentum for reform.

Money has continued to corrupt power, however. Corruption is a multi-billion rand enterprise that plagues both the private and public sector. Greed, often fuelled by opportunity and the wealth gap in the country, is partly to blame. An effective effort to combat corruption requires the implementation of existing laws designed to ensure access to information, to protect whistleblowers, to prosecute corruption and to govern conflicts of interest. Coordination between agencies is equally important and may require the re-opening of an earlier debate on the need for a single anti-corruption agency. Corruption is not the single biggest threat facing South Africa, but it could undermine the twin goals of helping the poor and entrenching democracy.

While looking forward, this paper also suggests that South Africa may be ready to critically look back at corruption under apartheid. This had not been possible during the initial period of transition. Corruption has a linear history in South Africa and this deserves proper introspection, not only to avoid repetition but also to reclaim assets that belong to all South Africans. The process of achieving social justice has only just begun, but it cannot be completed unless we start at the beginning.

## 2. Summary

### 2.a. Overall outcomes and current status

This paper has attempted to map out the fundamental shift in the state's response to dealing with corruption before and after apartheid. The country did not undergo a revolution, but the results of reform have been profound. For the first time in its history, a host of new anti-

corruption agencies have been created and laws drafted that give the country the institutional framework to combat corruption. Access to information, whistleblower protection and a tough new anti-corruption law are just a few examples of these reforms. A host of new, specialised agencies tasked with combating corruption are visible examples of an emerging anti-corruption framework. This is all supported by a progressive constitution that all major political parties continue to support.

The country does not have a single reform driver. Instead, members of civil society, the media and state institutions all work together to combat corruption. Nevertheless, there remain some corrupt public and private sector officials, waiting in the wings to take advantage of a transforming state to illegally enrich themselves. A culture of greed, fuelled by the ever present wealth gap in South Africa, continues to undermine personal integrity.

South Africa faces major challenges in combating corruption. Corruption is endemic at the provincial and local government level, negatively affecting the capacity of the public sector to deliver services to the poor. At a national level almost 2 billion rand was lost in 2003 to corruption in the social welfare system, the Labour Ministry may have lost as much as R1 billion allocated for skills development, and the Road Accident Fund, which has long been susceptible to fraud and corruption, may have lost R1 billion in the past year as well. The former Minister of Justice, Penuell Maduna, has estimated that the private sector, a major source of corruption, loses as much as R50 billion a year to fraud and corruption. Disclosure laws are not enforced equally among civil servants, and a number of parliamentarians continue to defy the requirements of this legislation.

## **2.b. Current challenges**

Implementation is now the key to effectively combating corruption. The way in which state agencies have proceeded against individuals, such as against the financial advisor of Deputy President Jacob Zuma, is an indication of the government's political will to combat corruption. This may not always be applied equally across the country, but the trends are positive. Where laws have been written, they now need to be enforced, and where individuals are accused of corruption, the criminal justice system must deal with them swiftly. In a country where most officials are paid on time, this means tackling both grand and petty corruption.

Questions need to be asked about the effectiveness of a number of anti-corruption agencies. The recently completed TI National Integrity Study of South Africa (September 2004)

recommends that South Africa reconsider establishing a single well-equipped anti-corruption agency that is focused on both investigation and awareness-raising.

There are those who argue that the most crucial period in democratic development is not the first ten years, but the next ten years. If left unchecked, corruption has the potential to alienate the electorate and undermine delivery of needed services to the poor. For these reasons alone, the momentum of the campaign against corruption in South Africa must be sustained.

### **2.c. Evaluation and lessons learned**

Analysing the costs and benefits of reform in South Africa is similar to analysing the costs of peace versus war. There can be little comparison between where the country has been and where it is now.

Making compromises and finding an initial consensus, imperatives for the transition from corrupt rule to a democratic state, have not come without cost. This has meant that many high level officials involved in corruption under apartheid have probably been left untouched. Similarly, the cost of reform has been massive as the state, including the large unwieldy civil service, had to be reformed. The South African lesson is one of compromise over conflict. Leveraging power from an old elite has meant accommodation. In many ways, the country still has much unfinished business.

Corruption is not the preserve of racial elites; it coincides with power. The South African experience has shown how important it is to defy complacency after regime change. It is important that broad coalitions across all sectors of society are built in order to ensure that reformers are not isolated.

### **2.d. Recommendations**

A number of these recommendations have been included in the forthcoming TI National Integrity Study for South Africa (September 2004).

*Looking back, while looking forward:* After a decade of democracy, the political situation may have settled sufficiently to now revisit corruption involving both the state and the private sector during apartheid. A first step may be for a specialised agency such as the NPA or SIU to undertake an initial investigation into which crimes could potentially be prosecuted. Such a report would reveal the linear nature of corruption in South Africa and dispel the myth that

corruption is only a problem of the post-democratic order. These are important lessons if the country is to learn from the past. The parliament should assist in setting the parameters of such an investigation in order to defuse potential political tensions that may ensue. In order to achieve a broad consensus, parliament should also ensure that civil society, the faith-based community and business are consulted when considering an investigation.

*Civil society:* The role of civil society in combating corruption must be promoted. This should involve leading national actors, but it should also be ensured that civil society organisations at the community level are involved in tackling graft. Funding for civil society organisations is also a cause for concern: government continues to be the magnet for much donor support for anti-corruption initiatives. In the medium term, however, government should shift away from this strategy and rely more on allocations from the treasury for such work. Investment in anti-corruption activities, if they are well-considered and if strategies are implemented, almost always results in cost recovery. Greater investment by the state (taking into account that it is already the source of the majority of funding for anti-corruption activity) will also ensure that there can be greater public accountability for the use of resources. This is difficult to ensure when the state uses donor funds for this purpose.

*Coordination among agencies:* The Anti-Corruption Co-ordination Committee has had some success in bringing together South Africa's various anti-corruption agencies. As this study suggests, however, it may be wise to revisit the issue of a single anti-corruption agency. No detailed study has yet been made public as to why this would be more costly than having the myriad of agencies currently in place. If the associated costs can be recovered over a period of time and if such an agency were to be sufficiently independent, then this is an option worthy of further consideration. The heads of various agencies will always be susceptible to pressure from the powerful to act in a certain manner; it takes a person of great integrity to counter such advances. The establishment of a single dedicated anti-corruption agency would also centre the mind of the public on one institution, build confidence and promote accountability when certain matters are not investigated or prosecuted.

*Ethics and disclosure:* Disclosure rules for members of the executive (at national and provincial level), national and provincial assemblies and senior public sector managers must be enforced and, in certain instances (such as in parliament), the sanctions should be made more severe when gifts or interests have not been declared. The Public Service Commission also needs to promote the prosecution of senior managers who are repeat offenders in this regard. With high public office comes certain responsibility and where trends are observed regarding non-compliance, prosecution of offenders will promote respect for the ethics regime.

*High-profile cases:* The political will to prosecute high-profile corruption cases in the public and private sector needs to be maintained. Such political will sends an important message to others, including to low-level officials involved in petty corruption that no one is beyond reproach.

*Implementing legislation:* The implementation of the Prevention and Combating of Corrupt Activities Act should be a source of concern for all sectors. Prosecutors, magistrates and judges must be made familiar with the contents of the law. Awareness needs also to be raised among the public and private sector of the penalties allowed under the act in order to ensure its deterrent function. In addition, the implementation of other pieces of legislation, such as the Promotion of Access to Information Act, needs to be monitored. Civil society actors and the media should encourage use of the act while public institutions should work to promote, and not hinder, access to information.

*Law enforcement:* It must be made clear which agency will be responsible for investigation corruption within the SAPS as the current model is not sustainable over the long term. The ICD would be well placed to take on this function.

*Local and provincial government:* These are two areas of government that are highly susceptible to corruption. More attention should be paid to local government where many suspect that the mismanagement of funds is rife. Government also needs to develop a much clearer strategy for central government intervention where it is suspected that local or provincial authorities are not doing enough to tackle the problem. This may require the establishment of a trouble-shooting unit.

*Media:* Media owners need to invest more in investigative journalism in the country. This should not be restricted to broadsheet newspapers. There is no reason why mass circulation tabloids could not do the same given their circulation figures and advertising budget.

*Parliament:* Following the recent parliamentary travel scam and a controversial arms deal, parliamentarians now need to take their oversight responsibility more seriously. Civil society and academic institutions should also be encouraged to provide members of parliament with research material that can assist them in this function. An overhaul of the current constituency-based electoral system may also establish greater accountability between the electorate and the elected.

*Party finance reform:* Parliament needs to consider producing legislation that will finally legislate the private funding of political parties. Failing to address this issue will leave a gaping hole in an otherwise well developed anti-corruption armoury. Situations should be prevented whereby private funders have greater leverage over elected representatives than the majority of the electorate.

*Post-employment restrictions:* Legislation must be produced regulating the employment of members of the executive, senior managers in the public sector, accounting officers involved in approving tenders and elected officials after they leave office.

*Procurement:* Once implemented, the Supply Chain Management Framework needs to be evaluated to see how effective it is in tackling corruption. Corruption in public procurement serves as a drain on public funds and therefore all efforts should be made to improve this process. Members of civil society should be involved in the evaluation process.

*Public sector anti-corruption strategy:* The elements of this strategy – yet to be implemented – need to be reviewed. To assist this process, the DPSA should draw up a new timetable for achieving outstanding targets. Such a step would also help civil society to monitor the implementation of the strategy.

*Public education and awareness:* The state should invest money in a concerted effort to raise public awareness of the need to combat corruption. This should take the form of radio, TV, print, and billboard advertisements and a long-term strategy to educate school children about corruption.

*Research and monitoring:* Civil society needs to sharpen its research capacity to focus both on monitoring implementation of anti-corruption measures and corruption within specific sectors (i.e. in the health sector, policing, local government, etc.).

*Supporting whistleblowers:* An enabling environment needs to be created within which whistleblowers feel confident that they will be free from reprisal. This will require not only an overhaul of the Protected Disclosures Act, but also a change in the collective mindset regarding the role of whistleblowers. The NACF might consider giving an award to two whistleblowers (one in the private sector and one in the public sector) every year who have shown exceptional courage.

*The wealth gap and greed:* Inequality remains endemic in South Africa. The size of the wealth divide means that two distinct groups are created: the majority who aspire to live a better life and those in the top tier who aspire to climb even higher as they fear the prospect of living as the majority does. This wealth divide encourages corruption and greed, particularly among the elite. Elected leaders should be exemplary in this regard and scornful of those who aspire to fabulous wealth. This may be the largest structural problem that must be tackled, but it is necessary to break the cycle of corruption. Though greed and corruption are not unique to South Africa, they are particularly pronounced in this society.