CHAPTER 6: REPORT BACK FROM WORKSHOP SESSIONS

Delegates attending a workshop session of the Third National Anti-Corruption Summit

6.1   INTRODUCTION

The reports of the commissions were presented by the respective rapporteurs of the commissions to the plenary session.

Workshop 1 dealt with governance and accountability in civil society and the important role that civil society played. Important themes that emerged included the need for improved capacity in the sector so as to improve the enabling conditions for civil society organisations to function properly and to meet its expectations in terms of governance and transparency.

Workshop 2 addressed the issue of the prevention of bribery and the role of oversight bodies in the business sector. There was general agreement that there was adequate legislation but the whistleblower legislation needs review as there is insufficient protection for whistleblowers who are victimized. Aspects identified going forward were the need to establish core regulatory mechanisms in industries together with the necessary policing, as well as stricter sanctions against transgressors and the naming and shaming of such transgressors.

Workshop 3, in examining the roles of local councillors, officials and the communities in the prevention and fighting of corruption listed the lack of transparent processes, the allocation of RDP housing, the recruitment and employment of staff, inadequate financial controls and the abuse of municipal asset management as the most common risk areas. A method proposed to counter-act such practices was to the adoption of the Gauteng approach of using Article 79 committees which applied the principle of the separation of powers.

Political party funding was looked at by Workshop 4 which found that although public funding is administered by the IEC there are no disclosure laws regulating private funding and that no regulations exist regarding anonymous foreign funding, whilst often donations have a secrecy clause attached to them. This impacted on public perceptions of corruption and that there was a need for improved governance and transparency.

Institutional arrangements to prevent and combat corruption was analysed by Workshop 5. It was agreed that South Africa's multi-agency approach was preferable to the single agency approach of smaller countries. The role of the NACF was also considered, with the consensus that the body required a broader mandate.

6.2 WORKSHOP 1: GOVERNANCE AND ACCOUNTABILITY IN CIVIL SOCIETY
(Rapporteur: Mr J Osborne, BUSA)

Civil society organisations play an important role, but in comparison to the power of business and government they are the 'poorer relative'. This does not mean that their role is any less important, and it in fact underscores the role of civil society organisations in ensuring government accountability.

In order for civil society to play its role it is absolutely critical and crucial for it to get its house in order. It should be in a position to practice what it preaches in terms of governance and accountability. Not only is there the imbalance of power, there is also such diversity in the sector. Against this background of a lack of power and great diversity it is difficult to find solutions for the sector.

Civil society organisations need to take into account that they are the custodians of development funding and socio-economic funding. This is essentially one of the roles that civil society organisations play as they are the custodians of trust funds. Also, they are the custodians of basic human rights and they represent the people from the grass roots level upwards.

One needs to look at the enabling conditions for civil society organisations to function properly: a legal and regulatory environment; funding and other resource and civil society organisations need to meet the expectations of donors. Knowledge and information needs to be disseminated and there must be transparency.

To achieve all of this civil society organisations need human and organizational capacity both internally and externally and should also have capable Boards of Directors and office bearers, the latter to be appointed selectively and intelligently: 'the right person for the job'.

Regarding self-regulation: this is key to the roles that civil society organisations should perform. Yet civil society organisations cannot adhere to a 'one-size-fits-all' approach due to their diversity. Presently, there is no requirement for civil society organisations to belong to or to align with a government department. This needs to be addressed and civil society organisations should have to register with a government department to protect the civil society organisations' constituency. Some organisations form quickly but disappear almost as quickly.

The Workshop does not believe that a generic code of practice will work, yet there should be a starting point made for various codes of practice which are aligned with the NIS. Regarding whistle blowing and the need for an Ombudsman; it was felt that this was not practical as there is too much diversity. But this is not to say that the sector's own structures could not create a culture of transparency and open discussion and criticism. An important aspect is the freedom of the press and public debate in so far as it covers any lack of service delivery or any irregularities pertaining to civil society organisations.

Some of the conditions that would be necessary to enable civil society to contribute towards a reduction in corruption would be:

- A sound legal and regulatory environment;
- Funding and resources, and to better scrutinize the credentials and intent of foreign donors in particular;
- Knowledge and information and, absolute freedom of the press;
- Human and organisational capacity: the role of CSO paid officials and elected office bearers cannot be over-stated. This necessitates that the people who assume these positions are absolutely the right persons for the job; and
- The creation of open and frank cultures within CSO structures to promote voluntary disclosure of irregularities pertaining to civil society organisations.

Some possible solutions are:

- Training of leaders;
- A need for clear policies and procedures;
- Better auditing and financial practices;
- Refocus on ethics;
- The ethos and ethics to be instilled at pre-and primary schools;
- Board of Directors and office bearers to be correctly appointed; and
- A strengthened grass-roots culture.

Whilst the above is not conclusive or exhaustive in terms of improving governance and accountability in civil society, it should serve as a basis for further discussion and commitment to achieving this.

Conclusion

Civil society organisations must ensure that they have their "house in order" if they wish to fulfil their important roles in society.

6.3 WORKSHOP 2: PREVENTION OF BRIBERY AND THE ROLE OF OVERSIGHT BODIES IN THE BUSINESS SECTOR
(Rapporteur: Adv P Moketedi, NPA)

The Workshop looked at number of aspects that related to the sector, namely the prevention of bribery, the role of over-sight bodies, the business sector itself, the international perspective, and the challenges to the sector as well as the way forward.

Under the heading of prevention of bribery the group looked at the adequacy and effectiveness of legislation in the country. There was general agreement that there was adequate legislation (this is the view of the OECD as well). However, there was a need to align South African legislation with international law and South African Development Community (SADC) instruments and legislations.

The whistleblower legislation needs to be reviewed because there are not enough provisions to protect whistleblowers. Such people are victimized with little or no recourse.

Corruption must also be at the top of the agenda of board rooms as Directors tend to address such issues last.

Regarding over-sight bodies: the question was raised whether the country has appropriate bodies that look specifically at business conduct and whether such bodies have been effective in carrying out their mandate. These structures need to share information, whilst also making such information public, something that is rarely done. Such agencies should also participate in anti-corruption forums such as the present Summit.

In addition, some of the structures are very capable whilst others are complacent. Certain structures suffer due to political interference (the group did not test this though). There is also a need to audit structures as there are overlaps while a suggestion was made that certain structures needed "more teeth" and that others in fact needed the power to subpoena persons.

Business needs to strengthen internal mechanisms, for instance, internal management and internal audit to detect transgressions. Business governance structures need to be strengthened and effectively implemented. Companies should act decisively against employees who engage in bribery and corruption and especially against persons in higher ranks who are often merely given "a rap over the knuckles". An additional consideration here is that companies do not want to expose themselves to bad publicity. It was also noted that quite often business has made provision to pay fines regarding price-fixing.

From an international perspective, South Africa has signed the OECD Convention, being the first African country to do so. The OECD evaluation Phase II will take place next year and so far the process has been flawless.

The following challenges were identified:

- The judicial system takes too long to finalize cases which translate into a costly process. Hence business often chooses a "slap on the wrist".
- Regarding moral degeneration, there is a need to re–evaluate the moral system in society and to emphasize the role of the family.
- Government should show more commitment to the reform of the judicial process.

The way forward:

The role of the labour movement should be more pronounced in forums such as the Summit.
The need to establish core regulatory mechanisms in industries that are then policed.
Social policy needs to be extended to government and the corporate sector.
Shareholders must get more involved in the business of their companies.

Conclusion

There should be stricter sanctions against transgressors, whiles mechanisms of naming and shaming of transgressors should be considered.

6.4 WORKSHOP 3: EXPLORING THE ROLES OF LOCAL COUNCILLORS, OFFICIALS AND THE COMMUNITY IN THE PREVENTION AND FIGHTING OF CORRUPTION
(Rapporteur: Ms H Duminy, FEDUSA)

Not too long ago there were 1245 municipalities in South Africa, with that number being further reduced to 843; today there are 283 local authorities only. Further, there are more than sufficient laws that provide a good framework for local government and governance practice.

However, risk areas in local government remain, which often leads to corruption. The most common risk areas are: the lack of transparent processes, the allocation of RDP housing, recruitment and employment of staff, inadequate financial controls and the abuse of municipal asset management.

Many municipalities have internal procedures in place to combat corruption. Thus they have completed their paperwork as far as procedures are concerned. Yet there is a lack of implementation, this being especially the case in smaller municipalities. Research done a few years ago in the Eastern Cape illustrated all sorts of absurd things and goings-on that happened in the system.

Other research has also shown that South Africa has a very strong civil society where many NGOs are involved in governance and transparency. Despite this, local government experiences a lot of corruption due to poor controls and poor decision-making and a lack of capacity which creates a fertile field for fraud and tender corruption.

Due to the general incapacity of municipalities there is a high reliance on outside contractors and experts who have a "strong preference" for particular sub-contractors. All of this results in poor communication with the community and often very little cost recovery for the community. Serious vandalism takes place while there is little 'ownership' by the community of assets and this all leads to a collapse of services.

A number of solutions were tabled:

- A strategic roll-out of capacity building by Salga and the DPLG to build a core for municipalities where this is needed. This also makes it easier to have ethics management and prevention systems put into place.
- The question remains whether there is sufficient training and whether it is effective?
- Oversight bodies must be in place to exercise accountability.
- Reporting needs to be compulsory.

Major problems include:

- Tendering and procurement process were issues that were raised repeatedly in the group. Tender officials are not sympathetic to smaller companies that require access to opportunities. An interesting example was provided concerning Johannesburg which has had a very successful pilot-programme where they separate powers using Section 79 committees, which also calls for procurement people have to declare their interests! This approach is now also being rolled-out to other municipalities in Gauteng.
- Tenders "are rigged" despite the rules being in place. The rules have to be implemented and enforced.
- There is a huge shortage of skills and resources.
- Ward committees do not operate properly and some are manipulated (this came up repeatedly in the group).

The question was asked whether the ethics infra-structure at local government level actually exists. The answer is 'yes it is in place' if seen only in terms of codes of conduct for officials. However, if an audit was carried out it would show that the implementation therefore is not adequate and that the municipalities are not involved with implementing such codes of conduct.

6.5 WORKSHOP 4: PARTY POLITICAL FUNDING
(Rapporteur: Adv. M Mashai)

The objectives of the group were:

- To find mechanisms to promote transparency and accountability in party political funding.
- To find mechanisms to prevent donors influencing the policy and agendas of political parties.

All five speakers were in agreement regarding the concerns and solutions proposed, whilst the Workshop delegates reached unanimity on the aspects below.

Public funding for political parties:

- Public funding is administered by the Independent Electoral Commission (IEC).
- Public funding is not enough for the operations of political parties.
- There are no disclosure laws regulating private funding.
- No regulations exist regarding anonymous foreign funding.
- Often donations have a secrecy clause attached to them.
- Some companies prefer group funding.

  - The IEC distributes fund proportionately to political parties – hence the major parties get more and smaller parties have to approach the private sector for funding.

The group's concerns included:

- The perception of corruption in the present method of party political funding. The group agreed that funds should be disclosed by parties and by donors.
- The improper influence on policy by donors and thus the need for a regulatory framework to combat corruption, improve integrity, the enhancement of transparency and accountability and the prohibition of the use of funds acquired by means of corrupt practices.
- A common fund, such as a democratic party political fund, from where all donations can be regulated is needed.
- Disclosure laws are needed to regulate disclosure by receiving and donating parties and which is open to public scrutiny.
- There should be annual reporting that is open for scrutiny by the public.
- There should be transparency and accountability in all donations made to political parties.

Possible solutions identified:

- private sector donors should have a policy that is open to public scrutiny.
- the oversight of such policy implementation should rest with the Board of Directors and the information should appear in the annual financial statements.

The regulatory framework can extend to the following:

- the criteria for funding;
- the degree of proportionality;
- Timing of donations (at election time only or on an annual basis);
- Justifiable conditionality (e.g. for party political internal organizational use only);
- Stakeholders interests must be taken into account; and
- Source of funding and the purpose of donating should be published. (Best practice can be obtained from South American countries apropos of a comparative study that has been undertaken by a member of the group).

A key challenge remains:

The monitoring of policies and regulations, once implemented is one of the best ways to combat corruption in the area of party political funding.

6.6 WORKSHOP 5: INSTITUTIONAL ARRANGEMENTS TO PREVENT AND COMBAT CORRUPTION
(Rapporteur: Ms P Drodskie, BUSA)

The Workshop had an important and specific brief, namely, to examine the single versus multi-agency approach to preventing and combating corruption, and to do so taking into account a number of perspectives. The brief included looking at South Africa's multi-agency approach and whether the single agency approach was perhaps a better one. The presentations to the Workshop covered the advantages and disadvantages of both options, as did the ensuing discussion. Important elements in the examination of the two approaches included the effectiveness of the two models and placing such effectiveness in the South African context.

A second brief was to look at the National Anti-Corruption Forum (NACF) and the expectations in terms of its envisaged role and whether it should remain an advisory body or whether its mandate should be changed. Also to be examined were its successes and main challenges and how these challenges could be addressed.

Such a comprehensive brief did not leave sufficient time to properly examine all the areas as well as to develop comprehensive solutions.

South Africa has a number of institutions in place that translates into a multifaceted and a multi-agency approach. Thus South Africa has, for example: a Special Investigating Unit, the South African Police (SAP), an independent Judiciary, a Parliament and electoral system that is very democratic, the Independent Electoral Commission (IEC) which is an iconic democracy institution in Africa, and an independent media.

Botswana has a single agency anti-corruption approach which has its advantages and disadvantages. Their approach is characterised by a single law and code of ethics for public servants, while each Ministry has its own individual obligations, Botswana also employs the method of naming and shaming those implicated; this is done at the time of charges being laid and ultimately when sentence is handed down. Yet the political system still faced challenges from corruption. Their challenges included delays in the justice system. The challenges that Botswana faces in its particular approach are:

- Justice is often seen to be delayed (justice delayed is justice denied).
- The Botswana Permanent Secretary is responsible for much of the process but does not have the time or the budget to champion the cause of the agency.
- The agency has a very wide brief and thus cannot always be successful due to a lack of focus.

The Workshop also looked at the business sector. Their opinion was that the model should cover aspects such as control, governance, risk assessment, correct strategies and policy and procedures as well as correct programmes. Any such aspects that were not adequately covered created a gap. It should also have a framework to cover these various areas that also would include information and communication as well as investigation and monitoring.

The Workshop felt that the gaps between various organisations needed to be filled. It was felt that a solution was to strengthen the individual and independent institutions of South Africa: the judiciary, Parliament and its institutions, the media, the IEC, and SAPS. Such organisations also needed to have the resources to be able to carry out the tasks for which they were established.

Regarding the type of model, to be used between a single agency or multi-agency approach, it was felt that there was no ideal situation. Both had advantages and disadvantages. The general consensus was that should the gaps in the South African model be adequately covered, South Africa's multi-agency approach served its needs best.

The Workshop agreed that the NACF had made quite significant achievements although not achieving all the expectations that everybody had hoped for. The challenges faced by the NACF that need to be addressed include:

- Lack of cohesion and commitment by stakeholders.
- The NACF is only funded by government.
- The PSC is marginalized as a secretariat.
- There is only limited involvement by members in the NACF.
- Lack of follow through on decisions.
- Implementation was weak because it is not a statutory body.

Furthermore a number of opportunities were identified:

- The NACF can be strengthened;
- The successes it has had can be further expanded;
- The secretariat can be strengthened;

- To share the financial requirements for the operation of the NACF between the parties;
- Its mandate should be widened to more than an advisory body;
- The NACF to do research which could determine strategic direction and to make it more proactive rather than reactive;
- Projects could be directly managed;
- Representation at conferences should be improved; and
- Establish anti-corruption fora in the provinces.

During the debate concerning the best way forward for the NACF and South Africa, it was recommended that the possibility of making the NACF a statutory body should be investigated.

In summary, the Workshop felt that the multi-agency approach that South Africa presently has should remain but that it should be strengthened and better coordinated. Regarding the NACF, it was felt that an investigation should be embarked on whether the NACF should retain its present role as an advisory body or whether it should become a statutory body.

6.7   COMMENTS FROM PLENARY IN RESPONSE TO RAPPORTEURS' FEEDBACK:

(No comments were made in response to commissions 3 and 4)

Workshop 1

- In the reporting from all of the 5 commissions there is too little emphasis placed on the important aspect of monitoring and this should be addressed.

- Everything cannot be legislated; hence bodies such as Sangoco and other umbrella bodies need to establish uniform standards that must be adhered to by their members. Furthermore, such umbrella bodies must ensure that members act in accordance with the set standards.

- There must be a limit on what and who civil society represents as it cannot be "everything to everybody." They need to recognize government just as government needs to recognize civil society organisations. The necessary partnership between civil society and government does not dilute the actions of both.

Workshop 2

- Everything cannot be legislated, hence bodies such BUSA and other umbrella bodies need to establish uniform standards that must be adhered to by their members. Furthermore, such umbrella bodies must ensure that members act in accordance with set standards.

Workshop 5

- The NACF needs to be evaluated in terms of how well it has functioned. The role of the secretariat has been downgraded and the secretariat should actually be strengthened in order to assist the NACF. This can be done by the secretariat including appropriate research in its work.

- Minister Moleketi referred to an earlier point made by a rapporteur that shifting the tender process from councillors to management was merely shifting the problem. In the PFMA and the MFMA the political office bearers are not involved in the tender processes as this is a matter that is executed by accounting officials and those that have the responsibility for such work. This is captured in law.

- Minister Moleketi also referred to the concerns expressed regarding the proposal of a particular task team. The Minister said that the initiative is not an attempt to replace existing structures; hence it will not replace the NACF or any other structures. The task team proposal is to use elements of the NACF to do work on how to move forward and ensure that South Africa has a proper NIS that functions for society as a whole and to ensure that it is considered and implemented by the NACF.

- The justice cluster should serve to link the national, provincial and the local justice levels and to provide feedback on a quarterly basis. In this way we can adapt and improve on strategies and actions to combat corruption.