

# **FIGHTING CORRUPTION : NATIONAL INTEGRITY SYSTEMS, GOOD PRACTICE EXAMPLES**

*Chairperson: Themba Godi, MP  
Standing Committee on Public Accounts  
Tel: +27 21 403 3532; E-mail: njackson@parliament.gov.za*

## **Introduction**

- Combating corruption is a topical societal and political discourse.
- Corruption has serious negative consequences for the Country, government and people.
- Vigilance and preventive measures necessary to counter its advance.
- Management and supervising personnel bear special responsibility in this respect.
- This paper intends to give insight into preventative measures and country examples on basic structures and mechanisms to combat corruption.

## **Fundamental Principles**

- There is a clear nexus between addressing corruption, good governance, transparency and the rule of law.
- The structural Component should be based on a set of institutions that provide checks and balances; law enforcement bodies etc.
- A strong and independent judiciary is the foundation to fair and impartial justice.
- Anti-corruption agenda should be grounded in the rule of law culture. Impartiality within the system should be a norm.
- The above need to be consolidated or bolstered by political will and broad public support
- Political will exists when the following pre conditions are met:
  - Comprehensive anti-corruption strategy
  - Independent agencies that are well resourced and politically supported
  - Anti-corruption laws that are enforced.
- Legal and political structures have to be built on a number of mutually supporting strategic pillars and values.
- A free media which correctly informs and engender public debate; is crucial and one of the essential components of a democratic society.
- The role of other important actors, life civil society; parliaments, Auditor-General's office etc.

## **Integrity : Good practice examples:**

- Different Countries have different mechanisms to prevent corruption thereby restoring the integrity of public sector.
- Any system has to be informed by a documented and well communicated code of ethical behaviour.
- Fighting corruption and achieving good governance are important challenges in South Africa.
- Since 1994, there have been a number of anti-corruption initiatives, which culminated in the adoption of the Public Service Anti-Corruption Strategy (PSAS).
- PSAS has a number of inter-related and mutually supportive considerations:

- Review and consolidation of the legislative framework
- Increased institutional capacity
- Protection of whistle blowers and witnesses
- Improved management and practices
- Management of professional ethics
- Partnerships with stakeholders.
- South Africa has strong political will to fight corruption: Legislations:
  - Criminalises corruption
  - Protects whistle blowers and witnesses
  - Provides access to information
  - For Special Commissions and Tribunals
  - To recover proceeds of crime
  - International co-operation in criminal matters.
- South Africa also has independent institutions that fight corruption:
  - Auditor-General
  - Public Protector
  - Public Service Commission
  - As well as a well functioning criminal justice system.
- It also has codes for conduct of Public Officials:
  - Management
  - Accountability
  - Internal Control arrangements.
- And codes that deal with breaches of conduct.
- South Africa has a relatively comprehensive and practical legislative framework which gives a good basis for combating corruption in the public sector, including good financial management and administration (Public Finance Management Act).
- The legislative and institutional frame is in place, the challenge is implementation.

## **Conclusion**

Integrity systems supported by good legislation and policy is important, but effective implementation and enforcement of such legislation is a critical step in efforts to prevent and fight corruption.

## **Biography of Presenter**

Not Received.

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## **1. Introduction.**

Preventing corruption is an important issue in societal and political discourse, as evidenced not only by recent cases of corruption, but also by increased awareness of the problem. Corruption causes serious economic damage, interferes with fair competition and destroys confidence in the integrity and functioning of public administration. In order to fight corruption effectively at all levels of administration, it is important to strengthen vigilance towards corruption-related activity, concentrating on preventing such activity. Preventive measures, including effective control mechanisms, are necessary to counteract in advance as many factors contributing to corruption as possible.

Management and supervisory personnel in public administration, politics and the private sector bear a special responsibility in this respect. The paper intends to provide insight into preventative measures to discourage and deal with corruption. It does so by providing examples of countries that have institutional mechanisms either in the form of legislation or other measures to discourage and detect corruption. A brief session however, will provide an overview of basic structures and mechanisms that need to be in place in order to effectively deal with corruption. Amongst other things, the section will highlight the role of Judiciary, political will and the role of civil society in fighting corruption.

## **2. Fundamental principles**

### **2.1 Political will versus Independent Judiciary**

International practitioners, policymakers and reformers have learned often the hard way, that there is a clear nexus between addressing corruption, good governance, transparency and the rule of law. Addressing corruption issues within the judiciary and law enforcement community should be a matter of highest priority for all governments and civil society. Universal right to fair and impartial justice and the administration of justice with integrity becomes crucial in dealing with corruption. If these key institutions are too weak, unprofessional or corrupt, then the rights of citizens and impartial justice are illusionary.

In today's globalising world and age of terrorism, international, political and economic competition it is crucial for every country to adopt and implement an anti-corruption agenda grounded in the rule of law culture. One of the essential institutions necessary to accomplish this societal goal is a strong, independent and predictable judiciary. Judicial independence requires judges to be relatively free from undue interference in the decision-making process and that justice is the norm, not the exception. Impartiality within the system therefore is the end goal.

However, some scholars have argued that what is most needed in most countries are not new constitutions, laws or treaties but the political will and strong, independent institutions to implement them as well as broad political support. While countries are struggling to find ways to create and nurture an independent judiciary within different socio-economic contexts, the reality is that most have not succeeded because of a lack of both political leadership and broad based public support. Political will requires commitment of political leaders to eradicate corruption and exists when the following pre-conditions are met:

- Existence of a comprehensive anticorruption strategy.
- Independent anti-corruption agency is provided with sufficient personnel, resources and political support.
- Anti-corruption laws are fairly enforced by the independent anti-corruption agency.

Political will therefore is the most important pre-requisite for the success of a comprehensive anti-corruption strategy. Other issues are secondary. For example, checking whether or not the policy context within the country hinders or favours corruption or institutionalising a code of good conduct and ethical standards within the public service.

Legal and political structures have to be built upon five mutually supporting strategic pillars and values, which are:

1. Impartiality and objectivity.
2. Integrity.
3. Transparency.
4. Accountability.
5. Public trust.

A penology of governance issues such as transparent appointments, promotion and disciplinary process, financial and administrative independence, personal security of judges, security of tenure, the fair and effective enforcement of court orders, access to judicial rules and decisions, addressing judicial interference and corruption are all high priority in discouraging corrupt behaviour. Support for engaged media, the public and civil society also provide the necessary platform for debate.

## **2.2 The role of media and civil society**

A free media ranks alongside an independent judiciary, as one of the two powers that should not be held accountable to politicians. Both serve as potent counter-forces to corruption and must receive sufficient protection. Unlike judges, public prosecutors and attorneys-general, the privately owned media is not appointed or confirmed in the office by politicians.

Without free media, civil society is crippled, both by a lack of information and inability to engender public debate. Censorship of media, direct or indirect, is unacceptable, thus laws restricting the right of news media to freely gather and distribute information must be abolished and government authorities must not interfere with the content of print or broadcast news or restrict access to a news source. Freedom of expression and freedom of media are amongst the most basic human rights and an essential component of any democratic society. A free, independent and pluralistic media is essential to a free and open society and to accountable systems of government.

Free media also needs to be supported by a vibrant and independent civil society. Civil society needs minimum guarantees of freedom of association and freedom of speech. In recent times policy-makers have come to realise that democratic institutions are fragile and that market forces alone are inadequate to ensure social and economic equity without the countervailing participation of civil society in decision-making processes. Responsible non-governmental organisations (NGOs) ensure that these processes are run democratically and accountably but it is also true that many NGOs are run in neither fashion.

Civil society encompasses the expertise and networks needed to address issues of common concern, including corruption. Corruption in a society involves two principal actors namely, the government and the private sector. Civil society is typically the major victim. As power shifts from the centre to local authorities, opportunities for corruption shift downward to people who are in direct contact with civil society. This means that the ability of the civil society to detect and reverse the activities of the public officials is enhanced by the proximity and familiarity with local issues. In discharging its roles, the civil society has the duty to monitor the actions of those in power and ensure an accountable, transparent and efficient use of public resources. The civil society also needs to monitor the media and the content of its reports.

While there may be other important role actors, like Parliaments, the Executive, Anti-corruption agents, the Independent Audit Office, that are not mentioned in the report, their role in fighting corruption cannot be overemphasised.

### **3. Integrity: Good practice examples**

Different countries have different mechanisms to prevent corruption thereby restoring the integrity of public sector. It is important to highlight that any system has to be informed by a documented and well-communicated code of ethical behaviour within the public service that seeks to discourage corrupt behaviour. Below is the list of good practice examples.

#### **South Africa**

- 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.

The Public Service Anti-corruption Strategy contains a number of 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:

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:

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.

South Africa has strong political commitment to fight corruption, both in our political leadership and through collective civil mobilisation. There is range of legislation, including legislation that criminalizes corruption, protects whistleblowers and witnesses, provides access to information to ordinary citizens, legislation for special commissions and tribunals, legislation to recover the proceeds of crimes, including corruption, as well as legislation dealing with international cooperation in criminal matters.

South Africa has independent institutions that fight corruption, namely the Auditor-General, Public Protector and the Public Service Commission, and the country has a well-functioning criminal justice system. The country is constantly developing management, accountability and internal control arrangements, including performance, employment and procurement policies. There are codes for conduct of Public Officials and codes that deal with breaches of conduct.

South Africa has a relatively sophisticated and comprehensive framework, which deals with transparency in procurement and financial management. The new Prevention of Corruption Act rectifies the shortcomings of the Corruption Act of 1992. The Act 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 (The Public Finance Management Act, 1999), in line with international best practice.

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.

The public sector has uneven capacity to enforce and comply with the legislation. The courts are overloaded and struggle to retain experienced prosecutors.

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.

## **Conclusion**

The need to foster and sustain high levels of ethics in the public service has come into the spotlight with a global shift of focus. Increased concern about corruption and the decline of confidence in both the integrity and capacity of public administration has prompted many governments to review their approaches to ethical conduct. Integrity of public officials can come under pressure in a variety of ways, and it is thus essential that ethical codes are tailored to a society's conditions. Integrity testing can have a role to play, and the assets and liabilities of officers at particular risk may need to be monitored. While it is important to have integrity systems in place supported by good legislation and policy, effective implementation and enforcement of such legislation is a critical step in efforts to prevent and fight corruption.