

CHAPTER 5: TOWARDS A NATIONAL STRATEGY

5.1 Introduction

Apart from the earlier survey of the literature that has evolved on the subject of corruption over the past fifty years, an attempt was also made (see chapter 2, section 6) to sketch the historical background that has to a large extent provided the context for the practice and proliferation of corruption in South Africa. The aim was to show that apartheid South Africa, up to the early 1990s and especially through its bantustan homelands policy, offered a unique environment for certain forms of corrupt practices to flourish in the presence of inadequate checks and controls. In this chapter a similar attempt will be made to continue the historical overview but over a shorter duration since 1994. This was obviously the most significant year in the history of South Africa thus far, as the country made its transition from apartheid to democracy under the leadership of Nelson Mandela. The past ten years of democratic rule, however, have also ushered in new and far more sophisticated forms and types of corruption than ever seen before in South Africa, much to the dismay of the law enforcement agencies who, as we shall see, were little prepared for such a development. Organized crime made increasing gains through its profligate activities, as a culture of lawlessness appeared to take root in South African society, thus making it an even more fertile ground for corruption to succeed.

If the perception that corruption has been on the increase since 1994 was true, so too was the determination of society, particularly the national government, to take steps to remedy the situation. This was initially undertaken more at the rhetorical than the practical level, with little or no thought given to the matter of costs and impact of fighting corruption.¹ Yet as President Mandela after five years in office began making way for a successor, the first attempts to set forth a plan for a national anti-corruption strategy began to take shape within government. This involved a series of consultations with various stakeholders, in and outside the public sector, often with international partners as well, and the introduction of a range of measures that culminated in the adoption of new legislation in 2003 to outlaw corruption in most of its overt forms.²

In this chapter, therefore, it will also be necessary to provide a brief overview of the changing policy environment and the ways in which policy shifts were undertaken. The task of fighting corruption was obviously one that signalled a radical departure from anything similar prior to 1994, hence the need to articulate some of the contributing factors that caused such a policy adjustment. The development of the national strategy against corruption took place over various phases, beginning with a series of discussions at Cabinet level and the release of a report that provided guidelines for strategic action. This was followed by a national public sector consultation at which a national

¹ OPSC/CD:PEHRR.

² Ibid

agenda or action plan to fight corruption began to emerge in anticipation of the more representative national summit that was held later. The national strategy, which serves as the basis for the ANC-led national government's anti-corruption efforts, was agreed upon at the next phase when the national summit was held, with then deputy president, Thabo Mbeki, playing a decisive role in proceedings. The summit called for the establishment of a national cross-sectoral body that would 'manage' the anti-corruption programme. The formal launch of this National Anti-Corruption Forum (NACF) marks the final phase in the process of building a 'national consensus' to fight corruption and will therefore be discussed in this chapter as well.

5.2 Policy Clusters

The existence of the apartheid state prior to 1994 contributed to the creation of a conducive environment for corruption to flourish, often in entrenched and disguised forms, as we have seen earlier (in 2:6). The harsh policies pursued by the former government were greatly detrimental to the country and its citizens, hence the need for rapid and radical change with the transition to democracy. The seismic shifts in policy that were to be the hallmark of the first democratic government were not initiated in a vacuum following textbook Weberian or Western-style models, though, but rather through particular clusters of policy actors comprising various networks and communities. While the problem of corruption was not one deserving of policy overhaul, among a

host of more urgent matters such as housing, health, education, and so forth, a political stage was being set and a pattern evolving that would define how any policy was to be formulated for the foreseeable future. The 'driving forces' in this new policy thrust included 'the urgent need for delivery, the need for consistency in policies, the political culture that confers legitimacy on high political and government leadership, and the need to protect liberation gains'.³ Political analyst Susan Booysen concludes that policymaking was as a result cast into 'a party managerial style, with the core clusters of policy actors prevailing'.⁴ Before moving on to consider the nature and consequences of corruption in the democratic South Africa, it might be useful to clarify the scope and effects of policymaking through such clusters, over against the more traditional policy process. This would help explain the particular 'party managerial style' of key public sector actors who will in turn play a decisive role in determining the approach to fighting corruption by the new government. For it is only within a distinctive framework that departments of the state are *allowed* to be different in utilising their unique positions, methods and consultants to restructure their policies and procedures.

The burden of overhauling policy immediately after 1994 was substantially informed by a moral imperative, for if '[a]partheid policies had been harmful and morally wrong, the new government's policies had therefore to right these

³ S Booysen 2001, Transitions and Trends in Policymaking in Democratic South Africa, *Journal of Public Administration* 36:2(June):131.

⁴ Ibid

wrongs, and the new policies had to be morally right'.⁵ The new policy framework that emerged from the ruins of the apartheid legacy was to be called the 'Reconstruction and Development Programme' (RDP). This was a comprehensive governmental initiative for the socio-economic upliftment of all citizens, especially blacks, and sought 'to eradicate imbalances and gross injustices of the past' and 'create the necessary conditions for a stable and viable democratic South African state'.⁶ To replace the old authoritarian, regulatory and unaccountable administration, the RDP sought to create the basis for an open, accountable and people-oriented approach in all government business. Civil society would henceforth become an active player in policymaking. Draft policy documents in the form of Green and White Papers were published to encourage public response, with conferences and workshops being held regularly on specific issues. Public hearings and public participation in parliamentary briefings were also held, while a significant development was the formation of forums to provide a context to achieve consensus on key policy matters such as the economy, labour, water, gender and, later, corruption, as we shall see. The RDP was closely aligned to the election manifesto of the ruling ANC-dominated government, but it had apparently been informed by 'neo-Keynesian assumptions and policy prescriptions, which had lost favour in the World Bank and IMF'.⁷ For a while

⁵ Ann Bernstein 1999, *Policy-Making In A New Democracy: South Africa's Challenges For The 21st Century*, Johannesburg: Centre for Development and Enterprise, August 1999, p 19.

⁶ M Wiechers 1995, The Caring/Benefactor State and its Administration, *Journal of Public Administration*, 30(4)(December): 236.

⁷ A Habib & H Kotze 2003, Civil Society, Governance And Development In An Era Of Globalisation: The South African Case, in G Mhone & O Edigheji (eds) 2003, *Governance In The*

though, South Africa's peaceful transition to democracy had given it the moral right to be different, and the extensive use of consultative and participatory modes of governance gave its policy experiments legitimacy among most of the citizenry and the international community as well.

By 1996, however, policy shifts were in the making with the closure of the RDP office in the Presidency and the adoption of a new Growth, Employment and Redistribution (GEAR) policy framework. This was in essence an economic plan of containing state expenditure, lower inflation, privatization, lower fiscal deficits, and increased foreign investment devised by elitist economists of the World Bank, the Department of Finance and the Universities of Cape Town and Stellenbosch.⁸ The 'economic exceptionalism' permitted under the RDP seemed over, as South Africa now had to catch up with the new world economic order on terms that were not of its own making. But GEAR largely failed to deliver economic growth, reduce unemployment, or bring social upliftment for the masses and was severely criticized by the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP), both alliance partners of the ANC.⁹ Some commentators believe that this failure forced the ANC to 'reintroduce the RDP as the government's primary development agenda',¹⁰ while others maintained

New South Africa: The Challenges of Globalisation, Cape Town: University of Cape Town Press, p 253.

⁸ Ibid, p 256.

⁹ G Houston & Y Muthien 2000, South Africa: A Transformative State? In Y G Muthien, M M Khosa & B M Mugubane, B M (eds), *Democracy and Governance Review: Mandela's Legacy 1994–1999*, Pretoria: HSRC, p 55.

¹⁰ Ibid

that the adoption of a neo-liberal economic policy effectively 'derailed' government's commitment to co-operative governance as GEAR 'by its very nature does not provide for consultative process'.¹¹ Implementation of GEAR has produced 'mixed success and ambivalence' with policy contradictions and failure by government departments to act decisively on corruption, capital wastage, the quality of administration, and crime.¹² After the second democratic election of 1999, the policy challenge shifted from formulation to implementation with fewer opportunities for wide stakeholder participation and to one where 'consultation was primarily based on bureaucratic and political interpretation'.¹³ Booyesen also observes that 'when deadlines for policy delivery became pressing', there is 'evidence of lip service' as an alternative to policy consultation.¹⁴ The co-operative governance mode of managing policy change was maintained, but a growing divide was also becoming evident among some civil society movements that were restless with government's pace of transformation that was bringing little benefits to grassroots communities.

In the case of some government departments, evidence has emerged that 'there has been a pretence of widespread consultation on intended legislation and policy, but without the capacity or real intention to listen to what emerged

¹¹ E Omano 2003, *State-Society Relations in Post-Apartheid South Africa: The Challenges of Globalisation on Co-operative Governance*, in Mhone & Edigheji, *Governance in the New South Africa*, p 70.

¹² Bernstein, *Policy-Making in a New Democracy*, pp 87–97.

¹³ Booyesen, *Transitions and Trends*, p 128.

¹⁴ *Ibid.*, p 135.

from the consultation process, and with little interest in learning from it either'.¹⁵ A pattern may be observed where an apparent 'confusion of policy advocacy with policy analysis' results in many within government believing their own propaganda without undertaking detailed systematic study.¹⁶ If policy analysis is 'a structured way of thinking about choices before deciding on a particular course of action', such a method of policy formulation has been a rare phenomenon.¹⁷ Over 300 pieces of legislation were produced between 1994 and 1999 alone, confirming the 'tendency to govern by legislation rather than sound administration'.¹⁸ Worse, the common assumption has been that 'good intentions will automatically result in good policies', which policies further show no consideration to the enormous financial implications of implementation.¹⁹ The 'exceedingly uncomfortable straitjackets' imposed by the demands of capital markets and international investors, in the midst of global mobility and interdependence, served to add further constraints on the policy renewal process as the rules for consultation became even more blurred.²⁰ Top officials in government departments, together with their policy advisors and policy consultants, who are all usually party loyalists, exert an 'inordinate influence' in policymaking, often even greater in degree than parliament or ministers.²¹ The Office of the Presidency may be responsible for centrally directing and co-ordinating the policy

¹⁵ Bernstein, *Policy-Making in a New Democracy*, p 22.

¹⁶ *Ibid*, p 20.

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ *Ibid*

²⁰ Booysen, *Transitions and Trends*, p 129.

²¹ *Ibid*, p 135.

process, but because of capacity constraints and lack of proper consultations, it has failed to make any real impression in the policy domain.²² With the formal establishment of Cabinet clusters in 1999, one would have anticipated a change in process and procedures, but evidence of such a shift is still lacking.

The secondary cluster of policy actors, which would include select business allies, together with COSATU and the SACP, and Parliament, have less of an influence, as policymaking remains 'executive-centric', where 'the policy and strategic positions of the top-leadership almost always prevail'.²³ Booysen's third tertiary cluster of policy actors, comprising civil society, people's forums and NGOs, play a role in determining needs assessment and implementation strategy, but their influence on policy remains in decline. This helps explain the rise of specific policy coalitions like the Treatment Action Campaign (TAC), which successfully forced government to transcend its 'unscientific paranoia' about antiretroviral therapy to prevent mother-to-child transmission of HIV/Aids.²⁴ TAC was led by an ANC member, Zachie Achmat, but their marginalisation in the health policy process compelled them to take an adversarial stance against government. It is the protests of such groups, according to former World Bank vice-president Joseph Stiglitz, that are now

²² Ibid, p 133.

²³ Ibid, p 137.

²⁴ Habib & Kotze, Civil Society, p 266.

making government officials and economists around the world think about alternatives to neo-liberal market-driven models for growth and development.²⁵ In an overall sense, despite the magnanimous achievements of government since 1994, policy proposals like White Papers have shown a 'lack of real analysis' as they tend to announce where we need to go without telling us how to get there.²⁶ If the resultant gap is filled by legislation, this often produces unintended and contradictory outcomes if and when it reaches the implementation stage. Both Parliament and Cabinet have been reduced to playing surrogate roles of contributing to legislative debates, especially since 1999, while policy remains the preserve of a central hierarchy (comprising the president and few others). One is led to conclude therefore that the traditional rules of policymaking were being increasingly abandoned as South Africa entered the new millennium. The above overview of the policymaking process since 1994 helps in some way towards anticipating the approach that will likely be followed by the national government in fighting corruption and evaluating it thereafter.

5.3 New Corruption

To what extent did corruption arise as a problem requiring government intervention? On the basis of media coverage alone, one may be led to perceive that South Africa experienced a rapid rise in reported incidents of

²⁵ Ibid, p 268.

²⁶ Bernstein, *Policy-Making in a New Democracy*, p 23.

corruption after 1994. As government itself maintains no such database, most commentators have relied on investigative journalists and the print media to provide information about corruption, since reporting such matters is in the public interest. The New National Party (NNP), the successor of the old National Party that ruled from 1948 to 1994, on becoming the official opposition in the national parliament, took the bold step of producing a public sector Corruption Barometer 1994–1998.²⁷ The NNP claimed that it had the ‘responsibility to expose corruption and its causes’ and owed an obligation to the voters to challenge the ruling ANC ‘to account for the threatening institutional collapse of the public sector’.²⁸ The first version of the barometer excluded the Western Cape, Gauteng, Northern Cape, and North West provinces as their exposure to corruption was considered limited. The second version, published a year later in 1998, noted that corruption cases had since doubled in the North West and that Gauteng was now ‘plagued by corruption in various departments’.²⁹

The NNP’s attempt to track various cases of corruption through reports of constitutional oversight bodies (like those from the Auditor-General or Public Protector) and newspaper articles was beset with serious difficulties as the results of many investigations into corrupt practices remained largely unknown, despite South Africa becoming a transparent society. The justice

²⁷ S Vorster (ed) 1998, *Corruption Barometer 1994–1998*, Cape Town: National Party Federal Council.

²⁸ *Ibid*, p 4.

²⁹ *Ibid*, p 108.

system indulged itself in lengthy delays for almost every case before it, while state departments were not forthcoming with names and outcomes of corruption cases that required disciplinary action. In the category of 'ghost workers' and pension fraud scams, the information that could be procured was minimal, especially in terms of the numbers of people involved and the amounts of taxpayers' money that was stolen.³⁰ These problems aside, about 4 000 cases were identified in all nine provinces and the total amount squandered ran up to nearly R37 billion.³¹ While one would prefer to exercise caution with data provided for political consumption, the method and sources used give this work by the NNP sufficient credibility to compare it with other similar efforts.

Using a scientifically valid instrument, the Institute for Democracy in South Africa (IDASA) initiated a series of nationally representative surveys from 1994 to 1999 on the public perception of political corruption.³² This was an attempt to gauge the 'citizens' assessments of official corruption' and to measure levels of trust and confidence in government. Nearly half (46 %) of those surveyed believed that those employed in the public sector were guilty of corruption. There was a strongly held view (among 41 %) that corruption

³⁰ Ibid, p 4.

³¹ Ibid, p 8.

³² R Mattes & C Africa 1999, Corruption – The Attitudinal Component: Tracking Public Perceptions of Official Corruption in South Africa, 1995-1998. Paper presented at the 9th International Anti-Corruption Conference, Durban, 12 October 1999.

had been on the increase since 1994. Most corrupt practices were thought to take place in national and provincial government departments (50 %) with lower levels perceived at municipalities, parliament and the Office of the President. Most of the respondents in these surveys expressed their desire for greater honesty from public officials than they had been experiencing, while a third believed that these same officials were less honest than the ordinary citizens. Only a paltry 6 % believed that the government of the day was clean and free of corruption. The overall conclusion was obviously that South Africans held a rather negative and dismal perception of corruption in government ranks, but as perception can be misleading, further explanations were sought. One possibility raised was that the hostile and suspicious attitude was prevalent among certain sub-groups mostly, who were cynical towards black government anyway. The media could easily be the main driver in influencing public opinion, and public ignorance itself could have fuelled the cynical disposition.³³

In 2000 another survey of the opinions of 150 'experts' (mostly degreed managers who had some direct and indirect exposure to corruption issues) on corruption was conducted by the Institute of Security Studies (ISS) to obtain new data on corruption matters and assist policymakers in devising effective

³³ Ibid, p 5f.

strategies of combat and prevention.³⁴ A third of these experts knew of bribery being practised, and a further third agreed that corruption levels were the same before and after 1994. Interestingly, about half of them believed that corruption would decrease over time, while a third believed it was more likely to increase. Nearly two thirds of those interviewed accepted that crime, security and job creation were more pressing issues for the country, though. While a large majority (83 %) acknowledged government's commitment to fighting corruption, 73 % of these experts did not believe that government resources were adequate. The Special Investigating Unit (SIU), when it was headed by Judge Willem Heath, was generally considered to be the most effective anti-corruption agency (85 %), followed by the Auditor-General (74 %) and the Public Protector (62 %). The two state departments most vulnerable to corrupt practices were identified as the Police Services and Home Affairs.³⁵ The ISS survey also established that a 'decline in morals and ethics' was one of the main causes of corruption, while greed, poverty, unemployment, mismanagement and poor controls were also responsible for its spread.³⁶

In the IDASA surveys mentioned above, the Eastern Cape province was identified as ranking very high in terms of its exposure to corruption. The Public Service Accountability Monitor (PSAM), which is based in this province

³⁴ L Camerer 2001, *Corruption In South Africa: Results Of An Expert Panel Survey*, Institute for Security Studies Monograph Series No 65, Pretoria: Institute for Security Studies.

³⁵ *Ibid*, p 31.

³⁶ *Ibid*, p 46.

at Rhodes University, Grahamstown, undertook another survey in 2001 to establish the divergence of perception between government bureaucrats at the Bisho capital and the public as far as such corruption was concerned.³⁷ PSAM were also interested in whether and how corrective action had been taken against corrupt persons. The key findings of this survey, while strictly valid for one province out of a possible nine, can be corroborated with the NNP's barometer and the IDASA surveys, particularly with regard to the prevalence of corruption. A total of 89 % of the government officials surveyed in the PSAM survey felt that corruption was 'wrong and punishable' but 48 % found it 'not wrong' or 'wrong but understandable' to accept gifts in the performance of one's public duty. Forty-two per cent blamed democracy for the increase in corruption, 22 % felt corruption to be linked to low salaries, 23 % agreed that 'extra payments and favours' contribute to effective government, and 21 % of respondents were of the view that government has more important business to take care of than worry about officials earning extra money through corruption. These findings help explain why corruption in the Eastern Cape has assumed endemic proportions, and how the influence of the 'apartheid legacy of patronage and clientelism on the current administration' has taken its toll.³⁸ This province was, after all, the result of an amalgamation of two bantustan homelands and the eastern part of the old Cape Provincial Administration.

³⁷ C Alan, R Mattes & U Millie 2002, *Government Corruption Seen From The Inside: A Survey Of Public Officials' Perceptions Of Corruption In The Eastern Cape*, PSAM Research Series No 1, Public Service Accountability Monitor, Rhodes University, Grahamstown.

³⁸ *Ibid*, vi.

Cabinet decided to intervene in December 2002, when the Eastern Cape provincial administration seemed to be at a point of collapse, and sent a task team to assist in addressing the structural problems and bring corruption under control. A further national intervention into the province's Department of Education was ordered in July 2004 after it ran up a deficit of some R600 million. Even the premier of the province, his director-general and a number of his ministers were replaced after the 2004 elections to bring about positive change. As one analyst notes, this is all too much of 'an alarming reminder that regardless of the many good policies a country such as South Africa might have to tackle graft, if unchecked by official sanction, the consequences can be disastrous'.³⁹

From our observations thus far it seems possible to confirm the conclusion reached by Tom Lodge, namely that 'though old habits and dispositions may well sustain much of the existing administrative corruption, its expansion is also the consequence of change . . . the simultaneous democratization and restructuring of the South African state makes it very vulnerable to corruption'.⁴⁰ It should also be emphasized that the constitutional provisions for transparency and accountability in all government business, and the elevation of values such as access to information and just administrative action in the Bill of Rights, in defining the peculiar character of South Africa's

³⁹ H van Vuuren, *National Integrity Systems*, p 9.

⁴⁰ Lodge, *Political Corruption in South Africa*, p 18.

democracy (over against its secretive past), have made corrupt behaviour more susceptible to detection even if it does not end in punishment.⁴¹ The open nature of democracy also makes access to information previously held captive by the state less difficult to obtain, especially for investigative journalists seeking to expose such behaviour, and for the reporting of corruption to take place without fear of reprisal.

But the reintegration of a substantial number of exiled citizens, mostly into public office, low levels of political competition, poor and uneven economic prosperity, high levels of crime caused by an antinomian culture, and the absence of sufficient competition regulations to protect business interests have not helped. Human beings suddenly thrust into positions of power and prosperity from conditions of dire poverty are as likely to succumb to the temptations of illicit gain as those motivated by avarice. The sweeping powers of an unchecked or authoritarian executive by a parliament totally dominated by a single party constitute an institutional licence to cover up corruption if and when necessary. The inheritance of a population whose majority had for hundreds of years celebrated their often illegally acquired gains in an illegitimate system of white minority rule was a recipe for the collapse of law and order. Economic growth is only possible in a stable and competitive environment, yet the moral imperatives for economic transformation made the empowerment of blacks a key priority, resulting in uncertainty and the need for further, and often, unwelcome legislation initiated by government.

⁴¹ See Act No 108 of 1996, sections 32, 33 and 195.

A free and independent media is considered pivotal to countering corruption as an independent judiciary,⁴² and in South Africa since 1994 the print media at least has influenced public perceptions about high-level corruption. The country's first democratically elected Minister of Welfare, Abe Williams, was forced to resign in February 1996 from the then Government of National Unity in which he represented the National Party. He was prosecuted for accepting a huge bribe from a company tendering to dispense pensions and sent to jail.⁴³ Winnie Madikizela-Mandela, Deputy Minister of Arts and Culture until her dismissal in 1995, was alleged to have accepted R75 000 for helping to influence the award of low-cost housing contracts, while Housing Minister Sankie Mthembu-Mahanyele was believed to have allowed the award of a contract to a company co-owned by a close friend.⁴⁴ Early in January 1996, the *Sunday Times* reported on a parliamentary hearing into the Department of Health's award of a R14 million contract to a playwright for his 'hideously expensive, of little artistic merit, anti-Aids play, *Sarafina 2*'.⁴⁵ Regular calls were subsequently made for the Minister of Health to resign owing to the alleged wastage of taxpayers' money, cover-ups, and for misleading parliament about the matter. When the Public Protector confirmed evidence of tender violations and other irregularities in the matter, it was hoped that the

⁴² See a full discussion of this theme in the *TI Source Book 2000*, pp 119–136.

⁴³ Lodge, *Political Corruption in South Africa*, p 15.

⁴⁴ TI 1997, *Corruption and Good Governance*, Transparency South Africa, Braamfontein, 1997, p 23 (unpublished). See also Court's decision not to prosecute in charges of defamation brought by the former minister against the *Mail and Guardian*, 13 August–19 August 2004.

⁴⁵ 25 January 1996.

president would at least reprimand the minister.⁴⁶ On the contrary, in the Cabinet reshuffle following the 1999 elections, the minister assumed the more senior Foreign Affairs portfolio.

South African's biggest corruption 'scandal' began to unravel in 2000 after government had signed a massive R40 billion Strategic Defence Procurement Package.⁴⁷ Contracts were entered into with numerous multinational companies for the supply of helicopters, submarines, arms and other military hardware, with particular attention given to 'offsets' and 'incentives' to justify the transactions. Numerous procedural irregularities were highlighted by the media and opposition parties in parliament, forcing government to appoint a joint investigating team to report on allegations of corruption in the whole arms deal. Some of these allegations were shown to have substance, but not enough to have influenced the entire package of transactions.⁴⁸ Numerous officials who had received gifts from some of the companies were mentioned in the report by name, while a senior official was shown to have favoured companies in which his brother, Shabir Shaik, had a stake.⁴⁹ Shaik faced a corruption trial starting in October 2004, and as the former financial advisor to Deputy President Jacob Zuma, his case raised serious questions that Zuma himself may be implicated. The former national director of public prosecutions

⁴⁶ *Sunday Times*, 9 June 1996. See the detailed discussion of the Sarafina 2 scandal in A Venter 1998, The Sarafina 2 Case: Evasion Of Ministerial Responsibility To Parliament, *Journal of Public Administration*, 33(2)(June):87–105.

⁴⁷ Van Vuuren, *National Integrity Systems*, p 10.

⁴⁸ *Ibid*

⁴⁹ T Lodge 2003, Southern Africa, in R Hodess (ed) 2003, *TI Global Corruption Report 2003*, Berlin: Transparency International, p 253.

Bulelani Ncguka in any case made public that he had *prima facie* evidence of corruption involving the deputy president.⁵⁰ It is of further interest that none of the foreign multinational companies or their employees implicated by the media for behaving corruptly in the arms deal have faced any sanction in their respective countries.

For some years after its transition from apartheid, South Africa was therefore more at risk to the corrosive effects of corruption in the lives of its citizens, the conduct of its public servants, the behaviour of its politicians, and in the nature of commercial transactions than ever before. The exact extent of the new forms of corruption that had taken root, in addition to the old forms, is difficult to quantify, as has been explained. South Africa's rating on the Corruption Perceptions Index was by no means favourable for investor confidence.⁵¹ In 1995 it stood at 21 out of a possible 41, and by 2003 its position had actually deteriorated in relation to countries such as Mauritius, Botswana and Tunisia. The pervasive practice of corruption, though not a new phenomenon to South Africa, had made an unwelcome blotch on the new democracy, and institutions of society, in the public sector in particular, were obliged to devise ways and means of confronting it. Exactly how this development was perceived, especially within government, and the full range of measures that were contemplated, and often enacted, to face this new corruption challenge will be analysed in the ensuing discussion.

⁵⁰ Van Vuuren, *National Integrity Systems*, p 11.

⁵¹ TI 1995, *Corruption Perceptions Index*, Berlin: Transparency International.

5.4 Cabinet Briefings

With burgeoning crime levels sweeping the country after 1994, it was not unexpected that a National Crime Prevention Strategy was devised and approved by Cabinet for implementation. In March 1997 the Cabinet ministers responsible for this strategy established a programme committee to consider the matter of corruption within the criminal justice system. This committee initially included representatives of the South African Police Services (SAPS), the Department of Correctional Services, and the Attorney-General of the Witwatersrand. Of immediate concern to this group was the need for a more effective docket control system and greater efficiency in the management of investigations and prosecutions. But these concerns were not pursued as 'the committee lacked resources'.⁵² In October of that year Cabinet then requested the Minister of Justice, with the assistance of the Minister for Public Service and Administration, and the Minister for Provincial Government, 'to consider proposals on the implementation at National and Provincial level of an Anti-Corruption Campaign'. The Justice Minister at that time, Abdullah Omar, was specifically asked to give consideration to three issues. The first concerned 'a campaign aimed at restoring the collapse of the system of social values and addressing corruption in its broadest sense'; the second issue involved 'the compilation of a consolidated report on the government's efforts to deal with corruption'; and lastly, 'the nature of the campaign, the

⁵² Proposal for a Campaign against Corruption: Report to Minister A Omar, July 1998, Department of Justice, unmarked, unpublished. See OPSC/343/98.

participants and a framework for implementation'.⁵³ The moral overtones of government's concern, their recognition of the systemic nature of corruption in the country, and the political will to devise a counteractive framework should not be overlooked. The primary benefit in the broadest sense of the fight against corruption was to be the restoration of the moral fabric of South African society.

Minister Omar subsequently appointed a committee to make recommendations to him in the above regard. This committee was to be headed by Dr Bernie Fanaroff of the National Crime Prevention Strategy secretariat, representatives from the South African Police Services (SAPS), the National Intelligence Agency (NIA), and the Ministry of Justice. By July 1998 the committee was able to produce through substantial work involving research and consultation a report detailing a series of recommendations for Minister Omar's consideration. These proposals were included in a Cabinet memorandum that was approved on 23 September 1998 and constituted the first set of policy guidelines for implementation in the fight against corruption.⁵⁴ The significance of this step should not be ignored, as for the first time in South Africa's history a government had by implication accepted that corruption was a serious problem requiring practical measures for its control. The report itself was the first attempt by anyone anywhere to carefully study the measures necessary to combat and prevent corruption in the South

⁵³ Minutes of Cabinet Meeting, 8 October 1997, OPSC/CD:PEHRR

⁵⁴ Minutes of Cabinet Meeting, 23 September 1998, OPSC/CD:PEHRR

African public sector. Yet because it was written primarily to brief the Minister of Justice and his Cabinet colleagues on how to tackle corruption, the report was classified 'secret' and remains unpublished. The proposals adopted by Cabinet in this regard, however, were made public and these are worth mentioning in more detail (see Appendix II).

Effective investigation and prosecution of corruption was considered paramount in the proposals and should include breaches concerning payment of government taxes, state tendering, government purchases, disclosures by public officials, and insider trading within private companies. Mention was also made of the need for a feasibility study on the question of a single anti-corruption agency and the rationalization of existing agencies. The need for new legislation, a new strategy with due consideration to public service corruption, a statement of political intent from the president, a national summit, business co-operation, and greater levels of accountability from public officials were all listed for attention, as well as taking the fight against corruption forward.

It is understandable that the substantive response of government as contained in these measures was couched within the law enforcement framework, despite the recognition that 'investigation is in the long term unaffordable and unsustainable and is in any case much less cost effective

than prevention'.⁵⁵ It was also clearly established that the fight against corruption required political commitment that had to be matched by a willingness 'to commit the necessary resources'. This recognition of the costs of fighting corruption at the outset of policy deliberations is highly significant and will be of particular interest to us for the rest of this study.

Even where the establishment of a new anti-corruption agency was contemplated in the Cabinet proposals, it had to be 'properly resourced'. In terms of the initial report, Cabinet was urged to recognize that 'an effective fight against corruption will require enormous resources'.⁵⁶ Thus while the attention given to costs was included in the proposals, it seemed to have been a more critical consideration when the report was originally written. This very important factor to ensure efficacy of implementation was unfortunately lost in the adaptation of the report into concrete proposals for action by the Department of Justice. Whether this was deliberately or unwittingly done is difficult to ascertain. The report called for a budgetary process in terms of government's medium-term expenditure framework to ensure that the envisaged anti-corruption agency and the national campaign against corruption became effective. Thus while national government was eager to flex its muscle of authority in firming up an agenda of actions against corruption, no serious consideration appears to have been given to the monetary implications of such actions. This might seem odd as most Cabinet

⁵⁵ Report to Minister Omar, p 2.

⁵⁶ Ibid, p 11.

proposals are required to be submitted with due consideration given to budgetary implications of policy measures proposed. But government could hardly have been at such a stage in its operations to contemplate action of this sort if it faced other more pressing budgetary constraints and if corruption did not matter as much. Or, there might have been an unwritten consensus that the costs of fighting corruption would have to be largely borne out of the existing budgets of departments and agencies without any new or special funds allocated for it. Either way, the implementation of policy measures against corruption would be difficult to sustain without the necessary resources.

5.5 Public Sector Commitment

To underscore the growing sense of urgency and necessity for ‘a new proactive approach to combat corruption,’ and to promote government’s constitutional obligations of transparency, clean government and efficient service delivery, a public sector conference against corruption was held in parliament’s Old Assembly Chamber in November 1998.⁵⁷ Apart from developing some concrete plans to combat and prevent corruption in the public sector, this conference was intended to provide a platform to prepare for the national summit and announce government’s unequivocal support for

⁵⁷ OPSC/343/153

the fight against corruption. Deputy President Thabo Mbeki in his keynote address spoke of a 'zero tolerance' approach whereby 'Government is firmly committed to coming down harshly on all forms of corruption including bribery and the abuse of public trust'.⁵⁸ New measures were to include new legislation, whistle-blower protection, bolstering the criminal justice system and a national campaign against corruption. Likewise, the Minister for the Public Service and Administration, Dr Zola Skweyiya, in his opening statement to the conference, emphasized that 'there must be zero tolerance for corrupt behaviour and practices'.⁵⁹ Justice Minister Omar reminded delegates in his speech that their struggle was against 'something that can threaten the whole edifice and social fabric of democracy, the rule of law, and the human rights culture' that was taking shape in the country. Corruption, together with crime, was now posing a serious threat to the stability and security of the country and had to be confronted.⁶⁰

The historical significance of this event should not be underestimated. This was the first occasion in South Africa's history that the precincts of parliament were opened for discussion on such a sensitive subject as corruption involving most components of the public sector. Fortunately, most of the time was not taken up lamenting the corrupting legacy of the past, but in devising new strategies for future action through group discussions. The final

⁵⁸ T Mbeki 1999, Keynote Address: Fighting Corruption in South Africa, in S Sangweni & D Balia (eds), *Fighting Corruption: Strategies for Prevention*, Pretoria: Unisa Press, p 11.

⁵⁹ *Ibid*, p 13.

⁶⁰ *Ibid*, pp 21—24.

conference statement, which was subsequently adopted as a policy directive by Cabinet, gives a strong indication of the emerging consensus of the time as far as public sector reform for corruption control is concerned (see Appendix III). It proclaimed the struggle to end corruption to be the same struggle to transform government and society as a whole, and committed public officials to developing a strategy, which combined 'prevention with ruthless action against aggressions'.⁶¹ An 'ethos of public service, discipline and accountability' was called for where managers would declare their private assets in a register, sign performance agreements, enforce the Code of Conduct for the Public Service, ensure better financial management and control to prevent corruption, and where government undertook to 'improve the capacity and efficiency of investigation and prosecution of corruption'.⁶² Delegates further agreed that the private sector should form part of the 'solution' in reforming public sector procurement with banks and auditors playing a more critical role in combating corruption. A working committee representing the stakeholders from among those present was tasked with taking forward the implementation process of the measures adopted and preparing for the forthcoming summit on corruption.

Most sections of the media reported extensively on the public sector conference, with the deputy president's speech often being reprinted in mass

⁶¹ Ibid, p 166.

⁶² Ibid, p 169.

circulation newspapers.⁶³ Government, it seemed, had put the nation at ease, including many opposition (political) parties, in stating its case against corruption unreservedly. The political intent to act decisively against corrupt individuals, as stated at the conference, was a welcome sign of relief for many who doubted the ruling party's ability to clamp down on its own members who were guilty. In addition to the issues mentioned above, case studies were offered on good practice in fighting corruption with inputs from the Department of Home Affairs, the South African Revenue Service, Parliament, Post Office, Mpumalanga and KwaZulu-Natal provinces, SAPS and the Department of Welfare. Group discussions were also held to cover the reform agenda for local government, strategic co-ordination of anti-corruption agencies, discipline, the criminal justice system, procurement and financial management. The public sector had for the first time gathered to collectively consider the problem of corruption and succeeded in getting its constituent parts to commit to a common struggle against the effects of corruption on the country as a whole. This was significant, as it provided a basis for government to consider holding a broader cross-sectoral event to develop a national strategy against corruption.

Unfortunately, again, as alluded to regarding government's earlier attempts, no mention was made anywhere or at any time during the two-day proceedings of the budgetary implications of the measures that were put forward to fight corruption. Nor was the need for a costs versus impact

⁶³ See, for example, *Sunday Times*, 15 November 1998.

analysis acknowledged, as the public sector representatives seemed quite oblivious of the monetary implications of their noble aspirations. The conference itself, as an event in the unfolding programme of government actions against corruption, was almost fully supported with funds from the British Department for International Development. The conventional understanding was that the national fiscus was sufficiently resourced to adapt to changing demands that arose from time to time and so the matter of resources was considered secondary. Government, it seemed, had pledged to henceforth plunge itself into a 'zero tolerance' mode of tackling corruption with no thought given to the capacity requirements for such an approach to succeed. It was also unclear following the conference as to who exactly was to do what to ensure that political will found expression in policy shifts. The chairperson of the Public Service Commission, Stan Sangweni, would henceforth initiate a series of meetings with various stakeholders to prepare the country for the national summit on corruption. But he was powerless to ensure that resolutions passed in Cape Town would find their way to implementation in all public sector entities and state departments. The risk of failure, of this public sector initiative on corruption being viewed as serving the mere purpose of political prattling, was one that government had to guard against, therefore.

5.6 National Summit

South Africa had barely started walking the road of democracy after its repressive past when the alarm bells were sounding of concerns for the moral fibre of the nation. Religious leaders took pride of place in pointing to what they termed 'a deep moral crisis' that had engulfed the country by 1998.⁶⁴ They began a process of engaging the political leadership in a series of moral summits to evaluate reasons for the moral impasse and chart the way towards societal renewal. Crime levels had ascended to about the highest in the world with instances of rape, murder, robbery, car hijacking, child molestation, domestic violence, and corruption spiralling out of control. Through the National Religious Leaders' Forum, a 'Code of Conduct for persons in positions of responsibility' was developed so that South Africans could 'live honest and upright lives and provide a heritage of love and prosperity for future generations'.⁶⁵ These calls did not go unheard, as President Mandela was the first to sign this code when he launched it, and he himself, in opening parliament in early 1999, lamented about those cadres in various government departments 'who are as corrupt – if not more than – those they found in government'.⁶⁶ The scourge of corruption was making

⁶⁴ B Adair, Consultant's Report 1999, in S Sangweni & D Balia (eds), *Fighting Corruption: Towards a National Integrity Strategy*, Pretoria: Unisa Press, p 25.

⁶⁵ Ibid, p 47.

⁶⁶ Opening Address to Parliament, 1999.

South Africa a 'sick society' whose future depended on a resolution of this debilitating problem.

Almost in anticipation of such a disturbing situation, prominent cleric and anti-apartheid activist Dr Beyers Naude had seized the moment to initiate the formation of the national chapter of Transparency International in South Africa as early as 1997.⁶⁷ This followed from a seminar held jointly by Transparency International and the Africa Leadership Forum in 1995 in Pretoria, at which Naude pleaded for civil society to 'take hands and act in unison' in forging a new coalition against corruption.⁶⁸ The extensive consultative process that preceded the national summit involved all sectors of South African society, with a view to obtaining critical information about all such activities that were directed against corruption. The private sector was no mere passive observer in this situation as the release of a corporate governance report, produced by the Institute of Directors under Judge Merwyn King, offered guidelines regarding responsibilities to shareholders, relations with customers and suppliers, employment practices, accounting practices, insider trading, social responsibility, and other such matters (see 6:5).

⁶⁷ TI 1997, Corruption and Good Governance, Transparency South Africa, Braamfontein (unpublished).

⁶⁸ Civil Society and Mobilisation against Corruption, Unpublished Paper presented at the Africa Leadership Forum Seminar on Corruption, Democracy and Human Rights Abuse in Southern Africa, 31 July–2 August 1995, p 2.

The National Anti-Corruption Summit, when it took place in April 1999, would therefore serve as the most critical milestone in the country's short struggle against corruption. It was a struggle largely inspired by President Mandela,

but which found expression among most of his Cabinet ministers, other senior officials in the public sector, community and religious leaders, and among the rank and file of South Africans of all races. A new president was to assume office soon after the summit, but a collective vision, tentative strategy and national consensus to combat corruption were already in place.

The summit was again held in the precincts of Parliament, with funding secured from the European Union for its organization. Unlike the earlier effort, government now sought to 'develop a clearly articulated national strategy to fight corruption in all sectors of society', to obtain a commitment thereof, and to recommend legislative measures where necessary.⁶⁹ The delegates, drawn from all sectors of South African life (but significantly excluding representatives of parliamentary opposition parties), were unanimous that corruption adversely affects all, but especially the poor, was corroding the national culture and ethos of democracy, was furthermore a blight on society caused by the worship of self, and required a 'culture of zero tolerance' to bring it under control. The resolutions (see Appendix IV for full text) drew attention to a plethora of issues, including the need for legislative review, whistle-blowing mechanisms, support for open democracy, special courts, 'blacklisting', a national co-ordinating structure, hotlines, disciplinary action, ethics, codes of conduct, education and training, research and analysis, and the need for a sustained media campaign. Cabinet was of course only too

⁶⁹ Sangweni & Balia, *Fighting Corruption: Towards a National Integrity Strategy*, p 4.

willing to adopt this agenda as a good governance policy imperative by July 1999, particularly as it resonated strongly with measures it had been contemplating since 1997.

Despite the presence of participants from civil society, organized labour and the private sector at the summit, commitments were again made to the nation without due consideration to their potential impact on the national budget or the cost of effectively implementing such measures, as mentioned above. The law enforcement approach to fighting corruption again took precedence, but amidst a range of other tasks for most sections of society. A partnership of shared interests was now possible as government, business and civil society pledged their resolve to jointly fight a common enemy. Some business leaders were inspired to the extent of producing an ethics code for business practices, but which was subsequently not adopted by any national or local formation. Civil society might have enjoyed a greater measure of success as it moved to organize the first national civil society conference on corruption. This event eventually took place in August 2000 after a lengthy participatory process involving workshops held in the provinces.⁷⁰ The mechanism that was meant to take the national initiative forward, however, in terms of a summit resolution was the 'National Co-ordinating Structure with the authority to effectively lead, co-ordinate, monitor and manage the National Anti-

⁷⁰ *Towards an Integrated Anti-Corruption Strategy*, National Civil Society Anti-Corruption Report, 25 August 2000, Willow Park, Johannesburg: Transparency South Africa.

Corruption Programme'.⁷¹ This was clearly the most onerous task identified by the summit, that is, the creation of a super cross-sectoral structure that would lead and manage the national fight against corruption. It would unfortunately take a full two years before any kind of progress on this particular matter could be reported.

5.7 National Forum

In terms of the United Nation's Global Programme Against Corruption (GPAC), once a country has formulated its anti-corruption strategy, a national integrity steering committee or its equivalent should be formed as 'the watchdog and mechanism to launch, implement and monitor a country's national integrity strategy'.⁷² In Hong Kong, as we saw earlier, community involvement was regarded as paramount for successful implementation of the anti-corruption strategy. Advisory cross-sectoral committees were appointed to closely monitor the work of the ICAC, and were encouraged to 'regularly brief the media on their work, including any advice they may have given to the Commissioner on major issues'.⁷³ Against the background of South Africa's transition to a participatory democracy, it was not unexpected that the national summit would recommend a cross-sectoral approach to monitoring the implementation of the anti-corruption strategy. Thereafter, the Public

⁷¹ Appendix IV.

⁷² *Anti Corruption Tool-Kit*, p 74.

⁷³ de Speville, *Hong Kong: Policy Initiatives*, p 58.

Service Commission was mandated by government to establish a cross-sectoral task team to consider proposals that would lead to the eventual creation of an anti-corruption entity as had been decided at the summit. This process began in August 1999 with representatives from state departments, parliament, constitutional oversight bodies, parastatals, civil society, business and organized labour meeting regularly in Pretoria.⁷⁴ The final text of a draft constitution for the new agency, however, was found to be problematic, as the thought of an independent body taking on functions normally resident with the executive arm of government was rejected. It was accepted instead that government had ultimate responsibility to formulate and implement policy, particularly with regard to combating corruption. The compromise reached involved setting up a non-statutory advisory body comprising equal representation (ten members each) from business, civil society and government. Its purpose was to contribute to 'a national consensus through co-ordination of sectoral strategies against corruption', advise government, and share information on best practice in fighting corruption. The National Anti-Corruption Forum was consequently formed along these vague principles and formally launched by Deputy President Jacob Zuma in Langa, Cape Town, on 15 June 2001.⁷⁵

The first full meeting of the NACF took place a month after its launch with most sectoral representatives, including Cabinet ministers, in attendance.

⁷⁴ OPSC/343/127.

⁷⁵ Ibid

Subsequent attempts to convene meetings or deliver on the purposes for which the forum was established failed dismally, however. It seemed that while the public sector, with government as the lead agent, was pressing ahead in implementing the resolutions of the summit, the private sector lagged behind. This was to be expected to some extent because while the summit resolutions were adopted as part of government's strategy, business in general showed little concern. A fairly low-key level of representation was delegated to participate in the forum despite the high level of public sector members designated by government. It is possible to infer that when the notion of a national agency to fight corruption was conceived at the summit, it was done in haste and in confusion with the view that the country needed a strong, central agency with legal authority to lead the struggle against corruption. How an institution comprising all sectors of society, but without legal authority, as the forum was conceived, could serve a useful purpose is uncertain. A structure allowing for full democratic participation by all stakeholders who would work together in 'partnership' against corruption seemed so full of potential, yet was so weak in operation.

Civil society remained a highly fragmented entity when the forum was formed and it was always unclear as to who the legitimate representatives of this sector were. A prominent attorney of the National Democratic Lawyers Association who had played a leading role in the Forum's formation, Adv Dali Mpfungu, was put forward by other civil society members to be the first

chairperson.⁷⁶ Government seemed happy to accept this proposal, provided that the chairmanship was decided on a rotational basis among the sectors. Civil society, and its first chairperson, regrettably failed to execute any functions of the forum, much to the consternation of the National Religious Leaders' Forum, who raised the matter with President Mbeki early in 2002.⁷⁷ The Minister for the Public Service and Administration, Geraldine Fraser-Moleketi, was requested by the president forthwith to take the lead in the 'revitalisation' of the forum as 'a matter of urgency'.⁷⁸ Despite her enthusiastic attempts to call meetings of the forum periodically, the interest shown towards this initiative by all sectors remained very poor. Government-designated ministers usually absented themselves from meetings because of other engagements, civil society members were never at ease in representing the interests of a constituency so diverse, and business representatives were themselves divided by a multiplicity of formations within their ranks.⁷⁹

To expect the forum to articulate a national consensus around issues of corruption with one voice under these conditions was therefore somewhat preposterous and naïve. No executive committee meetings were held because there was no finality as to its composition. Yet none of the above reasons for the forum's failure are as compelling as the fact that it was an institution established without a budget. The memorandum of understanding

⁷⁶ OPSC/ CD:PEHRR.

⁷⁷ Ibid

⁷⁸ OPSC/ CD:PEHRR.

⁷⁹ See OPSC/343/127 for minutes of NACF meetings.

that brought the forum into being indicated that it was to be 'assisted by a secretariat provided by the Public Service Commission' (see appendix V). This involved staff in the commission's office in Pretoria spending much of their time trying to synchronize the diaries of very busy individuals to attend occasional meetings and little else.⁸⁰ Such meetings, if they involved lengthy inputs from government, as was usual, were held in venues hired and sponsored by donors. It is quite clear that the forum had no hope of functioning effectively without the required resources. It is almost inconceivable that a country would attempt to create a national structure with the expressed purpose of containing a national disease without the requisite funds being made available. Worse still, this was a matter that was only given attention in February 2004 when a foreign donor roundtable was convened by Minister Fraser-Moleketi.⁸¹ As late as July 2004, more than three years after its formation, the NACF secretariat received a directive to compile a budgetary request for the consideration of National Treasury.⁸² While the customary fiscal approach on the part of government in the fight against corruption, namely engaging the support of donor agencies while leaving the coffers of the national treasury relatively untouched, was still being followed, signs of a shift were slowly beginning to emerge.

⁸⁰ OPSC/CD:PEHRR.

⁸¹ OPSC/343/127.

⁸² Ibid

5.8 Conclusion

South Africa's transition to democracy brought an end to hundreds of years of racial segregation and created the basis for a new society to be built on the ruins of apartheid but, unfortunately, not one free of corruption. If apartheid was a form of institutionalized corruption, especially in the 'homelands', many of its essential features were not obliterated overnight, but carried over into the new political dispensation. Yet with the rise of organized crime and South Africa's readmission into the international community, corruption began to assume a new and peculiar character that required state intervention. This began in 1997 when Cabinet commissioned the groundbreaking study that identified, among other concerns, the need for substantial resources to make the fight against corruption effective. While the public sector approach received fresh impetus from a historic conference held in Parliament in 1998, it was only at the national summit held a year later that a national strategy was articulated. This was achieved in close consultation with representatives of labour, business, the faith communities, and civil society who with government would later form the National Anti-Corruption Forum. While this body has remained largely ineffective, its creation was symbolic of a national consensus that was emerging on the urgency to combat and prevent corruption. The time for deliberations about how to fight corruption was now to be taken up by implementation of the national strategy against it.

Unfortunately, despite the adoption of a national strategy to fight corruption, it was far from clear how, when and where funding would be secured to ensure implementation. This was not a question that was posed when the strategy was being adopted even though the issue of resources had been emphasised in a critical study that had been commissioned by Cabinet. Policy shifts in fighting corruption were clearly agreed upon in the absence of policy analysis, which in this instance should have included the calculation of costs and benefits. As we observed earlier (5:2), policymaking in South Africa since 1994 had shown a penchant toward achieving 'mixed success and ambivalence', of paying only 'lip service' and confusing 'policy advocacy with policy analysis', and of 'governing by legislation rather than sound administration'. The nation was now being taken into the corruption battlefields with the threat of such policy contradictions being repeated. From the holding of the first public sector conference on corruption to the formation of the NACF, no funds from the National Treasury were committed for the unfolding of the national strategy. We shall now turn to the implementation of further aspects of the strategy to inquire whether such policy 'muddling' would continue.