

SECTION 3

PLENARY SESSION: PRESENTATIONS AND PANEL DISCUSSION

INTRODUCTION

Part of the methodology of the Summit was to hold plenary sessions that were followed by discussions in commissions or breakaway groups. The intention was to “set the scene” for the rest of the Summit by inviting renowned speakers to address the Summit from the respective sectoral points of view and thus to invite debate on the issues raised.

The first speaker was Mr. Cas Coovadia, a member of the Banking Council of South Africa who raised initial issues on the “Impact of corruption on Development”. Next, Prof Richard Levin presented an “Overview of Current Strategy, Regulatory Frameworks and Achievements” by government, since the first Summit was held in 1999. Amongst other issues, Prof Levin stated that though much had been achieved, South Africa “remains an anti-corruption construction site”. Further, Mr. Hassen Lorgat, gave a brief “Critical, (cross-sectoral) Review of Implementation”. The presentations not only prepared participants for the panel discussion which followed but also stimulated lively debate which led to positive recommendations, some of which were developed into the final set of resolutions adopted by the Summit.

6. OPENING REMARKS

BY DR JANETTA MINNAAR-VAN VEIJEREN³

Our distinguished President, Mr Thabo Mbeki, referred to the Anti-Corruption Treaty that was signed at the end of 2003 where it was said that we need to co-operate and combine forces in the fight against corruption. There was a particular remark made by Kenya’s Justice Minister at the signing of the treaty that I would like to quote here: “corruption has ruined our schools and our hospitals, it has destroyed our agriculture and our industries, it has eaten up our roads and our jobs, it has destroyed our society”. Those are the effects of corruption if it is left to flourish. I obviously assume we are all here today to seek some solutions from all three sectors, public, private and civil society, in the fight against corruption.

I would like to give you a definition of corruption but corruption has become a concept that is quite difficult to define. At first it used to be a common law offence in South Africa, so it wasn’t even written down anywhere in a law book, but now we sit with the new Prevention and Combating of Corrupt Activities Act that was promulgated last year and

³ Dr Minnaar-van Veijeren is attached to a private consultancy offering training and advice on legal matters.

it has become quite a comprehensive and complicated piece of legislation. Deriving from that Act, I extracted my own little definition . As I see it:

“Corruption can be defined as any person who directly or indirectly accepts, agrees to, or offers any unlawful gratification from, or to, any other person, to benefit him or herself, or a third party. Such a person is guilty of the crime of corruption.”

“Gratification” in the new act is defined as a broad principle. In other words, it does not have to be monetary. If I promise a favour in return for something, that in itself could constitute corruption. Remember, the benefit that I ask or demand does not need to come to me it could be for the benefit of any person, such as a benefit for my child at school. “If you make sure that my boy becomes head boy next year of that particular school, I will make sure you get that job you applied for....”, that’s corruption. If I am stopped by a traffic officer and offer a bribe, I am guilty of corruption. Then if that traffic officer accepts the bribe, he or she is also guilty of the same offence. Both parties are guilty – so no one reports it. It becomes insidious of the culture of a country because why would two people who both commit a crime and both benefit, go and report it?

This Summit gives us a unique opportunity to co-operate between civil society and the public and private sectors to seek solutions and to actively co-operate in the fight against corruption. Our distinguished panelists will each give a short presentation each within their respective area of expertise.

7. THE IMPACT OF CORRUPTION ON DEVELOPMENT

BY MR CAS COOVADIA⁴

I am speaking to you on behalf of Business Unity South Africa (BUSA) today and hopefully on behalf of business as a whole. I would like to express BUSA's gratitude for being invited to address the Summit and re-commit business generally to playing a full role in the effort to stamp out corruption in our country. We remain convinced that the private sector has an ongoing commitment in the fight against corruption and will continue to play a critical role in both the NACF and in other efforts to address corruption. Our efforts to eradicate corruption are critical for economic growth, for moral regeneration and for socio-economic development.

Right at the outset, we must say that we welcome efforts by Government and other stakeholders to join with business in this concerted effort. As a business representative I need to dispel the notion that corruption is a factor only in Government. Corruption is a scourge that is all-pervading and which spreads into all corners of our community, all sectors of our country, including Government, business and civil society. My topic is the impact of corruption on development and I will try to bring this down to some practicalities because we very often tend to talk at very high levels on policies and concepts, etc.

A recent look at the Institute for Security Studies (ISS) website shows that it refers to research that the ISS conducted in 2001. The study showed that 50% of respondents felt that levels of corruption in Government and in business are similar. The study also showed that 54% of respondents expressed a view that there is less corruption in civil society. That's a perception and we need to take that into account in our discussions. Let us now refer to some examples of corruption and the impact from BUSA's point of view on development.

- A recent topical example has been the efforts by the Minister of Social Welfare to combat corruption in the social grant system. The Minister is on record as saying that approximately R2 billion per year is lost to this country as a result of corruption in the social grants system. There are obvious impacts of this corruption: significant delays in social grant payments, resulting in real strife amongst the people who should genuinely benefit; and an adverse effect on health and on the education of our children. A lot of people who receive grants are actually responsible for the health and education of children that they care for. This type of corruption has

⁴ Cas Coovadia is a member of the Banking Council of South Africa.

another insidious effect - because of the delay in receiving grants, recipients need to make ends meet, so they borrow money. This in itself creates a cycle of indebtedness, something that is very close to the hearts of many people in this country. Also the R2 billion that is lost to the economy is obviously not put to productive use in the economy and has an impact on consumer spending, general growth and so on.

- ii) City Press reported on 23rd January this year on corruption related to land deals in Badplaas, Mpumalanga. This is an example of corruption between the private and the public sector. It involves collusion between private land speculators and officials in the Land Commission and results in inflated land prices. Government launched an investigation into this state of affairs and action has been taken. The potential impact of this: obviously a delay in land restitution in that area (given the sensitivities of land issues in this country); a potential for political upheaval and problems in the area; as well as a delay in the development of emerging agricultural activity.
- iii) The ISS website also refers to corruption in the affairs of an organization called the AIDS Consortium, an NGO. This is a non-profit organization representing approximately 1 000 community-based organizations whose top management team has been suspended for financial irregularities and massive mismanagement of donor funds (approximately R1.1 million)! The impact of this corruption include: the knock-on effect to those 1 000 community-based groups working with AIDS related issues; negative public perception of community-based groups (who usually have severe problems in financing their activities); and damages donor perceptions of our country and how we are managing donor funds. Most importantly this has an impact on programmes related to AIDS, a scourge which is probably one of the most three crucial and critical challenges facing our country today.

These are just three examples that demonstrate corruption across the board, not only in Government, not only in civil society and not only in the private sector - but in each of them.

It should be pointed out that corruption is a critical factor which will naturally be taken into account by international investors when taking investment decisions. So this will obviously have an impact on socio-economic development. Again, a 1999 study involving companies from the United States and European Union undertaken on behalf of an organization called Control Risks, revealed that 39% of all companies consider corruption a deterrent to investment. 34% of them identify labour issues, 31% cite environmental issues and 27% identify human rights issues. Thus corruption was the

foremost issue identified in 1999 by companies from the European Union and the United States as the highest deterrent factor for investment.

Let us commit business to this fight. We believe that the National Anti-Corruption Forum is the appropriate structure for a multi-stakeholder offensive against this problem which is a scourge to development. We believe we need to continue to work together to ensure that the National Anti-Corruption Forum is effective and efficient, and we trust that everyone in this auditorium today will, during the course of this Summit, be honest and frank in their assessment of the Forum's work to date.



8. AN OVERVIEW OF CURRENT STRATEGY, REGULATORY FRAMEWORKS AND ACHIEVEMENTS

BY PROF RICHARD LEVIN⁵

At the last National Anti-Corruption Summit the Public Service Commission (PSC) was assigned the lead role by Government in its Anti-Corruption Campaign. Early in 2001 following Cabinet's decision to fast track our anti-corruption work, the Public Service Commission and the Department of Public Service and Administration spearheaded the formulation of Government's public service anti-corruption strategy. The strategy was multi-pronged, focusing on anti-corruption from the perspectives of prevention, combating, information and communication and was approved by Cabinet in January 2002. An inter-departmental, anti-corruption co-ordinating committee was established to co-ordinate implementation of the strategy as well as other anti-corruption work. Much work has now been done on implementing this comprehensive, integrated and coherent strategy. Its nine considerations are inter-related, mutually supportive and draw heavily on the resolutions of the 1st National Anti-Corruption Summit. These considerations are:

- a review and consolidation of the legislative framework which emanated from the previous National Anti-Corruption Summit resolutions;
- increased institutional capacity;
- improved systems for reporting corruption and the protection of whistleblowers and witnesses (this was also highlighted at the last Summit and formed part of the Summit resolutions);
- the prohibition of corrupt individuals and businesses (also included in the resolutions of the previous Summit as a preventive measure – our new legislation already provides for this);
- improved management policies and practices;
- the management of professional ethics (which again formed part of the resolutions dealing with integrity building and raising awareness at the previous Summit);
- partnerships with stakeholders (also highlighted at the previous Summit), a key output of which was the establishment of our National Anti-Corruption Forum;
- social analysis, research and policy advocacy; and
- awareness, training and education.

⁵ Prof Richard Levin is the Director-General of the Department of Public Service and Administration. He represented the Public Sector at the Summit.

The requirements of our Constitution, the Public Service Anti-Corruption Strategy and the resolutions of the previous National Anti-Corruption Summit together with a range of policy decisions of Government, have been translated into a number of anti-corruption measures:

- National Government has introduced and promoted various pieces of key legislation, such as the Protected Disclosures Act, the Promotion of Access to Information Act, the Financial Intelligence Centre Act, the Promotion of Administrative Justice Act and the introduction of the new and improved Prevention and Combating of Corrupt Activities Act which came into effect on Freedom Day last year.
- Special Commercial Crimes Courts have become operational in Durban and Port Elizabeth. These courts have gained strong business support and international acclaim as best practice models. Statistics show that these courts finalize a greater number of cases and achieve higher conviction rates than normal regional courts.
- We have established strong institutional capacity at national level to complement basic police work with institutions such as the Public Protector, the National Prosecuting Authority, the Special Investigating Unit, the Public Service Commission, the Financial Intelligence Centre and the Auditor-General. These institutions individually and collectively are reaching levels of maturity and efficiency which provide the country with strong anti-corruption capacity.
- Measures to combat money-laundering through the establishment of the Financial Intelligence Centre meet with globally acclaimed standards; namely, the 40 recommendations of the Financial Action Task Force on Money Laundering.
- The establishment of an Asset Register and mandatory financial disclosure of assets and interest for accounting officers and all senior managers in the Public Service is another major achievement.
- There are various other improvements in public administration including defining honesty and integrity as a key set of 11 competencies required of senior managers in the Public Service which form part of the Performance Development Management System.
- The enactment of the Public Finance Management Act including the requirements for departments to undertake risk assessments and develop fraud prevention plans is another major milestone in the prevention of corruption.
- Government has evaluated its capacity for anti-corruption work in order to increase efficiency and impact. This was completed in August 2003 and based on some of those results, Cabinet has approved proposals for the establishment of minimum

anti-corruption capacity within all Government departments. Guidelines have been published to assist departments in the implementation of these requirements.

- The Public Service Commission has set up a National Public Service Anti-Corruption Hotline which has been operational since September last year. It can be reached by dialing: 0800 701 701.

In September 2002, Cabinet approved the Protocol on Corporate Governance for State Owned Enterprises (SOEs). Besides dealing with various good governance arrangements, the protocol obliges state-owned enterprises to prevent and combat corruption through mechanisms such as risk management and fraud prevention plans, to make full disclosure of losses as a result of fraud and theft and to implement codes of ethics for board members and staff.

In the area of Local Governance, the Municipal Finance Management Act has been introduced to bring greater accountability and transparency into municipal operations. This piece of legislation also introduces risk management and fraud prevention as statutory requirements for local authorities. Structures have been created within the Department of Provincial and Local Government to initiate and implement a Local Government Anti-Corruption Strategy.

If we recall our discussions in preparation for the 1st National Anti-Corruption Summit, we felt like we were sailing through uncharted waters without a compass. Today we can confidently assert that our current strategy, regulatory framework and achievements have been inspired by the resolutions of the previous Summit. However, while we have laid a strong foundation, South Africa remains an anti-corruption construction site. Our regulatory framework is not yet fully on a par with all the provisions of the United National Convention Against Corruption. Our President has held this as a framework document that deals with cutting-edge anti-corruption initiatives. Participation in the negotiation process of the convention offered us the domestic advantage of giving effect to the express commitment of Government to fight corruption. There was also the added benefit of good governance principles being promoted globally. Furthermore, our participation in forging regional agreements such as the SADC Protocol Against Corruption and the African Union Convention on Preventing and Combating Corruption have contributed to African unity and improved regional relations.

There is no doubt that much work is still required. Our new arsenal of anti-corruption legislation is yet to be tested and our institutional capacity needs constant strengthening. We must also continue to promote and establish impeccable professional ethical behaviour by individuals and organizations while building partnerships that will

sustain the fight against corruption. In so far as a collaborative mechanism such as the National Anti-Corruption Forum is concerned, the challenge remains to define and put into operation the respective contributions of the sectors and their many constituent parts. It is imperative that the Forum's visible contribution to the fight against corruption is based on a realistic concrete work programme which includes reviews of legislation, a research agenda, the promotion of South Africa as a regional centre of excellence and the functioning of the Forum. Related to this, is the need for the Forum to mobilize the public and to raise awareness against corruption whilst communicating the successes of the Forum and its respective sectors.

Let us conclude with this thought: corruption raises serious moral and political concerns, undermines good governance and distorts international competitiveness. By jointly and collectively as civil society and private / public sectors raising awareness by educating members of the public and encouraging the reporting of corruption, we can go a long way to alleviating the situation.



9. A CRITICAL (CROSS-SECTORAL) REVIEW OF IMPLEMENTATION

BY MR HASSEN LORGAT⁶

Civil society has performed relatively well in the fight against corruption, given the innate problems pertaining to lack of funding, capacity problems (exacerbated in part by poaching of competent leadership by other sectors, particularly business and government), excessive workloads, etc. Issues of good governance and anti-corruption work continue to be major challenges for civil society. Clearly both these challenges are vitally important and will have a direct impact on the poor and the working people. Civil society organizations have always asserted that fighting corruption is important and necessary; corruption retards growth in our societies. Since 1999, civil society has been interested in working collaboratively to try to tackle these issues, but clearly there are different degrees of obligation: Government has the prime obligation of making sure that its citizens are safe and free from corruption, violence and crime.

Although civil society has battled to meet the challenge of corruption, let me admit that there is more they could be doing. It does not help that there is a climate of hardship in this country where nine million people are said to live in dire poverty. South Africa is second only to Brazil as the world's most unequal society.

Many genuinely concerned people seek to help alleviate poverty by forming NGOs. However, there are also many 'fly-by-night' NGOs and some have siphoned off valuable funds intended for HIV/AIDS and other worthy causes. For our part, SANGOCO tries to encourage and assist the genuinely hard-working NGOs and to separate those who are a sham or bogus. It has done this by vigorously enforcing its code of conduct when members brought SANGOCO into disrepute.

Since 1999 steady progress has been observed and many specialist organizations within civil society organizations have made a strong impact in the fight against corruption. Some key initiatives include:

- the SANGOCO code of conduct for NGOs has been launched and is being implemented via the media and in advocacy campaigns. The code of conduct is currently on the SANGOCO website;
- various groups such as the Open Democracy Advice Centre (ODAC), played a critical role in drawing up the Protected Disclosures Act;

⁶ Hassen Lorgat is the Media Officer of SANGOCO. He represented the Civil Society Sector at the Summit.

- SANGOCO and Transparency South Africa held national workshops (during 2001/2) which defined a national programme of action for civil society on tackling corruption, mismanagement and inequality in society;
- SANGOCO and IDASA's research and work on the Civicus Diamond which indicates that NGOs were willing to weed out corruption from amongst their own ranks;
- the Civil Society Network Against Corruption (CSNAC) was established in 2003 and is comprised of leading anti-corruption/good governance NGO's;
- the National Integrity Study (2004/5) is a comprehensive review of how a society is coping. This study was done by Transparency South Africa and contains a number of recommendations which civil society identifies with; and
- tentative plans are under consideration for an 'ombuds-office' and perhaps an 0800 line.

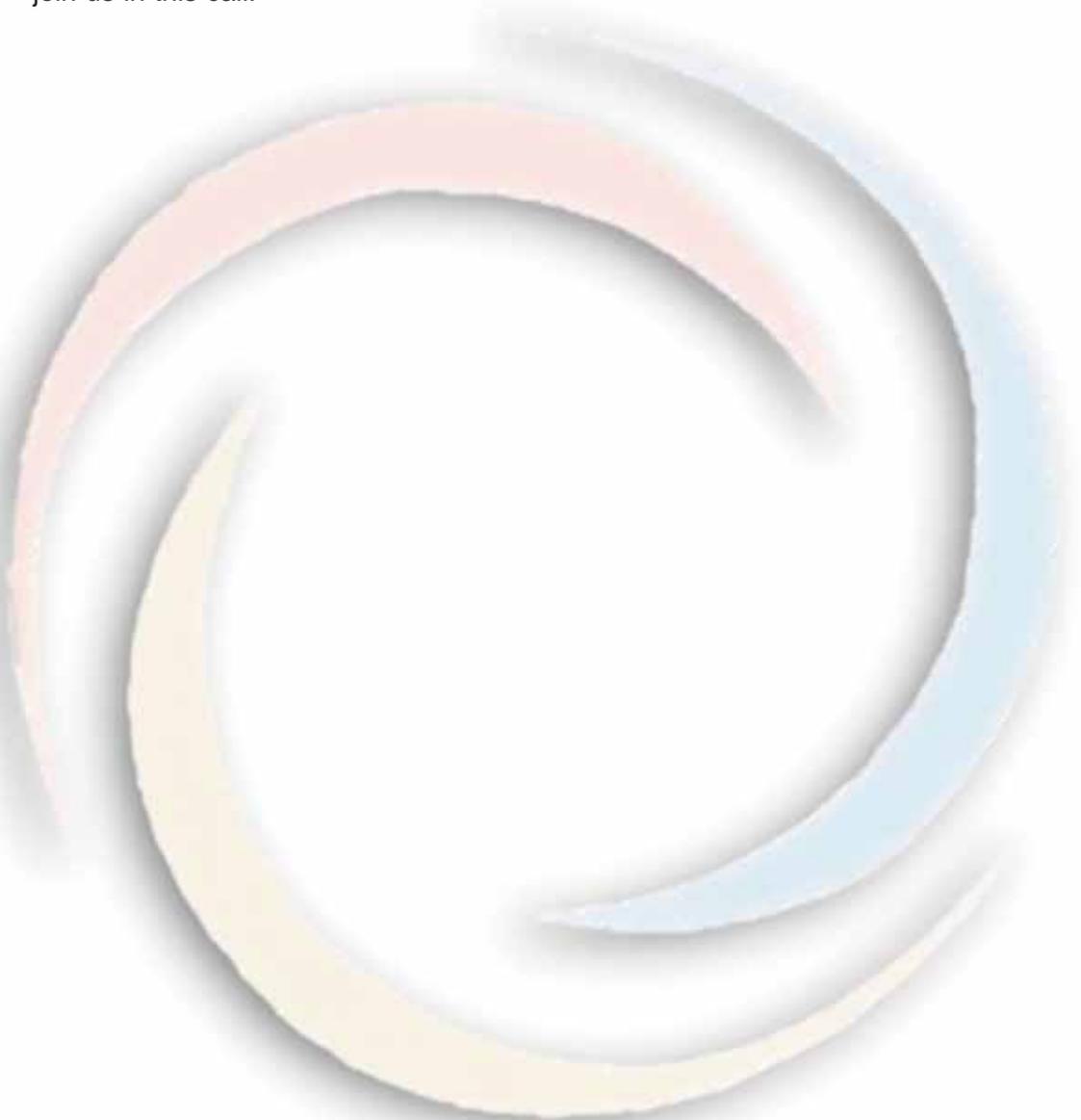
There are many effective NGOs who tackle corruption as a priority: Churches against Corruption (a coalition of mainly Catholic church groups), Peoples Budget Campaign, the Treatment Action Campaign, Transparency Africa Chapter, the Black Sash, The Gender Advocacy Programme and IDASA - to name but a few. Cosatu and the unions too are taking up issues of corruption - at the 8th National Cosatu Congress the federation dealt with a number of resolutions specifically addressing corruption. In the Cosatu secretariat's report, Zwelinzima Vavi notes that "allegations against government leaders have become commonplace" and although criticizing sensational reporting, went on to note that "there is a serious concern about the level of corruption which needs to be seen to be addressed".

The Public Service Accountability Monitor (PSAM) has recently done some meticulous work in the Eastern Cape Legislature where they investigated over 600 cases of lost revenue (amounting to about R7 billion). PSAM believes that only about 60 cases of these instances have come to a satisfactory conclusion: 60 out of 600! Clearly this is not a perception, this is fact. We cannot vilify the Eastern Cape as an island of corruption and make it independent by default, but clearly we need to look at ways to deal with the province's high corruption rate.

Because of civil society's desperation and lack of support from South Africa's citizens, the country tends to rely on international donors. However, there are drawbacks at using donors from outside our borders. International donors often try to steer NGOs into certain directions which are not necessarily in their best interests, and such funding is often not sustainable. So it would be in everyone's best interest to get more local

funding. We need to mobilize national resources to begin the process of controlling our own national agenda. There is definitely a place for Government and business to talk about sustainable national funding for NGO work.

Controversially, some consideration needs to be given to apartheid corruption, since quite clearly the problem of corruption existed long before 1994 and we ask that you all join us in this call.



10. PANEL DISCUSSION

After the presentations by Messrs Levin (Public Sector), Coovadia (Private Sector) and Lorgat (Civil Society Sector) a panel discussion ensued. The panel discussion focused on the presentations made by the representatives of the three sectors. The following recommendations emanated from the panel discussion:

Recommendations from the Civil Society Sector

- The Professional Associations (medical, teaching, legal, accounting etc) should be brought into the relevant structures, such as the NACF where they could make a contribution to the fight against corruption.
- More advocacy is needed in terms of advising and empowering citizens to be honest and to act ethically.
- An assessment should be made on how corruption affects poverty and inequality.
- High levels of consumerism and materialism encourage people to yearn for goods and services beyond their reach. In this regard, it is not ethical to persuade the poor to purchase goods beyond their means because it may lead to corruption.
- Nobody is born corrupt. Corruption is a process emanating from socialization. Therefore, education about corruption should begin at school or crèche level to build moral character.

Recommendations from the Private Sector

- In terms of existing procedures, a government department that awards a tender to a contractor who does not provide a SARS Tax Clearance Certificate to show that it is in good standing, is in violation of the law. Where applicable such departments (or their officials) should face heavy penalties.
- Corruption on the South African borders is rife. The motor industry has many problems regarding the easy illegal movement of vehicles across the borders. In this regard it is recommended that specific partnerships should be created that will enhance the Government's ability to prevent cross-border corruption.
- The Prevention and Combating of Corrupt Activities Act includes a section on the blacklisting of companies that have been convicted in respect of corruption or tender defaulting. Where applicable this Act should be utilized more prominently. It is recommended that the NACF promotes this Act as part of its educational campaign.

- Business need to play a role in identifying blacklisted companies or individuals and ensure that no further business is done with them. Government cannot do this alone. It is recommended that Business take up this challenge as a whole and within the context of Black Economic Empowerment. (BEE).

Recommendations from the Public Sector

- Research aimed at reviewing legislation and raising awareness regarding anti-corruption is currently underway. It was recommended that such research should also include a review of the effectiveness of current constitutional mechanisms for combating corruption.
- It was pointed out that the NACF is about creating co-operation between the different sectors and formulating joint programmes over mutually beneficial issues. It should not be seen as an alternative to existing constitutional and oversight bodies.
- Codes of conduct, ethics and professional levels of behaviour need to be taught in a positive way.
- In government departments, it is the responsibility of Accounting Officers to deal with compliance issues. The Public Finance Management Act spells out this responsibility and criminalizes financial wrongdoing. There is a section in the Act that allows the courts to act against Accounting Officers who permit such wrongdoing. Public servants who deliberately ignore wrongdoing need to have action brought against them.
- The Preferential Procurements Act establishes fronting as a criminal act. Organisations guilty of fronting should have their contracts withdrawn.
- The NACF needs to prioritize the problem of corruption at the Department of Home Affairs.