

TOWARDS AN INTEGRATED NATIONAL INTEGRITY FRAMEWORK: CONSOLIDATING THE FIGHT AGAINST CORRUPTION

REPORT ON THE THIRD NATIONAL ANTI-CORRUPTION SUMMIT

Held at the Birchwood Conference Centre
Ekurhuleni, Johannesburg, South Africa
4 – 5 August 2008



NACF

National Anti-Corruption Forum

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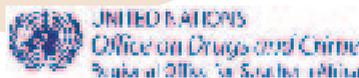




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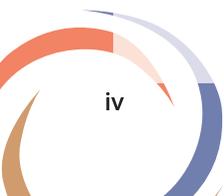
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GLOSSARY OF ABBREVIATIONS

ACCC	- Anti-Corruption Coordinating Committee
ADB	- Asian Development Bank
AU	- African Union
ANC	- African National Congress
BUSA	- Business Unity South Africa
CEO	- Chief Executive Officer
CORE	- Cooperative for Research and Education
CSO	- Civil Society Organization
DCEC	- Directorate Against Corruption and Economic Crime
DFID	- Department of International Development (UK)
DDG	- Deputy-Director General
DG	- Director-General
DPLG	- Department of Provincial and Local Government
DPP	- Directorate of Public Prosecutions
DPSA	- Department of Public Service and Administration
DTI	- Department of Trade and Industry
FEDUSA	- Federation of Democratic Unions of South Africa
FICA	- Financial Intelligence Centre Act (2001)
GTZ	- Deutsche Gesellschaft Fur Technische Zusammenarbeit
IDASA	- Institute for Democracy in South Africa
IDC	- Industrial Development Corporation
IEC	- Independent Electoral Commission
ISS	- Institute for Security Studies
JSE	- Johannesburg Stock Exchange
LO	- Life Orientation
LRA	- Labour Relations Act
MFMA	- Municipal Finance Management Act
MoU	- Memorandum of Understanding
MP	- Member of Parliament
NAC	- Network Against Corruption
NACF	- National Anti-Corruption Forum
NACH	- National Anti-Corruption Hotline
NAPTOSA	- National Professional Teachers Organization of South Africa
NBI	- National Business Initiative
NGO	- Non-Governmental Organization
NIF	- National Integrity Framework
NIS	- National Integrity System
NPA	- National Prosecuting Authority
ODAC	- Open Democracy Advice Centre
OECD	- Organization for Cooperation and Development
OPSC	- Office of the Public Service
PAIA	- Promotion of Access to Information Act (2000)
PAJA	- Promotion of Administrative Justice Act
PSC	- Public Service Commission
PSAM	- Public Service Accountability Monitor
PWC	- Price Waterhouse Coopers
RDP	- Reconstruction and Development Programme
ROSAF	- Regional Office for Southern Africa
SADC	- Southern African Development Community
SALGA	- South Africa Local Government Association
SAMDI	- South Africa Management Development Institution
SANGOCO	- South African NGO Coalition

- SAPS - South Africa Police Service
- TI - Transparency International
- UNCAC - United Nations Convention Against Corruption
- UNODC - United Nations Office on Drugs and Crime



FOREWORD

The Third National Anti-Corruption Summit hosted by the National Anti-Corruption Forum (NACF) was held on 4 and 5 August 2008 at the Birchwood Conference Centre in Ekurhuleni, in Johannesburg. The theme of the Summit was, An Integrated National Integrity System: Consolidating the Fight Against Corruption. The Summit presented the opportunity for all sectors of South African society, namely the Public, Business and Civil Society sectors, to collectively reflect on the crafting of an Integrity Framework for the country as well as the values underlying such a Framework.

The objectives of the Summit were, (inter alia):

- To develop an holistic and integrated approach to the fight against corruption
- To build a framework for national integrity
- Ensure a continued awareness to prevent and combat corruption, in order to embed and deepen the fight against corruption.

The concept of a national integrity framework was advanced at both the Africa Forum on Fighting Corruption and Global Forum V which were held in Johannesburg during March and April 2007 respectively. Amongst others, issues highlighted at these two conferences were: the values necessary for building an integrated national integrity system; the need for a common approach resulting in a holistic system of integrity and its measurement, as well as the roles of stakeholders towards establishing a framework for national integrity. In pursuance of such a holistic approach for the establishment of a national integrity framework the Summit provided the opportunity for all delegates to examine and exchange views on areas in which progress had been made with legislation, coordination, and implementation of anti-corruption initiatives.

**PROF SS SANGWENI, CHAIRPERSON:
PUBLIC SERVICE COMMISSION**

ACKNOWLEDGEMENTS

The National Anti-Corruption Forum (NACF) would like to thank all those who contributed to the Third National Anti-Corruption Summit. Great appreciation is therefore due to:

Ms G. J. Fraser-Moleketi, former Minister for the Public Service and Administration and former Chairperson of the NACF for her leadership role and support to the NACF, as well as for delivering the Keynote Address and providing critical inputs and suggestions during the Summit.

The Public Service Commission (PSC) for its guidance and support during the hosting of the Summit, in particular the insight and leadership provided by the Chairperson of the PSC, Prof. Stan Sangweni.

The Chairpersons of the plenary sessions at the Summit who led with insight, wisdom and humour including the former Premier of Gauteng, Mr Mbhazima Shilowa; Mr Jerry Vilakazi, CEO of BUSA; Ms V Harbajan, BUSA; Prof. J Jansen, Honorary Professor at Wits University; and the Programme Director, Dr N Maharaj, who ensured that the process and the programme remained as planned and did so effectively and with the necessary degree of flexibility.

The members of the Resolutions Committee who, during the course of the entire Summit, identified the issues to be formulated as Summit resolutions, and who subsequently worked into the night in the compilation of the resolutions: Prof. R Levin, DPSA (Convener); Mr J Marnewick, BUSA; Dr J Minnaar, BUSA; Ms A Tilley, ODAC; Mr Peter Just, NRLF; Dr Ellen Kornegay, DPSA; Mr Ruan Kitshoff, DPSA; Ms Odette Ramsingh, DG, OPSC; and Mr Admill Simpson, OPSC.

Appreciation is also due to the Implementation Committee and the team from the Secretariat who helped to make the Summit the success it was.

A significant factor in the success of the Summit was the support received from the following sponsors:

- Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ);
- United Nations Office on Drugs and Crime (UNODC), Regional Office for Southern Africa (ROSAF); and
- The Department for Overseas Development (DFID) and the Public Service Commission.

CHAPTER 1: INTRODUCTION

1.1 Background

Since the hosting of the Second National Anti-Corruption Summit, the need for a much more holistic and integrated approach to the fight against corruption has become evident. A major step towards achieving such a holistic approach is to build a framework for national integrity, thereby entrenching the fight against corruption. The Second National Anti-Corruption Summit has shown that government, business partners and various civil society groups are all involved in building national integrity in one way or another. To date however, no cohesive, integrated system for a national integrity framework exists. It was from this perspective that the Third National Anti-Corruption Summit was organised and hosted by the National Anti-Corruption Forum (NACF).

The Third National Anti-Corruption Summit was held during 4 - 5 August 2008. The theme of the Summit was **“Towards an Integrated National Integrity System: Consolidating the Fight Against Corruption.”** In so doing, the Summit took forward the need to consider the development of a National Integrity System. Such a framework, if properly established, would ensure a continued awareness of the need to prevent and combat corruption, thus embedding and deepening the fight against it. The aim of this Summit, therefore, was to advance and fully explore the idea of an integrated national integrity framework for South Africa with the intended result of a cohesive approach to the building of integrity. In this respect attention was also placed on the promotion of integrity in the Business and Civil Society sectors. The Office of the Public Service Commission (OPSC) as Secretariat took this into consideration when the theme for the Third National Anti-Corruption Summit was proposed and developed.

The summit was fully representative of the three sectors comprising the NACF and was attended by 316 delegates. The three sectors of the NACF are the:

- Civil Society;
- Business ; and
- Public Sectors.

Each sector was responsible for inviting their specific delegates to the Summit. Furthermore, members of various professional organisations were also invited to the Summit.

1.2 Objectives of the Summit

The objectives of the summit were to:

- Identify and debate the key components of the South African National Integrity Framework.
- Identify governance and accountability mechanisms in the civil society sector to map the way forward for the promotion of transparency and accountability within the sector.
- Explore mechanisms to prevent bribery by Business as well as the effectiveness of relationships between business entities and oversight bodies.
- Explore the roles of local councilors, officials and the community in the prevention and fighting of corruption.
- Debate the declaration of donations made to political parties as a mechanism to prevent undue influence by donors as well as other mechanisms to promote transparency and ensure accountability in this regard.
- Discuss institutional arrangements to prevent and combat corruption.
- Explore price-fixing and its impact on communities.
- To debate Ethics in Education based on the NACF’s report in this regard.
- Develop and agree to Resolutions emanating from the discussions during the Summit.

1.3 Structure of the Summit

The summit comprised of four plenary sessions as well as five workshop sessions. These sessions had specific themes to help ignite the debate on the National Integrity Framework. The four plenary sessions dealt with the following themes:

The Role of Government, Business, Civil Society and Labour in the National Integrity Framework;
Implementation of the Resolutions of the Second National Anti-Corruption Summit;
Price-fixing and its impact on communities; and
Ethics in Education

The plenary sessions were held in the form of panel discussions under the chairpersonship of a facilitator.

The themes of the five workshops were as follows:

- Workshop 1: Governance and accountability in Civil Society
- Workshop 2: Prevention of bribery and the role of oversight bodies in the Business Sector
- Workshop 3: Exploring the role of local councillors, officials and the community in the prevention and fighting of corruption
- Workshop 4: Party political funding
- Workshop 5: Institutional arrangements to prevent and combat corruption

In deciding on the themes for the workshops, consideration was given to its relevance in the development of a national integrity framework. The five workshops constituted the main focus of the Summit. Delegates were requested to attend one of these workshops where the themes were addressed by a spokesperson of each of the sectors under the chairpersonship of a facilitator. In turn, a rapporteur reported back to the plenary session on the findings and recommendations of the respective workshop.

The programme director for the Summit was Dr Norman Maharaj, Commissioner of the Public Service Commission. Introductory remarks were made by Professor Stan Sangweni, Chairperson of the Public Service Commission and the keynote address was delivered by Ms Geraldine Fraser-Moleketi, former Minister for the Public Service and Administration. The Chairperson for the opening proceedings of the Summit was the Mr Mbhazima Shilowa, the former Premier of Gauteng. The Summit concluded with resolutions that were adopted by the delegates and are reflected in Chapter 9 of the Report.

CHAPTER 2: OPENING PROCEEDINGS

2.1 INTRODUCTION

During the opening proceedings introductory and welcoming remarks as well as the keynote address for the Summit were made. This helped to set the tone for what became an intense and engaging Summit under the sub-themes as well as the special plenary sessions. The debates which ensued focused delegates' minds on what later came to be adopted as the resolutions of the Third National Anti-Corruption Summit. The addresses made by speakers during the opening proceedings are reflected in this Chapter.

2.2 INTRODUCTORY REMARKS BY PROF STAN SANGWENI

We have been engaged in anti-corruption Summits since 1999. One of the resolutions at the first Summit called for the formation of a multi-sectoral organisation to address corruption in the country. This in turn led to the formal launching of the National Anti-Corruption Forum (NACF) in Langa, Cape Town, on 15 June 2001.

Hence, as I welcome and introduce you to this our 3rd National Anti-Corruption Summit, I can recall very vividly in my mind's eye, on the eve of the launch of the NACF, that morning in Cape Town, I was interviewed on Morning Live by a Ghanaian lady who was on loan from the BBC to the SABC.

Very upbeat about the initiative, and feeling positive and optimistic about the potential of the soon to be launched NACF, I confidently remarked to her, "Corruption will soon be contained, if not completely eradicated through this body representing South Africa in its totality, the NACF!" She looked at me quizzically and remarked, "But there is so much corruption in this country, how will you manage that?" A little ruffled by what sounded like a cynical quibble I responded passionately: "Today we usher in a new and unique weapon against corruption in South Africa. Next time you interview me on the first anniversary of the NACF I shall be telling you how we have contained corruption if not eliminated it. Watch this space," I said defiantly!

Today, I am sad to say that, from where I sit at the helm of the oversight function of the Public Service Commission (PSC), where through the National Anti-Corruption Hotline (NACH), launched in September 2004, we have seen no less than 5000 alleged cases of corruption involving persons in government departments and local government structures. However, such corruption obviously is with the connivance of persons from the private sector and/or civil society. We have forwarded these to the concerned departments for investigation, but the rate of completed investigations is dismally low.

The majority of the allegations relate to "unethical behaviour", which includes arriving late to or leaving early from work; theft of departmental property; abuse of telephones, computers and so on. This is followed by allegations of fraudulent/irregular procurement transactions as well as fraudulent claims and qualifications totaling just over nine hundred. While these are allegations, some of them have proved to be true. They nonetheless point to the serious state of affairs with regard to the prevalence of corruption across the board. By this I mean in the public sector, private sector and civil society, as indeed we have the phenomenon of cross-sectoral corruption.

Utat' u Madiba, our former President Nelson Mandela, saw this coming already in his opening address to Parliament in 1999, when he made the point:



Professor Sangweni is the Chairperson of the Public Service Commission (PSC). The Office of the PSC also serves as the Secretariat to the NACF under whose auspices this summit was held.

"Our hope for the future depends on our resolution as a nation in dealing with the scourge of corruption. Success will require an acceptance that, in many respects, we are a sick society. It is perfectly correct to assert that all this was spawned by apartheid. No amount of self-induced amnesia will change the reality of history. But it is also a reality of the present that among the new cadres in various levels of government you will find individuals who are as corrupt as, if not more than, those they found in government. When a leader in a provincial legislation siphons off resources meant to fund services by legislators to the people; when employees of a government institution that was set up to help empower those excluded by apartheid, defraud it for their own enrichment, then we must admit that we have a sick society. This problem manifests itself in all areas of life."

Mr. Programme Director, Distinguished Delegates and Guests.

Let me say this: This is "A rather chilling welcome and introduction to this Third National Anti-Corruption Summit". Today I see emerging before us two categories of people in our society: The one category of innocent men and women of virtue who have discharged their duties responsibly and accountably as stewards over the resources destined for alleviating poverty among our suffering masses. These we need to protect and preserve as best as we can. God Bless our land for these!!

The second category is that of wicked men and women, the corrupt fraudsters who have siphoned millions, if not billions of Rands for their selfish ends from the state coffers for which they are responsible, thus depriving millions of our destitute people. They may be listening or even looking at me as I speak. These we do not need in our society.

This is not the space I would like my Ghanaian lady to watch; indeed, I cannot stand tall today as I look at this space!!

Distinguished guests, in welcoming you and introducing you to our Third National Anti-Corruption Summit let me say I trust that we shall build on the integrity of the majority of our women and men of virtue to reinforce the bulwark against corruption, and at the same time consolidate our strategies for combating corruption so that we can root out the wicked, corrupt fraudsters who have no place in our society. Let me also say that we at the Public Service Commission, having seen the vision of the NACF and nurtured it from its inception, stand committed to promoting and upholding the high values which are the foundation of our national integrity and which the NACF stands for. This is what the NACF hopes to achieve for our people.

2.3 OPENING AND WELCOME ADDRESS BY MR M SHILOWA

One is aware of conferences of this nature that take place from time to time. It is due to the importance of the issues that surround the theme of this conference that we have come together, namely to address the problem of corruption. We need to find resonance in the country where all of us, black and white, young and old, civil society, public and private sector collectively frown on corruption.

If we do not as a society frown on corruption we will not be able to combat it. One tends to look at corruption at the level of the public servant - as those who steal much needed resources from the people. In this way social security benefits come under threat; one cannot pay pensions; and the construction of housing cannot be finished on time as public servants have "helped themselves".



Mr M Shilowa was, at the time of the Summit, the Premier of Gauteng Province

However, one also needs to look at who works with the corrupt civil servants. We need to be able to say that we frown on any corruption committed by civil servants or by the private sector. We must also be able to deal with corruption committed by politicians or by a CEO of a business. As a country we must take a very dim view of such issues and practices.

It is important that we talk about this because we want to ensure that when we talk about an anti-corruption strategy, it means that the battle is joined by all throughout the country.

Everyone has a role to play in combating corruption; it is not just civil servants, trade unions and the other sectors of society. Many of us have committed what is often referred to as “minor acts” of corruption, e.g. the bribing of traffic police to avoid a traffic fine. In fact, there is no “minor” offence or act of corruption.

We also need to ask whether the problem is just with ourselves or whether it is also with institutions. We need to take seriously the reports regarding the public sector not adequately following up on information provided by the public via the corruption toll-free numbers. Perhaps we need to consider that institutionally we may just not be sufficiently ready to meet these challenges.

I also ask myself the question whether the problem in fact relates to the type of society that South Africa presently is - a society in which it is perceived that it is not hard work that provides the success that is sought. The perception is that life is more about the lure of “easy” money and the “easy life”, better cars and material consumption. However, our society with its high poverty and unemployment sees that the ability to lead “the good life” does exist and this realization goes together with the assumption that it is not something that one needs to work for with the result that one is willing to use means that are less than honourable in order to succeed.

At this Summit we must start from the basis of what has been discussed and agreed thus far and ask the question if these aspects have been implemented. Also, where have we failed and what has been the cause of such failure? This should prompt us as a society to ask of ourselves and of our sectors: “Have I done something to combat corruption?”

What should be the conclusion of the Summit? Hopefully this Summit will have a programme of action. However, not one that says “We the people”, but one that says: “As the private sector this is what we commit ourselves to do and this is how we will be accountable.” The trade unions similarly can commit to combating corruption, while the same applies to employers. On the side of government – appropriate legislation can be put in place, among other things. And lastly, the question remains as to what institutions we as society will strengthen in order to move forward on the various corruption matters that we need to confront.

2.4 KEYNOTE ADDRESS BY MINISTER G J FRASER-MOLEKETI

Corruption reinforces the banality of evil and its conceit lies in its ability to implicate, its complicity, its ability to violate the laws of nation states, flout international conventions and treaties and undermine democratic values and the democratic ethos. It thrives among those who subscribe to Thomas Hobbes’ view that “... *the basic condition of man... is a condition of war of every one against every one; that in such a condition every man has a right to everything; even to another’s body*”. (Thomas Hobbes, *Leviathan*, Collier Macmillan, 1974, p 103).



Minister Geraldine Fraser-Moleketi was, at the time of the Summit, the Chairperson of the NACF and the Minister for the Public Service and Administration.

But is this really the value system conferred on us from time immemorial? If we agree with Hobbes, then corruption is nothing more than an extension of this natural right in a world where we are at war with each other. This logic, much vaunted even today, seeks to justify a world in which wealth, profitability and conspicuous consumption is pursued by individuals and corporations at all costs. Hobessian logic negates the very existence of an alternate value system based on the principles of *ubuntu*, humanity, caring and compassion towards others.

Corruption is anarchy that has been loosed upon the world in which we live. Chinua Achebe and many other writers in Africa including Ngugi WaThiongo and Ousmane Sembene all point to the importance of fighting corruption because it erodes the social fabric, undermines community and perpetuates poverty, inequality and underdevelopment. For these reasons alone, we must be resolute and steadfast in our fight against corruption in all spheres of society.

Corruption has been manifest in all historical epochs. It was Plato who warned us to “do no service for a present”, and Aristotle who said that “we become just by doing just acts”. What both Aristotle and Plato are addressing is corruption of values, the corruption of the soul of the nation, the institutions of democracy and the corruption of the individual. But more so, they are actually speaking loudly and vociferously about those who either in the spirit of triumphalism or in a backlash against progressive ideas and the reality of transformation seeks to undermine the values upon which we have built our democracy.

Robert Klitgaard, a former professor at the University of Natal, uses the Guatemalan experience to reflect on corruption and its pervasive influence on values: “When in a society the shameless triumph, when the abuser is admired, when principles end and only opportunism prevails, when the insolent rule and the people tolerate it; when everything becomes corrupt but the majority is quiet because their slice is waiting... When so much “whens” unite, perhaps it is time to hide oneself, time to suspend the battle; time to stop being a Quixote: it is time to review our activities, re-evaluate those around us, and return to ourselves.”

As we reflect on the root causes of corruption in the contemporary era we must return to the central values which have shaped our struggle for national liberation, the democracy we have built and the historic transformation project we have undertaken. Those on the left or on the right who accuse this government of nepotism, of racism, of sexism and of not being quick enough to transform the institutions of governance and administration and who do so without a shred of evidence to support their assertions need to reflect seriously on the unwitting corruption of our ideals and values.

It was the Freedom Charter, which succinctly articulated the values of our democracy when it proclaimed that “South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all the people”; and that “our country will never be prosperous or free until all our people live in brotherhood, enjoying equal rights and opportunities”.

The values of equality, social justice, the right to rule based on the legitimate will of the people, service to the people without fear or favour, transformation of all the institutions of injustice, and transformation of a public service, are all embedded in the Freedom Charter. These values formed the basis of our struggle for national liberation and they inform our democracy and our democratic practice today. And the Freedom Charter, with immense foresight said “All people shall be entitled to take part in the administration of the country”; is this not about transformation to which this government has been deeply committed?

When the Freedom Charter says “All people shall be entitled to take part in the administration of the country” it is referring to the radical transformation of public administration and in particular:

- That the public service must reflect the demographic make – up of the population that it serves – and in fifteen years I can confidently say we have transformed the administration with a swiftness that is unquestionable and transformation will continue apace.
- That a democratic ethos must inform the values of public servants and as Plato says they must “do no service for a present “. Again I say with confidence, these are the principles of “Batho Pele” which we seek to instil in all public servants. These principles include putting people first, being open, transparent and honest and not corrupt.
- The administration of the state must work to advance the core values of our country – the values of non-sexism, and non-racism. It must consciously eschew all forms of chauvinism and discrimination both in service delivery and in the hiring of personnel.

It is this essence of the Freedom Charter that has found its way into our Constitution which is transformative and speaks of recognizing “the injustices of our past”. But this recognition brings with it obligations for the state and for public administration. In adopting the Constitution the state has to heal the wounds of the past, respect democracy; rule, based on the will of the people; respect fundamental freedoms and human rights; and improve the quality of life of all the people of South Africa, and realise the vision of a non-racial, non-sexist, democratic and prosperous South Africa where the wealth and assets of the country are more equitably shared by all.

The Constitution, like the Freedom Charter proclaims the equality of all and is highly transformative for it recognises that “To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken”. This is about making both public and private institutions representative of the people being served by these institutions.

The importance of governance and administration based on democratic principles including the rule of law and administrative law finds its most cogent expression in the Constitution. The basic values and principles governing public administration, enjoins us as follows: Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- A high standard of professional ethics must be promoted and maintained.
- Efficient, economic and effective use of resources must be promoted.
- Public administration must be development-oriented.
- 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, to maximise human potential, must be cultivated.
- Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, Fairness, and the need to redress the imbalances of the past to achieve broad representation.

As a country we need to guard against the corruption of our values and we must exercise vigilance over self proclaimed guardians who corrupt our democratic ethos by labelling those they disagree with as sexist, racist and engaging in practices of nepotism. Corruption does not only take the form of the cash nexus; it takes the form of the corruption of values.

Early in our democracy when he was still Deputy President, Thabo Mbeki decried this very form of corruption at the 1999 Anti-Corruption Summit when he said: “The culture of entitlement, so prevalent in our community, has contributed to the “name it, claim it” syndrome where individuals seek an elusive moral justification for engaging in criminal activity. The deepening crisis in public values is largely visible in the lack of professional conduct from so many wearing the badge of public honour in the civil service. To meet the challenge of stemming the tide of corruption we need to march to the tune of a new song, the song of regeneration and rebirth, the song of our renaissance, the song signalling the birth of the “new public servant”.

At the Africa Forum on Anti Corruption in March 2007, we outlined seven important premises related to corruption. The first premise is that while corruption manifests itself in the relationship between individuals and institutions, corruption as a practice is rooted in the operation of market forces, the pursuit of individual prosperity and gain as opposed to the common good. This possessive individualism has undermined the goals and objectives of national and community-level development.

Our second premise is that corruption is fundamentally undemocratic; it undermines the legitimacy and credibility of democratically elected governments and of responsible and accountable civil servants.

The third premise is that corruption is about the interface of political and economic elites at a global, national and regional scale.

Our fourth premise is that the intentional preoccupation in the global corruption discourse with bribe takers and bribe - givers and particularly with bribe takers is disingenuous, ideologically loaded, and simplistic and certainly serves other agendas that are not linked to developmental goals. This discourse needs to be challenged precisely because it overlooks the complexity of the social forces, systems, processes and structures which underpin acts of corruption. It also needs to be challenged because as democratic states in Africa continue to strengthen the fight against poverty and underdevelopment, this preoccupation detracts from the broad goals of development.

The fifth premise is that corruption is a direct impediment to Africa's development. Corruption hurts the many and benefits the few. It inhibits the ability of government to respond to citizens' needs and to utilise scarce resources in the most efficient and effective manner. It takes away resources from priority areas such as health, social development and education. It also hampers the continent's efforts to instil sound political, socio-economic and corporate governance.

The sixth premise is that corruption is systemic, and the focus must therefore be on effects rather than intentions. The effect of corruption is that it undermines the value system, the norms and the very cohesion of society. It may not be the intention of the corrupter to engage in practices that undermine the values of the nation state and the values of community; but it has this effect, regardless of intent. Corruption distorts and undermines the value systems of all societies and their peoples and possessive individualism overrides any sense of the common good.

The seventh premise is that an anti-corruption strategy must be articulated by leaders in the political, economic and civil society spheres and must engage all sectors of society on the basis of a core set of leadership practices and values. If, as we have argued, corruption has a deep and lasting impact on the very core values of society, then an anti-corruption strategy must articulate an alternative ethos and value system.

Corruption engenders perverse political dependencies, lost political opportunities to improve the general well being of the citizenry and fosters a climate of mistrust particularly of public officials. The losses that accrue from a culture of permissiveness with respect to corruption include a loss of revenue, loss of trust, loss of values, loss of credibility and legitimacy and a loss of the democratic ethos and impulse within institutions and organizations.

Corruption erodes the "common good" and the "People's Contract".

Under conditions of democracy, the state needs to take the lead in combating, preventing, managing and eliminating corruption. The political cost of corruption is that it undermines democracy, weakens the developmental state and undermines responsibility, accountability and legitimacy. In eroding the "People's Contract", corruption alienates citizens from the very officials they have elected and also alienates people from each other. Corruption weakens democratic processes, public order and undermines the ability to fight for reform. Corruption destroys trust and erodes both the sense of global citizenship and the sense of shared responsibility as well as national citizenship and the sense of social cohesion.

Developmental states are about the interface between the political, economic and the bureaucratic elites. Democracy keeps politicians honest and accountable while sound corporate governance and systems of accountability keep the economic and bureaucratic elites honest. Central to the developmental state is the strong interface between key state actors, institutions, business and civil society. As the

developmental infrastructure is created, the interface intensifies, and there must be requisite levels of trust to ensure that public goods and resources are well managed and not squandered. The interfaces between politics, economics and the bureaucracy must be kept clean.

Critical to this is firstly reclaiming a value system that sees the individual as part of a broader community. In the South African context we talk about *ubuntu*. In kiSwahili we talk about *ujamaa*, the values that relate to neighbourliness and *utu*, possessing the values of a human being, humanity and cooperation. The word *ubuntu* comes from the Zulu and Xhosa languages. A rough translation in English could be “humanity towards others.” *Ubuntu* also means “I am what I am because of who we all are”. The Zulu maxim is *umuntu ngumuntu ngabantu* (“a person is a person through other persons”). *Ubuntu* is “The belief in a universal bond of sharing that connects all humanity.”

By combining the many complementary meanings of *Ubuntu*, we are in fact saying that we are human by virtue of doing for others and not just ourselves. This must be the essence of a value system that underpins our commitment to anti-corruption. This is the spirit we must continue to encourage in all sectors of our society. This is the spirit that is necessary for the creation of a socially cohesive and inclusive Africa.

Secondly, we need strong robust democracies where all sectors of society including the media and organizations of civil society, private sector, trade unions and faith based organisations have a responsibility to educate and promote the values of *ubuntu* and anti-corruption.

Thirdly, there is the need for the establishment of a professional meritocratic public service that is able to uphold the values and principles of democracy, good governance and *ubuntu*.

Government intervention in the economy to promote development implies extensive interaction between politicians, bureaucrats and business people. The interaction could take the form of collaboration, collusion and corruption, or all of these. The experience of developmental states across the globe has problematised the close relationship between government and business. It can be seen as benign collaboration or crony capitalism or corruption. In pursuing a development agenda the collaboration between government and business is critical, because information exchange is a prerequisite for effective policy formation and implementation. A professional, meritocratic bureaucracy is a key condition for preventing collaboration from degenerating into collusion and corruption. But the bureaucracy itself must also be steeped in a strong code of conduct and a code of ethics. These codes need to be implemented and rigorously enforced. Similar codes must be established, implemented and rigorously enforced for elected officials and for the corporate sector.

The public interest which is central to public administration has to be an integral part of the democratic process. The standard by which we address the public good is the dual imperative of historical redress and socio-economic improvements in the well being of all our people. Judged against this dual imperative, public servants are under a constitutional obligation to assess their performance and conduct as well as their discretionary powers against their effectiveness in meeting the moral imperative that is serving the public with integrity and free of corruption. But this also requires an examination and re-examination of performance and this kind of introspection allows one to get at the corruption of values and allow for an honest assessment of service to the people.

Corruption is more likely to be found under conditions where policy failures have increased redistributive pressures to address inequality than where development policies have been successfully implemented by a meritocratic bureaucracy, thus decreasing inequality. The deepening of democratic institutions is likely to reduce corruption due to enhanced monitoring and accountability mechanisms. These are critical elements of National Integrity systems that link values and principles of good governance with the institutional structures and practices that give effect to these values.

Good governance is a prerequisite to preventing and combating corruption, while corruption undermines good governance. Corruption can therefore be viewed as a governance challenge. The concept of a National Integrity System is fundamental to the development of an anti-corruption discourse. It comprises the building blocks necessary for the long-term fight against corruption and other forms of unethical and anti-social behaviour. Its core elements are constituted by a society's value system.

The National Integrity System's values must permeate the structures, practices and principles of the state, the corporate sector and civil society. These values include accountability, transparency, equity, efficiency, developmentalism, and fundamental rights and freedoms including freedom of speech, access to information, democracy and participation.

A national integrity system must of necessity be built on the following:

1. A strong code of ethics in the workplace;
2. The political will to enforce this ethos;
3. Transparency and accountability of public servants both for the service deliverer and for their work ethic – for to work inefficiently and ineffectively while our people stand interminably in queues is to be unethical;
4. Rewarding exemplary conduct;
5. Managers should lead by example and they must abide by the highest of ethical standards;
6. Subjecting misconduct to disciplinary sanctions.
7. The training of public servants in integrity, conflict of interest and a democratic ethos should be a high priority;
8. The training of public servants in both administrative and constitutional law; and
9. According a high priority to the public interest and serving the public.

These are the essential preconditions for the elimination of corruption, conflicts of interest and malpractice in the public sector. As President Mbeki said, "Recent years have seen corruption become the misdirected juggernaut of society. In our country, it has succeeded in infesting our shared value system with moral decay and winning the hearts and minds of many a public servant. Not only those who exercise public power but large sections of the citizenry as well have been engulfed by the corrupting tentacles of this wayward beast that is threatening to destroy the soul of our nation and the very basis of our democracy."

I would like to acknowledge initiatives such as "Know Your Services Rights" launched by our Government early this year. This initiative is instrumental in educating and creating awareness about the rights of our people to services provided by Government. The NACF launched an awareness and communications campaign in 2007 and 2008. The aim is to create awareness around our anti-corruption legal framework. This initiative of the NACF is highly commended, as is its many other achievements since the last national Summit.

I trust that this important Summit will help us in coming up with a new and vibrant plan of work with defined responsibilities and accountability arrangements that will allow the NACF to rise to the challenge of a national consensus against corruption. Most importantly, the work plan should include indicators to assess the efficacy of the NACF as an inter-sectoral mechanism to raise awareness, prevent and fight corruption.

Conclusion

We can all agree that corruption undermines democracy and negatively impacts on sustainable growth and development. The most effective antidote to corruption therefore has to be a strengthened National Integrity System (NIS) that puts issues of good governance in all the spheres of society, the political sphere, the corporate sector and in civil society, thus at the very heart of the anti-corruption project.

The perception discourse that focuses on the corrupted and the discourse of blame that focuses on the North do little to illuminate the complexities hidden beneath the surface. They are simplistic and glib and avoid a more holistic approach that is structural and systemic and looks at social forces that are conjunctural. A structural approach to corruption is a far better point of entry into the debate for it locates corruption precisely at the interface between the public and private sectors and thus allows us to focus our attention more sharply on the critical issues that confront us today.

As we engage more rigorously in our analysis of corruption, let us imagine a world that exists without corruption. Let us exercise leadership and judgement in the building of a world that rests on the principles of *ubuntu*. This is not impossible; it must be our reality.



CHAPTER 3: TOWARDS A NATIONAL INTEGRITY SYSTEM

3.1 INTRODUCTION

The concept of a national integrity framework was advanced at both the Africa Forum on Fighting Corruption and Global Forum V which were held in Johannesburg during March and April 2007 respectively. Amongst others, issues highlighted at these conferences included:

- the values necessary for building an integrated national integrity system;
- the need for a common system for measuring integrity; and
- the various roles of stakeholders towards establishing a framework of national integrity.

The aim of this panel discussion was to advance and fully explore the idea of an integrated national integrity framework for South Africa with the intended result of a cohesive approach to the building of integrity.

With a view to promoting discussion and the obtaining of inputs from the all delegates, plenary was addressed by speakers covering the different sectoral points of view. Thereafter delegates were given the opportunity to obtain further clarity, to ask questions and to make suggestions to the panel members.

The presentations contributed to the tone of the Summit and prompted some of the resolutions presented to plenary at the conclusion of the Summit.

3.2 OPENING REMARKS BY MR JERRY VILAKAZI: CEO, BUSINESS UNITY SOUTH AFRICA (BUSA)

The key issue linked to our theme is the question of an Integrated National Integrity System that speaks to all the sectors of society. Further, a key issue for me was in fact mentioned this morning in the opening session, namely that of the responsibility of the various South African sectors and social partners to respond positively and collectively to the challenge to eliminate corruption

In this regard the concept of a National Integrity System, as was widely endorsed at the Africa Forum on Fighting Corruption as well as during the Global Forum V, is an important aspect that requires our attention and discussion.



Mr Jerry Vilakazi is the CEO of Business Unity South Africa

3.3 THE ROLE OF GOVERNMENT IN THE NATIONAL INTEGRITY FRAMEWORK BY PROF RICHARD LEVIN: DIRECTOR-GENERAL, DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

When it comes to a national integrity framework, as South Africans we are indeed privileged. We have the values and institutional framework that underpins much of our national integrity framework which is clearly documented in the Constitution of the Republic of South Africa. The very manner, in which we arrived at this Constitution, through extensive public participation, itself a value of the Constitution, ensured that we have defined common values and the institutional framework to advance and protect these values. I would argue that in fact we have a defined national integrity framework.

If, as the Chairperson of the National Anti-corruption Forum indicated in her keynote address, the national integrity framework's values must permeate the structures, practices and principles of the state, the corporate sector and civil society, then I think we must debate whether indeed our Constitutional values have found practical application.

The Government has a dual role in the national integrity framework. Firstly, like any other sector it must ensure the integrity of its daily operations. This means that the processes and activities such as planning, budgeting, drafting of legislation, procuring goods and services, appointing and managing staff and most importantly the manner in which services are provided stand up to the benchmark of the Constitution. This benchmark is to be found throughout the Constitution but pertinently in Chapter 10 which deals with the values and principles of public administration. These values and principles include professional ethics, efficiency, effectiveness, equity, redress of demographic imbalances in our workforce and services and accountability.

Secondly, Government also has the developmental obligation to ensure that all of society has the requisite integrity in its operations, processes and outputs. This is in essence about the interface between the State and the business and civil society sectors and the degree to which this interface serves the best interests of all of society. Without the State regulating, for example the ethical circumstances under which labour is contracted and used, it may be as history has taught, that labour will be exploited in rampant pursuit of profit. There are many examples indeed where the developmental intervention of the State is desirable and fundamental to ensuring integrity in operations.

I think it fair to state that the standards of integrity that the Government applies, in the first instance, that is towards its internal operations, exceeds that which it requires for the business and corporate sectors. This is fine but begs the question whether sufficient emphasis is being given to ensuring that values such as accountability, transparency, equity, efficiency and access to information permeates the operations of the other sectors?

For nearly 15 years now the project towards an ethical and transformed public sector has been ongoing, and this project will continue as long as it takes to reach the Constitutional benchmark. What is it that has emerged from this 15-year project?

- A new public sector belief - set of Batho Pele, of caring, sharing and serving that makes the Constitutional values practical and tangible.
- The introduction of Constitutional values and principles in the education curricula.
- We have various normative frameworks such as Batho Pele, the Public Service and Local Government Anti-corruption Strategies, codes of conduct and ethics, financial disclosure frameworks and detailed procurement and employment policies.
- Many laws that fight corruption and sustain integrity, including the Prevention and Combating of Corrupt Activities Act, the Protected Disclosures Act, the Promotion of Just Administration Act and the Promotion Of Access To Information Act, laws on financial management at national, provincial and local government, laws on companies, auditing and reporting.
- Strong and maturing institutions such as law enforcement agencies, courts, Constitutional and so-called oversight bodies.
- Mechanisms for cooperation and coordination such as the National Anti-corruption Forum, the Anti-corruption Coordinating Committee, similar provincial mechanisms and the Moral Regeneration Movement.

Our research shows that the majority of public service recipients regard such services in a positive manner and that the actual experience of corruption is marginally on the decline. This is good news but not good enough news. As long as citizens experience disappointment in service delivery and perceive the public sector to be generally corrupt, trust in the integrity of the State suffers.

The public sector, like all of society and the world, is a mixed bag of humanity. This mixed bag contains persons of little virtue and persons of virtue. The public sector, being a microcosm of our society will feel the effect of greed and moral decay of society in general. The reality is such that the public sector is no more and no less unethical than the rest of society. But because the public sector is constituted of people and institutions that hold public trust, and because the public sector functions on the back of taxes that citizens pay, the public sector must and does make that extra effort to maintain the integrity of its internal operations.

The ideal of meeting the Constitutional values in practice in the public service can thus not be divorced from what the business and civil society sectors do to enhance integrity and obviously what the public sector does to enhance its integrity will equally impact on the business and civil society sectors. There is no doubt that the public sector is the senior partner in the interface between the sectors; the public sector has responsibilities and powers that the other sectors can never have. This really makes the public sector the catalyst for improved integrity in society at large and reinforces the developmental role of the State in pursuit of our Constitutional objectives. This essentially requires of the public sector, leadership which goes much further than mere legal requirements and levels of conduct that are exemplary. The *Batho Pele* belief - set is built on this recognition of the need to care for and serve citizens that stems from the value system that sees the individual as part of the broader community. *Ubuntu* is the same belief in a universal bond of sharing that connects all humanity.

The African Peer Review process in South Africa, the Phase 1 examination of South Africa by the OECD Working Group on Bribery and past assessments by the Department of Public Service and Administration, Transparency South Africa and the Centre for Public Integrity all affirm that we have a solid and progressive integrity framework and in particular a sound framework for the public sector. These reviews also recognize the challenges we still face. The challenges are in essence the full application of our anti-corruption framework and full awareness and understanding of the rights, obligations and potential sanctions that citizens accrue in terms of the national anti-corruption framework.

Chairperson, in conclusion I wish to reaffirm a few points:

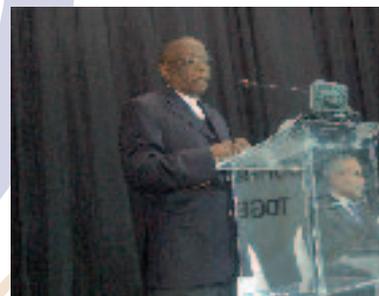
- The public sector has established the requisite normative frameworks, legislation and institutions to support a national integrity framework as envisaged through the Constitution.
- The public sector is a microcosm of society and reflects the “values of the day” but the public sector has the advantageous position and obligation to also shape the “values of the day”.

Under the leadership of the President and Ministers the public sector has made significant strides in the last 15 years towards implementing a national integrity framework, and this work is ongoing.

3.4 SOUTH AFRICA. A COUNTRY IN A STATE OF MORAL DECLINE By Archbishop Tlhalagale, Archdiocese of Johannesburg

South Africa faces many challenges. But the one that appears virtually every day in the media is the challenge of the worsening morals of men and women who are simply unscrupulous in getting what they want.

They favour private advantage by exploiting resources, which have been put in their care. White collar fraud and corruption point to the decline of the appreciation of virtues of honesty, loyalty and integrity. When such a collapse happens at the level of leadership, when it affects the “shakers and movers” of society, then, there is a serious reason for concern. This is equally the case when institutions which have an impact on the lives of ordinary people, become tainted by moral corruption.



Archbishop Tlhalagale of the Archdiocese of Johannesburg

The examples listed below have been gleaned from newspapers. Some are allegations of corruption which simply refuse to go away. Regrettably, the justice system drags inordinately on, on such matters and this affects some people's good name negatively. The attempt is certainly not to confess other people's sins. These matters have been amply covered by the press.

Charges of racketeering, corruption, fraud and money laundering have been brought against the high profile leader Mr Jacob Zuma, a former Deputy President. (Star, 19/04/2008). Similar charges have been leveled against the National Police Commissioner, Mr J Selebi in connection with his ties to Mr G Aggliotti, a businessman. The latter has also been accused of involvement in the murder of mining businessman Brett Kebble.

Corruption charges are being investigated against another high profile leader Mr M Maharaj. It is alleged that he had corrupt dealings with a high profile businessman, Mr S Schaik who is currently serving a jail sentence for corruption. Corruption charges have also been investigated against the former Minister of Defence, the Late J. Modise.

Alexander Forbes, South Africa's largest Administrator of pension funds is currently facing a R1.16 billion claim from seven retirement funds for taking millions of Rands out of the surpluses of their funds in the 1990's. In 2006, Alexander Forbes was accused of bulking bank accounts of many funds under its administration. The company was requested to repay R500 million to the affected funds. (Star. 1/04/2008).

Fidentia Holdings, an asset management company, is alleged to have misappropriated millions of Rands, depriving 500 000 mineworkers' beneficiaries of money invested on their behalf. (City Press. 16/12/2008).

The Competition Commission is investigating the anti-competitive behaviour of cartels. Tiger Brands has been accused of price-fixing in the bakery industry and has been ordered to pay over R90 million. Other companies under investigation for price-fixing include companies dealing with dairy products, fertilisers, and pharmaceutical companies. (Sunday Times. 2/03/2008).

The South African Post Office was ordered by a court of law to pay R60 million in damages due to a tender process that had been "greatly influenced by corrupt and dishonest conduct and fraud" committed by a former employee of the Post Office (Business Report. 14/12/2007).

Currently, 3000 civil servants are being investigated for fraudulently obtaining government-subsidized houses during the 1990's. During that period, the data systems could not detect and verify some of the applicant's details. (Star. 23/04/2008).

A study by Business Against Crime released in March 2008, reported that middle- management was mostly involved in demanding and in accepting bribes. Also, that corruption occurs mostly when competing for and when rewarding tenders. Corruption is reported to be in the form of monetary bribes, kickbacks, gifts, favours and excessive entertainment.

Doctors J. Preddy and P. Miller were declared guilty of unprofessional behaviour by accepting kickbacks from radiologists to whom they had referred patients. During 1993 – 1999, they respectively received R156 792 and R756 153.

Those, whose cases of corruption have come to light, raise questions about the many cases that are known, but not reported. There are perceptions that corruption is rife in some areas where driver's licenses, passports and identity documents are issued. Is it possible to quantify the extent of corruption in these areas? Some people are said to bribe officials in order to jump the housing queue while others reduce traffic fines by engaging with officers on the road. There is clearly an abuse of authority and

power on behalf of those who solicit bribes. But so too those who seek unlawful favours. A widespread practice of crime and corruption precipitates society into a state of moral decay at the expense of the well-being of society itself.

The Impact of Corruption

Allegations of corruption that have been brought to the courts for investigation, and hugely publicized by the media, have a serious and negative impact on the individuals concerned and on the institutions they serve. These allegations imply that the individuals so accused do not behave in an exemplary fashion, and consequently undermine the ethical code of the institutions. The institutions themselves suffer a serious loss of credibility and the public's trust in the institution is eroded. Serious allegations of corruption against prominent political leaders and businessmen poison their work environment, which in turn, becomes a sordid breeding space for ethical malpractice. It sends a regrettable message to employers and to members of society without a moral backbone and to those who find themselves in situations of moral dilemma. It says to them: "go for it; enrich yourself; just make sure that nobody catches you in the act". These allegations and the numerous cases of actual corruption weaken the moral fibre of South African Society. It tarnishes the reputation of the said institutions and renders the common decency of people suspect. So much money of the tax-payer is wasted on protracted law-suits in the false name of justice and criminal lawyers have a field-day. Justice on the other hand is entangled in its own red-tape of procedures.

Moral sensitivity

The King Report on Corporate Governance for South Africa, 2002, reminds us that while the implementation of an ethical code can be "a powerful instrument for preventing ethical malpractice as well as for raising standards of moral behaviour ... it would be a mistake to over-estimate the value of an ethical code" (p.244). It is therefore critical that people embrace and internalize self-chosen ethical principles in the process of realising themselves as authentic persons. This choice of ethical principles points directly to the dignity of the person. There is an urgent and pressing need in our society for individual members of society hitherto mercilessly and helplessly exposed to ethical malpractice, to make an about-face. This about-face entails a moral conviction that gives a new basis to one's decisions and choices. Such decisions and choices will no longer be based primarily on personal satisfaction, and personal aspirations to get rich quickly, but on values, and on what is truly "good". Such a discovery of ethical principles and values entail the promotion of personal integrity and honesty and respect for the accepted ethical norms of behavior. Personal discovery ought to lead to an effort at self-mastery, self-control and a deepening sense of moral responsibility for one's actions. There is a need to develop a strong collective sense of responsibility so that individuals do not hold entire communities to ransom. Those who do not uphold the law should find it difficult to survive in our workplaces and communities.

In addition to observing an ethical code of behavior, it is imperative that we discover and promote ourselves as creators of value in the decisions and choices we make. It is equally important that individual persons are committed to values such as: respect for life, respect for community and respect for property.

As persons, and as citizens, we are called to embrace the ideal of authentic human living where moral responsibility becomes a key element in the process of self-creation, and self-transcendence. Certain public perceptions ought to change if we are to bring about a culture of integrity and moral responsibility, and to restore confidence in the justice system. Cases of serious crime, fraud, corruption, robbery and rape take ages before finality is reached and the victims often throw their arms up in despair. "Justice delayed is justice denied". After such long delays, cases are at times thrown out of court for lack of adequate evidence or because of some legal technicalities.

There is also a widespread public perception that crime and corruption are endemic. There is a growing culture of impunity. First, cash transport vehicles are still being attacked and robbed and Automated

Teller Machines (ATM's) are now routinely blown-up and the perpetrators disappear "into thin air". A car cannot be left parked on the street overnight. Crimes committed with such impunity spread a deep sense of insecurity among law-abiding citizens. People feel insecure about their future given the high levels of crime and corruption. To say that crime and corruption exists everywhere in the world is an unfortunate "cop-out".

There is also the perception that the police services are at their wits end; that they cannot cope with the challenges, and that the justice system does not seem to deter the committing of crimes. Finally, in the price-fixing scams by major companies, the Chief Executive Officers have not been held liable for the crimes committed by their companies. This goes against the principle of accountability and integrity.

The National Anti-Corruption Forum calls for and promotes vigilance by advocating that proper measures be put in place in order to eliminate unethical practices in both the public and private sectors.

We are reminded that human beings and societies are like earthen jars.* - they break easily. Yet Nelson Mandela at the age of 90 symbolizes the triumph of good over evil and that it is possible to overcome the odds, if there is enough political will.

*[The Archbishop dropped a large earthen jar on stage to demonstrate and to symbolize the fragility of societies beset by corruption].

3.5 TOWARDS A NATIONAL INTEGRITY FRAMEWORK – THE ROLE OF BUSINESS BY MS FUTHI MTOBA: BUSINESS UNITY SOUTH AFRICA (BUSA)

Corruption is big business!! Just how big, however, is impossible to quantify. Some estimates show that the cost of corruption equals more than 5% of global GDP (US\$2.6 trillion), with over US\$ 1 trillion paid in bribes each year¹

Is Africa coping?

According to the African Union, corruption in Africa is costing the continent nearly US \$ 150 billion a year².

Closer to Home – South Africa

- South Africa featured 43rd out of 179 countries in the 2007 Corruption Perception Index³.
- As the economy tightens, so does the incidence in South Africa of white collar crime and vulnerability of public and private institutions from being robbed from the inside.
- Deloitte's Tip-offs Anonymous has seen a 200% increase in reports of corruption in the past 12 months⁴.

Corruption is a complex and sensitive topic. It is a globally pervasive phenomenon – in developed and developing economies. It impacts both public and private sectors and has far-reaching consequences for society as a whole.

The integration of anti-corruption into the corporate citizenship agenda as well as the United Nations Global Compact has been an important development.

1 Clean Business Is Good Business – The Business case against corruption – 2008 A joint publication by the International Chamber of Commerce, Transparency International, the United Nations Global Compact and the World Economic Forum Partnering Against Corruption Initiative (PACI)

2 http://www.transparency.org/news_room/latest_news/press_releases_nc/2007/2007_12_19_nis_africa

3 http://www.transparency.org/policy_research/surveys_indices/cpi/2007

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It sends a strong signal that the private sector shares the responsibility for the challenges of eliminating corruption.

The essence of our global compact is the upholding of a sustainable and ethical world. In this context, the fight against corruption is a fight for the "soul of business".

I believe that the theory, principles and philosophy of the anticorruption drive are well documented. In my message this morning, I would like to be as plain and practical as possible.

While there are many ethical businesses out there, corruption remains a global problem. This is well illustrated by the following conventional attitudes. In isolation, they may appear trivial, but, as a whole, they illustrate a serious ethical problem in our approach to business.

- "The end justifies the means".
- "It does not happen in my business".
- "We are fine at corporate headquarters. This is a foreign geography challenge".
- "These are the realities of business and society".
- "It's a redistribution of sales commissions".
- "It's a facilitation payment".
- "It's a cultural phenomenon. That's the way they do business over there..."
- "The world is not black and white, but shades of grey".
- "Or, in the words of Shakespeare's Macbeth, "I am in blood steeped in so deep, that going over is just as easy as going back".

Corruption is a phenomenon that we should all agree is wrong. Indeed 93 Countries have ratified the United Nations Convention Against Corruption.

So, we are not short of knowing what to do: We have extensive conventions, laws, guidelines and activities: In addition to the UN convention, we have, for example:

- The Global Forum on Fighting Corruption.
- The Financial Action Task Force on Money Laundering.
- The Basel Committee on Banking Security.
- The Group of Eight Recommendations.
- The recommendations in the Global Coalition for Africa.

In reality, corruption is often difficult to confront and handle.

As business leaders and members of the society compact, what are we going to do to give real effect to this fight against corruption?

Understanding the Challenges

Corruption has been identified as amongst the greatest obstacles to economic and social development. It undermines development by distorting the rule of law and weakens the institutional foundation on which economic growth depends.

It has a clearly negative impact on investment, increasing the cost of doing business and undermines the trust and faith of stakeholders in the capital markets.

The harmful effects of corruption are specifically severe on the poor, who are:

- hardest hit by economic decline;
- are most reliant on the provision of services, and are the least capable of paying for the extra costs associated with bribery, fraud, and the misappropriation of economic privileges.

This is a specific concern for me and those of us on this continent. The experience is that corruption sabotages policies and programs that aim to reduce poverty. Therefore, attacking corruption is critical to the achievement of the mission of poverty eradication.

So what can we do about this?

Everyday each of us in this room makes decisions that impact our world at varying levels. We are leaders

- In our own businesses,
- Our industry segments,
- Our global and local supply chains, and
- Our communities and our countries and our families.

How do we uphold the public trust and do the right thing. How do we move from the philosophical level to practical action? Consistent with the theme of this meeting, how do we move "Towards an Integrated Framework, Consolidating the Fight against Corruption...?"

Let us consider some of the tangible approaches that I believe are key in addressing corruption:

- As business leaders, we need to increase our accountability and responsibility.
- We need to create an ethically Competitive Private Sector for Business to thrive. *Sustainability is the new competitive edge.*

I also agree with the Premier of Gauteng in his opening remarks that it is impossible to fight this battle alone! In the spirit of the Global Compact, we need to collaborate and work together. We need to extend our efforts in partnering anti-corruption programs and initiatives.

We need to open up interaction between civil society, government and business to re-establish values, for example – using today's session as a moral summit - to adopt specific anti-corruption interventions that give effect to existing frameworks. Anti-Corruption efforts require partnerships across communities and organisations through effective engagement at the local, regional and global level.

We need to increase institutional capacity to combat corruption and we need to do this visibly. Throughout the African continent, with varying degrees of success, there have been serious efforts by government, the private sector and civil society to combat corruption.

The question remains, given such efforts, why does corruption remain such an intractable challenge? Part of the reason is that the prevention systems are not functioning effectively, largely due to inadequate institutional capacity.

The lack of accurate information on occurrences of corruption is also a challenge. Most instruments to measure corruption focus on the private sector's perception of corruption in the public sector, neglecting to recognise that the private sector itself plays a significant role on the supply side of corruption (i.e. paying bribes).

The private sector also plays a significant role on the demand side of corruption (receiving bribes) i.e. company to company corruption.

The private sector, however, cannot do it alone. We need collective action against corruption so as to move forward.

At a global level:

- Most recently, on the 5-6th June 2008, the third meeting of the United Nation's Global Compact Working Group on Anti-corruption took place at the United Nations Office in Vienna.

- The meeting brought together business participants from 13 countries with representatives of civil society, labour, business associations, and international organizations.
- South Africa's Business organisations, Business Unity South Africa, National Business Initiative and the signatories to the United Nations Global compact were also represented.
- The meeting concluded with the establishment of a few task teams that had to move the programme of implementation and reporting forward.
- The meeting strengthened collaboration between global initiatives. Working in this initiative are the International Chamber of Commerce, Transparency International and the World Economic Forum's Partnering against Corruption Initiative (PACI)⁵, and the UN Global Compact.
- It is imperative that as South African business we are vigorous and link up with what is happening at a global level by setting up our own working groups which will feed into the global networks and initiatives.
- The next international working group meeting will take place in February 2009 and South Africa needs to make its input at this meeting. Note that as we are on the African continent we are perceived to be the more corrupt. We need to have our actions well put together so that we can demonstrate our efforts in this regard.

Taskforce on Reporting on Anti-Corruption

This Taskforce will aim to mainstream the reporting of companies' anti-corruption efforts in non-financial and/or sustainability reports because it is not yet adequate.

There has been an increasing demand for companies reporting on non-financial matters from a wide range of stakeholders and users ranging from regulators to civil society. A majority of non-financial reports have increasingly favoured the issue of environment, neglecting transparency and anti-corruption matters.

Therefore this team will look at how to improve the reporting on anti-corruption in financial statements so that stakeholders can assess their impact and contribution to society.

Multi-National Corporations (MNC) Head Quarters to Subsidiaries, Suppliers and Subcontractors Task Team

The aim of this Group is to ensure that the policies or practices of major MNC headquarters are implemented as they move across different geographies.

Anti-Corruption Education Initiative Task Team

The Anti-Corruption Education Initiative aims to promote the integration of anti-corruption and ethics courses into the curriculum of business schools.

Anti-Corruption Tools and Resources

The Sub-Working Group on Anti-Corruption Tools and Resources will look at tools that can be used by business as they deal with the issues of corruption.

Multi-Stakeholder Dialogue Networks Initiative Task Team

In an effort to promote public-private partnerships on anti-corruption issues, the Dialogue Initiative will aim to expand multi-stakeholder dialogue networks to the local level involving public sector-counterparts.

⁵ United nations Global Compact 3rd meeting of the Working Group on the 10th Principle 5-6th June 2008, Vienna , Austria

Media Engagement Initiative Task Team

This Initiative specifically aims to bring media's attention to positive stories and progress that business has made in the fight against corruption.

Conclusion

In an interconnected, global economy, we cannot afford a failure of global governance. How do we move beyond expediency and our own self-interest? How do we avoid losing our soul as business?

It is clearly in the enlightened self interest of business to address corruption effectively.

The way forward

There are three action steps that business needs we take:
Collective action, Collective action, Collective action!

First collective action: By each one of us accepting responsibility for our part or contribution to the problem. Therefore it is critical that as business we promote collective action.

Second Collective Action relates to collaboration between the public and private sector.

The third collective action relates to civil society, especially the media: We need to bring media's attention to positive stories and progress that business has made in the fight against corruption.

Let me conclude with a quote by the Late Dullah Omar that summarises our imperatives well:

"Ultimately, the struggle against corruption depends on our sense of morality which tells us that our own egoistic interest does not come before our public interest. We can take all kinds of prevention measures and they can be broken down and subverted. But if the moral fibre of our society in the conduct of our business activities is high, then no amount of corruption can subvert our preventative measures".

3.6 CORRUPTION IS A PROCESS OF DECAY BY MS M MALETE: PRESIDENT OF THE FEDERATION OF DEMOCRATIC UNIONS OF SOUTH AFRICA (FEDUSA)

The Third National Anti-Corruption Summit could not have come at a better time. Every day our society cries out for help, which seemingly falls on the deaf ears of those who are answerable and when there is no transparency in dealing with the concerns that are raised. To my mind this is done deliberately to cover up or undermine society and to label them as 'for ever moaning'.

Corruption is defined as *"acting dishonestly in return for money or personal gain, it is evil and morally depraved, unreliable and unethical"*. Usually two or a group propagates corruption. "It takes two to tango" as it is said. Corruption is said to be a process of decay just like when bacteria gets into the body and ends up causing harmful diseases. The person starts as a law-abiding citizen, who later gets so entangled, that for he or she it becomes business as usual. These people abuse their authority that was entrusted to them, for personal gain.

Corruption in effect corrupts one's personality and unfortunately it becomes difficult to get rid of. Corruption can manifest itself where poor people are trapped either by greed or peer pressure, like those who take vulnerable people and misuse them for crimes for personal gain. Such persons need psychological assistance. Corruption for personal gain is affecting our country the most and needs serious intervention by society at large. People enrich themselves at the expense of the poor and in the name of community projects. Services from the government don't reach the poor; an example hereof is the corruption of certain public servants in the department of Social Development who were involved

in the misappropriation of grants. One can also look at the issue of BEE which is an attempt by our Government to improve the lives of the poor. Instead 'the haves' are the ones who are awarded up to six tenders per company. However, the smaller companies are sidelined because they don't know the "right people". Small businesses, if they are lucky will render a service using their stretched resources they have, but will wait for ages to be paid. In this regard, some are even told to have their own reserves. How do you accumulate reserves, when you are paid late? Those who want to blow the whistle are told that nothing will happen as the perpetrators know the "top brass" in government. Using small companies to subcontract also is a mockery, though the attempt has its good intentions. One can go on and on. It is regrettable that when corruption is committed by top people it is something else and when done by 'nobodies' it is corruption. Bribery and kickbacks are also forms of corruption.

Corruption in government undermines our democracy and if not seriously confronted head on, it has the potential to destroy it. The decay of the moral and ethical standards in the various sectors is undermining the good policies that have been created. Elected officials through their actions weaken the democratic institutions and deprive government of revenue that could be used to provide citizens with basic needs, hence the outcry by the people against "NO SERVICE DELIVERY". Corruption is a worldwide phenomenon which needs a Messiah to turn the world around!

Our hope depends on the nation to admit that it is wrong whether done by the most powerful or least powerful. The nation knows the various types of corruption practices. They should be the ones to change the mind - set against accepting wrong things and accepting them as the business of the day. They need to be jealous of guarding the good of democracy. This can be done by knowing your rights and fighting hard to correct things, knowing the policies and rules of our country, knowing channels of reporting corruption and providing facts, and also insisting on being heard.

The Moral Generation Charter adopted and signed last week, if practiced by all, will lead our society to greater accountable, transparent and efficient democracy. All our collective efforts will contribute to a country in which everyone wants to live. Every member of the society should be each other's keepers. We have also witnessed the appointment of comrades into certain positions because they are members of the ruling party. Organised labour must also consider not representing workers who have intentionally committed corruption and so depriving society from benefiting from democracy.

Corruption widens the gap between the rich and the poor. Let us use the Constitution, the charters that were adopted to benefit all, especially the vulnerable, by taking them along and hearing and responding to their concerns.

3.7 PANEL DISCUSSION

A panel discussion ensued after the presentations and the input/comments on the presentations are contained in Table 1.

TABLE 1: COMMENTS ON PRESENTATIONS

Discussion points	Inputs from conference delegates	Response by panel members
Local Government	<ul style="list-style-type: none"> ● Local government is usually the focus of corruption discussions, however all levels of government must be examined as must all the other sectors. 	<ul style="list-style-type: none"> ● There is corruption at all levels of government but the focus is on local government because of the direct interface with citizens and the fact that citizens experience such corruption negatively.
Assistance with the combating and the eradication of corruption	<ul style="list-style-type: none"> ● Corruption is rife and must be eradicated. Organisations such as Sangoco and others are able to monitor corruption and work with government in this regard. The Department of Labour should also be included in the process. ● The communication breakdown between sectors and between institutions must be eliminated. ● There are many discussions - fora and Summits on corruption, but too little implementation takes place, whilst corruption affects the poorest sections of the population the most. 	<ul style="list-style-type: none"> ● Monitoring is critical. Yet to do this on a multi-sectoral platform the difficulty remains the method sharing information. All sectors should monitor their areas and share their information in order to overcome the communication problem.
Procurement and Tenders	<ul style="list-style-type: none"> ● Research should be done from 1994 onwards to see which individuals and which organisations have benefited the most from the Tender and Procurement Act. It appears that it benefits those people who already have money, yet South Africa is supposed to be a developmental state. 	<ul style="list-style-type: none"> ● National Treasury is busy completing a comprehensive study on corruption on preferential procurement and the requirements of such preferential procurement. Procurement is an area where there is a lot of corruption and I do think that in the implementation and application of preferential procurement and BEE, "corners are cut", while not enough significance is given to the actual tender processes.

Discussion points	Inputs from conference delegates	Response by panel members
Service Delivery	<ul style="list-style-type: none"> Despite poor service delivery, top managers always get their annual bonuses; such bonuses are paid whether they perform or not. Quality performance management systems are needed to address this. 	<ul style="list-style-type: none"> Regarding poor service delivery and productivity, society tends to keep quiet about poor service delivery as it is often afraid of officials and politicians. Such officials need to be monitored as has been suggested by a number of delegates. Regarding the issue of service delivery and the fact that managers still get bonuses; the government acknowledges the need to improve the management system and the need to measure organizational performance which must be done at the individual and institutional level.
Labour	<ul style="list-style-type: none"> Organized labour's philosophy concerning productivity is questioned and the original approach of 'an injury to one is an injury to all' is often no longer in congruence with the living conditions of many of the people in South Africa. The agency-employment system needs to be addressed by organized labour. The extended public works programme has the objective to help with the skilling of the poor. However, once these skills have been obtained there are too few opportunities to do practical work. 	<ul style="list-style-type: none"> As companies and labour have established codes of practice that were negotiated and agreed upon, they both have to abide by these agreements. Regarding the employment agencies – labour has been active regarding this matter and has approached the Minister, Parliament and Nedlac regarding the problems of agencies. Since 1999 in various fora the trade union sector has come up with a number of solutions. The sector should determine whether they are working, and if not, we need to find out how they can be improved upon.
Common System of Integrity	<ul style="list-style-type: none"> What is the role of business and government in establishing a common system of integrity, while examples are needed of best practice and of good governance? Thus lawyers and universities, for example, should become involved. 	<ul style="list-style-type: none"> No response was provided.
Private Sector	<ul style="list-style-type: none"> There are challenges in terms of the Competition Act and the complex monopolies in South Africa. 	<ul style="list-style-type: none"> Codes of conduct and methods of reporting, including financial statements, are needed to deal with the collusion and corruption that takes place at the business-to-business level. The UN global Compact is an attempt to have a uniform approach for members so that civil society and others have access to the necessary information. Proper directives and a common point of view are also needed for this to succeed. Where cases of corruption are not taken further or the results of such cases of corruption are not generally known the people become disillusioned. This should be addressed.

Discussion points	Inputs from conference delegates	Response by panel members
Accountability	<ul style="list-style-type: none"> ● A mechanism should be in place to ensure that the public remain informed of the process of justice as too often the outcomes of cases of corruption are delayed. If citizens do not hear of the outcomes they become disillusioned. ● The NACF and NIF should have some form of oversight role so that at the next Forum the same issues are not again raised. 	<ul style="list-style-type: none"> ● No response was provided.
Commitment of Ministers	<ul style="list-style-type: none"> ● The commitment of Ministers to the NACF is questioned as they have not participated at the Summit. The Ministers of Intelligence, Finance, Security and others should be present. Only Minister Moloketi has been present at the Summit. Their absence will impact on the implementation of any agreements and resolutions that are taken at the Summit. 	<ul style="list-style-type: none"> ● No response was provided.
Common System of Integrity	<ul style="list-style-type: none"> ● What is the role of business and government in establishing a common system of integrity, while examples are needed of best practice and of good governance? Thus lawyers and universities, for example, should become involved. 	<ul style="list-style-type: none"> ● No response was provided.
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Discussion points	Inputs from conference delegates	Response by panel members
<p>Sectors</p>	<ul style="list-style-type: none"> ● There is a need for independent sector and organizational monitoring, without which nothing will be achieved. The Summit also needs to agree on monitoring structures for each government department. ● Statistics are needed regarding the number of women entrepreneurs that have been empowered. The present situation often sees women as subcontractors, but not contractors. ● The professional sectors of society are presently outside of the process and should be in the lead in the debate on integrity. Thus lawyers and universities for example, should become involved. 	<ul style="list-style-type: none"> ● Regarding the ability to implement policies as well as the promotion of development issues, the need exists to keep the focus on the policies, legislation and frameworks that deal with corruption. ● There is a need to build integrity-systems composed of different elements. An important element is the monitoring framework in the individual sectors. In this regard government has normative frameworks and codes of conduct and financial disclosure system, all of which are operating. However, the level of implementation is an issue of concern. ● In the other sectors, such as the business and civil society, individual businesses have codes of conduct as do certain civil society organisations. But the idea is to have a broad overall intra-sector code of conduct accepted by all participants. This has been spoken about for many years and we need to move towards this and also to enhance cooperation. There is also a need to strengthen the monitoring within sectors and to ensure compliance with codes of conduct which forms part of the NIF. ● Improved oversight measures are needed and to achieve this and the NACF needs to be strengthened, together with an augmentation of its oversight functions. South Africa has not reached the point of systemic corruption and we need to ensure that we do not head down that road. ● In terms of corruption, South Africa is ranked 43rd in the world which is some cause for concern and the situation needs to be improved. A zero tolerance approach is required. The NACF should be strengthened and an oversight body is needed. There are countries that have reached the point of no return and South Africa must send out the message of 'zero tolerance.' ● The legal profession should be at the conference and also take part in such debates, whilst there should be more Ministers participating in the Summit. ● One should look beyond civil society and look at the broader community as they should be involved. Often criminals are part of the community which also benefit from such corrupt elements. Communities need to be involved in the debates and fora to effect a change of perspective. In addition, an oversight body to ensure progress in combating corruption is important and to ensure that progress is made.

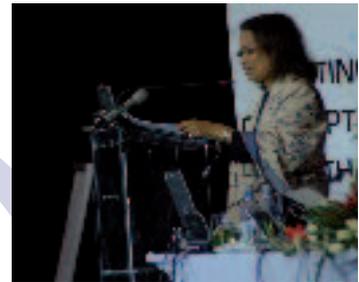
CHAPTER 4: REPORT ON NACF ACTIVITIES

4.1 INTRODUCTION

The Public Service Commission (PSC) as Secretariat of the National Anti-Corruption Forum (NACF) prepared a Report on behalf of the NACF on the implementation of the Resolutions of the Second National Anti-Corruption Summit held in March 2005 at the CSIR in Tshwane, Gauteng. At the Second National Anti-Corruption Summit the delegates adopted a set of action-oriented resolutions and the NACF committed itself to the implementation thereof. Emanating from the resolutions adopted, a National Anti-Corruption Programme (NACP) was developed by the NACF which provided for joint projects to be implemented by the sectors. Progress of the NACF in relation to the joint projects as well as sector-unique projects were reported in two Reports on Activities of the NACF covering the periods 2005/2006 and 2006/2007. This Report presented by the Minister for the Public Service and Administration reflects on the progress made with the implementation of the resolutions based on the two Reports on Activities of the NACF and updated information submitted to the Secretariat through the Implementation Committee of the NACF. A power point presentation by Minister G J Moleketi, based on the NACF Report on the Implementation of the Resolutions of the 2nd National Anti-Corruption Summit 2005, set out the progress made to date on a number of important themes.

4.2 REPORT ON NACF ACTIVITIES AND PROGRESS BY MINISTER G J FRASER- MOLEKETI

The last Summit called for the resolutions to be transformed into a programme of action, and this was done. The national programme of action was developed by an inter-sectoral team consisting of civil society, the private sector and government, with the PSC being the secretariat. Based on the Summit, deliberations we also looked at sectoral anti-corruption programmes which were to be implemented directly by the sectors. Every sector should now look introspectively as to how it has implemented the national action plan. These sectoral anti-corruption programmes and progress reports were to be provided to the Forum as a whole.



Minister Geraldine Fraser-Moleketi was, at the time of the Summit, the Chairperson of the NACF and the Minister for the Public Service and Administration.

In terms of the development and implementation of strategies of the national anti-corruption programme (NACP), we adopted the programme in June 2005 with the objective to have the Forum as a vehicle to develop a national anti-corruption consensus. This Summit is an opportunity to examine whether we have provided this leadership as a Forum.

We also looked at advocacy in all sectors and to the obligations and rights and sanctions that emanate from South Africa's anti-corruption legislative framework. We also looked to ensure the proper functioning of the anti-corruption framework and we cannot say that this is 'mission accomplished'. We also looked at the promotion of ethical practices and the raising of awareness as well as training programmes.

Also as part of the strategy of the programme the need to provide platforms for national engagement so as to fight corruption as well as to fully involve all sectors was identified. I would argue that we did not use all platforms and clearly we could have done more.

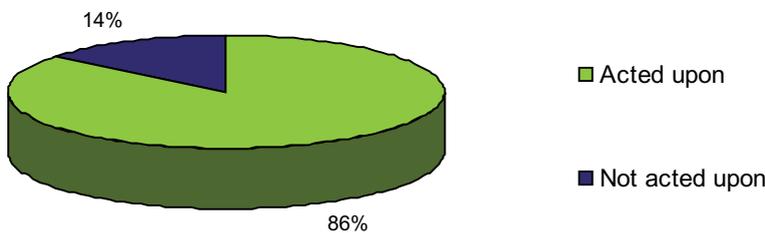
One recurring point is the implementation of the sectoral anti-corruption programmes. Regarding the development and implementation of the strategy, the programme was an opportunity for us to revitalize the Forum based on a programme of work. The Forum was aware that there was an incredible energy and we felt that we needed to sustain this and to channel this energy into various sectoral

programmes. The Forum also redefined its function and on this basis we decided that the Forum must meet once a year and that there should be quarterly Exco meetings. An implementation committee was established to define the project and the budget. We also created inter-sectoral task teams on certain project areas.

On the issue of the budget a large part of the consistent budget came from government. However, we have also had consistent donors such as GTZ, with DFID assisting from time to time. We also do have a very close relationship with the UNODC, which is a multilateral partner.

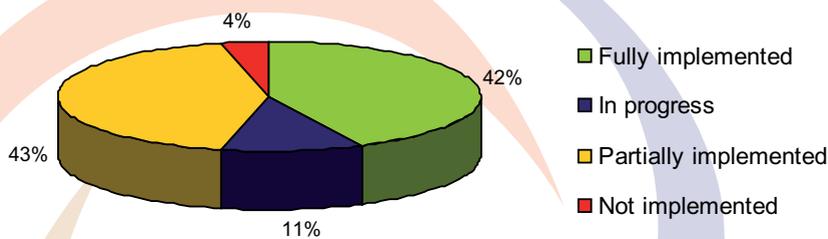
In terms of progress regarding the programme you can see from Figure 1 that we have acted on 86% of the actions of the programme itself. There are 14% of the actions that we did not act on at all. This area must be addressed as some areas are still pertinent as they relate to the future of the Forum.

Figure 1: Overall performance



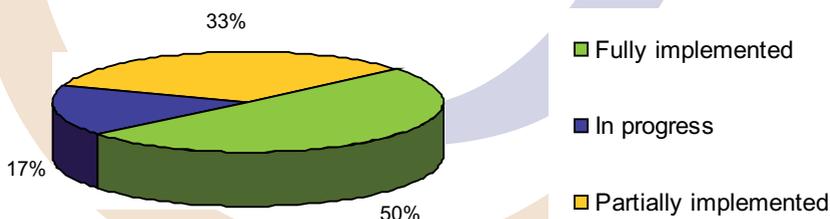
Further, 42 % of the resolutions taken at the Second National Anti-Corruption Summit have been fully implemented, while a further 43% of the resolutions have been partially implemented and 11% are in progress. Also, 4% have not been implemented at all (See Figure 2).

Figure 2: Overview of implementation of resolutions



In terms of progress on the theme of ethics, awareness and prevention (Figure 3), 83% of the resolutions have been acted upon. Here 50% have been fully implemented and 33% are partially completed.

Figure 3: Theme: Ethics, Awareness and Prevention



Regarding the combating of corruption, 87% have been acted upon of which 38% have been fully implemented and 13% are in progress.

Furthermore, regarding the theme of oversight, transparency and accountability, 80% have been acted upon with 20% fully implemented, 20% in progress; and 20% that have not been acted upon at all.

Regarding the programme itself and the NACF one can see that all resolutions have been acted upon with 62% fully implemented and the remaining 38% being partially implemented.

Challenges

What are the challenges that we have experienced? One of them was the issue of sustainable and predictable funding. We had hoped that we would see more resources from organized business, but this has unfortunately not been forthcoming. In the future the Forum would like to call on business to invest in the Forum itself. We may also look at other resources such as secondments to the Forum. Our challenge to business is that they should also come to the Summit and the Forum in a more structured manner.

We would also like to see appropriate indicators for the programme in the future, with such indicators being monitored and evaluated on an ongoing basis.

Across the board there has been sub-optimal representation. The challenge includes galvanizing the participants within each of the sectors to take its work forward. There have been challenges in the civil society sector and I would argue that government has also experienced challenges in terms of representation. From the side of government there are nine members serving on the Executive of the Forum and we would want to propose that there are alternates that are able to stand in for members of the Executive, and thus ensure continuity of work. Despite each sectors' consistent participation we have not seen the full participation by all sectors. We also want to make good on the recommendation and thus propose a rotating Chair at the level of the Forum. We also want to ensure that there is an evaluation of the Secretariat, not from a negative point of view, but to see how to optimize structures.

As Chair I would like to thank all members of the NACF for their participation and the Chairperson and members of the Implementation Committee. They have carried on the work of the Forum between its meetings. I also would like to thank the PSC for its secretarial support that they provide to the NACF and its structures. I would also like to take the opportunity to thank those who make this Forum a reality and would like extend the challenge that there is so much more that we could do. In this way I would like to make a recommendation as outgoing rotating Chair that a national task force be established under the Chair of the Minister of Public Service to develop very clearly what a national integrity system (NIS) must be and to also look at the implementation steps that are involved. As Minister for the Public Service I am ready to invest some resources to make this happen and hope that we can soon announce who would constitute such a Task Force so that by the end of 2008 the Task Force can produce a report about how to take this work forward.

CHAPTER 5: PROMOTING INTEGRITY IN ALL SECTORS OF SOCIETY

5.1 INTRODUCTION

The Summit considered five workshop themes under the banner of “Towards a National Integrity System, Consolidating the Fight Against Corruption”. The themes were:

- Workshop 1: Governance and accountability in Civil Society
- Workshop 2: Prevention of bribery and the role of oversight bodies in the Business Sector
- Workshop 3: Exploring the role of local councillors, officials and the community in the prevention and fighting of corruption
- Workshop 4: Party political funding
- Workshop 5: Institutional arrangements to prevent and combat corruption

Each Workshop had a Chairperson, Rapporteur and minute-taker. The Rapporteurs of each Workshop reported to plenary regarding the content of the commission’s discussions as well as the recommendations.

Experts in their field of expertise made presentations on subjects that were further discussed in each Commission. These presentations also served the purpose of informing delegates as well as providing building blocks for informed discussion and resolution making.

5.2 WORKSHOP 1: GOVERNANCE AND ACCOUNTABILITY IN CIVIL SOCIETY

Chairperson : Mr Thabang Makwetla ⁶
Rapporteur : Mr Jeff Osborne ⁷

As introduction to the workshop delegates were made aware, through the programme of the Summit that there is no recourse for anyone who wants to report any complaint against a particular non-governmental organization in the civil society sector. This includes allegations of corruption or service delivery-related complaints. Secondly, there is no data-base in the sector on which complaints can be registered. This raises the question of accountability as well as the question of governance in the sector. Is there therefore a need for some kind of Ombudsperson to be appointed to deal with complaints in the sector as well as some form of regulation? Civil society needs to improve its own internal standards in combating corruption to allow it to engage credibly and effectively with other role players. As the least regulated sector with respect to corruption matters and consistent with initiatives in the rest of the NACF, governance and accountability mechanisms were explored during this workshop in order to map the way forward for the promotion of transparency and accountability within the sector.

⁶ Mr Tabang Makwetla is the Premier of Mpumalanga

⁷ Mr Jeff Osborne represented Business Unity South Africa

5.2.1 PRESENTATION BY MR D DE VILLIERS: National Treasury

I need to share my views with you on this very important, and in a way, contentious subject on governance and accountability in the civil society sector, a sector which by definition is amorphous. It is a sector which is very diverse and disparate consisting of a wide range of bodies and associations from chambers of commerce, churches and trade unions to community-based organisations.

It is very important because of the nature and content of the subject and the fact that it is contentious. If it were not so, why would one have to debate the issue of governance and accountability in civil society in the first place?

Analysts of civil society have resorted to two defining characteristics for the sector:

- its intentional commitment not to seek political office, and
- its intentional commitment for the public good, broadly defined. For anybody fully committed to the public good, the adherence to good governance principles and accountability are non-negotiable.

The question though is what are you doing when no one is watching? Periodically, many organisations encounter this test. And many fail miserably. It is a test that comes in many forms. For instance, some members are being dishonest by awarding contracts to service providers without following due process; projects are identified and implemented for personal gain, others commit fraud where donor agendas get embraced for expediency to ensure the next funding contract.

Additionally, allegations of corruption and financial mismanagement within trade unions abound. Equally important is the need to make available information on activities, effectiveness and financial accountability and the protection of free association in a democratic society.

The results of these unsavoury actions impacts negatively on the people and the broader civil society community it professes to represent and it also places a question mark over the relevance and real purpose of such actors in the broader spectrum of society.

It takes just one such incident to cast aspersions on the whole civil society community and to affect their credibility. Given this state of affairs I believe that you will concur with me that there is a need to explore mechanisms of promoting governance and accountability within the sector. That is the easy part; the more difficult part is to decide which models are to be developed and how they are to be implemented. Even more daunting is monitoring and enforcement. To ensure proper governance and accountability, in my view, one requires an effective legislative framework and also strong internal organisational capacity to implement the principles and functions within that framework.

Focusing on the trade union component of civil society I want to deal with the current legislative landscape and also the internal capacity and problems experienced by trade unions in relation to governance and accountability.

The current legislative landscape

One of the purposes of the Labour Relations Act, (LRA) 1995 as amended is: *“to provide for a simplified procedure for the registration of trade unions and employers’ organisations, and to provide for their regulation to ensure democratic practices and proper financial control.”*

The negative aspect of the LRA in relation to this purpose is that it is not compulsory for all trade unions to register. Anybody can set up a trade union and operate as such without registering the organisation.

Registered trade unions obviously have more rights in terms of the provisions of the LRA but they also have to comply with more onerous requirements in terms of record keeping and reporting to the Department of Labour; a responsibility which is necessary and important.

For unions and employer organisations (which could arguably also be seen as part of civil society) to be regarded as “genuine”, they are required to comply with *inter alia*, the provisions of section 98, 99 and 100 of the LRA, which stipulate an annual submission of audited financial statements and record keeping in respect of member details, minutes of meetings and ballots.

Members of trade unions may lodge a complaint with the Registrar of Labour Relations to investigate cases of mismanagement, corruption or non-compliance with the trade union’s constitution. The LRA stipulates that the Registrar of

Labour Relations may cancel the registration of a trade union or an employer organisation by removing its name from the appropriate register, if the Registrar is satisfied that the trade union or employer organisation has ceased to be compliant with the requirements of the LRA. The Registrar will then publish a notice to that effect in the Government Gazette. That, however, does not mean that the trade union must cease operating.

In order for workers to enjoy the full protection of labour legislation, it is vital for them to belong to legitimate, registered trade unions. I believe that you will agree that the current legislative framework goes a long way to create an environment which promotes transparency and governance in registered trade unions.

However, it does not go far enough to ensure that all trade unions are registered and comply with the LRA to protect its members. This creates a vacuum in the legislative framework limiting the promotion of governance and accountability within certain trade unions, which we as registered trade unions need to take up and ensure that the vacuum is removed.

Internal mechanisms

Trade unions are in their very nature democratic and are political organisations. Members elect shop stewards to represent them at workplace level, regional and national representatives and also national office bearers. During these election processes lobbying does take place as part of the democratic process.

The capacity and knowledge of candidates does not necessarily play a role in the election process other than the intentional commitment to act for the good of members. I am thereby by no means casting a reflection on any trade union’s representative or office bearer.

Why is this important within the context of our current discussion? It is important because these elected representatives have to fulfil the role similar to trustees; by representing the interest of members; being accountable for collection and expenditure of the contributions; and to ensure compliance with the trade union constitution as registered in terms of the LRA. In other words they are the custodians of governance principles on behalf of the members.

What many do not understand is that as soon as they start serving on the structures and as national office bearers they are entrusted with a power that can “make or break the trade union”. Along with this power comes the responsibility of governance and accountability. Many times the office bearers are confronted with role conflict between their trade union obligations towards the members and the governance role they need to fulfill.

Governance is based on four primary pillars: transparency, accountability, responsibility and fairness. Within the trade union environment we can raise the following issues in respect of the four pillars:

● **Transparency**

The common view is that trade unions are in essence democratic and the principle of transparency is applied to all the affairs and activities of the trade union. However, this is not always the case. Transparency means that the activities of the trade union are open and accessible to scrutiny by its members which includes the audited financial statements, procurement policy, and the process and allocation of contracts to service providers.

● **Accountability**

One of the challenges within the trade union environment is to allocate accountability, as in many cases decisions are taken on a consensus or majority basis within a committee structure and are driven by the interests of the members.

● **Responsibility**

The paid official's responsibility for managing the affairs of the trade union should pertain to behaviour that is open to corrective action being taken and for the penalizing of any mismanagement.

● **Fairness**

Systems and policies that exist within the trade union should be balanced in taking account of all those who have a stake in the trade union and its future.

These four pillars clearly underpin the purpose as set out in the current legislative framework of *"providing for their regulation to ensure democratic processes and proper financial control"*.

The role of office bearers and paid officials serving in the trade union structures should be to ensure that these pillars are vigorously pursued and implemented

Trade unions should ensure the following:

- Principles of corporate governance should be applied with the necessary adjustments applicable to trade union structures
- Disclosure on prudent financial expenditure financed through membership contributions, grants, donors and any other forms of income.
- Holding paid officials and office bearers accountable for their actions.
- Building of capacity within the structures so office bearers understand their role and responsibilities.

At the end of the day an effective legislative framework and vigorous internal governance and accountability as well as structures and processes fighting corruption remains dependent on the people holding responsible positions. Integrity is crucial to the whole process and that is something which we need to develop as a societal culture starting at the youngest possible age.

I want to conclude by quoting President Vladimir Putin of Russia, during his televised question and answer phone-in with the public on 11 October 2007: "We need to improve the legislative framework; we must work with society to reduce tolerance of corruption, from small bribes on the road to big commercial corruption."

5.2.2 PRESENTATION BY MR M J MOLAPISI: South Africa Non-Governmental Organizations Coalition (SANGOCO)

There are a number of pertinent questions that need to be raised, namely: do Civil Society Organisations (CSOs) have the infrastructure they need to fulfil their purpose; how does civil society organise its affairs and how might it organise better; and what are the trends for civil society infrastructure around the globe?

Civil society infrastructure needs to be structured around the concept of accountability that includes a set of institutions that creates the efficient and effective conditions in which citizens and organisations can flourish. However, there is no universal model of such an institutional infrastructure as it varies according to context.

Some common features can be gleaned internationally as all countries, in one way or another provide mechanisms for holding those in power to account and for expressing and protecting human rights values. These universal aspects allow for comparison and appreciation at both the national and global level.

There are challenges in that CSOs are part of a wider society that has been dominated by two other institutions, namely, government and business. In recent years, there has been an increasingly explicit orientation towards multi-sector governance of public goods at local, national and global level. Notwithstanding this, civil society and business are also actively testing new roles and responsibilities. In all these developments accountability is critical.

There are four enabling conditions that support a sound institutional infrastructure:

- A legal and regulatory framework
- A sustainable resource base
- Knowledge and information
- Human and organizational capacity

All these need to be founded on the basis of the principle of accountability.

The regulatory framework and self regulation needs to ensure the necessary legal stability and security for CSOs to organize. In some parts of the world restrictive legislation is aimed at weakening CSOs. Yet countries are beginning to see how CSOs are necessary and even useful for their development agenda. Self-regulation in its different forms attempts to deal with concerns of trust, transparency, and accountability. This is often a response by the CSO sector to government's threat to withdraw tax benefits.

Self regulation and legitimacy

- Self-regulation, while preserving CSOs independence, leads to legitimacy, strengthened relationships and greater power and influence.
- Relationship-building is a difficult task for CSOs and its outcome largely depends on the attitude of the state.
- Self-regulation and relationship building with the state confer legitimacy on civil society actors.
- It may be advisable that the administration of civil society regulation be undertaken by the CSOs themselves. However, they often find it difficult to self-regulate due to limited finances.

Civil society worldwide is limited by a weak financial resource base. Among the reasons for the inadequacy of financial resources is the lack of diversification of income sources, the absence of an

income generating approach, and the general difficulty in articulating the “social return on investment.” This creates a reliance on foreign aid or state funding. The risk faced by CSOs that overly rely on foreign funding can provide a criticism by sensitive governments of accusing CSOs of serving foreign interests.

Information and knowledge is an important enabling condition for civil society. Three aspects are important here: knowledge of the sector, utilization of the internet, and civil society networks. Also relevant is that support for civil society is very limited and thus visibility which is key to voice of the CSO, is limited. Furthermore, technological and infrastructural resources available to civil society, including information and communication technologies, vary a great deal across countries and reflect the digital divide which exists.

The imperative of downward accountability demands that CSOs create channels that allow beneficiary voices to be heard and enable learning among all constituents. In an increasingly globalizing context, networks are another driving force for CSO visibility. The transnational level enables CSOs to identify issues, facilitate marginalized stakeholders, amplify important issues, and build bridges among diverse stakeholders, and also to monitor and assess solutions. Importantly they also influence economic, political, and cultural structures and relations in ways that are impossible for individual actors.

A further enabling condition for civil society is capacity i.e. CSOs’ internal systems, procedures, and resources. The capacity gaps, the lack of professionalism, and limited expertise undermine ideas forwarded by CSOs and hence valuable ideas do not make it to the public agenda - and if they do, they are immediately discredited and therefore cannot make an impact on policy formulation.

Issues going forward:

- Who should address the capacity gaps and how? (It is important to note that it is not a donor problem).
- CSOs are responsible for addressing their own capacity gaps and donors can finance capacity-building which will enhance the return on donor investment.
- In South Africa there is a need for the establishment of formal qualifications in development work.
- The challenge is not only innovation for capacity-building but also process innovation to help us realize a new and meaningful infrastructure.

5.2.3 PRESENTATION BY MR J MARNEWICKE: Business Unity South Africa

Governance

Governance is the process of decision-making and the process by which decisions are implemented (or not implemented). Further, good governance would have the following characteristics (attributes): it would be effective and efficient, responsive to the citizenry, and would be consensus seeking as well as striving for equity, transparency, accountability, inclusivity and the observance of the rule of law.

Governance applies to all decision-makers in South Africa who would typically be government, business, civil society and others, e.g. donors and a host of informal players.

Accountability

Accountability is the way in which individuals and organizations are held responsible for their actions and occurs either internally or externally, but is not mutually exclusive. It must also be morally based and procedural. Further it is best if it acts upwards and downwards. The following are beneficiaries of or expect accountability: the public at large, stakeholders of an organization as well as its funders.

There are various forms of accountability measures which involve among others; self-regulation, governing boards, codes of conduct, sanctions, and enforcement. Some measure of accountability is also achieved via consultation, reporting and by measuring success. It is prudent to realize that there is no one instrument that would be suitable for all circumstances.

Challenges facing the CSOs in South Africa

The challenges facing the CSO community in meeting acceptable levels of governance and accountability are numerous. The following are cardinal:

- **Diversity**

CSOs vary widely in size, complexity and focus. Each organization serves beneficiaries who equally vary in their state of poverty. Decision-making responsibility tends to be in the hands of fewer individuals, the smaller the organization is. Consequently, the ability of CSOs to access resources tend to vary in direct proportion to their size. Once such resources are accessed, the beneficiaries seldom have the capacity to audit the organization for good governance - beyond appreciating the immediate relief obtained. To complicate matters, there is an emerging trend whereby funding by donors seems to follow personal networks rather than the pure merits of the funding proposal. The major casualty of this trend is that it is no longer enough for CSOs to be active in the "good cause" arena.

- **Competition for resources**

CSOs among themselves generate fierce competition for resources within the areas they operate in. It is unfortunate that in the rat-race for resources, credibility is the casualty as corners are cut to gain advantage over competitors.

Discernable themes

An enabling regulatory framework is needed from government's side to assist the CSOs manage their activities while sustainability has to be inculcated into the

NGOs. They also have to work hard on their other competencies which include acquiring knowledge and information that would be crucial to their sustainability.

Related to the above point are human capital and organizational development issues. The complicating aspect regarding the human capital development is that CSOs are unable to hold on to the volunteers they train. Volunteer retention attempts are hampered by bigger organizations with better resources being more capable to attract staff than the smaller ones. It is often the differential in stipends that puts strain on the smaller CSOs.

Audited financial statements are a prerequisite to funding, but smaller organizations struggle to afford audit fees. There is a desire to investigate the possibilities of a pooled auditing mechanism such that the auditing fees are shared among the CSOs.

5.3 WORKSHOP 2: PREVENTION OF BRIBERY AND THE ROLE OF OVERSIGHT BODIES IN THE BUSINESS SECTOR

Chairperson : Mr Dennis George⁸
 Rapporteur : Advocate Prince Mokotedi⁹

As introduction to the workshop the programme of the Summit indicated that the Bribe Payers Index (BPI) of Transparency International (TI) for 2006 ranks South Africa in a cluster of countries third most likely to practice bribery by businesses. The country's rating is at 5.61 out of a possible 10, where 10 represent the score of countries least involved in bribery. This shows a propensity of businesses to use bribery extensively in South Africa. During this workshop the extent to which business is preventing bribery was explored.

The effectiveness of relationships between business entities and oversight bodies such as the Financial Services Board, the South African Revenue Services and the Johannesburg Securities Exchange was also explored. This allowed for engagement on possible mechanisms to improve oversight in the interests of all stakeholders in the various companies, in particular the public as many have lost their life-savings as a result of poor governance and corruption.

5.3.1 PRESENTATION BY MS F CHAIN: Organisation for Economic Cooperation and Development (OECD)

Introduction

Bribing public officials to obtain international business raises serious moral, political and economic concerns. When public officials take bribes in awarding contracts to foreign businesses for public services such as roads, water or electricity supplies, prices inflate, allocation of resources become distorted and competition is undermined. It has a devastating effect on investment, growth and development. Furthermore, such corruption exacts an inordinately high price on the poor by denying them access to vital basic services. Increasing intolerance of these effects has led to mounting pressure from citizens and financial markets for an international fight against corruption.

The OECD has played a leading role in the battle against bribery and corruption in international business deals for over a decade. The fight gathered momentum in 1999 with the entry into force of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("the Convention"). The Convention makes it a crime to bribe a foreign public official in exchange for obtaining, or retaining, international business. As of today, the

Convention has been ratified and transposed into domestic legislation by 37 countries. This includes the 34 original signatories – the 30 OECD member countries and 4 non-members (Argentina, Brazil, Bulgaria and Chile). Three other non-member countries have since also adhered to the Convention: Slovenia in 2001, and Estonia in 2004. South Africa was the 37th and first African country to join in 2007. The OECD, through its Working Group on Bribery, is now ensuring that all 37 Parties fully implement the Convention.

The Convention represents a landmark in international co-operation to fight bribery and corruption. For the first time, the world's largest trading and investment partners – which together account for more than 70% of world trade and 90% of foreign direct investment – are acting in concert to halt the flow of bribes to foreign public officials in international business transactions. The OECD efforts to fight bribery are not limited to the Convention. The OECD's Revised Recommendation on Combating Bribery in International Business Transactions (the "Revised Recommendation") adds strength to the effects of

⁸ Mr Dennis George represented the Federation of Democratic Unions of South Africa

⁹ Advocate Prince Makotedi represented the National Prosecuting Authority

the OECD Anti-Bribery Convention by focusing on areas the Convention does not address in detail, such as international co-operation and the non-tax deductibility of bribes. Related OECD instruments put an end to the tax deductibility of bribes to foreign officials, deter bribery in officially supported export credits and require anti-corruption provisions in development aid. This presentation focuses on the Convention, its implementation, and its enforcement.

How does the Convention combat foreign bribery?

Countries that accede to the Convention agree to make bribing foreign public officials in international business transactions a criminal offence. The Convention provides that legislation making bribery of a foreign public official a criminal offence must apply to all persons (natural persons and companies) and that it must cover offering or promising, as well as giving, a bribe. It is an offence regardless of whether the bribe is paid through an intermediary or whether the advantage is for a foreign public official or a third party.

The offence must prohibit all forms of bribes, including tangible or intangible, as well as pecuniary and non-pecuniary, advantages. The Convention covers bribery for the purpose of obtaining or retaining “business or other improper advantage in the conduct of international business”. This applies not only to obtaining contracts, but also obtaining regulatory permits, or preferential treatment in taxation, customs, or judicial and legislative proceedings.

Bribery remains an offence even if the person concerned was the best-qualified bidder and should in any case have been awarded the contract purely on merit. And, it does not matter whether the bribe achieved the desired result, or if bribery is tolerated or even widespread in the country concerned. The Convention defines a “foreign public official” as any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation.

In addition, the Convention requires each Party to:

- establish effective, proportionate and dissuasive criminal penalties for the foreign bribery offence. Where a country’s legal system does not apply criminal responsibility to enterprises, they shall be subject to effective, proportionate and dissuasive non-criminal penalties;
- establish its jurisdiction over the foreign bribery offence when the offence is committed in whole or in part in its territory. Where a Party has jurisdiction to prosecute its nationals for offences committed abroad, it shall establish such nationality jurisdiction over the foreign bribery offence according to the same principles;
- establish a money laundering offence in relation to the bribe and/or proceeds of foreign bribery;
- prohibit accounting and auditing practices that make it easier to conceal foreign bribery; and to
- provide prompt and effective legal assistance to other Parties in the investigation and prosecution of foreign bribery offences. The bribery of a foreign public official must be deemed an extraditable offence under both the laws of the Parties and the extradition treaties between them.

Countries also accept the Revised Recommendation, which contains broader measures to deter, prevent and combat transnational bribery. These measures include:

- eliminating the tax deductibility of bribes;
- ensuring the transparency of book-keeping and auditing practices, and encouraging the introduction of sound internal company controls, including standards of conduct; adopting preventive and repressive measures against corruption in public procurement systems. For instance, companies responsible for bribing foreign public officials should be suspended

- from future bids for public contracts; and
- ensuring that procurement contracts funded by bilateral aid include anti-corruption provisions and promote the proper implementation of anti-corruption provisions in international development institutions. Parties also agree to work closely with development partners to combat corruption in all development co-operation efforts.

How is enforcement of the Convention monitored?

A monitoring process based on the OECD peer-review principles ensures the effective implementation of the Convention and the Revised Recommendation. The OECD Working Group on Bribery in International Business Transactions (the “Working Group”) is in charge of monitoring Parties’ implementation of the Convention and the related instruments.

The monitoring process is divided into two main phases.

Phase 1 evaluates whether the legal texts through which State Parties implement the Convention meet the standards set by the Convention.

Phase 2 studies the structures put in place to enforce the laws and rules implementing the Convention and the Revised Recommendation, and to assess their application in practice. This includes reviewing national investigations and prosecutions, and conducting “on site” interviews with government and regulatory authorities and other persons concerned with application of the Convention. The monitoring procedures are similar for the Phase 1 and Phase 2 examinations. For each country reviewed, the OECD Secretariat prepares a draft report, based on information provided by the country under examination as well as information collected by the OECD Secretariat and two other countries from the Working Group who act as “lead examiners”.

The report on the review is put to the Working Group for final adoption; the country under review also has an opportunity to comment. The country under review may express a dissenting opinion, which is reflected in the final report, but it cannot prevent the Working Group from adopting the report. The document, which contains an evaluation of the country’s laws and practices to combat foreign bribery, is published by the OECD and is also posted on its website (www.oecd.org/corruption).

Phase 1

The principle objective of Phase 1 is to evaluate whether the legal texts through which participants implement the OECD Anti-Bribery Convention meet the standard set by the Convention. Phase 1 also evaluates initial actions to implement the 1997 Revised Convention Recommendation. Additionally, the evaluation provides an opportunity for countries to learn from the experiences and approaches of others.

Phase 1 is conducted on a country-by-country basis. It includes elements of both self and mutual evaluation. In consultation with the country examined, two countries are chosen to lead the examination. The countries acting as lead examiners choose the experts who take part in the preparation of the preliminary report. The entire group of countries Party to the Convention evaluates each country’s performance and adopts conclusions.

Elements of the Phase 1 mutual evaluation procedure include:

- the appointment of two countries to act as lead examiners;
- replies from the examined country to an evaluation questionnaire;
- preparation of a provisional report by the OECD Secretariat and lead examiners on the country’s performance;
- discussion and adoption of this report by the Working Group on Bribery, including conclusions on the examined country’s performance; and
- publication of the Phase 1 report on the OECD website.

The Phase 1 reviews, which began in April 1999 when the Convention was ratified, have been completed; all 37 countries have been examined by the Working Group. These reviews have found that overall, national standards are in line with the Convention; where necessary, remedial measures were recommended. Most Parties have taken action to implement these recommendations. Others are in the process of amending their legislation.

South Africa's Phase 1 evaluation was discussed and adopted by the Working Group on Bribery in June 2008. The full report is publicly available and can be downloaded from the OECD website. In its conclusions, the Working Group found that, overall; South Africa's legislation conforms to the standards of the Convention. Nevertheless, the Working Group recommended amendments in two areas:

- In accordance with Article 5 of the Convention, investigation and prosecution of foreign bribery should not be influenced by considerations of "the economic impact of the offence on the community", a factor mentioned in the South African Policy Directives for Prosecutors. South Africa has expressed its intention to make the necessary legislative modifications; this was welcomed by the Working Group.
- South Africa's laws on extradition require that the offence for which extradition is sought has been committed within the jurisdiction of the requesting country. The Working Group is concerned that this limits South Africa's ability to provide extradition for a foreign bribery offence when the requesting country is exercising nationality jurisdiction (i.e. the offence took place outside the requesting country's territory). The Working Group looks forward to the adoption of a proposed Extradition Bill which would remove this obstacle.

In addition, the Working Group expressed its intention to follow-up on certain issues in the context of South Africa's upcoming Phase 2 evaluation. These include the application of liability of legal persons in practice, the requirement of intent in the South African foreign bribery offence, and how the disbandment of the Directorate for Special Operations and the appointment of a new Directorate for Priority Crime Investigation will impact on the investigation and prosecution of foreign bribery.

Phase 2

The purpose of Phase 2 is to study the structures put in place to enforce the laws and rules implementing the OECD Anti-Bribery Convention and to assess their application in practice. Phase 2 broadens the focus of monitoring to more fully encompass the non-criminal law aspects of the 1997 Revised Recommendation. Phase 2 also serves an educational function, as participants discuss problems and different approaches.

Phase 2 includes elements of both self and mutual evaluation. It is based on examinations country-by-country. In consultation with the country examined, two countries are chosen to lead the examination. The countries acting as lead examiners choose the experts who take part in the on-site visits and preparation of the preliminary report. The entire group of countries Party to the Convention evaluates each country's performance and adopts conclusions.

Elements of the Phase 2 evaluation include:

- appointment of two countries to act as lead examiners;
- replies to two evaluation questionnaires: the principal questionnaire is identical for all countries, while the supplementary questionnaire identifies questions specifically relevant to the examined country;
- a one-week on-site visit to the examined country. This on-site visit includes consultations with representatives from various government departments, law enforcement authorities, the judiciary, as well as the private sector, trade unions, civil society, journalists and practitioners such as lawyers and accountants;

- preparation of a preliminary report by the OECD Secretariat and lead examiners on the examined country's performance;
- discussion and adoption of this report by the Working Group on Bribery, including recommendations to improve the examined country's performance; and
- publication of the Phase 2 report on the OECD website.

The Phase 2 reviews started in 2001 and have nearly been completed: 36 countries have been examined. Only the review of South Africa (the newest signatory to the Convention) remains to be carried out. This should take place in 2009.

Following the adoption of the Phase 2 Report, the examined country is required to provide within one year a detailed oral report to the Working Group on steps it has taken or is planning to take to implement the review's priority recommendations. Within two years, it must provide a detailed written report, which is published as an addendum to the review. Oral and written follow-up reports are ongoing.

What is the role of civil society and the private sector?

Civil society plays a key role in fighting corruption, and several civil society and private sector organisations work with the OECD in implementing the Convention. The OECD Working Group on Bribery in International Business Transactions consults regularly with non-governmental organisations, and provides information on its work to the public. Civil society, trade union and business representatives are invited to comment on the country reviews. They also play a key role during on-site visits by the OECD as part of the Phase 2 monitoring process. This enables examiners to check, for example, whether the law implementing the Convention is well-known to local firms. Feedback from trade unions, non-governmental organisations and journalists can provide an independent perspective on whether a government is doing enough, and can also put pressure on governments to uphold their commitments. As mentioned, all Phase 1 and Phase 2 reports are published on the Internet, which gives the public the opportunity to pressure governments for change.

Companies also need to play their part in ensuring the effectiveness of the Convention. They must become fully implicated in ensuring compliance with the Convention and with national anti-bribery legislation. Some companies have established their own anti-corruption strategies, including adopting codes of ethical conduct that include provisions concerning bribery and extortion between the private and public sectors, as well as between private companies. These codes express the companies' serious commitment to comply with international efforts to combat corruption, and are intended to modify the corporate culture and attitudes of employees to reduce the risk of corrupt behaviour. They are often accompanied by the creation of management systems for monitoring and reviewing compliance.

Other OECD instruments also address the issue of corporate social responsibility. In their chapter on combating bribery, the OECD Guidelines for Multinational Enterprises (non-binding recommendations for enterprises made by the member countries) include rules for combating bribery of public officials, as well as for preventing channelling of payments to public officials through subcontracts, purchase orders and consulting agreements. The OECD Principles of Corporate Governance, which call for more disclosure and financial transparency, also provide a framework that discourages bribery.

Finally, in the ongoing review of the OECD anti-bribery instruments, the Working Group on Bribery has engaged in extensive and intensive consultations with civil society and the private sector.

What lies ahead?

Review of instruments

November 2007 marked the tenth anniversary of the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Revised Recommendation

of the Council on Combating Bribery in International Business Transactions. As the Working Group on Bribery continues to carry out its responsibility for overseeing implementation of these instruments, as well as the 1996 Recommendation of the Council on the Tax Deductibility of Bribes to Foreign Public Officials, it wants to ensure their effectiveness. The Working Group on Bribery is therefore undertaking a review of the OECD anti-bribery instruments.

In this context, the Working Group engaged in extensive consultations with the private sector and civil society. A Consultation Paper on the Review of the OECD Instruments on Combating Bribery of Foreign Public Officials in International Business Transactions was posted on the OECD website, and stakeholders were asked to comment on the major issues that have arisen in the course of monitoring implementation of the anti-bribery instruments. This Consultation Paper elicited responses from a total of 35 organisations and individuals, including international legal experts, multi-lateral organisations, NGOs, prosecutors, accounting and auditing professionals, and private-sector representatives. More than 30 representatives of civil society, the private sector, multi-lateral institutions and the legal profession met with the Working Group on Bribery on 16 June 2008 for a discussion on how to strengthen measures for preventing, detecting, investigating and prosecuting cases of bribing foreign public officials. Participating individuals and organisations had an opportunity to clarify and expand upon their written responses to the Consultation Paper. A summary of this session is due to be posted shortly on the OECD webpage devoted to the review of the OECD anti-bribery instruments.

The ongoing review of the anti-bribery instruments is tentatively due for completion in the first half of 2009.

Continued monitoring

Article 12 of the Anti-Bribery Convention requires a systematic monitoring programme of indefinite duration. This obliges the Working Group to continue monitoring the implementation and enforcement of the Convention after the completion of the current Phase 2 cycle. This commitment has been reiterated on numerous occasions, including during expert discussions in Rome on 21 November 2007 on the occasion of the Convention's tenth anniversary – but also in several G8 Summit Statements. The need for further monitoring of progress in the implementation and enforcement of the Convention – and for a systematic, effective and adequate review mechanism – was reiterated on these occasions.

The Working Group has started to discuss the general parameters of a Phase 3 review mechanism, which could be launched in 2009 once the review of the OECD anti-bribery instruments has been completed. Detailed procedures for and contents of Phase 3 reviews still need to be further discussed and agreed, but certain essential features of the next cycle of country exams have already emerged. Firstly, the new Phase 3 cycle of peer reviews will involve systematic on-site visits as part of a shorter and more focused assessment mechanism. In addition, the Phase 3 reviews will address both country-specific topics and horizontal group-wide and cross-cutting issues.

Country-specific vertical issues would address:

- progress on weaknesses identified in Phase 2;
- enforcement efforts and results; and
- issues raised by changes in domestic legislation, or institutional frameworks.

Cross-country horizontal issues could include:

- general group-wide cross-cutting issues from the Phase 2 Mid-Term Study, including enforcement;
- general group-wide cross-cutting issues arising since the Phase 2 Mid-Term Study; and
- matters pertaining to the implementation and understanding of any changes made to the anti-bribery instruments as a result of the current review.

In addition– for the purpose of consideration during Phase 3 examinations, and subject to Working Group approval – the Working Group has asked the OECD Secretariat to identify relevant issues not considered during Phases 1 or 2, or issues which might have received inadequate or inconsistent attention during those examinations.

Enlargement and enhanced engagement

At the 2007 Council meeting at Ministerial level, the OECD launched an accession process with Chile, Estonia, Israel, Russia and Slovenia. The Council called on the Working Group on Bribery to examine the position of each of the five candidate countries with respect to their anti-bribery principles and instruments, and provide the Council with its formal opinion on the willingness and ability of each country to assume the obligations of OECD membership in the field of anti-bribery in international business transactions. Chile, Estonia and Slovenia are already members of the Working Group, and have completed their Phase 1 and Phase 2 evaluations. Israel and Russia need to undertake signature and ratification of the Convention, adoption of domestic foreign bribery legislation, and examination under the Phase 1 and Phase 2 processes to allow assessment by the Working Group.

The OECD Council also decided to offer enhanced engagement, with a view to possible membership, to Brazil, China, India, Indonesia and South Africa. While Brazil and South Africa are already Parties to the Anti-Bribery Convention and Working Group members, China, India and Indonesia have had less contact with the Working Group. China, India and Indonesia – as well as most dynamic South East Asian Economies (e.g. Malaysia, Singapore, Thailand, and Vietnam) – are members of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific. However, none of these countries have established a foreign bribery offence. Therefore, enhanced engagement with Asian countries will aim to expand dialogue focused on the risks associated with foreign bribery (awareness raising) and the need to implement high anti-corruption standards.

Brazil has concluded its Phase 1 and Phase 2 exams, and follow-up on important matters from the Phase 2 report is now on the agenda. Brazil is also due to participate in regional events organised under the auspices of anti-corruption programmes in Latin America. The main priority for South Africa will be the completion of its Phase 2 examination in 2009. Furthermore, given its leadership role in the region, South Africa could play an important part in advancing regional anti-corruption initiatives in Africa.

5.3.2 PRESENTATION BY DR D TITUS, Transparency South Africa (TISA)

Introduction

“Corporations and government alike, in the North and the South, understand in principal that corruption undermines public trust; the precious glue that holds our social fabric together. Corruption perpetuates moribund political elites who hold back their own people from escaping poverty. And, it distorts markets by rewarding cheating and thus closing the door to responsible entrepreneurship, the surest and arguable only reliable way to escape poverty.” George Kell. Executive Director UN Global Compact.

We need to include anti-corruption in the corporate agenda. This contributes to greater market integrity and holds “the promise of infusing improved governance in the public and private spheres alike.”

Fighting corruption has become more urgent than ever. As our knowledge of the phenomenon expands, we realize the extent of the harm it causes. Corruption impoverishes national economies, undermines democratic institutions and the rule of law, and facilitates the emergence of other threats to human security such as organized crime, human trafficking and terrorism.

For too long the world has looked the other way while corrupt elites looted their countries of hundreds of millions and even billions of dollars, creating economic chaos and depriving citizens of education,

health services, basic infrastructure and functioning public services. Even when good governance is restored or attained, officials can spend years or even decades attempting to retrieve funds that are often critically needed to repair the social and economic damage done by their corrupt predecessor.

The Editor of the Sunday Times, Mondli Makhanya, relates in his Sunday Editorial (03 August 2008) the story of a British man - some kind of fixer/agent/businessman whom he had met in 1993 in a restaurant. The man boasted that arms dealers were already taking ownership of ANC leaders, ahead of the installation of a democratic government. Makhanya states that he was a naïve idealist back then and could not countenance the heroes of the revolution being lured by dirty arms dealers. And, so says Makhanya, "I argued furiously with him and told him that my country would be different. You know that South African thing – we were always going to be different."

"But alas," says Makhanya, "like all political parties the world over, it did not take the ANC too long to be sullied by the spoils of power and as the man in the restaurant predicted, the arms deal was the beginning of this descent.

Prevention of bribery and the role of oversight bodies in the business sector

This relates to the role of oversight bodies and the prevention of bribery in the business sector: it is never business alone but government and civil society as well. This relates to prevention as well as the fight against bribery in all sectors. It may be that The Sunday Times has it all wrong, that our government and the business sector have clean hands - never touched by corruption. Point is, that at this National Anti-Corruption Summit more particularly, where government, the private sector and civil society meet to effectively address and combat the scourge of corruption - the arms deal truth must come out as well as other truths.

The oversight bodies will have to operate within the particular legislative frameworks nationally as well as internationally. While the national frameworks are quite crucial, I wish to focus upon the immediate international instruments, for example the United Nations Convention Against Corruption (UNCAC) and the Organisation for Economic Cooperation and Development (OECD).

How should we do it?

How should we do it? This question considers the UNCAC and the OECD conventions we have entered into.

UNCAC

Article 1

Statement of purpose

- To promote and strengthen measures to prevent and combat corruption more efficiently and effectively.
- To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including asset recovery.
- To promote integrity, accountability and proper management of public affairs and public property.

The UNCAC embodies a comprehensive approach to corruption and the recognition of the importance of both corruption and punitive measures. It also addresses the cross-border nature of corruption through arrangements for international cooperation and includes provisions on the return of ill-gotten assets. The convention holds great promise for civil society because it provides a mandate for the participation of citizens and civil society organizations in accountability processes while simultaneously recognizing the need for accountability processes. It also recognizes the need for governments to provide citizens with information about anti-corruption efforts and to protect whistleblowers.

If UNCAC is properly implemented, it will result in major reductions in corruption. It provides a much-needed global framework for countering corruption and its negative impact on human rights, democratic governance, equitable economic development and poverty alleviation.

The 1997 Convention on Combating and Bribery of Foreign Public Officials in International Business Transactions.

South Africa is the third country after Slovenia and Estonia to accede to the OECD Convention in compliance with Article 13 of the Convention, which regulates accession.

Section 231 (2) of the Constitution of the Republic of South Africa 1996, provides that an international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces unless it is an agreement referred to in Subsection 3. The South African Parliament approved the Convention in August 2006.

(Read TI's document on Progress Report 2008 at www.tisa.org.za)

Conclusion

Whendell Rawls won a Pulitzer Prize for investigative journalism, and while he believes tougher laws are necessary, he says "the best way to reduce corruption is to expose it. You have to shine lights on the concerned and expose those who are trying to cut corners and those who are trying to skirt the law and you have to make government accountable at every level. You have to make anybody who profits on the backs of the people of the world, accountable for how they're making their money and who they are abusing and how they are abusing them".

5.3.3 PRESENTATION BY MR V VAN VUUREN: Business Unity South Africa

There is a need for the recognition that corruption and bribery are a problem at all levels of society including government and business. However, elements of society will not recognize the problem and hence the issue of corruption is relegated to the "non priority" items on the agenda. Business in particular has much work to do in this arena.

Oversight bodies

There is much debate worldwide on the role of oversight bodies, with many being for, whilst many are against oversight bodies. Monitoring is important, yet despite police contending that they are responsible for law and order implementation, society often argues that even the police need to be monitored.

There is indeed a need for oversight bodies. They need to be properly established, properly staffed and properly funded. Furthermore, such oversight bodies need to be accountable, transparent and they need to report regularly.

Oversight bodies: South African Scenario

The following facts influence their effectiveness:

- Questions about credibility
- Political uncertainty
- Society and business uncertainty
- Political interference
- Fear of fulfilling duty

- Lack of governance
- Lack of certainty

Quo Vadis?

Leadership is required that is decisive, where all South African social partners believe in and practice accountability.

Conclusion

It must be recognized that corruption and bribery are a problem at all levels of society including government and business and that all sectors need to work together in fighting corruption. The emphasis should be more on prevention of corruption and the best way to prevent it is to expose it and to make of the perpetrators by successfully prosecuting them.

In the case of overseeing bodies they need to be properly established and funded.

5.4 WORKSHOP 3: EXPLORING THE ROLES OF LOCAL COUNCILLORS, OFFICIALS AND THE COMMUNITY IN THE PREVENTION AND FIGHTING OF CORRUPTION

Chairperson : Ms Nele Meyer ¹⁰

Rapporteur : Ms Helen Duminy ¹¹

As introduction to the workshop, the Summit programme indicated that the role of the local councillor in facilitating service delivery and preventing corruption is critical. According to the Code of Conduct for Councillors they are to, "at all times act in the best interests of the municipality ...and perform the functions of the office honestly and (in) a transparent manner". This implies that councillors do have a role to play in promoting integrity at municipal level.

On the other hand, communities need to hold local government accountable for fighting and eradicating corruption. Local government is the key point for service delivery and corruption impedes their ability to function effectively. Do local communities engage with municipalities to hold them accountable? Are there examples in South Africa where the monitoring of municipalities by local communities has happened and what have been the successes or failures? Are there any lessons to be learnt? These are some of the questions that were addressed by this workshop.

5.4.1 PRESENTATION BY MR X GEORGE: CEO of the South African Local Government Association (SALGA)

The presentation's focus is on service delivery by Local Government and will touch on the role of local councillors, officials at community level, and the key legislative instruments that are in place. Also, I will look at what are the key impediments that have been identified around this particular challenge and will also take the opportunity to reflect on progress made thus far in the fight against corruption in terms of Local Government.

I will now provide a brief context in terms of the outline of the presentation as it is important to reflect on the evolution of the system. We have emerged from a long road prior to 1993. That road was characterised by emergency powers and the emergence of a military constitution of the country.

¹⁰ Ms Nele Meyer represented German Technical Cooperation

¹¹ Ms Helen Duminy represented Fedusa

From that time we moved to the phase of Local Government in 2000 and then on to the phase of Local Government to 2006. The present phase is commonly referred to as a consolidation and sustainability phase.

We now have 283 municipalities; there were 843 municipalities in 2000, whilst there were 1245 municipalities during the Local Government transition era phase. As a result of this evolution of Local Government a comprehensive policy and regulatory framework is now in place:

- The Local Government: Municipal Demarcation Act, (1997)
- The White Paper on Local Government (1998)
- The Local Government: Municipal Structures Act (1998)
- The Local Government: Municipal Systems Act (2000)
- The Municipal Finance Management Act (2003).

The focus is service delivery by Local Government and that is where the commitment of government is realized and that is where we often hear of incidences of corruption.

The above legislation provides for good governance; what remains is:

- Sector-wide support.
- Phasing and timing of implementation.
- Capacity-building to meet the set objectives.

The following high risk areas of corruption within local government remain:

- Lack of transparent procurement process (we have legislation that guides such transparency. There is a need for sector-wide support and capacity building).
- Allocation of RDP houses.
- Nepotism in recruitment and employment of staff.
- Inadequate financial controls.
- Abuse of municipal assets.
- Failure to respond timeously and decisively to these challenges will impact negatively on service delivery.

The legislative and policy framework comprises:

- The Constitution of the Republic of South Africa (which prescribes the basic values and principles of public administration).
- Systems Act (prescribes the Code of Conduct to which all municipal staff are expected to ascribe to).
- Municipal Finance Management Act and Regulations (May 2005 Regulations prescribe additional requirements to employees of the state).
- Structures Act (obligations on municipalities to establish oversight structures).

Progress required:

Critical Elements for fighting Corruption are:

- Establish internal systems, policies and procedures.
- Establish oversight structures.
- Develop and implement anti-corruption measures.
- Implementation and enforcement of codes of conduct.

Progress Made:

- 94% municipalities have established and adopted internal systems, policies and procedures.
- Approximately 80% of municipalities have established oversight committees.
- 89% of municipalities have established their own anti-corruption plans, 124 have anti-corruption strategies and 51 are in the process of developing such strategies.
- Enforcement of the codes of conduct has been allocated as a specific responsibility to either the Speaker or the Chief Whip at municipal council level.

Challenges

Whilst noticeable progress has been made a number of challenges still remain:

- Although some municipalities, especially district and metropolitan municipalities have anti-corruption and fraud policies and structures in place, these have proven to be inadequate to effectively fight corruption.
- Municipalities that service rural and economically under-developed areas do not have the required resources to establish anti-corruption structures and they respond to corruption and fraud matters on an ad hoc basis.
- Whilst most municipalities have established and adopted internal systems, policies and procedures remain a challenge.
- Roll-out of the Local Government Anti-Corruption Strategy is complicated by the unavailability of municipal officials during workshops.
- Lack of knowledge and awareness of anti-corruption measures by external stakeholders remain a challenge.

Role of SALGA and the SALGA Strategic Plan for 2007-2012

SALGA is committed to:

- Improve public participation and functioning in ward committees.
- Improve municipal governance processes.
- Improve appointment processes in municipalities.
- Improve corporate governance of municipalities.

The role of key stakeholders; councillors and officials:

- Create a culture within municipalities which is intolerant of unethical conduct, fraud and corruption.
- Comply with codes of conduct and other legislative requirements promoting anti-corruption.
- Engage the community in anti-corruption and fraud prevention initiatives.

The Community and partners need to:

- Develop awareness and knowledge of municipal systems, policies and procedures.
- Strengthen their participation in municipal public participation processes.
- Report to the appropriate authorities allegations of unethical conduct, fraud and corruption.

Way forward:

- Continue to provide support to municipalities in establishing the necessary systems and developing their own anti-corruption strategies/plans.

- Need to restore public confidence in municipal service delivery by developing an anti-corruption communication strategy, which should include awareness drives.
- Develop and roll out ethics manuals and ethics training.
- Development and roll out of policies on risk areas.
- Need for comprehensive measures and guidelines to address the enforcement of the anti-corruption strategy.

5.4.2 PRESENTATION BY MR G HOLLANDS: Good Governance Learning Network (GGLN)

This research was done two years ago and the data illustrates some principles that are of importance with special reference to the Eastern Cape. Mr Thabo Mbeki, in 2005, warned the municipalities that they were increasingly seen to be responsible for severe irregularities and that the Municipal Finance Management Act did not seem to be having any effect.

The methodology for this was:

There was a need for a literature review and a scan of high profile corruption cases in the Eastern Cape which entailed the development of flexible research instruments. In this research we worked with different agencies:

- Anti-corruption agencies e.g. the Scorpions (DSO) and the Special Investigating Unit (SIU).
- Service users/community stakeholders, i.e. the victims of corruption.
- Persons involved in or convicted of corruption.

Victims and perpetrators of corruption are very difficult to locate and to access. While there is a bias towards engaging anti-corruption agencies the Department of Correctional Services is a great pool of information that could be researched because people are already in their custody. However the application process to obtain access took one year; but we did manage to speak to some of those in custody.

South Africa has a well-developed and sophisticated NGO sector and this sector has invested extensively in the capacity to monitor and to act as a check against the exercise of irregular state power. The role of the UN and the Department of Public Service and Administration Country Corruption Assessment Report of 2003's monitoring role is recognized to a degree. But, the Report tends to place the onus on civil society to promote "dialogue with government to increase transparency, while at the same time being a critical partner in the dialogue." The assumption seems to be that government already facilitates the dialogue environment.

Civil Society to Combat Corruption

The Country Assessment Report acknowledges the anti-corruption work of CSO's and their unique skills as well as their access to constituencies. Yet not all NGOs received proper acknowledgement: a recent IDASA / Cooperative for Research and Education (CORE) survey of the state of civil society in South Africa notes that 62% of respondents run programmes and projects in a category defined as 'transparency and governance'. The general picture is one of a well defined network of organisations each with its own focus and expertise. Relations with government range from polite e.g. more academic approaches to the "in your face" e.g. Public Service Accountability Monitor (PSAM).

Civil Society Partnership with Government

In 1998 in the Eastern Cape, for example, all departments had to have units against fraud and corruption. There also needs to be coordination via the Anti-Corruption Forum which includes CSO representation

(NGOs and church bodies) and other anti-corruption agencies. However, two years later the Network Against Corruption (NAC) was set up with an overlapping membership and a similar Terms of reference (ToR) resulting in a failure to achieve a rational and harmonious working relationship.

Civil Society partnership with government: Lessons

There is a need to analyze the partnerships with government in anti-corruption programmes against the broader context of governance and the political culture of the time. Getting caught up in periods of high optimism and strong rhetoric can lead to naïve strategies that ultimately waste the time and resources of NGOs. The terms of reference for state and non-state actors in joint initiatives need to be very carefully considered and the parameters of anti-corruption strategies should be defined 'up-front'. Conflicting views on alleged incidents of corruption are inevitable when state and non-state actors are involved and should be anticipated from the outset while systems for resolving disputes must be developed. Building a clear and informed understanding of the relevant legislation and policy that determines what is legal or illegal, regular or irregular, good practice or poor practice is essential. In the Eastern Cape for example, interpretations were widely divergent.

CSOs need to avoid being drawn into departmental politics but should also be capable of supporting and protecting government officials who are victimized as a result of their vigorous anti-corruption efforts.

Different forms of Local Government Corruption

There are two different forms of significant local government corruption:

- An insidious mix of weak controls and questionable or poor decision-making that mixes illegality with incapacity (that may ultimately have serious consequences for services to the poor).
- The specific defrauding of tender and procurement principles – frequently as recognizable graft and frequently punished when it is detected.

The debilitating mix:

General incapacity tends to result in high levels of reliance on contractors or outside expertise that leads to partiality in appointment of contractors and an inability or an unwillingness to manage / enforce contracts. There is little investment of own funds in capital projects by certain municipalities which also results in a 'don't care' or 'weak concern' for outcomes which in turn often results in weak communication and transactions with the local community. This in turn results in low cost recovery and impacts on vandalism, lack of ownership and ultimately service failure.

5.4.3 PRESENTATION BY MR K DOBIE: Business Unity South Africa

Corruption goes wider than just bribery in terms of money, favours or the abuse of power. We need to ask ourselves what is it that the public perceives as being corrupt when we look at perception indexes. We know that the public has an opinion that there is corruption in the country. We need to ask ourselves how to address the issue of corruption in South Africa?

In that sense I would like to refer to two aspects that the Minister raised in her opening address about the corruption of values. I would like to then talk briefly about the corruption of language and the corruption of institutions.

We need to ask ourselves if we really still believe the message when people say that 'service delivery comes first'.

Language can get corrupted in two ways; one is when it is coherently spoken, yet the message does not make sense; and two, when one stops believing in what is being said.

Once we cannot believe that service delivery is our primary objective in local government then the language has become corrupted and that leads to the corruption of the institution. The result is that local government does not function properly and becomes ineffective.

We need to be able to distinguish between decisions and conversations, and between arguments that are motivated politically or egotistically and / or corruptly and weigh this against ethical words and action. We need to at some point take a stance and ask 'is this ethical?'; 'is it for the best in the long term interests of the citizens?'

Thereafter, we need to ask ourselves the question as to how does that ethical decision help us improve service delivery consistently?

The role of councillors and officials is to increase the space for ethical conversations and questions; for people to ask the question whether it is the best decision for service delivery and are we sufficiently focused?

This should be achieved through leadership that creates the necessary space and the structured anti-corruption and pro-ethics management interventions in the organisation, together with public accountability.

- I would like to focus on the structured anti-corruption management interventions at the national and provincial government level; these also need to be implemented at these levels.
- We also have SAMDI that offers training and also the Anti-Corruption Co-ordinating Committee (ACCC) that has just established a learning network so that people can come together to share best practice. In addition, the PSC provides an important oversight function.
- Many municipalities and institutions have policies in place but only in a few instances are they effective and compliant.
- There is training that is offered by the Department of Provincial and Local Government (DPLG) and by SALGA. But the effectiveness of such training needs to be properly determined and reporting on its impact and effectiveness should be made a requirement.

Conclusion

There is a need to continue to provide support to municipalities in establishing the necessary systems and in developing their anti-corruption strategies and plans as well as the restoration of public confidence in municipal service delivery. Important in this is an anti-corruption communication strategy and an awareness drive.

There is also a need to develop an ethics manual and training and policies on risk areas. Comprehensive measures to address the enforcement of anti-corruption strategies are additionally needed and it is important to re-gain people's confidence in local government.

5.5 WORKSHOP 4: PARTY POLITICAL FUNDING

Chairperson: Mr Manane Samela ¹²

Rapporteur: Adocate Mamiki Shai ¹³

As introduction to the workshop the Summit programme indicated that it is argued that transparency and accountability are necessary in order to prevent political parties being “held ransom” by donors and to influence their policies and agendas. This could undermine the implementation of the election mandate of the governing party. Citizens are then “shortchanged” in favour of the private agendas of donors and the public interest suffers as a result. This workshop explored to what extent this is true and if so, whether the declaration of donations by political parties is the mechanism to use to prevent this, or, are there other mechanisms to promote transparency and ensure accountability?

5.5.1 PRESENTATION BY MR N NHLANHLA: ANC Chairperson: Portfolio Committee on Finance

On behalf of the Chief Whip of the majority party in Parliament and the African National Congress we welcome the opportunity to participate in this Summit and particularly this important topic of political party funding. Among many resolutions that we took at our 52nd Conference in December 2007, one was on transformation of the state and governance and particularly on ethics and integrity. The resolution acknowledges that the ANC has through its 95 year history always embodied and aspired to the highest morality and values for South African society. We believe that service to, and in the name of the African National Congress, require the highest level of ethical conduct and integrity. We therefore resolved as follows:

- The ANC members, and leaders in particular, should continue to actively promote ethical and democratic values and lead by example;
- ANC members and leaders in particular must avoid conflicts of interest or perceived conflicts of interest; and
- The ANC must provide leadership to society as a whole in the fight against corruption.

We further resolved that the public sector should continue to play a leadership role in ensuring ethical conduct and integrity in all aspects of the national integrity system through multi-sectoral forums such as the National Anti-Corruption Forum, hence our support for this Third National Anti-Corruption Summit.

Party Political Funding

This funding has been the subject of discussion for quite some time, particularly since the advent of our constitutional democracy. This comes as no surprise as our constitution enjoins us to a culture of transparency, openness and accountability. As a deterrent to undue conflict of interest and the corrupt lobbying of political parties there is a transparent process of funding political parties from the taxpayer’s coffers.

This is intended to allow political parties to contest elections based on their support and capacity. The ANC fully supports the proportional apportionment of these resources. Once political parties have been elected there is further political party funding in order to allow members to discharge their responsibilities effectively. This again is supported by the ANC even though mechanisms still have to be discussed as to how this system could be improved so that it takes into account the level of support that political parties require in order to deepen our democracy. The funds referred to in this instance would be the Parliamentary Caucus and Constituency Funds appropriated to each political party in Parliament.

¹² Mr Manane Samela represented the National Congress of Trade Unions

¹³ Adv Mamiki Shai, Deputy Public Protector

Our view is that these funds must be properly regulated with such regulations being agreed to by all parties. The envisaged regulation must among others:

- Regulate the allocations of funds in an equitable manner;
- Specify the purpose for which funds may be used;
- Prescribe a format for financial statements for accounting for the use of funds;
- Establish a procedure according to which members of Parliament and parties account for the use of these funds; and
- Require the audited financial statements to be submitted to Parliament annually.

The other type of funding that political parties receive is private sector funding and most of the debate in our fledging democracy has been around this type of funding. We cannot ignore the role that the private sector can play in deepening democracy, while at the same time we cannot underestimate the potential that the private sector has to abuse their economic muscle. The viability and vulnerability of political parties is indeed a matter of public interest and it is for this reason that this type of funding has become a critical issue in many democratic societies.

If not properly managed, the interest of powerful financial oligarchs can have undue influence on parties in government, with adverse consequences for the interests of the poor and marginalized sections of society. In this regard the ANC submits that public funding of representative political parties and civil society groups is a cost that no vibrant democracy can avoid. As indicated earlier, stringent accounting mechanisms need to be put in place in order to ensure that public funds are spent in the interest of the public at large.

Funding by the private sector would also require legislation that would govern it. This legislation should take into account public interest while it respects the rights of the private sector, while ensuring that the state is not compromised in anyway. Social responsibility in the corporate world is also governed by the relevant codes of conduct, amongst which would be the Corporate Governance King I and II codes.

South Africa, in keeping with international and continental conventions to which we are signatories, must table and pass legislation that regulates party political funding.

5.5.2 PRESENTATION BY MR C HATCH, MPL: DA, Mpumulanga Legislature

No more than a casual glance is all that is needed to see that the majority of political scandals not only in South Africa but also in the majority of established democracies throughout the developed world arise from political party funding in particular, or from donations to either the party or to an individual politician in general.

We in South Africa are no different. As a representative of the Democratic Alliance I can attest only too well of the furore over the allegations that German Financier Jurgen Harksen donated substantial sums of money to the Democratic Alliance. This is, despite the fact that no criminal charges were ever brought or proved against the party or representative.

In recent times we have heard of scandals in the United Kingdom, a country where party political funding is far more highly regulated than in South Africa. There were allegations of "cash for peers" where it is alleged that people making loans to the Labour Party during the last election campaign would receive as a reward a peerage, a practice eliminated after the Lloyd George era, over a century ago. There was also a scandal surrounding the donation to various candidates standing for the position of deputy leader of the Labour Party without being properly declared, this indiscretion cost Peter Hain his position in Cabinet.

Operating a political party and fighting elections are expensive, and parties in all democratic states are forced to raise money from private sources, even if the state does contribute. The problem is to what extent is it either possible or desirable to restrict or prevent corporate or individual contributions.

Currently, the Public Funding of Represented Political Parties Act of 1997 makes provision for the funding of parties on a basis that is proportional to the size of their representation. In the current system that we have in South Africa it is obvious the lion's share of state, taxpayers support goes to the ANC.

Quite clearly, the State is unable to fund the full cost of either operating a political party or contesting an election. This scenario is further complicated by the fact that no matter what funding formula is used or how often it is updated or tweaked it cannot keep pace with the constantly changing political environment.

The second alternative of a totally uncontrolled environment is equally untenable and will not enhance the characteristics of a multi-party democracy.

Presently in South Africa there are no restrictions on raising funds for political parties from private sources, domestic or foreign. What is therefore needed is an acceptable middle-of-the road approach.

Clearly a strong prima-facie case does exist for some form of control of political donations. The problem is, "how to do so". The American experience of seeking to limit the size of donations shows that the problems of enforcement are great and donors have been able to find their way around controls with relative ease.

I have heard it said that donors do not make these contributions out of the goodness of their hearts or for reasons of political idealism. They expect a return on their investment and such returns can take several forms:

- Favorable consideration of any industry's needs or special concerns;
- Conversely; a hope that a donation will serve as a kind of insurance policy against harsh, even discriminatory treatment.

In my opinion, whatever system is implemented, transparency must be the ideal but it must not be at the cost of the donors' democratic right of privacy (a free and secret vote is fundamental to democracy). We are constantly approached by corporations or wealthy individuals who fear discrimination from government if publicly named as a donor of the DA. In a divided and fractured society it is conceivable that they would be embarrassed at being publicly named as a donor to a particular party. Shareholders, employees and clients might object.

Currently there are regulations within the FICA process to ensure that the funds received are donated from legitimate sources and are above board. These regulations provide for:

- No amounts above R5 000 to be in cash;
- The recipient to be able to prove the identity of the donor;
- The donor's residential address and identity number must be recorded with the donation; and
- A valid receipt must be issued.

A case may be made to open a confidential register at a body such as the IEC where a donation in excess of a predetermined amount e.g. R100 000 are recorded. Should a donor be found guilty by the IEC or such authorized regulatory body of not recording such a donation they or the recipient would be liable for prosecution.

All donations from Parastatals or other state entities and departments should be prohibited to political parties. The use of state funds to advertise government policy or events should be monitored for six months prior to an election.

Of far greater concern and more difficult to regulate is funding from overseas. It is alleged the ANC have raised in excess of US\$ 250 million and £10.0 million from foreign governments. These generous benefactors are alleged to include dictators like Gaddafi and Suharto and despots like King Fahd of Saudi Arabia. I have never heard these allegations denied by the ANC.

These donations bring into question the state's sovereignty, particularly because the government of that state is the beneficiary. It suggests that the donor is attempting to 'buy' a favorable foreign policy from the beneficiary Political Party.

Attempts to ban all foreign funding as the Nationalist government tried in the days of apartheid, will also not succeed. We are living in a global community; money nowadays is so mobile and so easily laundered that efforts to eliminate or monitor inflows would almost certainly fail. There should therefore be a legal requirement inserted into the Electoral Act, that all foreign donations above a certain amount e.g. R10 000 should be made public knowledge.

With the election on the horizon the question of funding has once again become a pressing one. Consideration should possibly be given to a broad-based, non-partisan investigation of best practice in other democratic states.

At present our best option is to use the most effective options provided for in our constitution, a free press with hard-nosed investigative journalists. I am confident that if parties are reluctant to part with the information and if their donors or donations are not transparent the press will dig out the information.

They have never failed us in the past.

5.5.3 PRESENTATION BY MS G CHAPLOG – LOUW: Independent Electoral Commission (IEC)

That today's democracy is inconceivable without political parties is without question. Likewise, it is common cause that a political party operating in a modern day democracy needs money, and from where I sit, they seem to need a lot.

Political parties are voluntary and informal associations and institutional arrangements of society and have become indispensable in modern representative democracies. Political parties play a unique role in society either as government or understood ideologies, norms, values, customs and attitude that regulate their entry into competitive politics.

In parliamentary systems, the function to oversee and control government rests with the opposition whilst in presidential systems the function falls on the legislature. Apart from the functions that a party should fulfil in order to sustain a working democracy, parties also have shared goals e.g. to maximize the share of their vote or differing goals e.g. lobby for specific policy agendas. Although the functions of political parties and goals of political parties may overlap, they are not always the same.

Multi-party systems have become the norm globally. Many countries on the African Continent evolved from a one party system but South Africa comes from a tradition of multi-partyism albeit that our democracy is newly established.

It is a well established fact that multiparty democracy functions optimally when there is a robust competition for political power between viable political parties. The institutional development of political parties is also affected by the levels of funding that political parties may have, how they get such funding and whether or how they account for it. Whilst experiences vary in this regard, all political parties need to mobilize significant resources in order to mount election campaigns and to cover their running expenses.

The greater support base of political parties in Africa stem from the poor and indigent, often rurally based communities hence, few political parties if any, survive solely on plutocratic, membership subscriptions. Accordingly, for African political parties to act as the vehicle of representation of those voices they need to look to alternative sources of funding to fulfil this role, institutionalize and launch sizeable election campaigns. Political parties in Africa are therefore compelled to raise large amounts of money from individuals or businesses, foreign corporations, foreign governments or foreign agencies and where applicable to look to the public purse. It is right here at this basic level that the problem of the potential corrupting power of money on the political decision makers calls for regulatory measures to negate undue influence on the political process.

But alas, political party funding remains a contentious issue in mature democracies of the world and it is no surprise that we are still experiencing ongoing challenges in finding a suitable framework, a 'negotiated role' for money to play in the political processes of our developing democracies.

Regulation of Political Party Funding

The background note to this conference states that:

"The issue of party political funding has been, in the past few years, a matter of interest for anti-corruption practitioners particularly from the civil society sector. Civil society organizations have called for more transparency and accountability in the issuing of funds by donors (both public and private) and the acceptance of such funds by political parties. Such transparency according to civil society organizations will prevent political parties from being "held ransom" by the donors and influence their policies and agendas."

Indeed, a powerful case for regulating private funding of political parties in South Africa have been consistently made by many civil society organizations and individuals in various fora since the advent of our democracy.

The Electoral Commission of South Africa has hosted many local and international conferences where presenters have eloquently reflected on the need to regulate private funding to political parties, the need to address the current lacunae in our public funding regime and to scrap the crossing of the floor legislation. With the Summit adding its voice to the cry for party funding reforms, this further inculcates the principles of transparency, accountability and equity. One remains positive that the ongoing debates will bear fruit in the near future.

More often than not the rules of party political funding aims more at controlling corruption than at providing adequate resources for political competition.

In modern democracies, legislation to limit and monitor party funding and public funding of political parties are some of the approaches that have been adopted in the main to limit the potential corrupting power of money in the political process. Such regulations may look to revenue and expenditure of political parties:

- *Limits on expenditure:* For example, ceilings on permitted spending by each candidate for Parliament or by each of the national party organizations.
- *Bans against certain types of expenditure:* For example, bans on bribes to individual electors, on drinks and meals for electors ('treating') and bans in some countries on the purchase of advertising time on television for party propaganda.
- *Contribution limits:* Restrictions on the amounts an individual is permitted to donate.
- *Bans against certain types of contribution:* For example, the regulation and restriction of political payments by business corporations, trade unions or foreign organizations and foreign citizens.
- *Measures designed to encourage donations:* Tax reliefs, tax credits and other forms of tax remission on political donations.
- *Subsidies-in-kind:* The provision of free or below-cost facilities for parties and candidates. For instance, free postage for election literature, free or subsidized facilities to parties for broadcasting on television and radio.
- *Public subsidies:* Financial payments to parties or candidates from public funds.
- *Disclosure regulation:* Mandatory declaration of the names of contributors to campaigns and to parties and disclosure of the amounts contributed by each.

Whatever the rules affecting party political funding or conversely where *laissez faire* policies apply, it has implications for the quality and sustainability of the democratic process.

Equity

The accepted norm that governments exist to provide technically sound administration allows governing parties to shape political finance systems in such a way to solidify their own advantages e.g. the use of state property (problems of incumbency) is rarely broached in party funding legislative framework. Minimal regulation on the other end of the scale results in rules being violated with impunity by all contenders in the political arena.

For political party funding policies to be in line with democratic norms, a first step is for it to allow or provide for essential funding, both during and between campaigns and to rally citizens' interest in supporting politics (to the best of their ability) so that in turn they can demand accountability.

When members and supporters contribute money and/or actively give their support to political processes, it generally signals the intensity of their views and this becomes an important form of political participation. Appealing to citizens for funds is a party-building opportunity, which should spawn party accountability although this is not borne out by fact. Given that political parties in Africa operate in societies facing pervasive scarcity within a democracy (where applicable) which is either new or re-emerging from crisis, this source of funding is negligible hence the opportunities for this party-building opportunity cannot be used to cement real party accountability to its broad support base.

Whereas citizens may understand that public [used to enhance open political contention and strengthen political parties] belongs to the nation as a whole, they do not necessarily act out that belief to make parties accountable to the nation.

In addition, to be aligned with democratic norms public party funding regimes must aim to level the playing field for political competition i.e. it must, to the extent that public funds are voted, ensure that minimal allocation to every participating political party will at least resource the parties' basic needs to fulfil their mandates. The remainder of the Fund could be distributed on a formula based on number

of votes cast and / or the number of seats in the legislature. In South Africa the total public funds made available to the various represented political parties tells its own story.

Parties with access to many resources may silence competitors and may even become isolated from their own social bases whereas parties funded from few sources may fail to represent or represent adequately some of the broad segments of the public.

Schedule of breakdown of funding to represented political parties: 25 July 2008

Some of the examples:

- ANC 64,83%
- DA 7,37%
- IFP 7,31%
- NP 5,33%
- UDM 2,71%
- ACDP 2,22%
- FF plus 1,89%
- AZAPO 0,10%

Transparency

An appropriate observation to make is to concur with the sentiment expressed in the IDASA court case that disclosure laws are a fundamental pre-requisite for a regulatory regime for the private funding of political parties and is a force for open accountable politics. However, the challenge is to find the right-fit formula as exposure of legitimate well intending contributors and political activists may lead to reprisal and may drive new groups or weaker parties out of the political arena.

Legislation must therefore find the right trade-off balance and include provisions that parties must account for all that is received in a transparent manner, also to their members and the broader public (audited statements) and to their donors / sponsors.

Accountability

Political parties operating in the democratic public arena are building blocks of that democracy and must abide by the basic democratic tenets within its operations and practice. They are accountable to their members and the broader electorate. The electorate holds the power of the vote, hence they are entitled to demand that political parties account to them with regard to party matters and also for income received and expenditures incurred.

Acceptable accounting practice requires institutions to have the books and records of accounts audited by qualified accountants and such audited statements are then made public. The accountability framework for public funding of represented political parties in South Africa includes such a provision. Represented political parties submit annual financial statements (31 March) to the IEC by 30 June every year and sometimes earlier / later depending on the electoral and / or crossing of the floor timeframe(s).

Challenges for a workable regime for party political funding

The powerful case for regulating private funding of political parties was eloquently made in the IDASA court case and supported by the ruling that the matter must be addressed in the legislative process. The challenges we face now is for the lawmakers to address the legislative lacunae as a matter of urgency. Such a legislative process should be based on a consultative process to ensure that the opinions of all parties are canvassed to ensure that the necessary trade-offs will be acceptable and in the interest of combating the potential corrupting power of money in the political process.

This paper has attempted to answer the following questions as follows:

- Does non-disclosure of donations by political parties lead to secret agendas being propagated? Yes, non-disclosure does open the political process up for undue influence.
- Is the public interest therefore being undermined? Where undue influence enters the political process the public interest will be undermined.
- What will the impact of disclosure be on political parties and donors? Disclosure will ensure transparency and will remove secrecy of donations and expenditure of political parties. Donors and sources of funding will therefore be known to the electorate.
- Besides disclosure, are there any other accountability mechanisms available? Disclosure is the first prize in ensuring that undue influence in the political process is limited although the monitoring and enforcement of disclosure laws present their own challenges. When one looks to other, older democracies it seems that regulating fundraising and expenditure of such funds by political parties becomes virtually worthless without disclosure provisions.

Acknowledgements of Reference Materials

This presentation also includes some of the issues raised in the following publications and / or websites (with related resource acknowledgement):

- Multi-Stakeholder Conference
- www.whofundswho.org.za
- Money in Politics
- Party Finance Reform in Africa
- Political Finance Policy, Parties and Democratic Development.

5.5.4 PRESENTATION BY MR A FOURIE: National Business Initiative (NBI)**A media view from Polokwane**

Below are excerpts from the media that covered the conference in Polokwane.

- "BIG business was required to fork out R5 million for a seat on the sideline of the African National Congress (ANC) national conference"
- "Thirty businesses have applied for a stall in the ANC's network lounge, a luxury tent, with alcohol and cigars on offer, and which are mere meters away from the ANC's main plenary hall."
- "We did not necessarily pay the ANC directly. We received requests and then made donations. (The ANC) also asked us to pay some of their bills and we responded positively."

In addition we have covered the following persons and issues that have been linked to party political funding; the arms deal; oilgate; Roodefontein; Jurgen Harksen; Brett Kebble; and the issue of Chancellor House.

The question remains why should there be a concern about private funding? The following are the risks that are often linked to such funding:

- Perception of corruption;
- Buying influence;

- Improper influence on politics and policy; and
- Confidence in the public and private sectors.

A sustainable democratic system requires well-resourced political parties. Without such funding the risk exists that cash-strapped political parties could seek covert funding. However trust must be created through disclosure and the international experience suggests that public regulation and private transparency are becoming acceptable norms and that good corporate governance can strengthen democratic institutions and democracy itself.

The current South African situation is characterised by:

- no disclosure laws regulating the private funding of political parties;
- no regulation of anonymous foreign or corporate sources of funds;
- the country does not have a history of corporate disclosure on political party funding; and
- often “secrecy clauses” are attached to donations.

A Regulatory Framework

There is need for a regulatory framework to combat corruption while promoting transparency and accountability and to ensure effective and vibrant electoral competition. Such a framework would reduce the likelihood of patronage and increase the risks for entities engaging in corruption. Furthermore, it would uphold the view that constituencies have a right to know which private interests financially contribute to the party for which they vote. Finally the framework would contribute to building a culture of trust and increased transparency in our democracy.

The African Union Convention On Preventing and Combating Corruption states that regulating private funding is important and that all states are to introduce legislation to prohibit the use of funds acquired through corrupt practices to finance political parties. The African Union also calls for the promotion of transparency into the funding of political parties.

The situation of Business

Major corporations face funding requests from the whole spectrum of political parties. Companies are generally reluctant to be seen to support a particular or a number of political party /s. Many multinationals have global “no funding” rules. SA business is keen to support democratic consolidation.

Selected examples:

Shell business principles

- “Shell companies do not make payments to political parties, organizations or their representatives or take any part in party politics”¹⁴
- “... the group has decided to make an exception to its political party funding policy by allocating R5 million to the registered political parties contesting the 2004 election. The formula for the group’s funding allocation is in accordance with that used by the Independent Electoral Commission.”

Anglo American: 2004 Election

- Company policy is not to make political donations.
- The Board had decided an exception could be made “at this juncture in South Africa’s democratic transition”.

- Committed R6-million to political parties contesting elections.
-
- Anglo American distribution to political parties:
 - ANC = 50% (R3-million)
 - DA = 25% (R1.5-million)
 - IFP = 8% (R480,000)
 - NNP = 4% (R240,000)
 - UDM = 2% (R120,000)
 - (Smaller parties in Parliament each receive R60,000)

The Anglo American approach in the 2004 election:

-
- policy gives greater weight to the principle of diversity than proportionality;
- based on parties' previous electoral performance;
- funding only offered to those parties that meet specific criteria;
- funding distribution determined by a Board sub-committee, comprising the South Africa based independent, non-executive directors.

Good governance principles include the following:

- A clear policy to fund political parties or not to fund political parties.
- The policy and its application must be open to public scrutiny.
- Policy formulation and the oversight of policy implementation be done by the main board of the company or a competent sub-committee thereof.
- The consistent implementation of the policy to be ensured.
- The policy to be communicated in a transparent manner and to be published in the company's annual report, (at the very least).
- Companies should also look closely at existing tendencies to "sponsor" political activities, conferences, etc, and to view these as falling within the jurisdiction of a party political funding policy.
- The policy should not be limited to cash donations and should include all contributions, such as discounts on products, overseas trips, etc.

The principle for funding political parties would require a transparent set of criteria for such funding as well as the degree of proportionality to be clearly described. The timing of the funding must be clear i.e. only in election years or annually and such decisions must in no way be tied, or seen to be tied, with public contracts or procurement decisions. Lastly, the unique stakeholder implications for each company are also to be considered.

Should companies ask some of the following questions of their beneficiaries?

- Should companies hold political parties to the same level of accountability as CSI beneficiaries?
- Should companies demand reporting of how the money was spent?
- Should companies restrict the use of donations to certain categories?
- Should business demand that parties adhere to basic principles e.g. human rights?

The NBI purpose:

- Advocating for good corporate citizenship and responsible business leadership towards sustainable growth and development;
- Mobilizing business leadership and resources for "making a difference";
- Facilitating collective business action and critical social dialogue;

- Implementing strategic projects backed by independent policy analysis and research; and
- Building relationships and trust with government, business and key stakeholders.

Conclusion

In conclusion all the speakers agreed that when it came to party funding, transparency, accountability and equity were the best ways to avoid corruption. A policy has to be put in place to regulate party political funding and that policy has to be monitored.

5.6 WORKSHOP 5: INSTITUTIONAL ARRANGEMENTS TO PREVENT AND COMBAT CORRUPTION

Chairperson : Dr Frene Ginwala ¹⁵
 Rapporteur : Ms Peggy Drodskie ¹⁶

As introduction to this workshop the Summit programme indicated that a trend in certain countries is to centralise the prevention and combating of corruption through the establishment of a single anti-corruption agency. South Africa's experience has been different in that various agencies exist to address corruption from various perspectives. This raises the need for coordination and cooperation. Has this been the experience in South Africa's case and if so, has it worked well to stem corruption? Is the single model agency approach not a better option? The advantages and disadvantages of both models was explored during this workshop, taking into account the country's unique context and challenges.

The NACF was also examined in this context to consider whether it has met with expectations of its envisaged role. Is it adequate that it is primarily an advisory body, or should its mandate be changed? What are the main challenges it faces and how could these be addressed?

5.6.1 PRESENTATION BY MR HENNIE VAN VUUREN: Institute for Security Studies (ISS)

The focus of the address will speak to political corruption globally and to the present situation in South Africa. Thereafter, the issue of strengthening the National Integrity System (NIS) will be addressed with the objective of identifying concrete measures to strengthen the NIS.

The first fourteen years of South African democracy was presented with the enormous challenge of dealing with the legacy of corruption during the apartheid era. Research into Grand Corruption under apartheid suggests that this legacy is not confined to bureaucratic small-scale corruption. More damaging has been the networks of corrupt apartheid-era politicians and businesspeople that, with connections within the new ruling elite, continue to thrive.

However, despite this the country has made enormous strides in promoting a culture and framework for promoting accountability. This was buoyed by the aspiration of the majority of South Africans for a more just, equal society. Based on research, it is clear that in the past fourteen years the country has moved through three different phases of countering corruption. These are:

1994-1999: During this period the focus was primarily on creating a legal basis for a functioning national integrity system. This commenced with the South African Constitution and the Bill of Rights guaranteeing freedom of association and the media. Importantly it also saw the creation of checks and balances on

¹⁵ Dr Frene Ginwala is the Special Advisor to the Minister for the Public Service and Administration

¹⁶ Ms Peggy Drodskie represented Business Unity South Africa

authority and the establishment of the so-called Chapter Nine Institutions (the Auditor-General, Public Protector, Public Service Commission and others) as well as a single Police Service and a constitutionally protected National Prosecuting Authority. It is these Chapter Nine Institutions that are central to a NIS.

1999-2007: While some laws were still crafted during this period (such as whistleblower protection and the establishment of the Directorate of Special Operations), the focus shifted to implementation and institutional strengthening. This was in some ways the hardest work, ensuring service delivery and more accountable governance. However, increasing reports of corruption in all spheres of society, not least the infamous billion-dollar 'arms deal', also tested institutions. The political response from politicians was initially a game of attack and defence between the opposition and government. There has been a marked shift in the past few years, as the political system has matured, towards introspection within government and the ruling ANC as to the causes and consequences of corruption. For the first time one has seen a consistent response by members of the Executive, the leadership of the ANC and struggle icons such as Desmond Tutu who warn openly of the dangers of a culture of crass materialism and corruption.

2007 – 2008: It is apparent that South Africa is moving into a new phase where the challenges of making the integrity system work remain (implementing laws and creating institutional capacity). There are also calls from within the ruling party and other sectors of society that have the potential to constrain the framework of the NIS. There is a need for this session to focus on and discuss these issues including possible future constraints and the independence of key institutions.

Possible future constraints on the independence of key institutions are witnessed in:

- the challenges made against the judiciary and constitutional court by senior politicians;
- draft legislation that could muzzle the press in reporting on corruption;
- the implication of the National Commissioner of Police in organized crime;
- there are institutional problems with the suspension of the head of the NPA which appears to be linked to his investigation and proposed prosecution of the National Commissioner of Police;
- the discussions around the disbanding of the Scorpions and to place them under the direct control of the National Commissioner of Police;
- the jockeying for position within the ruling party in the run-up to the 2009 elections which often appears, as some would argue, to be centered around access to resources and patronage;

(The above are the most important areas upon which we should focus).

The current phase (2007 and beyond) may well be short-lived and nothing more than political posturing, but if the National Integrity System (NIS) is weakened the impact will be profound. Most importantly this could allow for high-level political corruption to go unchecked and develop into systemic proportions. This will in turn have a negative knock-on effect on poverty-alleviation, economic development and democratic consolidation. This paper should not be read as an attempt to suggest that the political class has failed South Africa or that the NIS is in terminal decline - this would be baseless given the fact of the relative robustness of the NIS and our democratic institutions. But the NIS is vulnerable and the need exists to focus on the institutions and to ensure their longevity in that system.

Political corruption in South Africa

While corruption is often understood as the 'abuse of entrusted power for private benefit', *political corruption* can be explained more narrowly as the 'abuse of political power for private benefit'. This definition is not intended to align the concept only to the often-cited corrupt kleptocrats such as

Mobutu Sese-Seko or Mohamed Suharto who were involved in the accumulation or extraction of power. It equally focuses on the misuse of such funds for narrow political purposes – such as building patronage networks or funding political parties. It takes place at the highest level of the political system, involving senior elected and appointed officials who work closely with senior leaders in the private sector. Importantly, it also “...takes place at the formulation-end of politics, where decisions on the distribution of the nation’s wealth and the rules of the game are made.”

Low level, petty corruption is kept largely in check in South Africa (with the exception of a few sectors) and where it has become entrenched, agencies such as the Special Investigating Unit and SAPS play a key role in keeping this in check. However, there is much to suggest that political corruption is in fact one of the greatest challenges we face and is therefore central to the debate on what can be done to improve the functioning of the National Integrity System. The reasons for this are partly historical - as far back as the 1960’s Chief Albert Luthuli warned against the legacy of materialism that he observed amongst the South African (white) power elite. So too has activist and academic, Mamphele Ramphele spoken and written of present-day materialism.

In developing countries where institutions are weak the method is to capture elements of the state. Ramphele introduces us to the danger of ‘state capture’ where corrupted elites within the public and private sector attempt to take control of sectors of the state for their own purposes largely facilitated through political corruption. While there are numerous examples of ‘state capture’ that have taken place across our continent, the South African state cannot be characterised as being exposed in such a manner - this needs to be stressed. But we need to be aware of the phenomenon and the linkages to political corruption. This is what makes political corruption relevant to South Africa today.

In the public mind at least, there are examples of corruption involving high level officers in government and in the private sector. It is therefore necessary to not only focus on the public sector. Prominent corruption occurrences include the Arms Deal, the accusations against the National Police Commissioner being involved with organized crime, the defrauding of Parliament by MPs (Travelgate) and the issue of political party funding. Regarding the latter, premier Shilowa noted earlier in the day that there is a need to tackle this head on, because where political party funding is not regulated it provides an opportunity for corruption to come in via the back door and to undermine internal political party democracy.

The danger is the impact of such corruption at other levels of government, particularly at a provincial and local level where corrupt public officials and businesspeople have access to a substantive portion of public expenditure. According to (the then Secretary-General of the ANC) Kgalema Motlanthe, “This rot [of corruption] is across the board [...] Almost every project is conceived because it offers opportunities for certain people to make money. A great deal of the ANC’s problems is occasioned by this.” Obviously this is not only limited to the ruling party.

The problems of the ruling party are of course also that of South Africa, and many citizens share Motlanthe’s concerns. The 2007 Transparency International Global Corruption Barometer revealed that South Africans are pessimistic, accordingly:

- 67% of respondents believe corruption will increase in the next three years;
- 54% of respondents believe the government’s effort to fight corruption are ineffective (a positive 40% regard it as effective); and
- Political parties and the Police are the sectors perceived to be affected most by corruption (a joint score of 3.8 out of 5), followed by Parliamentarians and Home Affairs (a joint score of 3.6 out of 5).

A survey has recently been completed using 12 months of newspaper clippings: all clippings relating to bureaucratic corruption were excluded and only media reports alleging the involvement of key decision-makers were included:

- Senior Elected Officials (Any elected official at the level of local government and above);
- Senior Public Official (Members of the Public Service at the level of Director/or equivalent and above); and

- Senior Business Manager (A manager in the Private Sector, including senior management and directors).

What is instructive from the data gathered is not the value of tenders and monetary loss (over R3.8 billion) rather; it is the very small group of influential individuals involved. They largely have access to power and can manipulate both policy outcomes and policy implementation. Often the corruption concerns one businessman and one elected official or one senior official. Often where political corruption takes place it does not include large networks of individuals as often only a very few persons are involved. Thus two or three people involved in a R100 million deal is one example.

Does South Africa need a single anti-corruption agency? The answer to that is 'no' given the current political environment. South Africa has developed and invested a great deal in an advanced framework of law, strategy and institutions which have a mandate to combat corruption. In this way an array of specialized anti-corruption institutions can be categorized as: constitutional and oversight bodies; criminal justice agencies, and other stakeholders.

The monthly meetings of the Anti-Corruption Coordination Committee (ACCC) should be the coordinator of the various organisations. There are some examples where a lack of coordination amongst the agencies has led to tension such as the Scorpions and the SAPS. This fall-out between institutions causes the NIS to suffer as a whole. It is imperative that structures such as the ACCC are made to work more effectively.

South Africa should continue with the so-called 'multi-headed' dragon. There is also a growing realization that while donors pushed the idea of the 'single anti-corruption' agency across the continent a few years ago, this is by no means a panacea for corruption. In fact, the experience has been that where they operate in a vacuum outside of a functioning National Integrity System, such agencies collapse. For example, without a functioning independent judiciary, parliament, civil society, business and media no anti-corruption agency can sustain its work. The imperative is to make all of these actors work together.

The South African society differs from that of Botswana in terms of its geography and that it is a more complex state. The single agency approach also seems to work for smaller states.

Turning to strengthening the independence of institutions; at the First Africa Forum on Fighting Corruption that took place in Ekurhuleni, in early 2007, the vast majority of African governments asserted the importance of strengthening the integrity and independence of the courts and oversight bodies including parliaments, Inspectors-General, Public Protectors, Auditors-General and Public Service Commissions in the fight against corruption. They went on to recommend, "Increased support to independent national anti-corruption bodies and related law enforcement bodies, including judicial bodies and, where national anti-corruption bodies do not exist, the speedy establishment of such bodies." The independence referred to is primarily independence from political leaders.

The judiciary and the Constitutional Court in particular have been the focus of sustained verbal abuse from politicians in the past few weeks. Such politicians need to step back. Although we need a robust debate, nevertheless, our institutions are still weak. It is imperative that the independence of the judiciary is maintained and that the integrity of the institution itself is promoted. This is key to the National Integrity Framework (NIF).

The extra-judicial processes must be rejected; for example, a proposed amnesty for those implicated in the arms deal. Such issues need to be settled within the judiciary so as to also strengthen it.

South Africa needs an 'independent' anti-corruption agency. The decision to locate the Scorpions within the SAPS and under the direct control of the National Commissioner of Police has the potential for more direct interference by the Executive in high profile investigations.

Regarding the media, the proposed Protection of Information Bill may have the unintended consequence of censoring public expression and criminalizing investigative journalists who play a central role in exposing allegations of political corruption.

Regarding Parliament, a major criticism of the system of proportional representation is that it places enormous power in the hands of political party bosses – thus elected representatives are largely accountable to them and not the electorate. This undermines Parliament's independence and means that MPs may very well be reluctant to tackle political corruption.

With regard to the IEC, its role and mandate should be extended to play a direct role in monitoring the private funding of political parties.

In conclusion, for the immediate future, South Africa must invest a great amount of effort in keeping political corruption in check. This manifestation of corruption poses the greatest threat to human development and democracy in South Africa. It is clear that a single anti-corruption institution is inappropriate since it risks being captured by corrupt groups, especially where it operates in isolation from the National Integrity System.

We have established a sound framework to promote national integrity. However, it is evident that the third phase of combating corruption poses new challenges which were not imagined when we last met in 2005. Now our immediate attention must shift towards strengthening aspects of the existing National Integrity System. The most immediate priority that demands our attention is greater independence of key institutions - without this political corruption risks becoming entrenched.

5.6.2 PRESENTATION BY MS P MONYATSI: Botswana Directorate of Corruption and Economic Crime

The stage was set in the early 1990s when the media picked up on allegations of corruption that involved Ministers and senior officials. Three commissions of enquiry were set up that confirmed these allegations. In 1994 the Corruption and Economic Crime Act was passed that set up the Directorate against Corruption and Economic Crime (DCEC). This was based on the Hong Kong model as significant results had been achieved there.

Government subsequently came up with enabling legislation, which set out the functions of the agency and the powers of its Director. Some of these powers are: to search a vehicle or premises if he/she has reason to believe that corruption is about to be committed; access to the records of a private or public body and also the powers of arrest without a search warrant, among others.

Botswana only has the one agency that focuses on corruption, with success being obtained by focusing on crime that could impede the development of the country. The Act has stiff penalties and also allows for a toll-free number that provides for anonymity. There are about 2000 reports that are received per year, of which about 30 % fall within the remit of the DCEC, the remainder being forwarded to other agencies.

Public education is an important achievement of the DCEC; and it has taken its message to all parts of Botswana. The DCEC's many successes are also owed to the cooperation and liaison with other organisations.

The Directorate of Public Service Management has for instance a Code of Ethics for all public employees. In addition, the Permanent Secretaries (the equivalent of Directors General in South Africa) are responsible to address corruption issues in their Ministries (Departments) and are required to implement recommendations related to corruption. The DCEC is also in contact with consultancies and academics to obtain their critique, from which the DCEC has obtained useful ideas.

The media is an important partner in exposing matters of corruption. The DCEC also has a policy of naming and shaming: the names of persons and the offense are provided to the media.

The prosecution of cases rests with the Directorate of Public Prosecutions (DPP) and the success of the DCEC cases depends on the cooperation of the two parties. Importantly the DCEC enjoys the political will to combat corruption and thus provides the DCEC with the opportunity to access information and the resources to combat corruption.

Regarding our challenges: the model that Botswana uses was adopted from Hong Kong as Botswana is not a large country. As is often the case when models are adopted there is sometimes the likelihood that certain aspects can be omitted that could influence an all-round strategy. On a recent visit to Hong Kong I found that they have oversight committees – something that the DCEC does not have. Such oversight committees give credibility to the work of the Agency. They also take into account the culture of the country, for instance in Hong Kong there is the culture of giving ‘tea money’ as a show of appreciation. However, in Botswana it is an offence for instance to accept a box of fast food valued at 25 Pula.

Another challenge is the reliance on the DPP, whereas in other countries the equivalent of the DCEC does its own prosecution as well as training their own personnel. In not doing its own prosecution and due to the complexity of cases much time is lost and the adage that ‘justice delayed is justice denied applies.’

Another challenge is that recommendations to combat corruption depend on the goodwill of the Permanent Secretaries of the various Ministries (government departments) for implementation as they are not obliged to apply the recommendations. As a consequence, certain opportunities for corruption remain.

Another challenge is the inadequate resourcing that impacts on the building of capacity to deal with the work load and more complex issues such as money laundering. Also, low salaries result in high staff turnover. The DCEC also has a too wide a mandate as it has to deal with economic crime, corruption and money laundering. If the focus was narrowed it could focus on corruption only.

As to the question of which model is better – the single or multi-agency model- the efficacy of the model applied depends on the socio-economic circumstances. A very important consideration is the enabling environment and the institutional capacity. A Whistle-blowing Act is needed as the DCEC depends on the public for information. The legislation needs reviewing as the law was enacted in 1994 and, with globalisation, certain crimes have not been properly legislated for. Such improvements will make the DCEC more effective.

5.6.3 PRESENTATION BY MR P GOSS: Business Unity South Africa

In considering the merits of the single model and the multi-agency model that South Africa presently has, consideration must be given to what the key components are to combat corruption. Important here are the strategies that are applied at national level, at institutional level and at the personal level.

I will however focus on the institutional aspects as well as the point of view of business which sees the corruption phenomenon as encompassing more than just bribery and corruption; it includes economic crime, financial crime and company fraud, among others.

At the national level, legislation as to how business conducts itself must be in place and here one thinks of the Companies Act. The next level is at the regulatory level which imposes upon business certain regulatory obligations. The next level is that of governance, for instance good corporate governance, the promotion of good business ethics and getting the assurance from the auditing environment that the company is on “the right track”.

Another important aspect is that of developing strategies and business plans to promote integrity at all levels with appropriate standards of business ethics and conduct. Also of importance are policy and procedure as well as having an anti-fraud and anti-corruption framework in place that also addresses economic crime and corporate fraud. It is this institutional level that I want to address and at the end of

the presentation to determine whether a super - powered body (single agency) can achieve this. Can a single agency achieve the implementation of a sound institutional framework to manage corruption?

Nonetheless, a solid institutional framework should cover:

- The control environment of the organization;
- The risk assessment environment;
- Crime assessment;
- Information and communications strategies; and
- Monitoring strategies.

All of this goes to make up sound institutional arrangements. From the business perspective, where does business see the threat? A Price Waterhouse Coopers (PWC) economic crime survey involved 4500 companies globally. The survey shows that economic crime is most often found in the insurance and financial industries, the consumer industries and third, the government and the public service sector. Companies surveyed about being asked to pay bribes in different parts of the world revealed the following: Eastern Europe was the worst, then Africa, and South and Central America were in third position.

Important aspects that must be included in the areas that make up a sound institutional arrangement include a code of ethics and business conduct. These address two key areas: i) conflict of interest, and ii) the offering and acceptance of business courtesies.

The aspect of personal integrity often relates to how people enter the organisation: their screening, how the organisation inducts them, the assessments of their performance, how performance management is assessed as well as the accountability and performance appraisal processes. Screening of people prior to promotion and also the screening of people in sensitive posts such as procurement is important. Of additional importance are the implementation of disciplinary and other corrective procedures and proper exit procedures.

In a survey of the public service sector it was found that the majority of people involved in financial misconduct were female, whereas the PWC survey indicated that 76% of fraud was committed by men between the ages of 31 – 40. As for the control environment, this is about appropriate accountability measures and the assessment of risk in key areas. Noteworthy is the fact that the public service sector is also a business, although there is strong denial about this assertion: there is the business of service delivery while some even raise money for example, such as municipalities.

The private sector and the public service sector have different notions of the seriousness of different types of crime. Asset misappropriation is the most common type of financial crime, second is financial misappropriation and third is corruption and bribery. Some 20% of companies say that they experience fraud of between US\$1 – US\$10 million. As this is not often seen in the media one may be tempted to think that that the private sector does not always reveal everything.

The cost of all of this is significant; the waste of management time with litigation takes up 63%, investor relations consumes 68% of time and regulatory matters take up 58%.

Detection is still the soundest strategy to detect fraud. Internal audits are important; however the most prominent form of detection is whistle-blowing. Detection by law enforcement is the least effective. In the case of a single agency such as the type that Botswana uses it is the least effective in detecting fraud. No matter what agency or model is used one needs to have a broader approach than the law enforcement angle. Monitoring is also required and the working together with stakeholders and oversight bodies.

There is a strong case for companies having an active programme as the PWC survey found that companies with ethics guidelines suffered fewer economic crimes. Thus such programmes reduced the incidence of economic crimes in companies.

In summary and considering the single agency approach, one is required to examine whether the single agency can have the capacity to deal with all the important components that have been identified so far at the conference and in this working session. My evaluation is that it cannot meet all the challenges. Can such a unit have all the skills? How is it coordinated and how is the necessary authority apportioned? In a multi-agency approach partnerships are essential with the need to cover the gaps: the detection gaps, the prevention gaps, and the enforcement gaps and the gaps in accountability at all levels. Ultimately a multi-agency approach is the better of the two as it addresses all the single agency concerns; however it has to be stressed that the gaps need to be covered.

5.6.4 PRESENTATION BY PROF SANGWENI: Chairperson of the Public Service Commission (PSC)

South Africa has a past that is characterized by unequal treatment, unequal distribution of resources and services and limited transparency. In leaving its discriminatory past behind, the presence of corruption had to be addressed and the democratic South African government has therefore made a concerted effort to further the fight against corruption. In developing its strategy in the fight against corruption, government soon realised that it could not effectively fight corruption on its own, as corruption affects all spheres of society. It therefore decided that a multi-stakeholder approach in dealing with corruption was necessary¹⁷.

In order to give effect to this decision, government assigned the responsibility to plan and coordinate the establishment of a cross-sectoral body in the fight against corruption for South Africa to the Public Service Commission (PSC), an independent body established in terms of the Constitution, 1996, to provide oversight over public administration. The process embarked upon by the PSC ultimately resulted in the creation of the National Anti-Corruption Forum (NACF). Since the establishment of the NACF in June 2001, the PSC has performed the role of its secretariat.¹⁸

The NACF decided that as part of this Summit's discussion on Institutional Arrangements to Prevent and Combat Corruption, a reflection on the NACF as multi-stakeholder coalition in the fight against corruption should be provided. Given the PSC's involvement leading up to the establishment of the NACF and its role as secretariat, it is ideally placed to provide such a reflection. My presentation today will provide background to the establishment of the NACF, the journey traveled in galvanizing the NACF into action, its successes and the challenges that must be addressed.

Background to the establishment of the NACF

A national dialogue of all stakeholders involved in anti-corruption efforts was convened by the PSC in 1998 in the form of a Public Sector Anti-Corruption Conference, calling for a national approach to the problem of corruption. This call was heeded through the hosting of the First National Anti-Corruption Summit in 1999, a first meeting of its kind of all role-players in the country to address corruption.

At this Summit a decision was taken to constitute a formal mechanism to address corruption from a multi-stakeholder perspective. A multi-stakeholder task team, comprising members of the public sector, civil society and business, was established to consider a National Coordinating Structure.

17 Presentation by Ms O Ramsingh, Director-General of the Office of the Public Service Commission to the Eschborn Dialogue held in Germany, 10 June 2008.

18 Presentation by Ms OR Ramsingh, Director-General of the Office of the Public Service Commission to the Eschborn Dialogue held in Germany, 10 June 2008.

Emanating from the work of this task team, a Memorandum of Understanding (MOU) was finally adopted on 6 March 2001 and the NACF was formally launched on 15 June 2001¹⁹.

The NACF, a unique example of multi-sectoral commitment to address corruption

The NACF is a unique example of a multi-sectoral coalition in the fight against corruption across the world and consists of the Public Sector, Business and Civil Society. Through the establishment of the NACF the three sectors recognised the serious nature and extent of the problem of corruption in our society and committed themselves to develop a culture of zero tolerance for corruption.

The Memorandum of Understanding (MoU) signed on 15 June 2001 provides that the National Anti-Corruption Forum is established:

- To contribute towards the establishment of a national consensus through the co-ordination of sectoral strategies against corruption;
- To advise Government on national initiatives on the implementation of strategies to combat corruption;
- To share information and best practice on sectoral anti-corruption work; and
- To advise sectors on the improvement of sectoral anti-corruption strategies²⁰.

The Forum consists of thirty (30) members on the basis of ten (10) representatives from each of the sectors. In terms of the MoU, the PSC serves as secretariat to the NACF.

Galvanizing the NACF into action

The task of getting three diverse sectors to work together would never be without its challenges. After the initial enthusiasm for the NACF, it took almost two years for it to become active. The inaugural meeting was held on 19 July 2001 and it was agreed that the Chairpersonship of the NACF would be held on a rotational basis by the three sectors. At this meeting Adv Dali Mpofu, representing civil society, was elected as the first Chairperson of the NACF. However, another 16 months passed before the next meeting of the NACF was held in November 2002. It was only after this meeting where government took over the chair from civil society, that the NACF started gaining momentum²¹.

The period from the inception of the NACF to the hosting of the Second National Anti-Corruption Summit in March 2005, was characterised by the NACF being reduced to mainly a talk-shop with very little tangible outcomes being produced.

The theme of the Second National Anti-Corruption Summit held in March 2005 focused on *Fighting Corruption Together: Past Achievements, Future Challenges*. Delegates adopted a wide range of resolutions centering on ethics and awareness, combating corruption, transparency, and oversight and accountability.

A key development of this Summit was that it was agreed to translate the resolutions into a programme of action within three months of the Summit to ensure that the NACF's activities yield tangible results and, as a result, achieve the desired levels of impact as envisaged through its creation. This was achieved through the adoption of a National Anti-Corruption Programme (NACP) at a special meeting held on 24 June 2005.

The focus of the NACP was to yield "quick wins", to enhance the profile of the NACF and to give results that were measurable and practical. The NACP only focused on joint projects i.e. those which involved all three sectors²².

19 Case Study on the National Anti-Corruption Forum, Ms OR Ramsingh and Mr C Dobie, 2006.

20 Memorandum of Understanding of the National Anti-Corruption Forum, 15 June 2001.

21 Case Study on the National Anti-Corruption Forum, Ms OR Ramsingh and Mr C Dobie, 2006.

22 Case Study on the National Anti-Corruption Forum, Ms OR Ramsingh and Mr C Dobie, 2006.

An Implementation Committee chaired by the Director-General of the Department of Public Service and Administration and comprising representatives of business and civil society was appointed to oversee the implementation of the NACP.

Since the development of the NACP the pace of the NACF's activities has noticeably accelerated. This is largely because activities were structured with defined time-frames, and sectors were held accountable for their undertakings. The NACF had through the NACP evolved from a talk-shop to a coalition that produced tangible and visible results.

Reflection on the NACF as a multi-stakeholder coalition

Having briefly touched on the historical context of the NACF it is opportune at this time to reflect on the achievements of the NACF and the challenges that confront it. In order to provide such an assessment, the PSC conducted an internal reflection of its role as secretariat and considered the challenges and opportunities of the NACF. The findings of a case-study on the NACF, commissioned by the Public Service Commission and compiled by Ms Odette Ramsingh, Director-General of the Office of the Public Service Commission, and Mr Chris Dobie of Ethics South Africa, for purposes of presentation to the Global Compact Learning Workshop held in Accra, Ghana during 2006, were also considered.

Achievements

Establishing a multi-stakeholder coalition against corruption is an achievement on its own.

Prior to the establishment of democratic government in South Africa there was a great level of distrust in the *bona fides* of government by business and civil society. Even after the democratic elections, the legacy that was left by the previous regime continued to create doubt amongst leaders in business and civil society about the extent to which government would take their concerns to heart and cooperate with them in the interests of society at large. When the idea of setting up a multi-sectoral coalition in the fight against corruption was raised, a lot of cynicism on the part of civil society and business could therefore have been expected.

Although the process of establishing the coalition was protracted and challenging, the cynicism that could have been present was soon replaced by real enthusiasm for the prospect of dealing collectively with corruption as one of the major stumbling blocks in creating the South Africa that its citizens are aspiring to. The creation of the NACF by pulling together the interests and beliefs of three diverse sectors should, in itself, therefore be viewed as a major achievement²³.

The NACP Achievements

Since the development of the NACP the pace of the NACF's activities has noticeably accelerated. This is largely because activities were structured with defined time-frames, and sectors were held accountable for their undertakings. The following results have already been achieved through the NACP:

- A new website (www.nacf.org.za) and logo were launched.
- An Integrity Pledge was adopted and signed by the leaders of the various sectors represented on the NACF.
- The NACF hosted a Roundtable on the Prohibition of Corrupt Persons and Businesses.
- South Africa's Prevention and Combating of Corrupt Activities Act was popularised by simplifying it through a Guide, both in terms of language and through the use of illustrations.
- A national communication campaign highlighting the public's rights in reporting corruption and explaining legislation designed to further the fight against corruption was launched²⁴.

23 Presentation by Ms OR Ramsingh, Director-General of the Office of the Public Service Commission to the Eschborn Dialogue held in Germany, 10 June 2008.

24 Presentation by Ms OR Ramsingh, Director-General of the Office of the Public Service Commission to the Eschborn Dialogue held in Germany, 10 June 2008.

Resolutions of the Second National Anti-Corruption Summit have been taken on board by government in policy development.

The resolutions adopted at the second National Anti-Corruption Summit address a broad range of matters that have been taken on board by the government in policy development. The following synopsis gives examples of some of the resolutions which have been acted upon at the level of policy:

- The Summit resolved that ethics training must form part of ethics awareness in all sectors including in school curricula. A scan of professional ethics in education was conducted in pursuance of this resolution and will form the basis of the special panel discussion to be held tomorrow.
- The Summit further resolved that the Financial Disclosure Framework for senior managers should be reviewed to ensure greater compliance and improved procedures. The PSC, who is responsible for the management of the Framework, made comprehensive recommendations in this regard which are currently being addressed through policy development by government.
- It was resolved that post public sector employment should be regulated to ensure “cooling off” periods to avoid conflicts of interest. Following recommendations of the PSC, government is currently at an advanced stage in developing a policy to address post public sector employment.

Based on the few examples provided, it is clear that government has appreciation for the recommendations of the NACF and that these are considered in policy development.

Challenges

Despite the successes of the NACF there are a number of challenges and threats that currently hamper the effectiveness of the NACF and may have negative consequences if not addressed.

- Lack of cohesion and commitment between and within sectors

Although the NACF has produced positive results through joint projects, levels of cooperation, cohesion and commitment among the sectoral members have been problematic. When inputs are requested from especially civil society, target dates are not met with the result that project time-frames are not adhered to. Aligning diaries to secure dates for meetings also remains problematic and meetings have to be arranged on very short notice on occasion. Civil society still appears to be fragmented and obtaining a coordinated response from this sector remains a challenge.

Although the attendance of Business at meetings of the Implementation Committee has improved there still appears to be a lack of commitment by key stakeholders in this sector to the objectives of the NACF. This is evidenced by the poor attendance at NACF meetings. Financial support that had been anticipated from this sector for the proper functioning of the NACF has not been forthcoming.

The Public Sector’s representation on the NACF has largely been carried by the Minister for Public Service and Administration. NACF meetings are very seldom attended by other members of the Executive, raising questions about that sector’s commitment to the objectives of the NACF.

- Funding for the NACF is only provided by government

Since the inception of the NACF, funding has only been provided by government and by foreign donor agencies. Neither business nor civil society as equal partners in the coalition has contributed to the NACF by providing funding for joint projects or meetings and workshops of the NACF. Although financial constraints apply to civil society, the same cannot be said in respect of business. Despite several calls

for funding from the business sector, such calls have not been heeded raising concerns about the commitment of the sector to the NACF.

- Marginalisation of the PSC as secretariat

The PSC's role has been reduced to menial secretarial or auxiliary functions such as-

- Arranging meetings;
- Taking minutes at meetings;
- Making logistical arrangements; and
- Sourcing funding.

The PSC's ability to contribute at a strategic and conceptual level has been curtailed. Given the extent of the PSC's involvement in the establishment of the NACF and its prominent role in anti-corruption initiatives, the question may rightly be asked if it is the proper cost effective way to use the PSC's resources in this fashion.

- Limited involvement of provinces and no programme for moving forward with the creation of provincial structures

The NACF is a national structure and needs to ensure that its resolutions and programme of action find application at both national and provincial level. However, liaison with provinces has been very limited despite correspondence from the Chairperson of the NACF to Premiers encouraging the establishment of provincial structures. Only three provinces have established provincial fora, namely the Eastern Cape, Limpopo and the Western Cape.

- Lack of follow-through on decisions of the NACF

At the first meeting of the NACF held on 19 July 2001, it was decided that the Chairpersonship of the NACF will be held on a rotational basis by the three sectors for terms of two years at a time. The first Chairperson, Adv Dali Mpofu represented Civil Society and held the Chairpersonship from July 2001 to November 2002 when the Minister for Public Service and Administration was elected Chairperson.

Since then the Chairpersonship of the NACF was never again raised by any of the sectors. The fact that government has held the Chairpersonship for more than five years raises concerns about the importance that the sectors, especially business and civil society, place on the partnership entered into through the NACF. The fact that neither business nor civil society has raised the issue of a rotational Chairpersonship could also be interpreted as an indication of indifference to this matter of principle.

- The NACF is not a statutory body and therefore commitment to the implementation of its decisions may be lacking

The decision to establish the NACF as an advisory rather than a statutory body may have impacted negatively in the participation of sectors. The level of engagement of sectors in the NACF is not remotely comparable with an institution such as Nedlac where there is vibrant discourse by all involved and follow-through on decisions taken. This could be attributed to the fact that Nedlac is a statutory body.

Opportunities

The spirit with the establishment of the NACF needs to be pursued vigorously by all involved and the successes achieved through the NACP must be built on. The following could be considered in moving forward:

- Statutory status for the NACF

The possibility of providing statutory status to the NACF may need to be further explored. This would, in opinion, improve the commitment of the sectors as decisions would have a more binding effect.

- Sharing the financial commitments of the NACF amongst sectors

As indicated, funding for the NACF has predominantly been provided by government with contributions by donor agencies. A greater level of financial commitment should be displayed by especially the business sector to ensure that the ideals of an equal partnership are realised.

- Building on the successes of the NACF

The resolutions of the Third National Anti-Corruption Programme must be translated as soon as possible into a plan of action for the NACF to ensure that the momentum created through the NACP is maintained and further improved upon.

- Strengthening the role of the Secretariat

The role of the secretariat has, as indicated, been reduced to menial administrative tasks. The PSC, given its historical involvement in the establishment of the NACF, its independence and its role in the promotion of professional ethics, can play a much more active role in driving the agenda of the NACF. The PSC's role should be realigned to include the following:

- Provide strategic research and advise the NACF on the prevention and combating of corruption.
 - Provide strategic direction to the NACF in terms of the latest trends with respect to the prevention and combating of corruption.
 - Drive the content of NACF meetings through the research conducted.
 - Directly manage projects of the National Anti-Corruption Programme (NACP).
 - Represent the NACF at anti-corruption forums, conferences and workshops when the need arises.
 - Drive the establishment of regionally based anti-corruption fora in the provinces.
- Increasing commitment to the NACF

As indicated the attendance of NACF meetings by all sectors has not been satisfactory. A renewed commitment by all sectors is required if the objectives of the NACF are to be achieved in the long term.

Conclusion

The NACF has reached a stage where there is engagement from all parties. As indicated in my presentation there is, however, a need to further strengthen this engagement and improve on the commitment of sectors to the objectives of the NACF. By seizing the opportunities that present themselves, the NACF will further entrench itself as a good practice example of multi-sectoral cooperation against corruption. I am confident that the resolutions emanating from this Summit will provide a sound basis for the NACF to further improve upon the visible impact that it has achieved since the Second National Anti-Corruption Summit.

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 Mokededi, 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, while 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 as 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.



CHAPTER 7: PRICE-FIXING AND ITS IMPACT ON COMMUNITIES

7.1 INTRODUCTION:

The media has recently highlighted price-fixing and other types of collusion between certain business entities in South Africa. This includes allegations of price-fixing on basic foods as well as certain medicines. In the light of world-wide concerns about the high prices of food it raises serious concerns in the South African context where there is a large constituency of economically disadvantaged people. Certain social partners have expressed their disquiet about these issues. The Summit therefore explored this issue from a business perspective and obtained business responses, but more specifically, responses from the point of view of local communities who are hardest hit by such price increases. This session was in the form of a panel discussion with presentations made by the following:

- Dr Janette Minnaar, Business Unity South Africa;
- Ms Nandi Mokoena, Competition Commission;
- Mr Sidumo Dlamini, President, Congress of South African Trade Unions; and
- Mr Nkosikhulule Nyembezi, Black Sash;

CHAIRPERSON: MS V HARBHAJAN, Business Unity South Africa (BUSA)

7.2 PRESENTATION BY DR J MINNAAR, Business Unity South Africa (BUSA)

The Batho Pele principle proposes: "A better life for all South Africans by putting people first". The act of corruption, or price-fixing, as we are discussing in this session, serves self-interest above the interests of others.

Not only is price fixing and cartel-forming criminalised by the Competition Act, but the damage done and the detrimental impact on communities are significant. Price-fixing and corruption slows much needed economic development by stifling free and fair competition. When companies form cartels, market dominance is achieved and often maintained for lengthy periods resulting in the smaller businessman being eliminated. Entrance into the market by new role players is therefore more difficult because of the monopoly held by the cartel. Consumers do not have access to and cannot freely select the quality and variety of goods and services they desire²⁵. Local communities have to pay more for products and services because the price is artificially manipulated. The fixing of a price of a product causes prejudice or harm to broader society and sadly, it is most often the poorest of the poor who suffer most.

These practices are immoral and unethical. It is not good, right or responsible behaviour and compromises the universal values of integrity, honesty, transparency and fairness. Price-fixing is in direct opposition to the principles of corporate social responsibility and good corporate citizenship as promoted in the well-known King II report on corporate governance.

Doing business in an ethical way pays in the long run. Ethical companies attract and retain better talent, protect their reputation more easily, build trust in the community and are more profitable and sustainable.

Our hands are not tied against price fixing and there are many existing structures and initiatives in the

²⁵ As stated in the preamble of the Competition Act 89 of 1998.

market which we can utilise to curb corruption. Examples are:

1. The United Nations Global Compact which is a framework for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, the environment and anti-corruption. The initiative was started because it was felt that business should play a greater role in making corruption unacceptable.

Principle 10 of the Global Compact states: "Businesses should work against corruption in all its forms, including extortion and bribery". Companies are challenged to join governments, UN agencies and civil society to realise a more transparent global economy.

2. The Integrity Pact (IP) developed by Transparency International. The IP is a tool aimed at preventing corruption in public procurement. It contains rights and obligations to the effect that neither side will pay, offer, demand or accept bribes, or collude with competitors to obtain a contract or engage in such abuses while carrying it out.

The IP (Integrity Pact) provides companies with a level playing field where all competitors are bound by the same rules, thereby discouraging bribes.

3. The World Economic Forum initiated the Partnership Against Corruption Initiative (PACI) which began as a sector specific project for the engineering and construction industry, as a practical step towards the implementation of anti-corruption measures. Many companies in South Africa have signed the PACI.
4. The International Business Leaders Forum and the China Business Leaders Forum are two forums where companies partner to promote transparency.
5. The US Federal Sentencing Guidelines, first published in 1991 and updated in 2004, encourage ethical conduct in US corporations. Businesses have to:

- Ensure that they have an effective compliance and ethics programme;
- evaluate periodically the effectiveness of the organisation's compliance and ethics programme; and
- periodically assess the risk of criminal conduct and ... take appropriate steps to design, implement, or modify each requirement ... to reduce the risk of criminal conduct identified through this process.

The Federal Sentencing Guidelines have been incorporated into the South African King 2 report on corporate governance as part of corporate-ethics management recommendations and they will be strengthened in the King 3 report (to be published early 2009).

Organisations can take internal steps to combat corrupt practices. For example:

1. Adopt a code of ethics with a set of chosen values and incorporate it into the strategy and daily operations of the organisation.
2. Follow up the adoption of the code by training and ongoing awareness. Continuous efforts need to be made to ensure that principles and codes are integrated into other management systems.
3. Implement a reporting facility or a "hotline" where employees and stakeholders can safely report crime and irregularities.

In conclusion, Business Unity South Africa and its members support free and fair competition and we

will continue to endorse the efforts of the Competition Commission and to take part in collaborative anti-corruption initiatives such as this Summit and the National Anti-corruption Forum. We applaud the valuable work done by the Competition Commission and we trust that the recent successes of this watchdog body will serve as a stern warning to potential transgressors.

7.3 PRESENTATION BY MS NANDI MOKOENA: Competition Commission

"...on both a moral and practical level, there is not a great deal of difference between price fixing and theft..."
Richard Whish, 2001.

What is price-fixing? The Act says that it is an agreement not to compete on price. This has the effect of increasing prices and / or reducing output with the purpose to maximize profits. Price-fixing frequently includes a policing mechanism where businesses have a code of practice and will actually monitor each other. The impact is that consumers cannot 'shop around' to obtain the best prices.

International studies find a median price mark-up from cartels of approximately 15%.

Businesses also agree to divide markets among themselves which has the same effect as price fixing. In such schemes, competitors:

- allocate specific customers or suppliers;
- allocate territories; and / or
- allocate goods or services.

Collusive tendering includes firms that agree in advance as to who will submit the winning bid or tender. Other forms include bid suppression, complementary bidding and bid rotation and are often accompanied by sub-contracting. Such an approach is often found in the engineering and construction sectors where State tenders and other very large contracts are on offer.

The Commission's mandate recognizes that combating cartels is one of the most important tasks that it undertakes, "Combating cartels should be among the top priorities of any competition law enforcement agency."²⁶

The Commission has implemented the Corporate Leniency Policy (CLP), 2004, which was revised in 2008. It is a pro-active tool which is integral to the detection and eradication of cartels. It operates on the basis of indemnity being given to firms that provide information of a cartel to the Commission. The "First through the door" method is applied, meaning that the first company that provides the Commission with information and subsequently fully cooperates with and assists the Commission receives a conditional immunity followed by a full immunity. This has proved to be a very successful tool as cartels are very secretive and are very difficult to penetrate.

Major cartels uncovered by the Commission include the bread price fixing cartel and the pharmaceutical cartel, among others. The theme of this session is the impact that price fixing has on communities: it does have a very severe effect on the poorer communities.

The Commission uncovered the bread cartel after the cartel had been implemented just before Christmas 2006 and found that Premier (Blue Ribbon) Tiger Brands (Albany) and Pioneer (Sasko) had agreed:

- to increase the price of bread to customers;
- to fix their prices to distributors; and
- not to poach each others independent distributors.

The effect was that:

- Prices of basic bread increased by +/- R0.30c;
- Distributors discounts were slashed from R0.90c to R0.75c; and
- Distributors were refused alternatives

This was implemented one week before Christmas (2006). There is an ongoing investigation into the milling industry.

“The bread case is a living example of how an unjust economy can further impoverish poor consumers, and destroy opportunities for small businesses (especially those that serve the poor) to help citizens to regain full and free participation in the economy.”²⁷

The pharmaceutical cartel investigation was initiated by the Commission. The cartel included Adcock Ingram, Fresenius, Kabi, Dismed and Thusanong, all of whom they had agreed to act collusively when tendering for State tenders. For example, all acted collusively for a contract, namely Contract RT299, a state tender for intravenous solutions and they also agreed to divide the private hospital market amongst themselves.

The effects resemble the usual outcomes of collusion:

- State paid 10% - 15% more for IV fluids, estimates range from R20 million p.a to R60 million p.a
- Private hospitals paid up to 33% more for IV fluids
- Barriers to entry were increased²⁸

The milk cartel investigation was also initiated by the Commission and the respondents were Clover, Parmalat, Ladismith Cheese, Woodlands Dairy, Lancewood, Nestle and Milkwood. It was Clover that has received leniency in part, with the hearings set for September 2008.

From the side of the Commission the allegations are that Clover, Woodlands and Parmalat fixed prices indirectly by co-ordinating the removal of surplus milk from the market, while Woodlands and Milkwood fixed the price of UHT milk and allocated geographic areas in which they would not compete in selling UHT milk.

The Commission further found that Clover, Parmalat, Ladismith, Woodlands, Lancewood and Nestle had exchanged sensitive information on procurement prices of raw milk in various ways.

Conclusion

All of these cartels have had severe impacts on poorer communities, as bread and milk are both staple necessities.

7.4 PRESENTATION BY MR N NYEMBEZI: National Advocacy Programme, Manager of the Black Sash.

As the Black Sash we believe that the greatest deterrent to cartels should be the likelihood that offenders at company and individual level will be apprehended, penalized and even punished through heavy fines, loss of future state tenders and tax incentives. There is no dispute that cartels destroy competition and are causing serious harm to the economy and consumers. This unscrupulous practice clearly

²⁷ National Consumer Forum, 2007

²⁸ The total expenditure on pharmaceuticals in the public sector is about R 5 billion

pushed up the price of basic food items and medicinal items to the detriment of consumers, but more disconcerting is the fact that these practices extended across the country for over 12 years.

It is important to remember that price-fixing and cartel activity takes place in an environment of high levels of unemployment, low wages, the sharp decline in purchasing power, rising fuel prices, rising energy prices, high interest rates and chronic poverty. It takes place in an environment where food security in poor households is declining. The significant increase in the price of basic food stuff particularly affects those at the lower end of the socio-economic scale for whom these food items are a staple.

The artificially high prices imposed on consumers through price-fixing have hurt ordinary people in our communities, especially those in the Living Standards Measure (LSM) 1-5, and increasingly the middle-income earners. So serious is the impact on poor communities that government has recognised the close link between social security and the price of food. Finance Minister Trevor Manuel's medium-term budget policy statement in 2007 set aside about R4,3 billion to compensate pensioners and social grant beneficiaries for rising food prices and other cost of living increases. This is based on the government's recognition that social grants are significantly and positively associated with a greater share of household expenditure on food.

We continue to ask ourselves, how many loaves of bread has this cartel activity taken away from the mouths of school children who are dependent on the school feeding scheme for a daily meal? How many households had to go hungry for days because there was not enough money to afford basic foodstuffs as a result of this activity? Price-fixing has affected the health of ordinary people as it has been noted in various studies that poor people with HIV/AIDS or TB benefit more from their treatment if they have the necessary nutrition to support the medication they receive. The high levels of poverty in South Africa are linked to structural unemployment and perpetuate the inequalities of the past. Cartels undermine the efforts of government to provide comprehensive social security and employment opportunities.

We call on this Summit to support legislative and other measures to ensure that companies guilty of collusion, particularly where this affects state resources and essential services, be excluded from state tenders for a determined period as a matter of principle. We also call on this summit to support legislative and other measures to ensure that government awards corporate tax relief only to those companies that practice good corporate governance by excluding companies guilty of collusion from this benefit.

The Black Sash calls for strong legislative measures to ensure that government departments, including the State Tender Board, involved in issuing and adjudicating of state tenders are better equipped to prevent corruption and deal with companies involved in collusion. In an environment where government is involved in the procurement of goods and services, and where the possibility for collusion and uncompetitive behaviour by companies applying for tenders is high, it is important that strong institutional checks and balances are in place.

Referring back to the strong legislative measures and the checks and balances we are calling for, companies and other stakeholders should not merely seek to promote compliance with certain guidelines or some pieces of legislation, but should promote a human rights culture through good corporate governance practice.

7.5 PANEL DISCUSSION

A panel discussion ensued after the presentations and the input/comments on the presentations are contained in Table 2.

TABLE 2: COMMENTS ON PRESENTATIONS

Discussion points	Inputs from conference delegates	Response by panel members
<p>Competition Commission</p>	<ul style="list-style-type: none"> The Competition Commission should not depend on cartel members' confessions. The investigative agencies also should be involved. 	<ul style="list-style-type: none"> The experience is that no company will come forward until the Commission has started an investigation, at that stage they come forward and the investigation is thus not compromised. The Competition Commission uses the Company Leniency Policy (CLP) as a tool to detect cartels. The Commission has been in existence since 1999; the CLP was only introduced in 2004. From 1999 – 2004 the Commission did not see much progress as cartels are highly secretive. But since 2004 there has been increased awareness and increased achievements. Furthermore, immunity is 'conditional' and only becomes 'full immunity' at the end of the process. The CLP is a trade off that the Commission needs to use to make progress as the commission can only act in terms of the Companies Act. However, the Department of Trade and Industry (DTI) has made proposals to criminalize certain aspects such as collusion, price fixing, and tender fraud etc. Also the Commission has already made submissions to Parliament on these issues. The Commission does not have criminal jurisdiction but there is cooperation with other organizations to see how this can be addressed.

Discussion points	Inputs from conference delegates	Response by panel members
<p>Competition Commission</p>	<ul style="list-style-type: none"> The CLP calls for full disclosure, yet Adcock Ingram and the bread price-fixing company belong to the Tiger Brands Group, thus indicating that there was not full disclosure. Furthermore, soon after being found guilty of price collusion, Adcock Ingram won a tender from the Department of Health. Further, there was no benefit for consumers after the bread price-fixing scandal and the whistleblower was victimized. 	<ul style="list-style-type: none"> The Department of Health will be claiming damages from Adcock Ingram. Further, the Act also says that anybody can take matters to court in order to claim what they think their damages are. Naturally the individual damages are too small for individuals to go to court as such. As for the price of bread not being reduced; the Competition Commission does not have such a mandate and is not a price regulator. The Whistleblowers Act provides for protection for those that give information to the Commission. The Act says that such persons do not have to give their names and details. Regarding the bread price fixing and the case of Mr Mukkadam; he was not the original complainant - it was another person had informed the commission. The Commission thereafter went to the Cape to interview bread distributors, which included Mr Mukkadam. They were informed that they did not have to provide their names. However, two days later Mr Mukkadam filed a formal complaint against the bread companies and in so doing provided his name and details. The Commission has tried to assist Mr Mukkadam with his present difficulties although this is not in the Commission's mandate to do so.
<p>Competition Commission</p>	<ul style="list-style-type: none"> The Harvard Study Group that was appointed by National Treasury Commission "waits for persons to complain". The recommendation from the Harvard Study Group is that legislation must change to enable it to work proactively. 	<ul style="list-style-type: none"> As a result of the bread and milk cases the Commission has commenced a study of the food industry to determine if there is further anti-competitive behaviour as it has had a huge impact on the poor. It is not an investigation and I am unable to reveal what has already been uncovered. Regarding the Harvard Study Group's report about the Commission being reactive; the Act provides that the Commission can act proactively and it has done so in many cases. The Commission also has a policy and research division so that it can generate important information. One of the submissions to Parliament recommends that this aspect needs to be enhanced. The Commission is using its powers with regard to the steel cartel which has huge implications for South Africa. This work has come from the Commission and thus shows that we are doing work on a proactive basis.
<p>BUSA</p>	<ul style="list-style-type: none"> What is Business Unity South Africa (BUSA) doing to sanction its members? 	<ul style="list-style-type: none"> The members of BUSA participate on a voluntary basis and many of them are in other chambers and professional bodies such as the insurance industry. BUSA does not operate in terms of legislation and thus it does not have the mandate to apply sanctions against its members. Senior members of BUSA have taken part in the Summit and participate in the NACF and BUSA has called for the strengthening of the Boards of Directors as well as participating in the King III report. BUSA is developing programmes for future awareness and capacity building to prevent corruption in organisations. The comments made however have been noted and will be referred to BUSA.

Discussion points	Inputs from conference delegates	Response by panel members
<p>BUSA</p>	<ul style="list-style-type: none"> ● Legislation needs to be tightened as a R2000 penalty for a CEO is too low. Also, the legislation is very good on paper but it needs to be implemented. Price-fixing is no less than robbing the consumer. The British Office of Fair Trade found that businessmen dread going to jail and also fear not being able to tender for government business. The voluntary membership of BUSA should require the adherence to codes of conduct. Can BUSA allow corrupt companies to continue to be members? There should be a message from BUSA that corrupt businesses should face the full wrath of the law. ● There seems to be an inability of business to regulate itself and hence such issues as price fixing. Also there are issues around medical schemes and bank fees among others that results in the calls for and by government to improve regulation. 	<ul style="list-style-type: none"> ● BUSA does not have direct membership; its members belong to business organisations, for example Business Leadership South Africa which has some of the top JSE companies as members. Further, BUSA is not a watchdog organisation and can only react to allegations of price-fixing and has on a number of occasions stated via the media that it does not condone price-fixing and that it is against corruption. ● Regarding codes of conduct – BUSA cannot prescribe to companies and industries as to what their codes of conduct should contain. Hence the codes of conduct of banks would be different to the codes of conduct of other sets of business.
<p>BUSA</p>	<ul style="list-style-type: none"> ● Can BUSA clearly state that they support the principle of CEOs being criminally charged and sent to jail for price-fixing and corruption? 	<ul style="list-style-type: none"> ● BUSA supports very strict punishment for directors and member companies that are involved in corrupt activities such as price-fixing. BUSA is a representative body, and we will take these suggestions back to be discussed at management level.

CHAPTER 8: ETHICS IN EDUCATION: NACF REPORT, WITH SPECIAL EMPHASIS ON SCHOOLS

8.1 INTRODUCTION

As part of the implementation of recommendations from the Second National Anti-Corruption Summit held in March 2005, the National Anti-Corruption Forum (NACF) through the Support of the United Nations Office on Drugs and Crime (UNODC) undertook an assessment of Ethics in Education and Training in Schools and Tertiary Institutions, in the provinces of Gauteng, Mpumalanga and North West Provinces. The assessment which was undertaken by the Ethics Institute of South Africa informed the discussion for this session and the report was launched at this same session. This session was in the form of a panel discussion with presentations made by the following:

- Mr Enver Surty, Deputy Minister of Education;
- Ms K Callaghan, Schools Governors' Alliance; and
- Mr Dave Balt, National Professional Teachers Organisation of South Africa

CHAIRPERSON: PROFESSOR JONATHAN JANSEN: (Honorary Professor at the University of the Witwatersrand)

8.2 SETTING THE SCENE BY PROF JONATHAN JANSEN

What is it that we know about how students learn ethics and values? Is the problem that we face in society primarily a problem of curriculum? For a few moments I will argue that this is not the case. It is the South African tendency to ask: 'where is the module to address the problem?' This is wrong. By way of example, the reaction to the children that drowned on the KZN north-coast not so long ago was to suggest that swimming should be put into the curriculum. The primary problem we face regarding the moral issues of the day is not a curriculum problem; what we face is a problem of the curriculum of our lives – children learn about ethics and values by observing adult behaviour.

I know that the kind of husband my daughter will one day choose depends on how I loved her mother – not on a module of how to choose a life partner. What we need to recognize is that what children see in us, is the primary influence on how they behave. By way of example, many trainee-teachers become teachers because of important and powerful roles played by one or more teachers in their young lives and who they want to emulate.

What do my children see when they look at South African society today? They see the president of the leading party in South Africa on charges of corruption. What do they see, whether it is true or not, when another politician is accused of graft? I sit on behalf of the Minister on the Council of Educators; there I see long lists of people accused of the most heinous acts against our children. Nothing influences children's behaviour more powerfully than adult behaviour. What do children learn when they see that teachers are late, when the principle is absent? what do children learn when the classroom is over-crowded? What does a child learn when teachers have sexual relations with students?

You can tinker with the curriculum until you are blue in the face but it is the curriculum of life that is important. The students are watching us – what do children think of the curriculum of our lives? "The students are watching us" is a book by Ted Sizer and is recommended as far as ethics and values are concerned in children's lives.

The iconic picture in my generation is the picture of Antoinette Sithole running with Hector Pietersen - that was blazoned on our minds. The most iconic picture in my children's generation is the picture of

a Mozambiquan burning. Ethics is not simply the absence of wrong doing it is also the failure to speak out in the face of evil. I have been deeply disappointed by our political and religious leaders for not speaking out. Where are the voices that stood down the caspirs in the townships when I was a child? Merely saying that 'I did not steal' is insufficient. Do we speak out when there is wrongdoing? I have set out a few ideas of my own which can form part of the platform for further discussion.

8.3 PRESENTATION BY MR E SURTY: Deputy Minister of Education ²⁹

Prof Jansen has raised a number of issues and we have the responsibility to respond. A starting point is to look at the iconic picture of Hector Pietersen and to look at the struggle for freedom that the youth of the 1970s sought to bring about. That is the iconic picture that many of us can associate with. It is unfortunate that currently the global picture exists of South Africans being intolerant and being unable to deal with human interaction in a caring way.

What can we do differently other than to have a curriculum that embeds the values that are enshrined in our Constitution? What responsibility do we have as educators and as parents and as society to bring about change? To what do we attribute moral degeneration? Perhaps the starting point to learning is observation; children observe adults and try to emulate them. Therefore important role models and icons are there to produce ideal citizens. As Prof Jansen is asking; where is the leadership? What he is asking us to do is to reflect on where we have gone wrong.

1976 was the starting point for change and in 1996 we celebrated the South Africa Constitution. We celebrated our Constitution as the "birth certificate" of our new nation. It speaks to human dignity and among others regulates the power relationships between state and citizens and among citizens themselves. But if we do not understand the concept of the dignity of people we do not understand the values of and the purpose of the Constitution. It speaks about equality and it says to those noble teachers that equality is not merely a word written in the Constitution: it is the foundation stone of our democracy.

Those that struggled for our liberation are conscious of the transformation that is required to bring about the equality in the system of education. For our children to mature and to develop their abilities the depth and scope of the curriculum is worth nothing if our educators are not committed. The educators have to understand that they are being observed in terms of what they do and how they do it. They must have the ability to think critically and to be reflective in terms of students with divergent backgrounds.

When we speak of ethics we have to understand the importance of education as it begins at home and in the communities. What values do you pass onto your children before he or she goes to school? What kind of tolerance and what kind of decency as well as what kind of behaviour and contact do you demonstrate to your children as he or she is growing up? What role do the teachers play in their conduct and behaviour?

We are aware that there is abuse of women. We are aware that there is abuse amongst our educators. Why is does the South African Council of Education, that regulates the conduct of educators, take so long to act? Why has it not made a clear statement that we will not tolerate such conduct?

The content of the curriculum is very rich, but perhaps the approach and methodology is the problem. Can we influence the holistics of the learner in a way that he / she can assess information in different contexts? The Department of Education needs to look at these issues. Education and ethical conduct is the business of each one us in this forum, which represents the culmination of the endeavours to overcome and eradicate corruption.

29 Mr E. Surty was, at the time of the Summit, the Deputy Minister of Education.

8.4 PRESENTATION BY MS K CALLAGHAN: Schools Governors' Alliance

Thank you to the organisers for inviting school governing body associations to participate in the panel discussions. I will comment on the Report on the "Ethics in Education" from the perspective of parents and public school governing bodies in particular.

At the outset we support the Report and its findings. The Report touches on the relevant role of Life Orientation (LO) in schools and the difference it can make in learners lives. We support the teaching of values in schools and the impact it can have on a learner's life. Life Orientation (LO) can make a difference to a child, but the influence of society and the environment where that child finds himself might not necessarily support the values being taught.

Is the programme achieving the outcomes?

Society is placing the responsibility on schools and educators to instil values in learners. So we come back to the question does LO make a difference in the life of a learner? The answer is yes if there is support of these values in the society where the learner finds himself. I need to quote from the Report: "The findings of this report indicate wide-ranging challenges that would have to be addressed in order to increase the efficacy of school education in general and specifically the values component of the LO programme.

Education is vital in the struggle to overcome poverty and in an endeavour to inculcate a sense of self respect and control in learners so that they are less prone to falling victim to criminal role models, thus perpetuating crime and other social ills. Quality education generally improves the character of individuals, making them more responsible citizens who are more capable of understanding their rights and their concomitant responsibilities. So we need to stand together as parents, civil society, and educators in order to prepare learners to become responsible citizens of the future.

We need to find a way of strengthening programmes being offered. Consultation must be ongoing with relevant stakeholders in education. Further, parents need to take up their role in their children's education.

Yesterday, Dr Ginwala said that at all levels of society we need to accept our responsibility for the ethics in society. Let's take up the challenge!

8.5 PRESENTATION BY MR D BALT: National Professional Teachers Organisation of South Africa

I quote from "The Ethics in Education Review" published in December 2007 and sponsored by the United Nations Office on Drugs and Crime and our own National Anti-Corruption Forum as I believe it serves as an appropriate introduction:

"The values crises in schools are to a significant degree a reflection of the larger moral malaise in South African society, which has historical roots and contemporary causes. South Africa's history is one of exploitation and dispossession that still casts its shadow over the present. But equally, the country's more recent political and economic transformation has superimposed a rights culture upon a social base that does not equally recognize an accompanying culture of responsibility, as well as upon a material base of persisting poverty and powerlessness."

This short contribution will focus on three aspects, namely, the challenge faced by teachers, secondly a reminder that the primary educator is not the school or teacher, and finally the impact of the moral "malaise" in which we find ourselves. Ethics in education is not a simple issue and incorporating ethics into education is complex.

There are different ways of doing it, but the outcomes and the process of internalizing ethics into the behaviour of individuals is never guaranteed. For the teaching profession the approaches include adhering absolutely to our professional code of ethics and incorporating ethics into a curriculum both formally as well as informally and in so doing infusing ethics into the practice of teaching.

Yesterday the Director - General of the DPSA clearly sketched the impressive and comprehensive National Integrity Structures that we have in place as dictated by our Constitution. To further reinforce the intention of the Constitution, codes of conduct for various sectors are crafted such as the South African Council for Educators Code of Conduct for teachers that I will refer to shortly. Also, in corporate South Africa as we heard yesterday too, that King I (1994) and King II (2002) were attempts to overhaul codes of ethics and to influence legislation. However, there is little evidence that these have had a significant impact. The answers then do not necessarily lie in tighter regulation and enforcement strategies as it appears as if legislation and codes have not succeeded in countering the moral erosion that is being reported on a daily basis and that appears increasingly to becoming a feature of South African society.

The fact that legislation alone does not seem to halt the erosion of morality in society necessitates looking at the role of education more closely. Any educational strategy that does not take into account our unique complexities in particular, will be in vain.

It is no surprise that in the Executive Summary of the Ethics in Education – Review, the following statement is made: “The research results show that South Africa’s educational institutions face formidable capacity challenges in pursuit of promoting core ethical values. There is evidence that values education and training go wrong right from the primary school, and that the unacceptable consequences of a failure to inculcate ethical values impact forcefully, and tragically, in secondary schools.”

A curriculum, designed to address ethics very often emphasizes technical skills and knowledge of the rules. Perhaps this is so because imparting knowledge about the rules is the easy part: write it into the curriculum, train teachers to deliver and assess it and assume, with a clear conscience, that ethics has been dealt with and that this will change the morality of society. This is, clearly, a worrying assumption as the success of teaching ethics can only be measured by measuring the change in behavior and not by assessing knowledge of the rules.

The question then is, what can education do to contribute to changing the behaviour of individuals?

Educational institutions are microcosms of the culture and the society that supports them and, clearly, the ethics curriculum which provides for knowing about the rules is, as has been stated, only one aspect. More importantly, each classroom becomes a laboratory of the process of decision-making, and of critically examining choices and examining relationships as well as individual and personal lives. Teachers must play an important role in assisting learners to view ethical choices as a vital part of every aspect of their lives.

Macfarlane (2004) emphasizes that it is important for teachers to develop “professional virtues, such as duty to learners and genuinely critical self-reflection as opposed to adopting prescriptive solutions to moral dilemmas”. A teacher is a leader and must lead by example.

It is important, then, to reflect on the circumstances that arise in schools in which teachers could be setting the example for ethical behaviour by the choices that they make in order to influence learners into making ethical choices, over and above “teaching a course on ethics”.

Teachers who live the following are best able to promote core ethical values:

- acknowledge the noble calling of their profession to educate and train the learners of our country;
- acknowledge that the attitude, dedication, self-discipline, ideals, training and conduct of the teaching profession determine the quality of education in this country;

- acknowledge, upholds and promotes basic human rights, as embodied in the Constitution of South Africa;
- commit themselves to do all within their power, in the exercising of their professional duties, to act in accordance with the ideals of their profession, as expressed in their Code;
- are not negligent or indolent in the performance of their professional duties
- recognize the parents as partners in education, and promotes a harmonious relationship with them; and
- strives to enable learners to develop a set of values consistent with the fundamental rights contained in the Constitution of South Africa.

These points by the way are from our Code of Conduct for teachers.

The “hidden curriculum” in my opinion is at the heart of the transfer of ethics and values and is epitomized by the actions and example set by the teacher. An integral part therefore of what each teacher does every day, as well as those seemingly trivial incidents in which the teacher’s behaviour and ethical choices impact on what learners will come to perceive as being the “right behavior”.

The value of daily examples of the correct choices, both big and small (and mostly made without even thinking about alternatives) cannot be overestimated. To do this teachers themselves must be “ethically conscious” before it will be possible for them to apply the professional ethics used by the profession itself to regulate its registered members.

In order to influence learners, teachers will have to be comfortable with and act comfortably within their own ethical frameworks. It is behaviour and example that counts. It is the presence of the teacher and the effect of this presence that counts. We as teachers must win back our PRESENCE where and if we have lost it.

The review indicates though, that where we have the appropriate presence, and where we are teaching the appropriate ethic, the success rate is not what we would expect because, and I quote:

“...it is confidently deduced that the discrepancy between values taught at school and values lived in the communities of which learners are members significantly undermines the effectiveness and credibility of the values component of the Life Orientation programme.”

Given the realities of the modern social order then, as well as the complexities of our South African society, it would be unrealistic to place the burden of changing the very fabric and morality of society solely on the shoulders of education. Sadly, and no doubt for a multitude of reasons, the majority of parents do not see themselves as the ‘primary educators’ and as a consequence more and more of the imperatives for the holistic development and education of children, particularly around ethics and values, has been directed to the school, and ultimately the teacher.

We are all aware of the many challenges teachers face in schools and just how demanding the job actually is. This a position by the way that is supported by the review. It is because of the size and the importance of the challenge that we are calling for a radical change in approach.

The most successful teaching model is that of the triangle with the child, the parent and the teacher working together. When the appropriate relationship has been established, the child, both young and not so young, knows that a “team” is in place to support him or her which brings in a level of accountability from each of the partners. Accountability in our present system is not as vigorously pursued as it ought to be. But when correctly applied by both parent and school we have improvements in levels of:

- Discipline;
- Work ethic;
- Respect; and

- Responsibility, and most important of all it provides a base for the inculcation of appropriate values and ethics.

Our call then is that mechanisms are put into place that establishes the necessity of parental involvement in the education of their children. This we believe warrants research or an investigation to establish how best to achieve this. To continue as we are will mean that it will remain extremely difficult to maintain present standards of discipline – many would say that the present standards are already unacceptable.

We all were shocked and saddened at the levels of violence at schools that were reported last year. Let us pray that the improvement in the levels this year are as a result of interventions put into place at schools by teachers and Departments. The Review states: “There are a number of strong indicators, mostly of violence in its various forms which are seriously undermining education in our schools. Theft at school, violence in the community and pervasive bullying has a detrimental impact on the quality and effectiveness of learning.”

We cannot afford further impediments in the classroom situation as we are already performing well below par, in fact embarrassingly so, but that debate will have to stand over for another time. Suffice to say that teachers alone will not be able to solve, address, and eradicate violence in schools without the assistance of parents and the community.

Irrespective of how conscientious either the parents, or the school are in attempting to inculcate the core ethical values, the impact of what is seen in the broader society will play a decisive role in the mind of the child.

I quote a number of excerpts from Mamphela Ramphele’s book “Laying Ghosts to Rest”, which are self-explanatory in the context of our moral malaise:

“The so-called Travelgate scandal involved 40 members of Parliament. Parliamentarians earn over R500 000 per year and enjoy pension and travel allowances, yet these members of an institution that is meant to enforce good governance, helped themselves to more public money by colluding with travel agents to make false travel claims.”

“Even more disturbing has been the embarrassing tardiness in dealing with this matter over the last five years or so since the scandal broke. Political parties involved, with the notable exception of one party, have failed to demonstrate their abhorrence of fraud and corruption by expelling those involved.”

“Corruption on the scale suggested by these examples and others reported in our media suggests that we as a society are ensnared in a political culture that tolerates corruption.”

“Ethical politics is not an option in a democracy; it is a requirement. In a democracy governed by ethics one need not fear opposition party victories or changes in leadership. What would matter would be the extent to which those standing for public office are able to advance the common good.”

The solutions to our “moral agony” lie not only in the hands of the powerful who decide about what passes for “good” or “bad”. Morality and choices about ethical behaviour are in the hands of ordinary people, particularly teachers and parents, who lead by setting the example of doing the right thing, in the right way, even when no-one is looking.

In conclusion, it is essential that all players review their roles and if we are not inculcating the necessary values and ethics into the minds and the hearts of the children of our country then let us take remedial action – the stakes are too high; we cannot fail the youth of our country.

100 **8.6 PANEL DISCUSSION**

A panel discussion ensued after the presentations and the input/comments on the presentations are contained in Table 3.

TABLE 3: COMMENTS ON PRESENTATIONS

Debating points	Inputs from conference delegates	Response by panel members
<p>Teachers' needs are not met</p>	<p>I was a teacher during the period of political upheaval which also affected teachers. Students in my class were murdered yet teachers were never taught how to deal with such students and situations. The issue of trauma is real and support is needed for teachers, as well support on a range of other aspects.</p>	<p>Our trauma is something that we have to acknowledge and live with as our past has been a painful one. Indeed the Truth and Reconciliation Commission (TRC) was an attempt to heal the wounds of the past. Xenophobia is also a manifestation of the past and we have to ensure that we deal with this problem and that xenophobia becomes part of the discourse within schools. With regard to the imbalances of the past, we have a special affirmative programme where we resource our previously disadvantaged school in terms of sanitation and other infrastructure. However, we must still make huge strides to improve conditions.</p> <p>Regarding teaching as a profession; thousands of teachers get fully funded bursaries especially in areas such maths and science. We have produced more than 1000 teachers last year, yet there is still a need for more teachers as they also make a difference in breaking the cycle of poverty.</p> <p>Naturally the unions have a responsibility to improve education in South Africa.</p> <p>Regarding issues such as strikes; in our profession the morale is extremely low as it is a very difficult task to teach. A lot more can be done by parents and societies: if we support our teachers we will have a far better output in terms of education and ethics. In Finland they only accept 10% of teacher training applications, whereas in South Africa we train 20 000 teachers too few! Why is this? Morale is low and the job is difficult.</p> <p>Regarding the right to strike, it is entrenched in the Constitution. However, we appeal for responsibility on the part of strike organisers.</p>

Debating points	Inputs from conference delegates	Response by panel members
<p>NACF</p>	<p>What is it that children see when they hear of the NACF? What do they see regarding the actions of government, civil society and business? What do they see that is exemplary? We hope that the resolutions at the end of the Summit will speak to these issues.</p> <p>The NACF may require a higher profile as many people including myself (Prof Jansen) had not heard of it prior to the Summit.</p>	<p>The review should not be lost. Research must be taken further as it only includes three provinces. Regarding all these issues, we all have a very important role to play and these processes should not be lost at the end of the conference</p>
<p>Concepts and language that people can understand</p>	<p>The biggest problem we face as a society, including the problem we face in this forum is that of concepts. When we speak of the NIF: what is the difference between the NIF and the Moral Regeneration Project? We are obsessed with concepts. We need to use language that speaks to basics and that goes to the poorest of the poor. Also we need to act and we need to implement.</p>	<p>Regarding the language of the conference and its sophistication; how do you link the NIF with the Moral Regeneration Programme? Why have two separate programmes? There is some logic to this and I do believe that the organisers would want to look at the possibilities of how to integrate this.</p>
<p>Women and sexual exploitation</p>	<p>Women are concerned about sexual exploitation and thus consideration should be given to the reinstatement of girls' only boarding schools by the Department of Education.</p>	<p>Root out any teacher that abuses another teacher or learner – action must be taken, action must be taken</p>

<p>Debating points</p> <p>FET Colleges</p>	<p>Inputs from conference delegates</p> <p>The report does not speak to FET colleges; in South Africa the focus is on the matric pass rate and the 'problem children' are rooted out of general education and are encouraged to go to FET colleges. But the FET colleges are not prepared to deal with such learners.</p>	<p>Response by panel members</p> <p>Regarding the FET colleges; they were previously seen as technical schools. We have changed the design of the FET colleges with the programmes and curricula content being adapted. In 2008 there are over 50 000 learners with bursaries of over R800 million. There are 50 colleges and satellite sites and in the next two years the goal is to achieve 1000 000 (learners) at these colleges.</p>
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CHAPTER 9: PLENARY SESSION



Delegates at the Third National Anti-Corruption Summit

9.1 INTRODUCTION

This section contains the closing remarks of the Chairperson of the NACF, Minister Geraldine Fraser-Moleketi, and the resolutions adopted by the Third National Anti-Corruption Summit. These resolutions will become the basis for anti-corruption work by the NACF as a whole and respectively by the various sectors.

9.2 CLOSING ADDRESS: BY MINISTER G J FRASER-MOLEKETI: Former Chairperson of the NACF and former Minister for the Public Service and Administration

It is South Africa's honour to have hosted you here today in Ekurhuleni. I do trust that you have found this Summit worth your while. I am certain this Summit has inspired and invigorated you so that you can return to your places of work with a renewed sense of purpose in the fight against corruption. We have completed our programme thanks to the combined efforts of all delegates; and we have come to the conclusion of the Summit. On behalf of the National Anti-Corruption Forum, I thank you for your participation and support. Your willingness to share your experiences and knowledge is highly appreciated.

The resolutions adopted at the Summit are inspiring and are an accurate reflection of the collective will of all of us and those whom we represent and are accountable to. As an anti-corruption coalition we have an opportunity, indeed an obligation to ensure these resolutions are fully implemented for the benefit of all.

Thank you once again for making this Summit the success that it is. The presentations, the discussions and the rigorous debates have been of a caliber that is outstanding and remarkable. Our collective commitment is evidence that we acknowledge the need for an integrated national integrity system.

I want to thank Professor Sangweni and the rest of the Public Service Commission team for their contribution and in particular, the Secretariat for the wonderful organisation of the Summit.

I want to thank all sectors for their commitment and to urge them to continue supporting the implementation of the national anti-corruption programme.

I also want to thank our Sudanese counterparts for their participation in the Summit.

I would also like to thank our donors for the continued support in making sure that we implement our national anti-corruption programme.

Participants at the Summit have demonstrated an enormous will to see us working towards an integrated national integrity system with a view to transforming our country into one that is corruption free. You have demonstrated this with vigour and an urgency that has been remarkable.

At this Summit we have collectively made a huge contribution towards shaping the anti-corruption/corruption discourse. We have debated this discourse and redefined the level of commitment required and critical to the discourse. We have agreed that corruption reinforces the banality of evil and its conceit lies in its ability to implicate, its complicity, its ability to violate the laws of nation states, flout international conventions and treaties and undermine democratic values and the democratic ethos.

We have agreed that in moving forward with the integrated national integrity system, our point of departure is to ensure that our anti-corruption institutions are fully capacitated. The Summit has challenged the DPLG and SALGA to ensure that local government municipalities are adequately capacitated to detect and combat corruption.

As we have argued throughout, South Africa has an adequate legal framework to prevent and fight corruption. However, increasing capacity is critical in ensuring that the legal framework is implemented and enforced and that its progress is monitored to identify and close gaps.

We also have identified the need to review the Protected Disclosures Act to ensure that whistle blowers are encouraged to report corruption and that necessary mechanisms are in place to ensure that those who blow the whistle are protected.

Most importantly, we agreed here during the Summit that we need to invest in monitoring and evaluation systems that will allow us to monitor the implementation of the anti-corruption programme and to continue our compliance with national and international legal instruments.

Critically, we have taken a challenge to ensure that communities and citizens are aware of measures we have put in place to eradicate corruption. Expectations are high. There is considerable media interest. The spotlight is shining on us. I take this as evidence that people want to know what the NACF has done to fight corruption. We need to feed public opinion with hard facts about measures implemented to fight corruption and their progress.

We also agreed that compliance with corporate governance measures in the business sector is critical and that business has a paramount role to play in building our national integrity system. We also agreed that price-fixing and the formation of cartels should be discouraged and that both government and business should continue working together to ensure that such practice is discouraged and that those implicated are punished.

We acknowledge that the first point of learning is observation; learners are looking at us as the National Anti-Corruption Forum. Right values are learned from society. We as the NACF come from all sectors, we are a microcosm of society. We are the society that imparts values to our learners. We recognize that a curriculum must be based on human rights. Ethical conduct is the business of society. Quality of education increases the character of learners.

We must reject the view that as individuals we are linked only to commercial transactions, and that we are accountable to no one, and need to justify our actions to nobody. In his novel, *Morning Yet on*

Creation Day, Achebe has embraced instead the idea at the heart of the African oral tradition: that 'art is and always was, at the service of man. Our ancestors created their myths and told their stories for a human purpose'. For this reason, Achebe believes that 'any good story, any good novel, should have a message, should have a purpose'. And the story of this Summit is that we have purpose and political will to work towards an integrated national integrity system.

One of the significant contributions this Summit has made to the discourse on corruption is our commitment to the values of *ubuntu* and *ujamaa*. These values inform our humanity, they tell us that we are human by virtue of "doing for others". This is the essence of our spirit of fighting corruption. This is the spirit we must continue to encourage in all sectors of our society. This is the spirit that is necessary for the creation of a socially cohesive and inclusive South Africa that is free of corruption.

I would take this opportunity to wish you all a pleasant trip back home.

9.3 RESOLUTIONS ADOPTED BY THE DELEGATES AT THE THIRD NATIONAL ANTI-CORRUPTION SUMMIT

The Third National Anti-Corruption Summit, hosted by the National Anti-Corruption Forum (NACF) from Monday 04 to Tuesday 05 August 2008 in Ekurhuleni, adopted the following resolutions:

We, the delegates drawn from various sectors of South African society attending the 3rd National Anti-Corruption Summit at Birchwood, Ekurhuleni on 4 and 5 August 2008,

Building on the outcomes of the two previous National Anti-corruption Summits –

Cognizant of the central role of strong leadership in the fight against corruption;

Affirm the fundamental significance of a National Integrity System in the fight against corruption in South Africa;

Respect our Constitutional values and institutional arrangements as the basis of the South African National Integrity System;

Recognise that South Africa has acceded to the United Nations, African Union, SADC and OECD international legal instruments on anti-corruption;

Recognise the progress made in the first 15 years of democracy and freedom towards a comprehensive national anti-corruption programme;

Noting that corruption undermines the democratic ethos and principles of our Constitution while eroding the social contract between citizens and the state;

Reaffirm the importance of inter-sectoral collaboration in the spirit of *ubuntu*;

Condemn the practice of price-fixing and related issues;

Recognise the centrality of education in laying the foundation for an ethical society and success in combating corruption and the critical need for society to support education;

Call for the values of the National Integrity System to permeate the structures, practices and principles of the State, business and civil society sectors; and

Recommit ourselves at an individual level and call on all others to commit themselves to the process of moral regeneration and adherence to a value system of ethical conduct.

We therefore resolve as follows:

A. Ethical practices in social and economic life

1. That the NACF establish a task team to urgently consolidate and articulate the National Integrity System.
2. To call on political parties and Parliament to expedite the regulation of transparency in party political funding and to consider a sanctions mechanism.
3. To urge political parties in all three spheres of government to disclose their business interests.
4. To continue to strengthen monitoring and accountability mechanisms with respect to all tender processes in the public sector.
5. To support the swift regulation of post-public sector employment for all elected and appointed public officials and its implementation.
6. To strengthen the current system of disclosure of interests for all elected and appointed public officials.
7. To develop systems of disclosure of interests for business and civil society.
8. To support legislative and other measures to ensure that companies found guilty of offences of price-fixing, market allocation and collusive tendering are prohibited from state tenders for a determined period.
9. To strengthen the enforcement provisions of the Competition Act including holding individuals accountable for price-fixing, market-allocation and collusive tendering.
10. To urge the business community to investigate self-regulating mechanisms to improve ethical conduct in practice.
11. To reaffirm that ethics must be infused in all aspects of the education system including the curriculum at all levels.
12. To reaffirm that schools of Business and Public Management must provide courses on professional ethics and anti-corruption.
13. To call for the strengthening of the institutional capacity of the private sector to detect and prevent corruption.
14. To complete the implementation of continental and international anti-corruption legal instruments and promote the enforcement thereof in national law.

B. Strengthening Accountability, Coordination and Oversight

1. To strengthen anti-corruption bodies and improve coordination among them.
2. That all allegations of corruption must be investigated and prosecuted without fear or favour, in accordance with past and present anti-corruption legislation.
3. To reaffirm that sectors and professional bodies must adopt sector and profession-specific codes of conduct and/or ethics as well as a training and communications regime to support their application.
4. That the private sector must mainstream anti-corruption practices and report on them in Annual Reports in an accessible and transparent manner.
5. To promote national anti-corruption values and interests continentally and internationally.
6. To call for improved financial accountability and transparency of civil society organizations.
7. To strengthen the powers of oversight bodies for the business sector and promote coordination of their activities.
8. To promote the National Anti-Corruption Hotline and support the further development of capacity to respond to reported corruption.

C. Access to services through participatory governance

1. That all state entities improve service delivery through inter-alia eliminating corrupt practices, encouraging whistle blowing and complying with the National Integrity System.
2. That services are offered to all citizens equitably and fairly.

3. That the NACF supports the urgent finalization of the review of the Protected Disclosures Act and initiates a national conversation on building a culture of whistle blowing.
4. That participatory governance must be promoted to ensure that corruption and the abuse of power are addressed at the site of service delivery.
5. To implement effective anti-corruption communication and awareness programmes at community level, within the business sector and across civil society.
6. That public officials in all spheres of government must be trained in ethics, conflict of interest principles, constitutional and administrative law and the principles of Batho Pele.

D. National Anti-Corruption Forum

1. That all three sectors must fully commit and take ownership of the NACF and the chair must rotate.
2. To strengthen the NACF and undertake a review of institutional arrangements including the role of leadership, composition, expanded participation and whether or not the NACF should become a statutory body.
3. To call on universities and professional bodies to expand their participation in the NACF.
4. That the NACF promotes dialogue within the sectors.



CHAPTER 10: CONCLUSION

It was encouraging to note that the Summit was representative of all sectors of South African society. The participants demonstrated an enormous will to work towards an integrated national integrity system with the aim of transforming South Africa to a country that effectively deals with the scourge of corruption. This was reflected not only in the presentations that were made but also in the comments and recommendations that emanated from the plenary and workshop sessions.

Of critical importance in the fight against corruption is the assurance that the country's anti-corruption institutions are fully capacitated. Such assurances were discussed at the Summit and the view was that all sectors should monitor the implementation of anti-corruption initiatives in order to enforce compliance with national and international legal instruments. Issues relating to these initiatives are fully incorporated in the Resolutions of the Third National Anti-Corruption Summit which were adopted by the delegates at the conclusion of the Summit.

The adoption of the resolutions of the Summit illustrates how the sectors of the NACF have been galvanized into collective action against corruption. There were honest and robust engagements on the approach to certain sensitive issues, such as price-fixing and party political funding, but unanimity on the principle to prevent and combat corruption enjoyed strong support. By adopting the resolutions the fight against corruption entered a new era and that is, the road towards building a National Integrity Framework.

ANNEXURE

LIST OF DELEGATES THAT ATTENDED THE SUMMIT

PUBLIC SECTOR

Initials	Surname	Organization
EI	Africa	Department of Provincial and Local Government
D	Ajang	Civil Service Commission – Sudan
C	Alexander	Special Investigating Unit
J	Apollo	Office of the Presidency
T	Assegaai	Office of the Premier North West
EG	Bain	Public Service Commission
C	Balla	Civil Service Commission – Sudan
R	Bellim	Mpumalanga Provincial Government
K	Bingle	Office of the Premier Northern Cape
P	Bishop	Special Investigating Unit
M	Biyana	Nelson Mandela Metro
FCW	Botes	Department of Defence
X	Chonco	National Intelligence Agency
AS	Claydon Fink	Department of Defence
S	Cleophas	Office of the Premier Western Cape
E	Coetzee	Department of Defence
P	Coldtiz	National Intelligence Agency
S	Cwati	Department of Provincial and Local Government
C	Da Silva-Nel	South African Revenue Service
L	Deepener	Independent Complaints Directorate
S	Diseko	Office of the Premier: Free State
W	Douglas	Office of the Presidency
N	du Plessis	National Treasury
V	du Preez	Institute of Internal Auditors
K	Gaesale	Department of Housing
B	Gama	Department of Labour
ME	Ganchi	National Treasury
K	George	Office of the Presidency
X	George	South African Local Government Association

Initials	Surname	Organization
F	Ginwala	Special Advisor to Minister for the Public Service and Administration
T	Godi	Standing Committee on Public Accounts
N	Goso	Department of Foreign Affairs
M	Gumbi	Department of Defence
C	Hatch	Member of Provincial Legislature: Mpumalanga
P	Helepi	Public Service Commission
B	Henderson	South African Local Government Association
M	Hleli	Office of the Premier: Free State
B	Holtman	Council for Scientific and Industrial Research
R	Jock	Department of Transport
L	Joel	South African Local Government Association
C	Kambule	Department of Provincial and Local Government
J	Kariri	United Nations Office on Drugs and Crime
K	Kehositse	Dr Ruth Mompoti District Municipality
L	Kekana	Department of Public Service and Administration
G	Kepadisa	Office of the Presidency
L	Kganyeago	Office of the Public Service Commission
ME	Kgosiemang	Government Employees Pension Fund
M	Kinnes	Department of Provincial & Local Government Western Cape
L	Kopofu	Department of Education
M	Leaser	Department Provincial and Local Government: Western Province
L	Lubisi	Office of the Premier: KwaZulu Natal
N	Lukele	Governors' Alliance
G	Luvuno	Department of Labour
MT	Madikane	Department of Provincial and Local Government
A	Madolo	Office of the Premier: North West
N	Magomola	Office of the Premier :North West
M	Mahapa	Department of Public Service and Administration
KE	Mahoai	Public Service Commission
J	Majola	Office of the Premier: Mpumalanga Province
P	Makgoke	Department of Public Service and Administration
NB	Makiwane	Walter Sisulu University

Initials	Surname	Organization
D	Malan	Department of Social Development
ME	Malatsi	Department of Correctional Services
F	Maleka	Government Employees Pension Fund
E	Maloka	New Partnership for Africa's Development
P	Maluleka	South African Local Government Association
J	Mangena	Department of Public Service and Administration
K	Markus	Independent Complaints Directorate
C	Martin	Department of Public Works – Eastern Cape
L	Marumule	Office of the Presidency
A	Masemola	Department of Health
K	Mashigo	Public Service Commission
E	Mathepe	National Department of Agriculture
KL	Mathews	Public Service Commission
Z	Mathiso	Dr Kenneth Kaunda District Municipality
	Matosa	Department of Transport
S	Matshego	South African Social Security Agency
Z	Mavundla	Office of the Presidency
M	Maxobongo	South African Social Security Agency
S	Mbuyazi	Department of Defence
A	Melane	Office of the Premier: Eastern Cape
J	Mgiba	South African Social Security Agency
R	Millson	National Intelligence Agency
C	Mitchell	South African Police Service
M	Mjiyako	Department of Provincial and Local Government
F	Mkhize	South African Local Government Association
V	Mlangeni	South African Social Security Agency
J	Mndawe	Office of the Premier Mpumalanga Province
J	Mofokeng	South African Social Security Agency
H	Mohamed	Department of Justice
KI	Mojaki	West Rand District Municipality
P	Mokotedi	National Prosecuting Authority
BE	Moloi	Dr Kenneth Kaunda District Municipality
D	Moloi	Office of the Premier North West

Initials	Surname	Organization
P	Moloto	Member of Provincial Legislature: Limpopo
TT	Molotsi	Department of Defence
C	Motshweneng	Office of the Premier: Gauteng
R	Mouton	West Coast District Municipality
M	Mpshane	Department of Defence
M	Msoki	Public Service Commission
A	Mulaudzi	Gauteng Provincial Government
M	Muthusamy	Office of the Public Service Commission
N	Mxakato-Diseko	Public Service Commission
Z	Mxunyelwa	Department of Public Works
S	Mzolo	Department of Safety and Liaison: Gauteng
E	Nagia	Institute of Administration and Commerce
P	Naidoo	Department of Defence
M	Ndala	Department of Justice and Constitutional Development
K	Nevhutalu	Gauteng Provincial Government
TE	Netshiongolwe	Vhembe District Municipality
A	Ngake	Department of Health
MM	Nkopane	Office of the Premier: KwaZulu Natal
P	Nonbabula	South African Social Security Agency
S	Noosi	Department of Home Affairs
B	Ntlou	Department of Housing
S	Ntsoane	Department of Provincial and Local Government
AJ	Nyambi	Public Service Commission
N	Oliver	Office of Premier Western Cape
C	Pakade	Department of Social Development
T	Phage	Boitshoko CHBCC
N	Phasha	Department of Labour
D	Phologa	Vhembe District Municipality
P	Pholoholo	Department of Justice and Constitutional Development
G	Pratt	Office of the Premier: Limpopo Province
O	Ramsingh	Office of the Public Service Commission
M	Rangata	Department: Provincial & Local Government
M	Runeyi	National Intelligence Agency

Initials	Surname	Organization
N	Sefa	Office of the Premier: KwaZulu Natal
S	Selamolele	Department of Public Works
M	Semenya	Department of Public Works
M	Shai	Public Protector
VS	Shongwe	Department of Public Works
S	Sibiya	Whembe District Municipality
M	Sigidi	Vhembe District Municipality
P	Sikhutshi	Vhembe District Municipality
KJ	Singh	Special Investigating Unit
PJ	Smal	Department of Education North West
J	Smit	Department of Home Affairs
P	Steenekamp	West Coast District Municipality
B	Subedar	Public Administration Leadership and Management Academy
L	Swana	South African Social Security Agency
W	Swenyane	Department of Education
PM	Tengeni	Public Service Commission
K	Terry	Office of the Presidency
S	Thela	Department of Transport
S	Truter	Department of Provincial & Local Western Cape
N	Tsatsi	South African Social Security Agency
S	Tshitangano	Office of the Premier: Mpumalanga Province
Z	Tyikwe	Office of the Premier: Eastern Cape
B	van Dyk	National Intelligence Agency
EJ	van Vuuren	Department of Social Development
D	Williams	Department of Public Service and Administration
VP	Zoko	Department of Labour
FN	Joseph	Department of Correctional Services
NC	Ndadlana	Department of Correctional Services
L	Ndungane	Special Investigating Unit
A	Nkwane	Legal Aid Board
E	Pheko	South African Local Government Association
M	Volmink	Legal Aid Board
R	Wills	Legal Aid Board

Initials	Surname	Organization
R	Davids	Office of the Public Service Commission
B	de Villiers	Office of the Public Service Commission
J	Kannemeyer	Office of the Public Service Commission
R	Kitshoff	Department of Public Service and Administration
G	Kunene	Office of the Public Service Commission
M	Malebana	Office of the Public Service Commission
E	Masango	Office of the Public Service Commission
J	Mashimbye	Office of the Public Service Commission
J	Matobela	Office of the Public Service Commission
J	Mentoor	Office of the Public Service Commission
I	Mongale	Department of Public Service and Administration
M	Morare	Department of Public Service and Administration
L	Motlhatlego	Office of the Public Service Commission
U	Mphendu	Office of the Public Service Commission
J	Mudau	Office of the Public Service Commission
S	Ndlovu	Department of Public Service and Administration
M	Ngema	Office of the Public Service Commission
M	Ngoasheng	Office of the Public Service Commission
V	Phala	Department of Public Service and Administration
H	Ramafoko	Office of the Public Service Commission
R	Ramaite	Office of the Public Service Commission
T	Reddy	Office of the Public Service Commission
A	Simpson	Office of the Public Service Commission
HD	Cloete	South African Police Service
NE	Khakhu	South African Police Service
DM	Mabaso	Office of the Premier: Gauteng
F	Mothapo	Office of the Premier: Gauteng
B	Ndala	Dr Kenneth Kaunda District Municipality
FE	Nemaenzhe	South African Police Service
F	Chain	Organization for Economic Cooperation and Development
G	Chaplog-Louw	Independent Electoral Commission
J	Jansen	University of the Witwatersrand
N	Mokoena	Competition Commission

Initials	Surname	Organization
P	Monyatsi	Botswana: Directorate on Corruption and Economic Crime
N	Nhlanhla	Member of Parliament: Portfolio Committee Finance
SS	Sangweni	Public Service Commission
E	Surty	Deputy Minister, Department of Education
GJ	Fraser-Moleketi	Minister for the Public Service & Administration
B	Khawe	The Royal Danish Embassy
R	Levin	Department of Public Service and Administration
G	Lobelo	Dr Ruth Mompoti District Municipality
NV	Maharaj	Public Service Commission
T	Makwetla	Premier of Mpumalanga Province
F	Maonera	Embassy Of Zimbabwe
A	Saloojee	Office of the Presidency
OM	Sewpaul	Department of Justice
S	Shilowa	Premier of Gauteng
IT	Motaung	South African Social Security Agency



PRIVATE SECTOR

Initials	Surname	Organization
B	Barua	Business Unity South Africa
K	Brebnor	Business Unity South Africa
P	Drodskie	Business Unity South Africa
H	Ebrahim	Deloitte and Touché
P	Goss	Business Unity South Africa
S	Heyl	Business Unity South Africa
J	Hlatshwayo	Business Unity South Africa
G	La Fleur	Business Unity South Africa
WV	Lacey	Business Unity South Africa
F	Lorgat	Anglo Gold
M	Majola	Business Unity South Africa
J	Marnewicke	Business Unity South Africa
T	Mashoeng	Business Unity South Africa
J	Minnaar	Afrikaanse Handelsinstituut
C	Mnguni	Soweto Business Executive Chamber
S	Mofokeng	Business Unity South Africa
T	Mohale	Soweto Business Executive Chamber
J	Moloi	Business Unity South Africa
S	Monyamane	Vodacom Group
C	Motshumi	Business Unity South Africa
P	Msiya	Business Unity South Africa
J	Mvubu	Business Unity South Africa
M	Ndaba	Eskom
B	Radebe	Business Unity South Africa
T	Simelane	Business Unity South Africa
T	Skenjana	Business Unity South Africa
E	Tshabalala	Business Unity South Africa
J	Tsotetsi	Business Unity South Africa
J	Van Eeden	Business Unity South Africa
F	Van Rooi	Business Unity South Africa
J	Vilakazi	Business Unity South Africa
N	Xulu	Vodacom Group

Initials	Surname	Organization
B	Barua	Business Unity South Africa
A	Maistry	Business Unity South Africa
J	Marnewicke	Business Unity South Africa
V	van Vuuren	Business Unity South Africa



CIVIL SOCIETY SECTOR

Initials	Surname	Organization
A	Berlin	Open Democracy Advice Centre
T	Boqo	South African National NGO Coalition
K	Callaghan	Governors' Alliance
J	Dube	South African National Civic Organization
H	Duminy	Federation of Democratic Unions of South Africa
J	Gadebe	South African National NGO Coalition
D	George	Federation of Democratic Unions of South Africa
L	Groenewald	Ethics Institute of South Africa
G	Hollands	Good Governance Learning Network
PG	Just	National Religious Leaders Forum
S	Kgatla	South African National NGO Coalition
J	Koen	Federation of Democratic Unions of South Africa
T	Kubeka	South African National NGO Coalition
S	Kokoris	National Religious Leaders Forum
T	Kweyama	South African National NGO Coalition
L	Leghule	South African National NGO Coalition
D	Lesejane	Ecumenical Service for Socio-Economic Transformation
E	Letlala	South African National NGO Coalition
T	Luthuli	South African National NGO Coalition
P	Madumise	South African National NGO Coalition
Z	Mafanga	South African National NGO Coalition
R	Mafohla	South African National NGO Coalition
S	Mahlangu	Police and Prisons Civil Rights Union
M	Mahlase	South African National NGO Coalition
N	Majikija	South African National NGO Coalition
G	Makgabo	South African National Civic Organization
M	Malete	Federation of Democratic Unions of South Africa
L	Martin	Open Democracy Advice Centre
M	Mashiya	Congress of South African Trade Unions
P	Matshoba	Open Democracy Advice Centre
T	Mbatha	TCCPS
C	Mogamedi	South African National NGO Coalition

Initials	Surname	Organization
N	Molefe	South African National Civic Organization
M	Molifi	South African National NGO Coalition
N	Nciza	South African National NGO Coalition
W	Nciza	South African National NGO Coalition
NP	Ndaba	South African National NGO Coalition
J	Ndlovu	African National Congress Women's League
R	Ndwandwe	South African National NGO Coalition
L	Nkosi	Moral Regeneration Movement
M	Ntsala	One Voice Against Crime
N	Ntshingila	South African National Civic Organization
K	Pelego	South African National NGO Coalition
L	Pelogo	Open Democracy Advice Centre
J	Phakoe	AGE in Action
E	Phathela	South African National NGO Coalition
M	Ratladi	South African National Civic Organization
T	Reddy	Institute for Security Studies
C	Schulz-Herzenberg	Institute for Security Studies
N	Sekoba	South African National NGO Coalition
F	Simila	One Voice Against Crime
T	Sithole	South African National NGO Coalition
A	Tilley	Open Democracy Advice Centre
B	Tlhagale	South African Catholic Bishop's Conference
T	Tshabalala	South African National NGO Coalition
C	von Eck	Institute of Internal Auditors
P	Zondi	South African National Editors Forum
D	Balt	National Professional Teachers' Organization of South Africa
D	De Villiers	Federation of Democratic Unions of South Africa
M	Deeb	South African Catholic Bishop's Conference
K	Dobie	Ethics Institute of South Africa
J	February	Institute of Democracy in South Africa
J	Molapisi	South African National NGO Coalition
N	Nyembezi	Black Sash
M	Samela	National Council of Trade Unions

Initials	Surname	Organization
D	Titus	Afrikaanse Taal- en Kultuurvereniging
H	van Vuuren	Institute of Security Studies
L	Saunders	One Voice Against Crime

DONORS

Initials	Surname	Organization
J	Kariri	United Nations Office on Drugs and Crime
R	Modipane	United Nations Office on Drugs and Crime
J	Lucas	United Nations Office on Drugs and Crime
E	Hustadt	Deutsche Gesellschaft Fur Technische Zusammenarbeit
N	Meyer	Deutsche Gesellschaft Fur Technische Zusammenarbeit







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