

## CHAPTER 6: INSTITUTIONAL REFORMS

### 6.1 Introduction

The national strategy against corruption required that action be taken on a number of fronts without due consideration being given (at the National Summit) to identifying the relevant implementing agency, the time frame or the resources necessary. Nonetheless, because of Cabinet's endorsement of the action plan against corruption, departments of the state were obliged to establish ways and means of implementing the resolutions of the National Summit. In this chapter we shall examine those aspects of the national strategy involving legislative review, the creation of a culture of 'open democracy', the improvement of institutional capacity to fight corruption, the role of the private sector, the need for a media campaign and moral regeneration. The summit resolutions, which constitute the national strategy, were originally divided into three overlapping spheres, namely prevention, combating, and raising awareness of corruption.<sup>1</sup> These resolutions determine to a large extent the content of the discussion in chapters 6,7 and 8 of this study. As will become apparent, the national strategy has been implemented to a considerable degree but its impact and the costs involved have yet to be determined. For this reason it will be necessary to examine the

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<sup>1</sup> See Appendix V.

resolutions with these two primary considerations in mind throughout. One will observe a slow but progressive recognition by national government that costs can be a critical factor in the implementation process of fighting corruption over time. The matter of evaluating the impact of any government-driven undertaking to counteract something that defies measurement (like corruption) might be difficult to attempt but nonetheless necessary. One would obviously want to avoid a wastage of scarce resources on something that is only producing a minimal impact on society, hence the need to establish the effectiveness of action plans against corruption.

## **6.2 Legislative Reform**

While the National Summit's call for the formation of a new structure to fight corruption was taken up, albeit with relative failure, the national government appears to have been much more successful in overhauling the legislative framework. The summit had identified this task as one 'to critically review and revise legislation in place to combat corruption, and to address any shortcomings by either amending, or drafting new legislation where necessary'.<sup>2</sup> In the first instance, the Corruption Act No 94 of 1992 was in urgent need of review. Silas Ramaite, a director of public prosecutions,

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<sup>2</sup> See Appendix IV.

identified the weaknesses of this Act to be first its narrow definition of corruption.<sup>3</sup> Corruption was defined as ‘the giving, offering, or agreeing to offer a benefit to an official or agent and the receiving, obtaining or agreeing to receive or attempting to obtain a benefit by a public official or agent’.<sup>4</sup> Exactly what constituted a benefit was unclear, but the intention was to outlaw any kind of favour of whatever nature, financial or otherwise, that was not legally due. Two parties are identified – the corruptor and the corruptee – and it is their giving and receiving of undue benefit that is prohibited but, importantly, only where such acts ‘fall within an official’s or agent’s strict sphere of duty’.<sup>5</sup> Ramaite explained the basic problem to be one where in attempting to suppress corruption, ‘the Corruption Act abolished the common law crime of bribery and thus narrowed down the ambit of the law dealing with corruption, instead of widening it’.<sup>6</sup>

It may also be questioned as to why a prohibition would apply only when corruption involved a compromise in one’s sphere of duty, thus making detection and prosecution quite difficult. Corrupt activities can all too easily be moved beyond one’s sphere of duties in order to bypass the law, which one must assume has often been done. Bribery in terms of the Act was only

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<sup>3</sup> S M Ramaite 1999, *Corruption versus Good Administration of Public Affairs*, in S Sangweni & D Balia (eds) 1999, *Fighting Corruption: South African Perspectives*, Pretoria: Unisa Press, p 161.

<sup>4</sup> Corruption Act No 94 of 1992, Government Gazette, Cape Town. See section 1:6 of this study for fuller discussion on the definition of corruption.

<sup>5</sup> Ramaite, *Corruption versus Good Administration*, p 62.

<sup>6</sup> Ibid

deemed to be illegal if it was shown to have taken place while an official or agent exercised his or his power wrongfully. The Act was clearly an ineffective instrument because for every six prosecutions attempted between 1996 and 2000, only one conviction on average was secured.<sup>7</sup> The situation would probably have been no better prior to 1992 when corruption-related offences were prosecuted in terms of the Prevention of Corruption Act No 6 of 1958. Offenders then were alternatively charged for crimes of fraud or theft. In trying to improve the legal framework, more harm than good was seemingly done with the 1992 Act. It was imperative, therefore, as a matter of urgency, as government recognised, that new legislation redefining corruption (rather than further amendments to the existing Act) should be drawn up to overcome this glaring deficiency. This task was undertaken by the Parliamentary Portfolio Committee on Justice and Constitutional Development under the leadership of Adv Johnny de Lange. After numerous sittings to consider a plethora of inputs from various interest groups across all sectors, the final Prevention and Combating of Corrupt Activities Bill was passed by Parliament late in 2003 for the President to sign into law the following year.<sup>8</sup>

In view of international best practice laws that are increasingly being adopted to control corruption, from places such as Hong Kong, Singapore, Malaysia and India, it proved quite unnecessary to begin the legislative review in a legal

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<sup>7</sup> SAPS *Bulletin*, Crime Information Management Centre, Pretoria, July 2001.

<sup>8</sup> OPSC/ CD:PEHRR.

vacuum.<sup>9</sup> The provisions of the Nigerian Corrupt Practices and Other Related Offences Act of 2000 served as a basis for drawing up the new legislation. Its most immediate change involves the reinstatement of the common law crime of bribery. Managers in the public and private sectors are now required to blow the whistle on corruption, as failure to do so can result in a penalty of up to ten years imprisonment. Private to private forms of corruption and illegal transfers of private capital are included, as are corrupt activities related to tendering and procurement. This new Act requires the Minister of Finance to keep a 'blacklist' of companies debarred from government tenders, which is open for public scrutiny.<sup>10</sup> Public officials showing evidence of 'unexplained wealth' are obliged to be transparent about their additional sources of income when necessary. The maximum penalty for engaging in corrupt activities is now life imprisonment. Corruption involving sporting events and the sanction of elected officials who are involved in corrupt practices are covered by the new legislation.

However, despite the substantial changes, the most notable omission in the Act is a clause regulating party political funding, or declaring when and how such activity amounts to corrupt behaviour. Nonetheless, that South Africa has created a new legal framework for the prosecution of corrupt individuals, something which proved quite cumbersome in the past, gives the criminal justice system ample ammunition to pursue cases of corruption with much

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<sup>9</sup> See discussion on legislative reforms in *TI Source Book 2000*, pp 269–285.

<sup>10</sup> See chapter 6 of Act.

more ease than before. Together with other important pieces of legislation that have been passed since 1994, like the Public Finance Management Act No 1 of 1999, the Promotion of Access to Information Act No 2 of 2000, the Promotion of Administrative Justice Act No 3 of 2000 and the Protected Disclosures Act No 26 of 2000, the new Act against corruption instils public confidence and is further evidence of political will to contain the effects of corruption on the new democracy. It is obviously too early to say whether implementation will be diligently followed, or whether the new Act will suffer the same fate as the one it replaces. The innovations introduced in the new Act, however, make it more likely to succeed, hence its current use by the British House of Commons as a model to devise new legislation for corruption in the United Kingdom.<sup>11</sup>

### **6.3 Open Democracy**

The South African Constitution (Act No 108 of 1996) includes a Bill of Rights, which, among other rights, guarantees everyone the right of access to any information held by the state and any information that is held by another person and that is required for the exercise or protection of any rights.<sup>12</sup> The Constitution further required that 'national legislation must be enacted to give effect to these rights'. Shortly after 1994, a task group was appointed under former deputy president Thabo Mbeki's leadership to draft the enabling

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<sup>11</sup> *Business Day*, 3 December 2003.

<sup>12</sup> Section 32 (1).

legislation. The draft Bill that was originally proposed included provisions for whistle-blowing, but was extensively revised over almost a five-year period before it was finally passed into law in 2000 as the Promotion of Access to Information Act. Much of the credit for this Act becoming law must go to the Open Democracy Campaign that was orchestrated from within civil society. From this initiative has emerged the Open Democracy Advice Centre (ODAC), which is based in Cape Town, and seeks 'to promote open and transparent democracy, foster a culture of corporate and government accountability, and assist people to realize their human rights, through supporting the effective implementation of laws which enable access to and disclosure of information'.<sup>13</sup> The Act requires both the private and public sectors to adopt a proactive 'right to know' approach where as much information as is in the public interest is released to prevent the need for adjudicated requests. Because this right of access is so basic to the human rights regime in this country, it has 'horizontal' application for individual citizens and community organizations as well.

According to ODAC chairman Richard Calland, this Promotion of Access to Information Act is very significant 'because it represents an unprecedented experiment and a unique opportunity to impose accountability through transparency in relation to both public and private power'.<sup>14</sup> If 'weak

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<sup>13</sup> Visit [www.opendemocracy.org.za](http://www.opendemocracy.org.za).

<sup>14</sup> D S Mukalani 2002, Access to Information Legislation in Africa. Paper presented at Access to Information Seminar in Hua Hin, Thailand, 3 March 2002 (unpublished).

companies and bad governments need secrecy to survive' and if such secrecy allows for 'inefficiency, wastefulness and corruption to thrive', ordinary citizens will have a particular interest in using this Act on access to information to their advantage.<sup>15</sup> However, while the right of access to information in an open democratic society might be guaranteed on paper, the bureaucratic procedure to be followed involves the possibility of lengthy delays in such access being granted. Furthermore, if one's request is denied, the only course of appeal is to the High Court, where considerations of cost, time and accessibility would easily serve to deter the ordinary citizen. But this was understandably not on the minds of delegates at the National Anti-Corruption Summit who called for the speedy enactment of the Open Democracy Bill to foster greater transparency, whistle-blowing and accountability in all sectors. Public officials who pride themselves on observing confidentiality are usually the ones most threatened, Yet, as Transparency International observes, 'the introduction of access to information policies can increase the quality of administration significantly. Such policies foster a public sector ethic of "service to the public", enhance job satisfaction and raise the esteem in which public servants are held by the communities they serve and in which they live.'<sup>16</sup>

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<sup>15</sup> R Calland 2001, *Access to Information: Modern South Africa and Globalisation*. Paper presented at seminar on Freedom of Information in Central and Eastern Europe, Bucharest, Romania, 3–5 October 2001 (unpublished).

<sup>16</sup> R Hodess (ed) 2001, *Global Corruption Report 2001*, Berlin: Transparency International, p 20.



To foster greater transparency and accountability and to inculcate a culture of 'blowing the whistle' on corruption, a further piece of legislation was being contemplated at the time of the summit. South Africa was not unique in trying to unravel its secretive past and making its administrative systems more accessible to the public. Throughout the world citizens were becoming more assertive about their right to know what governments were doing and how public resources were being allocated.<sup>17</sup> IDASA had for example initiated a process of ensuring civil society participation in the national budgetary process, believing that 'an open budgetary process serves both to detect and prevent corruption, and to ensure that spending policies respond to public needs'.<sup>18</sup> But the reluctance of individuals to report acts of corruption that they were witness to, or had knowledge of, is a basic reason that action against corruption may be slow. People often felt intimidated, usually for fear of reprisals, about blowing the whistle on corrupt activity. During apartheid informants would sometimes report on their comrades to the authorities, but when found out, were often murdered by having a burning tyre thrown around their necks. Even if one's motivation for whistle-blowing was much more noble, after 1994 there was still no guarantee of legal protection or support for such action. The fear of victimization loomed too large for ordinary citizens to take the risk, particularly in the wake of a few scandals where whistle-blowers suffered occupational detriment.<sup>19</sup> To overturn this legal deficit, Parliament was motivated to pass the Protected Disclosures Act

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<sup>17</sup> See the publication by R Calland & G Dehn 2004, *Whistle-Blowing Around the World*. Cape Town: Open Democracy Advice Centre.

<sup>18</sup> Hodess, *Global Corruption Report 2001*, p 61.

<sup>19</sup> See *Whistle-Blowing Around The World*.

No 26 of 2000, which created a new framework for the culture of whistle-blowing to take root. Intended primarily to provide for procedures to report 'unlawful or irregular' conduct by employers or one's colleagues in the workplace, the Act also sought to offer protection to those employees making such a disclosure. The new whistle-blowing framework was based on the British Public Interest Disclosure Act of 1998, where such legal recourse was taken after instances involving catastrophes that could have been avoided, had individuals been less afraid to speak out to the right people and been taken notice of. It was of course assumed that the protection of disclosures was only possible in cases where the whistleblower acted in good faith. Employers in turn are obliged to offer protection to whistle-blowers and encouraged to put structures in place to facilitate the practice of disclosures. The Act also placed the onus on the Minister of Justice to issue appropriate guidelines to explain the Act to anyone seeking to report or remedy an impropriety. When a host of such potential whistle-blowers in the civil service were canvassed about their willingness to comply with the provisions and procedures of the Act, however, the response was highly negative. This was done when the Public Service Commission, in collaboration with the ODAC, conducted a series of provincial workshops to publicize the new whistle-blowing framework and to garner support for its implementation.<sup>20</sup> Most public servants who participated in these 'interactive learning sessions' expressed the need for a higher level of political commitment from government, and their immediate superiors as well, if they were to become whistle-blowers.

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<sup>20</sup> Report On The Establishment Of A Whistle-Blowing Infrastructure For The Public Service, Public Service Commission, Pretoria, 2003. The key findings and recommendations are listed on

They repeatedly mentioned cases involving fraud and corruption that remained undetected but did not feel 'protected' enough to take up such matters themselves.<sup>21</sup>

In the above exercise, concern was often expressed for 'confidentiality' to be safeguarded if people were to come forward, but this, it seemed, was a rare commodity in public service.<sup>22</sup> Participants in this process were nevertheless unanimous in calling for more training, policy guidelines and telephone hotlines to facilitate whistle-blowing.<sup>23</sup> Mention was also specifically made of the need for a whistle-blowing infrastructure to be budgeted for in order to ensure efficacy, as departmental funds were not adequate to cover proper implementation of the new framework.<sup>24</sup> Two deficiencies of the Act were highlighted. It offered protection only to employees, and not to ordinary citizens, pensioners or casual workers. Neither was its provision of 24 months' salary compensation in cases of unfair dismissal considered satisfactory. Thus while there is an emergent base of support for the principle of making disclosures, and for the Act itself, there are serious doubts about whether the protection it offers will prevail over the victimization fears of potential whistle-blowers. The Minister of Justice has in any case been rather slow in publishing the required guidelines that would hasten implementation of the policy, while departments generally adopt a wait and see

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pages 1 and 2.

<sup>21</sup> Report On The Establishment Of A Whistle-Blowing Infrastructure.

<sup>22</sup> Ibid

<sup>23</sup> Ibid

<sup>24</sup> Ibid

approach to the detriment of whistle-blowing itself. Whether its inclusion in the list of public service strategic considerations to contain corruption (as discussed below) will make much of a difference remains to be seen.

It is worth noting that South Africa has chosen, as part of its democratic culture, to adopt statutory provisions in respect of whistle-blowing, which is an important weapon in the fight against corruption. Despite the limitations of the legislative framework, it has certainly added an air of respectability to the practice of blowing the whistle on wrongdoing against a legacy of distrust and suspicion about 'traitors'. To become inculcated into the working culture of both public and private sector employees, much more will have to be done to promote whistle-blowing in the workplace, not least in the public sector. The perception that government departments 'go to great lengths to seek out whistle-blowers and punish them'<sup>25</sup> should also be addressed. The situation in the private sector, however, is much worse, as repeated calls for action to be taken have made 'little or no impact'.<sup>26</sup> Companies seem more interested in using the services of call centres to receive reports on fraud, with the promise of monetary rewards in some cases, than to invest in culture change that might be more costly in the short term at least. Even when whistle-blowers are offered protection, and make their disclosures in terms of the Act, the dilemma faced is no less burdensome, as the experience of Victoria Johnson illustrates. She worked as a lawyer for the City of Cape Town

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<sup>25</sup> *Pretoria News*, 29 July 2004.

<sup>26</sup> A Tilley & L Stober 2004, South Africa: Open Democracy Advice Centre, in Calland & Dehn, *Whistle-blowing Around the World*, p 192.

and blew the whistle on political corruption in the mayoral office, involving the renaming of two famous streets, an act which is said to have helped 'establish new standards of accountable governance in the Western Cape'.<sup>27</sup> Yet by her own account, Victoria Johnson continues to 'feel a deep sense of ambiguity' over what she did as 'her memory of the time is always tinged with an underlying sense of discomfort and shame'.<sup>28</sup>

The costs and benefits calculation is as relevant for whistle-blowing as it was for other anti-corruption measures discussed earlier. Thus, in the Australian context, a challenge is made that 'the benefits of protecting those who blow the whistle on corruption and of any subsequent attempt to rout out the corruption must be balanced with the costs of such an exercise'.<sup>29</sup> These costs would include those to a whistle-blower such as Victoria Johnson whose decision to act may be avenged, 'the cost to any individual improperly or wrongly accused by a whistle-blower; the cost to the organization involved; and the cost to society of the investigation which may follow'.<sup>30</sup> It remains to be seen whether a new workplace culture of whistle-blowing, one that can have a powerful deterring effect against corruption (public benefit), can supplant the fear and personal risks (human cost) usually attached to it, and whether the South African public sector can afford the attendant monetary costs.

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<sup>27</sup> Calland & Dehn, Introduction, *Whistle-Blowing Around The World*, p 10.

<sup>28</sup> V Johnson 2004, Public Deception in Cape Town: Story of An Insider Witness, in Calland & Dehn, *Whistle-blowing Around the World*, p 52.

<sup>29</sup> R Douglas & M Jones 1996, *Administrative Law: Commentary And Materials*, second edition, Annandale: Federation Press, p 141.

<sup>30</sup> *Ibid*, p 137.

## 6.4 Institutional Capacity

Effective investigations and speedy prosecutions of acts of corruption have been consistently identified as critical to fighting corruption in South Africa. Apart from Cabinet's call in September 1998 for 'a task team to review existing and new cases and to expedite the investigation and prosecution of some high impact cases',<sup>31</sup> the public sector had been unanimous in calling on government a few months later to 'improve the capacity and efficiency of investigation and prosecution of corruption'.<sup>32</sup> Not surprisingly, this concern was endorsed by the National Summit with an addition that such action be facilitated by the establishment of special courts.<sup>33</sup> When the Public Service Anti-Corruption Strategy (PSAS) was formulated, this strategic consideration was extended to include 'national corruption fighting institutions and departmental institutions'.<sup>34</sup> Yet, instead of creating new specialized courts, the emphasis shifted to 'improving the specialized capacity of court officials to address corruption cases',<sup>35</sup> and hence no special corruption courts have been established to date. However, in the fight against fraud, new commercial crimes courts have been established with support from Business Against Crime, a private sector network that operates in partnership with government. For the financial year ending March 2003, the SAPS Commercial Crimes

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<sup>31</sup> See Appendix II.

<sup>32</sup> See Appendix III.

<sup>33</sup> See Appendix IV.

<sup>34</sup> Country Corruption Assessment Report, South Africa, UN Office on Drugs and Crime and Department of Public Service and Administration, Pretoria, April 2003, p 134.

<sup>35</sup> Ibid

Branch operated with a budget of R151 873 million. Of 17 676 cases reported, 3 045 arrests were made and 2 660 convictions obtained at a 'cost' of R57 095 per conviction for offences related to cheque fraud, stolen credit cards, and 'other fraud' .<sup>36</sup>

Whilst it was recognised at the national summit that increasing the existing anti-corruption capacity of national agencies and departmental units was imperative and urgent to fight corruption, it was unclear as to where the additional resources for this shift in approach would originate from, apart from existing budgets. In most cases, as we shall see below, these budgets were already depleted or highly inadequate to meet the formidable new challenges of fighting corruption. The Public Service Commission, in terms of its mandate to monitor and evaluate public administration policies and practices, conducted a detailed investigation with the help of consultants to identify weaknesses and strengths in government's capacity to deliver on its commitment to fight corruption. The first part of this work involved an audit of state agencies that engaged in anti-corruption activities directly, while the second part consisted of an attempt to scope the anti-corruption capacity and capability of government departments. In the examination of each agency or department that featured in this investigation, special consideration was given to the matter of resources and budgets, and the potential impact of a single agency or unit that would be dedicated to the co-ordination of all anti-

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<sup>36</sup> J Redpath 2004, *The Scorpions: Analysing the Directorate of Special Operations*, ISS Monograph No 96, March 2004, Pretoria: Institute for Security Studies, p 59.

corruption activity within government. Two reports have subsequently been published detailing the findings and recommendations of this investigative study and which currently serve as a basis for further reform of public sector institutions that seek to fight corruption as a priority issue.<sup>37</sup> In what follows we shall try to capture the salient results of this study in so far as their implications for measuring the costs of fighting corruption are concerned. The respective operating budgets of the country's key institutions involved in fighting corruption are provided (see Figure 4) for purposes of a general comparative overview. It should be noted, however, that these budgets are not strictly for fighting corruption purposes only.

From a citizen's point of view, the most critical institution to which one would report acts of corruption and maladministration would be the Public Protector. Whilst the budget of the Public Protector's office has steadily increased since 1995, when it was founded, it received a modest R29 million of the R50 million it had requested for its work in the 2001/2002 financial year. The Public Protector once noted in Parliament that: 'A major problem facing my office is that it is still not yet adequately resourced.'<sup>38</sup> This had further given rise to a backlog of some 6 000 cases that awaited investigation, thus contributing to poor staff morale in dealing with their workloads. A staff contingent of 200 had been identified as a prerequisite, but only 114 were

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<sup>37</sup> The first report is entitled 'A Review Of South Africa's National Anti-Corruption Agencies' (Pretoria: PSC, August 2001), while the second is 'Audit Of Anti-Corruption Capabilities Of Departments' (Pretoria: PSC, November 2002).

<sup>38</sup> A Review Of South Africa's National Anti-Corruption Agencies, p 19.



**FIGURE 4****SOUTH AFRICA'S NATIONAL ANTI-CORRUPTION AGENCIES**

<b>No.</b>	<b>Name of Agency</b>	<b>Allocated Budget</b>	<b>Financial Year</b>
1.	Office of the Auditor General	R 322 800 000	1999/2000
2.	Office of the Public Protector	R 29 371 000	2001/2002
3.	Public Service Commission	R 57 971 000	2002/2003
4.	Independent Complaints Directorate	R 27 135 000	2002/2003
5.	SAPS Commercial Crime Unit	R 3 203 000	1999/2000
6.	SAPS Anti-Corruption Unit	R7 680 183	2000/2001
7.	National Prosecuting Authority	R 150 000 000	2000/2001
8.	Directorate of Special Operations	R 316 000 000	2003/2004
9.	Asset Forfeiture Unit	R 25 000 000	2000/2001
10.	Special Investigating Unit	R17 739 000	2000/2001
11.	Department of Public Service and Administration	R 85 248 000	2000/2001
12.	South African Revenue Services#	R 3 800 000 000	2003/2004
13.	National Anti-Corruption Forum*	R 57 971 000	2002/2003
<b>Total (excluding SARS)</b>		<b>R1 100 117 183</b>	<b>2001 (Average)</b>
<b>Total x 1% (excluding SARS)</b>		<b>R 11 001 172</b>	<b>2001</b>

# As the SARS budget includes incomes (from taxes), it is excluded from the calculation of the average budget.

\* As the NACF is managed by the PSC, the relevant budget is used.

employed by 2001 owing to insufficient funding. The overall effectiveness of work was measured by the extent to which the Public Protector's recommendations were followed. It was observed that when recommendations were made against public servants, 'we get full backing from Parliament. But where those recommendations are against political office-bearers the majority party closes ranks.'<sup>39</sup> For these reasons the Public Service Commission (PSC) called for a recognition that the Public Protector is unlikely to receive adequate public funding in the future, that it needed to adopt a more strategic role, and should give more attention to cases with an explicit public interest perspective.

An equally important agency for the purpose of investigating police corruption was the South African Police Services' Anti-Corruption Unit (ACU), which was set up in 1996, but finally closed down in January 2003. Its work was hampered from the start because it was not independent, it was poorly staffed and it was strategically misdirected. Approximately 120 investigators were employed in the ACU to cover the entire police force of over 100 000 members with a declining budget of just under R8 million in 2001.<sup>40</sup> While the number of cases for investigation increased, so too were processes hastened to integrate the functions of the ACU into the broader police service bureaucracy. It remains unclear exactly how incidents of corruption involving members of SAPS are currently dealt with in an impartial way. A similar

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<sup>39</sup> Ibid, p 20.

<sup>40</sup> Ibid, p 40f.

situation prevailed in the SAPS Commercial Crime Unit, where declining budgets, uncertainty over restructuring, and low staff morale contribute to the inability of this unit to function more effectively than it currently does.<sup>41</sup> The Independent Complaints Directorate (ICD), a statutory body investigating misconduct by police officers, especially deaths in custody, is slowly beginning to assume some of the functions of the ACU as it seeks to overcome severe resource constraints. It is quite evident that matters of police corruption, and the capacity of the police services to investigate corruption, are detrimentally affected by the severe lack of human and financial resources. The unfortunate reality is that there is no plan or strategy in place to address this deficiency in the law enforcement aspects of government's attempt to fight crime and corruption.

A slightly more positive picture, however, emerges when one considers work being done by agencies that report to the National Prosecuting Authority such as the Asset Forfeiture Unit (AFU) and the Directorate of Special Operations (DSO). The AFU was established in May 1999 to ensure that the powers given to the state in terms of the Organised Crime Act to seize criminal assets would be used to their maximum effect. Large amounts of cash, property, and other proceeds of organised criminal activity, including corruption, have since been seized in numerous operations by the AFU. In 2001 the AFU succeeded in obtaining court orders for assets to be frozen in 57 cases, 18 of which involved a total value of R7 million and were completed for forfeiture

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<sup>41</sup> Ibid, pp 35-37.

purposes.<sup>42</sup> Its staff complement of 66 boasted a success rate of 100 % despite some cases where the courts had ordered assets to be returned to their original owners. Also launched in 1999, the DSO (also known as the Scorpions) has been instrumental in fighting high priority crimes and investigating selected corruption cases like one involving Deputy President Jacob Zuma. Unlike most other agencies, it is substantially resourced, with a projected budget of R316 million and staff complement of 2 000 members for the 2003/2004 financial year.<sup>43</sup> Serious conflict has arisen between DSO members, who are often trained abroad and paid higher salaries, and members of the SAPS, who complain of low morale and poor salaries.

While it is difficult to measure the success of the DSO in fighting corruption, it has undoubtedly been well capacitated, has enjoyed wide media coverage and public support for the high profile nature of its investigative work, and remains a key institution in enforcing the rule of law. Compared to the SAPS Commercial Crime branch, however, the DSO has a budgetary excess of 57 % with the 'cost' per conviction 45 times higher.<sup>44</sup> (see Figure 5). The work of the DSO is admittedly more complex, but this cost analysis ratio, though crude at first, suggests the need for serious attention to be given to the costs and benefits of fighting crime being evaluated as well, if only for operational comparison. The evidence from research strongly leads one to conclude that the DSO can be far more productive with its resource allocation and take on a

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<sup>42</sup> Ibid, p 55.

<sup>43</sup> Ibid, p 49.

<sup>44</sup> Redpath, *The Scorpions*, p 60.

<b>Comparative Budgets</b>							
<b>R1000</b>	<b>1999/ 00</b>	<b>2000/ 01</b>	<b>2001/ 02</b>	<b>2002/03</b>	<b>200/ 04</b>	<b>2004/05</b>	<b>2005/ 06</b>
<i>NPA Total</i>	484	605	724	948	1020	1090	1155
<b>Public Prosecutions</b>	446	531	502	647	693	740	785
<b>DSO</b>	16	49	197	267	290	310	329
<b>SIU</b>	16	17	21	22	25	27	28
<b>ICD</b>	23	25	26	31	36	40 95	44
<i>Detective Service Total</i>	2624	2831	3105	3478	3743	4069	4385
<b>Organised Crime</b>	812	865	800	949	899	960	1022
<b>Commercial Crime</b>	122	137	140	151	137	147	157

**FIGURE 5:** Comparison of SAPS and NPA Budgets (Reproduced from 'The Scorpions: Analysing the Directorate of Special Operations' by Jean Redpath, ISS Monograph Series No. 96, March 2004, p57).

much bigger caseload, not least in corruption matters.<sup>45</sup> One is aware of the select nature of cases that the DSO chooses to prosecute, but the relative isolation of its public sector corruption desk from the public service strategy to curb corruption is evidence perhaps of a need to review its desk structure.<sup>46</sup> Or, it might well be a reflection of the priority given to high profile cases of organised crime over against corruption ones. A corruption case must in any event involve a threshold amount of R500 000 or more before it is even considered,<sup>47</sup> unlike the ICAC in Hong Kong, where every reported case was investigated.

Somewhat more controversial has been the case of the Special Investigating Unit (SIU) when it was headed by Judge Willem Heath from its inception in 1997 until 2001. Its mandate has been to act speedily with presidential proclamation to save, recover and protect public assets through civil law procedures and litigate through a special tribunal. With a budget of R17 million and limited personnel, the SIU was able to save, recover or protect the loss of state assets to the value of over R1 billion for the year ending March 1999.<sup>48</sup> Yet Judge Heath was found to be complaining to the media in 2000 that his work was being undermined by the failure of the state to allocate new cases to his unit. The uncertainty surrounding the unit's work was further

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<sup>45</sup> Ibid, p 62.

<sup>46</sup> The three other DSO desks are Serious And Economic Offences, the desk dealing with prosecutions under the Prevention of Organised Crime Act, and Syndicate Organized Crime (see Redpath, *The Scorpions*, p 33).

<sup>47</sup> Ibid, p 47.

<sup>48</sup> Review of South Africa's Anti-Corruption Agencies, p 61.

clouded when the Constitutional Court ruled that a judge could not be head of the unit. Government moved quickly and appointed a successor in Willie Hofmeyer, who was able to secure the unit's future operations.

During his tenure Willem Heath maintained a high media profile of his work and became the nation's leading 'graft buster' as a result. This approach obviously served to instil much public confidence in the state's resolve to fight corruption, particularly as an independent judge was unlikely to be selective in choosing cases to investigate. The SIU was actually reported to be involved in more cases than its capacity allowed, but no evidence is available of attempts to fully empower its operations while Judge Heath remained at the helm.

The Auditor-General, while not sharing a primary mandate of fighting corruption as the above agencies do, performs an important audit function that indirectly helps to discourage corruption. The Constitution requires that the Auditor-General conducts audits of government departments and other public sector bodies and reports to Parliament about the extent to which these entities have managed their financial affairs according to prescripts and generally accepted accounting practices. The Office of the Auditor-General developed a forensic audit capacity in 1997 to determine 'the nature and extent of the perpetration of economic crime and the adequacy and effectiveness of measures that should have either prevented or detected it', and facilitate 'the investigation of economic crime in general by providing

support to the relevant investigating and prosecuting institutions'.<sup>49</sup> This new focus was in line with recommendations emanating from the International Congress of Supreme Audit Institutions (1998) concerning the need to focus audit strategy more in areas prone to fraud and corruption, closely co-operate and exchange information with national and international bodies fighting corruption, and evaluate the efficiency and effectiveness of financial and internal control systems.<sup>50</sup> In 2001 the Forensic Auditing division was investigating implementation of the Code of Conduct for the Public Service and backlogs in investigations and prosecutions involving economic crime. During this time the Auditor-General also experienced an acute problem regarding the recovery of audit fees from local authorities and was also one of the lead agencies investigating allegations of corruption in the defence armaments procurement matter (5.3). Unfortunately, the sacrosanct independence of the Auditor-General was called into question on the publication of its joint investigative report, which absolved government of any wrongdoing. In terms of its mandate, though, it is therefore clear that the Auditor-General's office can be further capacitated to undertake more investigations into corruption-related cases if and when this is deemed necessary. Being 'the fulcrum of a country's integrity system' and standing at 'the pinnacle of the financial accountability pyramid',<sup>51</sup> the role of the supreme audit function is pivotal to the presence of reduced corruption and financial

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<sup>49</sup> Ibid, p 13.

<sup>50</sup> Ibid

<sup>51</sup> *TI Source Book*, p 75.



austerity in developing countries like South Africa. For this reason also the Auditor-General's office and function should at no time be compromised by a lack of adequate resources.

In addition to statutory agencies discussed above, government departments also took the initiative at various times to confront corruption within their own ranks. As early as April 1998, the Department of Home Affairs, following Cabinet approval, began one of the first anti-corruption units to fight internal departmental corruption. Many other departments of government followed suit, often with the assistance of the SAPS and the National Intelligence Agency (NIA). Anti-corruption hotlines, increased investigative capacity, and better audit control became the mainstay of these units, whose efficacy was called into question by the PSC report. It noted that: 'The capacity of an anti-corruption unit to successfully combat and minimize corruption depends on the resources available.'<sup>52</sup> It further noted that the level of independence of the unit heads was critical to the effectiveness of their work.

The table and graph (see Figures 6 and 7) indicating departmental resource outlays for work on corruption by a sample of 20, whether through specialized units or not, paints a rather negative picture. The spending and staff ratio pattern indicates a net investment of below 1 % on average for fighting corruption, which might be considered disproportionate to other priorities. The

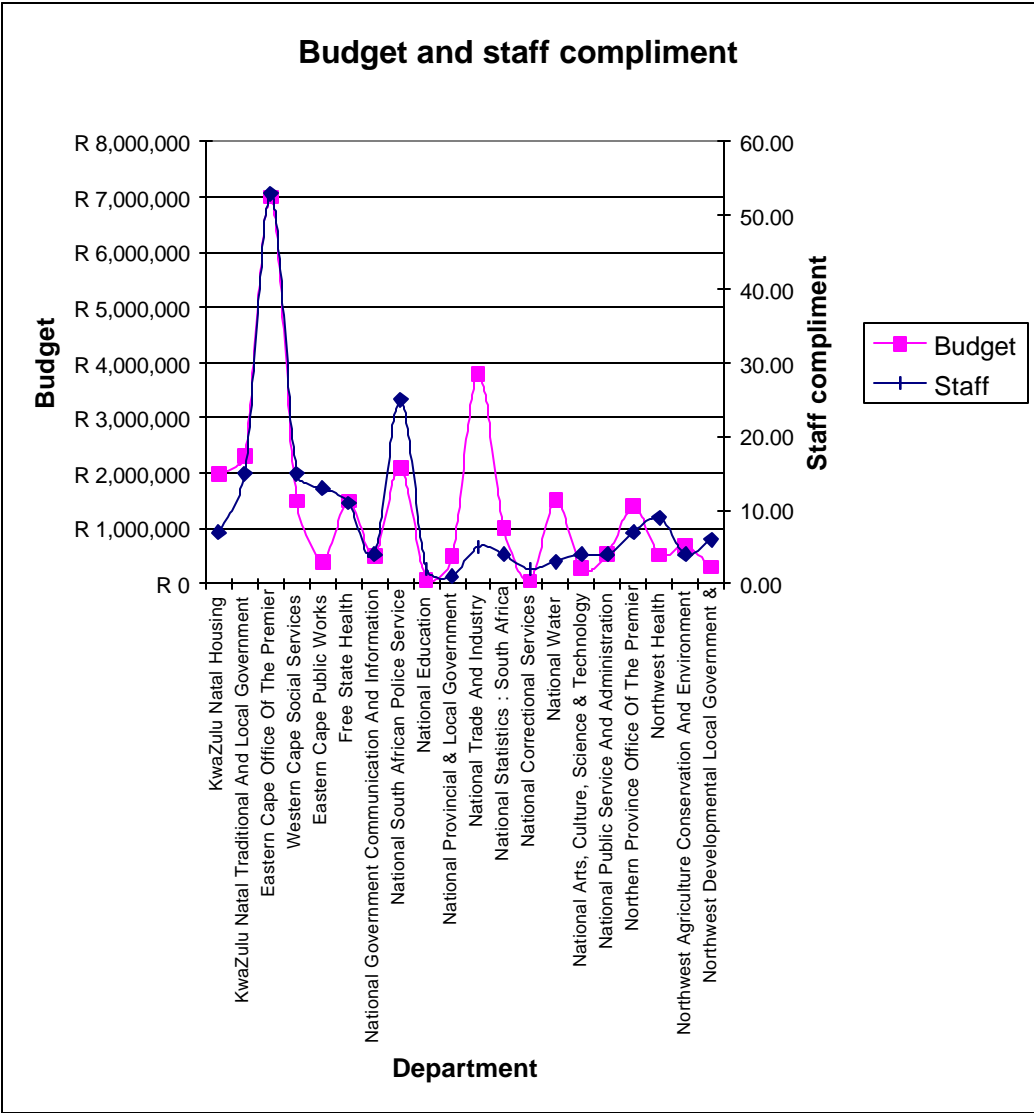
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<sup>52</sup> Audit of Anti-Corruption Capabilities, p 59.

**FIGURE 6:** Departmental Anti-Corruption Budgets (Reproduction from ‘Audit of Anti-Corruption Capabilities of Departments’, PSC, Report, Pretoria, 2003, p47).

DEPARTMENT	DEPARTMENT ANTI-CORRUPTION BUDGET	DEPARTMENT ANNUAL BUDGET	% OF TOTAL DEPT BUDGET ALLOCATED TO ANTI-CORRUPTION
Eastern Cape Office of the Premier	R7 000 000	R90 031 000	7.78%
Northern Province Office of the Premier	R1 405 000	R102 342 000	1.37%
Western Cape Provincial Administration	R2 333 333	R206 832 000	1.13%
Nat. Govt. Comm. & Information System	R513 680	R61 438 000	0.84%
National Public Service & Administration	R541 000	R88 073 000	0.61%
KZN Traditional & Local Govt. Affairs	R2 324 000	R423 746 000	0.55%
National Statistics: South Africa	R1 000 000	R282 982 000	0.35%
Northwest Agri. Cons. & Environment	R690 000	R219 720 000	0.31%
KZN Housing	R2 000 000	R785 162 000	0.25%
National Trade & Industry	R3 800 000	R2 245 427 000	0.17%
Free State Department of Health	R1 501 063	R1 777 203 000	0.08%
W-Cape Dept. of Social Services	R1 500 000	R2 207 937 000	0.07%
Northwest Dev. Local Govt. & Housing	R300 000	R498 900 000	0.06%
E-Cape Dept. of Public Works	R400 000	R727 092 000	0.06%
National Dept. of Water	R1 514 000	R3 177 330 000	0.05%
Northwest Health	R519 000	R1 561 486 000	0.03%
National Arts, Culture, Science & Technology	R290 000	R985 101 000	0.03%
National Transport	R615 763	R4 179 617 000	0.01%
National South African Police Service	R2 103 000	R15 727 425 000	0.01%
National Provincial & Local Government	R492 000	R3 754 811 000	0.01%
National Education	R74 000	R7 678 394 000	0.00%
National Correctional Services	R54 000	R5 671 612 000	0.00%

**Figure 7: Departmental Anti-Corruption Staffing Budget** (Reproduced from 'Audit of Anti-Corruption Capabilities of Departments', PSC, Report, Pretoria, 2003, p49).



Premier's office in the Eastern Cape has the highest budgetary allocation to fight corruption in a province where as we saw (2:6) it can be particularly acute. Furthermore, one is led to conclude that in national departments like Correctional Services and Education, very little is being done to stamp out corruption within the framework of the national strategy. The overall picture that emerges is rather gloomy as departments of government overall show a budgetary allocation of less than half a percent to manage a debilitating problem that can so easily ruin their operations and reputations.

Not surprisingly therefore, a key recommendation of the PSC study was: 'The establishment of a central anti-corruption unit to be utilized by more than one department, and accessible to all members of these departments, would be cost effective and also an extremely efficient way of ensuring that anti-corruption is dealt with by the most appropriately skilled individuals.'<sup>53</sup> This recommendation of course was made because departments were not sufficiently resourced to fight internal corruption effectively, and since this was unlikely to change in the foreseeable future, a more centralised and integrated approach was required.

While the PSC was comfortable to offer the above recommendation on rationalising departmental efforts against corruption, it was unable to do the same when it reviewed the anti-corruption agencies. This was owing in large measure to the resistance of personnel within the agencies themselves to

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<sup>53</sup> Ibid, p 74.

supporting the establishment of a single anti-corruption agency for various reasons, including job security. None of the agencies mentioned so far, nor those not discussed in this study, such the NIA and the PSC, are able to engage in any work against corruption without an awareness of overlapping mandates. No public sector agency at present can claim to be solely in existence for the purpose of fighting corruption. It would appear that most of the anti-corruption work within government is therefore being pursued through enabling legislation or statutory regulations of the agencies without clearly defined protocols to help determine the scope of any one agency's mandate. This was something that Judge Heath was acutely aware of, and he sought to get the various agencies to agree to a memorandum of understanding, but failed to do so mainly because of a lack of support from the National Prosecuting Authority.<sup>54</sup> Thus the PSC report concludes that: 'Mechanisms built into legislation to avoid "turf wars" and functional overlap have not been activated.'<sup>55</sup> Neither does the new Prevention and Combating of Corrupt Activities Act No 12 of 2004 envisage any new structure to overcome the lack of strategic co-ordination and the duplicity of functions experienced by state agencies fighting corruption.

Whilst a merger of functions in a climate of declining budgets may seem imperative in fighting corruption, if not for the sake of efficiency, effectiveness and public benefit, the political will to move towards a centralised approach is

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<sup>54</sup> OPSC/CD:PEHRR.

<sup>55</sup> Audit of Anti-Corruption Capabilities, p 78.

inexplicably absent. Earlier centralised attempts to fight poverty and reconstruct the development agenda for the country, through the RDP for example, had not been particularly successful as we saw (5.2). Now, the powerful Office of the Presidency in ‘party managerial style’ exercised much more influence to determine policy initiatives but not in matters concerning corruption it seemed. This was left to the Minister of the Public Service and Administration, Ms Geraldine Fraser-Moleketi, to pursue, yet her ministry could only act on such a task within its broader civil service reform agenda. The matter of assigning functions of authority or redefining mandates to fight corruption required a structured way of thinking about choices by party policy actors. Such choices have not been made yet, except to create a powerless national forum embracing civil society and the private sector to instil public confidence about government’s attempts to fight corruption. How the plethora of existing institutions (over against a single new one) can have a greater impact in reducing corruption levels without their functions being redefined remains an unanswered question for the public sector.

## **6.5 Corporate Governance**

The National Summit’s resolution to ‘promote and implement sound ethical, financial and related management practices in all sectors’<sup>56</sup> was adopted as a challenge in as much as it reflected an affirmation of steps that were already

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<sup>56</sup> Appendix IV.

under way in the public sector and in the private sector. Implementation of a national strategy against corruption would require that the role played by the private sector be recognised as an integral part of any national integrity system, according to the TI model depicted earlier (see Figure 2). Here this sector's 'special role' is stressed for the sake of improved corporate responsibility and it is viewed as a 'powerful tool' to fight corruption.<sup>57</sup> Also, for the World Bank, 'weak institutions for corporate governance not only result in inefficiency, they encourage corruption',<sup>58</sup> hence the need for an array of reforms that can be effective in curbing both incentives and opportunities for corruption. Such an established view was not out of synch with the evolving corporate culture in South Africa, as the first King Report of 1994 on corporate governance shows<sup>59</sup> but, more pertinently, the process of setting new standards had not been completed until the release of the second King Report in 2002.<sup>60</sup>

The first report mentioned above was groundbreaking and included a code of corporate practices and conduct. It went beyond the mere financial and regulatory aspects of corporate governance in advocating 'an integrated approach' that would serve the interests of a wide range of stakeholders and the basic principles of good financial, social, ethical and environmental

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<sup>57</sup> *TI Source Book*, p 137.

<sup>58</sup> *Anti-Corruption in Transition*, p 50.

<sup>59</sup> King Report on Corporate Governance, Institute of Directors, Johannesburg, 1994.

<sup>60</sup> King Report on Corporate Governance, Institute of Directors, Johannesburg, 2002.

practice.<sup>61</sup> It was compiled under the auspices of the Institute of Directors at a time that the issue of corporate governance was fast becoming a global concern, and coincided with the profound social and political transformation of South Africa as it took its place in the world economy. King I has adopted ‘a participative corporate governance system of enterprise with integrity’ and ‘formalised the need for companies to recognize that they no longer act independently from the societies in which they operate’.<sup>62</sup> Such measures by the private sector in South Africa were of course fully in synch with global trends, where the traditional view, that corporations exist solely to make profits for their shareholders, was receding in favour of a new sense of wider corporate social responsibility, not just to customers and clients, but to communities and societies in which such corporations operated. But with the dawn of a new millennium, the rapid emergence of new technologies, and the plethora of legislative changes, not least those affecting public finance management and labour relations, and changes in the listings requirements of the Johannesburg Securities Exchange, an updated version was required.

The next King Report on Corporate Governance for South Africa was released in 2002, where the key challenge identified for good corporate citizenship is ‘to seek an appropriate balance between enterprise (performance) and constraints (conformance) which takes into account the expectations of shareowners for reasonable capital growth and the

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<sup>61</sup> Draft Report for Public Comment, King II, p 8.

<sup>62</sup> Ibid



responsibility concerning the interests of other stakeholders of the company'.<sup>63</sup> The guiding principles for company boards in these deliberations must include fairness, accountability, responsibility and transparency. Unfortunately, compliance with the provisions of both reports is voluntary and there are no formal measures in place to monitor implementation, let alone any company being held accountable for failing to follow such provisions. One recent survey found that while 75 % of 53 large companies had official codes of ethics, performance was much weaker when assessments were made of compliance and the creation of an ethical culture, with inadequate communication and virtually no training on ethics issues.<sup>64</sup> Of equal concern, in another survey, only 7 % of 1 000 businesses interviewed reported paying bribes, while 62 % agreed that bribery was becoming an accepted business practice in South Africa.<sup>65</sup> Sixty-four per cent of respondents believed that corruption and fraud were obstacles to doing business, but only 31 % had policies in place to deal with such malpractices in this latter survey.

Following the wave of international accounting scandals, with periodic manifestations in South Africa as well, a draft Accounting Professions Bill was put before a panel of experts established by the Minister of Finance in 2002. The panel was mandated to offer recommendations on a range of issues that included separation of the consulting and auditing functions within firms, the

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<sup>63</sup> Ibid, p 9.

<sup>64</sup> Ethics Institute of South Africa 2002, *Corporate Ethics Indicator: Business Ethics South Africa (BESA) Survey 2002*, Pretoria: Ethics Institute of South Africa.

<sup>65</sup> Country Corruption Assessment Report, pp 97-100.

need for term limits for auditors, audit rotation, disciplinary procedures against auditors providing improper reports, and general rules to govern accountability between auditors and their respective clients.<sup>66</sup> This joint initiative, together with the reports of the King Committees, are expected to strengthen the corporate accountability climate in South Africa for the foreseeable future. However, in the short to medium term, the challenge of fighting bribery and corruption remains, despite ongoing measures instituted by big business against fraud that are supposed to bring in 'bottom line' benefits. No counter-culture against corruption is in the offing, and neither is it anticipated as a particular matter requiring attention in either King I or King II. The amount of resources set aside by the private sector to fight corruption within its ranks is much less clear. As a way forward, a higher and more concerted level of engagement by the private sector with government, through or independent of the NACF, would seem to be imperative. Though South Africa is not a member of the highly industrialized Organisation for Economic Development and Co-operation (OECD), government is seeking the regulatory compliance with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (see 3:5). The calculation of costs that is under discussion in the rest of this study is obviously one that must be reinvented within the private sector environment. While the emphasis may shift from the bottom line of increasing shareholder value for the sake of corporate accountability, the factors determining the level of investment in fighting corruption (if at all) will differ from the private to

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<sup>66</sup> OPSC/CD:PEHRR.

the public sector. Yet, as was observed with the Hong Kong model and the National Integrity System, the role of the private sector in the implementation of a country's strategy against corruption should not therefore be underestimated.

## **6.6 Media Campaign**

One of the foremost media critics of apartheid, Allister Sparks, recalled that in 1988 his greatest fear for South Africa's future after apartheid was not ideological, but corruption which in his words 'was the cancer of Africa, the malignancy that seemed to grow exponentially throughout our continent, bringing debilitation and death to country after country'.<sup>67</sup> By 1995 he felt 'confirmed in that view' and therefore consequently called for a 'campaign against corruption' to prevent the 'great South African experiment' in democracy failing.<sup>68</sup> As we noticed earlier (see Figure 3), the media forms an integral pillar in the national integrity system and was also effectively used to change public perceptions and promote the successes of the ICAC in Hong Kong (see 4:6). The importance attached to the role of the media in fighting corruption was likewise not overlooked at the National Summit, when delegates agreed to 'support and work together with government in creating a sustained media campaign to highlight the causes of, and solutions to

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<sup>67</sup> Mass Media and the Campaign against Corruption, paper presented at the Africa Leadership Forum Conference, 1 August 1995, Midrand.

<sup>68</sup> Ibid

corruption, and to communicate the national integrity strategy'.<sup>69</sup> The necessity for an independent media to report freely on acts of corruption in the public interest was, it seems, taken for granted in the South African context, as all restrictions in this regard had been removed after 1994. Section 16 of the Constitution, after all, protects freedom of expression, which would include freedom of the print, electronic and other forms of media.

Unlike other aspects of the national strategy, the envisaged 'media campaign' has not taken place or found any expression, except perhaps through the reporting efforts of individual journalists who have exposed numerous cases of corruption (see 4.3). It has been said of independent-minded journalists that by simply doing their jobs well, they have played a central role in promoting democracy, good governance and global awareness of corruption as a result for many years.<sup>70</sup> It is possible that the campaign has failed to materialize owing to the lack of political will for such action, or it might be owing to the lack of resources. Either way, it would be difficult to 'support and work with government', as the summit had expressed, without encroaching upon the sacred media terrain of freedom and independence. Tensions around this media 'space' abound, as when President Mbeki accused sections of the media of racism, and when some (black) journalists were 'weary of being seen as overtly critical of the ruling party and the Presidency

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<sup>69</sup> Appendix IV.

<sup>70</sup> B Peters 2003, The media's role: covering or covering up corruption? In Hodess, *Global Corruption Report 2003*, Berlin: Transparency International, p 45.

in particular'.<sup>71</sup> This can be further illustrated with regard to the 'punishment' meted out to whistle-blowers, which was to be expected, according to PSC chairperson Stan Sangweni. He once claimed that if 'an official goes to the media to whistle-blow to a journalist, he is immediately deviating from the prescribed procedures of whistle-blowing'.<sup>72</sup> The South African NGO Coalition's media spokesperson, Hassen Lorgat, rebutted this view by claiming: 'The current structures of government are not fully functional and haven't developed into maturity, so journalists fill a valuable gap, especially while these institutions are being built up (and) play a vital role (to ensure) that good governance and accountability is achieved.'<sup>73</sup> A compact between government and the media to 'work together' in exposing corruption might therefore be more difficult to create than the national strategy suggests.

As mentioned above, the media has played an important role in exposing corruption but its watchdog status can be compromised through lack of resources. If media enterprises remain under-funded, they can easily fall prey to large advertisers who exert a powerful controlling interest in the media companies. The threat of monopolies arising is one that must be fiercely resisted. Five groups control nearly 30 newspapers in this country, while in addition to the public broadcaster, three privately owned broadcasters are licensed to operate.<sup>74</sup> Whoever owns the media companies will be irrelevant if

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<sup>71</sup> Van Vuuren, *National Integrity Systems*, p 31.

<sup>72</sup> *This Day*, 20 August 2004.

<sup>73</sup> *Ibid*

<sup>74</sup> Van Vuuren, *National Integrity Systems*, p 31.

journalists ‘demonstrate their independence, objectivity and professionalism each and every day in order to earn public trust and confidence’.<sup>75</sup> Yet, as Transparency International believes, ‘it is imperative that the owners of the media ensure that journalists are paid wages which encourage independence, rather than dependence’.<sup>76</sup> Serious investigative reporting, which can carry high risks, involving legal challenges and loss of life, is often time-consuming and costly, but remains pivotal to providing the public with relevant coverage on corruption cases. The ability of the media to shape public attitudes and government policy is often underestimated, hence the view that it is not only useful for raising public awareness ‘but it can also contribute by providing the necessary support of the civil society to government’s anti-corruption initiatives’.<sup>77</sup>

Moreover, as the UN Anti-Corruption Tool Kit notes, ‘journalists, editors and newspaper owners can take on an active role in combating corruption by facilitating public debate on the need to introduce anti-corruption policies and measures’.<sup>78</sup> Such a measure would serve to counteract the concern of the Media Institute of South Africa (MISA) that journalists are often put under pressure to report the ‘right angle’ by those implicated in corruption and other interest groups.<sup>79</sup> MISA has in any case expressed its support for efforts to

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<sup>75</sup> *TI Source Book 2000*, p 127.

<sup>76</sup> *Ibid*

<sup>77</sup> *Anti-Corruption Tool Kit*, Global Programme Against Corruption, Version 1, p 121.

<sup>78</sup> *Ibid*

<sup>79</sup> Country Corruption Assessment Report, p 84.

build the capacity of journalists so that they report responsibly on corruption-related cases.<sup>80</sup> But 'such training in investigative journalism will be a wasted effort if the media is not free and independent of political influence and if access to information is not sufficiently guaranteed'.<sup>81</sup> Thus, the challenge of a media campaign in the fight against corruption might be better placed if the emphasis shifts from 'working together' to greater access for journalists to information residing in the public sector, more especially government, and overcoming resource and capacity constraints. While costs are a debilitating factor, and possibly the lack of political will, there remains widespread recognition for the notion of a media campaign against corruption to be effected and for an implementation plan to be developed thereto.

## **6.7 Moral Regeneration**

In defending government's efforts toward fighting corruption, Public Service and Administration Minister Geraldine Fraser-Moleketi included the decisions of the Moral Regeneration Summit as part of the arsenal of anti-corruption measures that emanate from policy directives.<sup>82</sup> This summit, which launched the Moral Regeneration Movement (MRM), was held on 18 April 2002 at the Waterkloof Air base in Pretoria with Cabinet approval and attended by hundreds of delegates from all sectors of society. It was funded

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<sup>80</sup> Ibid, p 85.

<sup>81</sup> *Anti-Corruption Tool Kit*, p 122.

<sup>82</sup> G Fraser-Moleketi 2003, 'Getting to the roots of corruption', *Business Day*, 24 March 2003.

exclusively from the budget of the deputy president, Jacob Zuma, who is the leader of the movement. The National Summit, which was held much earlier, had established the need for the nation 'to work together to inspire the youth, workers, employers and the whole South African society with a higher moral purpose and ethos that will not tolerate corruption'.<sup>83</sup> This mandate was largely assumed by the MRM, but in the context of a broader moral campaign that had its origins in an invitation issued by former president Nelson Mandela in June 1997. It was for religious leaders 'to meet with him to discuss the positive relationship required between religion and politics in the transformation of South Africa', but also to seek answers for the 'spiritual malaise which was affecting our society'.<sup>84</sup> This led to the formation of the National Religious Leaders' Forum, which initiated the proposal for a national summit to consider the collapse of the moral fibre of the country.

The first such moral summit was held on 22 October 1998, at which the moral crisis engulfing South Africa was acknowledged and a code of conduct for people in leadership positions was adopted to effect moral leadership for social transformation. President Mandela was the first person to sign this code (called the 'Ubuntu Pledge'), which included a recognition that bribery and corruption were dishonourable. A 'process towards moral renewal' was started at the summit, with the hope that 'all sections of society will respond by making their own evaluation of the causes and answers to the problems

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<sup>83</sup> Appendix IV.

<sup>84</sup> National Religious Leaders Forum Press Release, 1 October 1998, OPSC/343/123



we face'.<sup>85</sup>This challenge was taken up by Deputy President Zuma, former deputy minister of education, Smangaliso Mkhathshwa, the Department of Education and the South African Broadcasting Corporation (SABC), who together convened two workshops in 2000 on moral regeneration. Numerous other consultations involving all sectors have been held since then, before the formal launch of the MRM, which was followed by the formation of a not-for-profit company that would house its executive secretariat. One of the first activities of the MRM secretariat was to work towards the formation of provincial MRM forums. In January 2003 a moral charter was launched to 'serve as a moral compass and reference to make a distinction between what is right and wrong in society and what constitutes good and ethical behaviour'.<sup>86</sup>

While it may be questioned as to why government should be at the forefront of the campaign to address the collapse of the moral order of society, it wisely contributed towards the creation of an autonomous entity that would drive the moral regeneration campaign. This was in contrast to the position taken over the National Anti-Corruption Forum where a similar approach of allowing the forum to function independently of government was rejected. Government's concern about the moral decay of society, as evidenced by spiralling crimes of murder, theft, domestic violence against women and children, and corruption, was commendable, as was its attempt to work with religious

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<sup>85</sup> Ibid

<sup>86</sup> Invitation Letter to Moral Charter Launch, 7 January 2003, OPSC/343/123.

groups to bring the matter to the nation's attention. With the establishment of an office to manage the activities of the MRM, the role that government will play in the future needs further clarification. While the MRM might be a vehicle that can be effectively used to fight corruption, this can only be done at a civil society level. The project of fighting corruption in the public sector is one that must be driven by governments as state authority rather than government as moral conscience of the nation, particularly when matters of law enforcement are concerned. That there exists a groundswell of moral outrage within government towards many of society's ills, including corruption, is commendable provided that government does not usurp civil society's role of holding governments themselves accountable to their citizens for their actions.

## **6.8 Conclusion**

This chapter has been devoted to a discussion of the 'institutional' elements of South Africa's national strategy against corruption as it evolved from the National Anti-Corruption Summit of 1999. An attempt was first made to show that corruption had become a serious problem warranting review of legislation to prohibit corrupt practices. New laws to promote transparency, access to information, whistle-blowing and more effective prosecution of corruption were therefore devised in terms of the national strategy. In line with the summit resolutions, other measures adopted included increasing institutional capacity

and holding the private sector responsible for greater levels of corporate governance. However, the proposed media campaign that was so boldly announced at the national summit failed to take off. Still, the efforts of the national government did not stop there. It also became instrumental in initiating a campaign for the moral regeneration of society. While the 'zero tolerance' approach to fighting corruption in a law enforcement mode has mostly been articulated, it has only been partially implemented owing largely to a shortage of capacity and resources. No evidence has been forthcoming of attempts by government to carefully balance the costs of fighting corruption against the impact that might accrue to society. The task of fighting corruption may be construed as part of government's wider strategy of making South Africa a favourable destination, for investment and other purposes, by creating the necessary 'rule of law' climate to reign supreme. This is one hypothesis that will require further examination. With the burden of responsibility for health, education, unemployment, and crime, government has been loathe to vote or commit funds in a substantial way to a concern that must rank as marginal within its budgetary framework. Yet, the fight against corruption can only produce a positive impact and translate into a public benefit (and be effective as a result) if the resources that are committed towards it are efficiently managed. To further sustain such a conclusion, however, a more thorough evaluation of the remaining 'public service' elements of the national strategy against corruption must first be done.