

CHAPTER 7: PUBLIC ADMINISTRATION REFORMS

7.1 Introduction

While the Public Service Commission (PSC) was mandated by the national summit to lead and manage the programme against corruption within the public service, such a task seemed to be in conflict with its watchdog role of an agency dedicated to monitoring, investigating and evaluating government policies and practices in the interests of effective and efficient public administration. The PSC therefore did not assume the leadership mantle or co-ordinating function to fight corruption, as the summit had mandated. Instead, Cabinet, while generally satisfied with the progress that had been made against corruption since the summit, subsequently approved a Public Service Anti-Corruption Strategy early in 2002 that was to be driven by the Minister for the Public Service and Administration (see Appendix VI). To facilitate management of this new initiative, the Minister in question had established an anti-corruption unit within the Department of Public Service and Administration. This unit was largely responsible for the co-ordination of the activities of a newly appointed Anti-Corruption Co-ordinating Committee (ACCC), liaison with government departments in matters of strategy implementation, and for giving form and content to the strategy itself. The public service strategy was intended 'to address the needs

of the Public Service' with a provision for its core elements 'to be tailored to suit the legislative and other environments of local government and public entities'.¹

The new strategy to control public service corruption was to be underpinned by some critical principles. One was the need for 'a holistic and integrated approach' that would be informed by 'domestic, regional and international good practice and conventions'.² South Africa was of course no newcomer to the debate about the steps necessary to curb corruption, not least in the public service, and was well poised to initiate its own reforms to comply with growing international standards. All aspects of the strategy to fight public service corruption had to be co-ordinated within government, subjected to continuous risk assessment, and implemented independently of other national strategies. Nine practical measures were identified for strategic intervention in the knowledge that 'sufficient allocation of resources' would have to be forthcoming for these 'stepping stones' of the anti-corruption strategy to succeed.³ These were again modelled on the strategic measures proposed by the National Summit, but sought more concrete application within the public service environment. Three of these steps have already been discussed, namely review of legislation, partnerships, and whistle-blowing, albeit as resolutions of the national summit. The review of the legislative framework would now include the need to regulate post-public service employment and to 'make legislation easy to understand and apply'.⁴ Regarding partnerships, the need for public service unions

¹ Appendix VI.

² Country Corruption Assessment Report, p. 132

³ Ibid, p 133

⁴ Appendix VI.

to become advocates of professional ethics for their members is mentioned. On whistle-blowing, the issue of witness protection is emphasized, as 'steps to improve the conditions for and functioning of the system' seemed imperative.⁵

The other strategic measures that will now be discussed, and that mostly overlap with similar measures proposed at the national summit, include increasing institutional capacity, procurement, public management reform, professional ethics promotion, increasing research output, and raising awareness and training. The public service strategy was obviously an improvement on previous attempts, in that it also provided systematic implementation plans with time limits and identified the responsible department or agency in the public sector for each of the measures contemplated in the strategy. Most importantly, the cost implications for accomplishing each strategic consideration of the new plan were calculated. Again, it should be emphasized that concise articulation of time, resource and responsibility factors in a national project on corruption such as the public service strategy was a new development for public sector attempts to fight corruption.

7.2 National Hotline

To facilitate the anonymous reporting of corruption, especially from the public, open telephone lines are often set up by government departments. Such a facility can serve an important function of making sure that any act of corruption, whether observed by a government official or member of the public, will potentially be dealt

⁵ Appendix VI.

with if reported. The apparent need 'to establish a National Anti-Corruption Hotline to facilitate the reporting of corrupt practices in all sectors' was acknowledged at the national summit as a measure for implementation in corruption prevention.⁶ So too was the resolve 'to establish and promote Sectoral and other Hotlines to strengthen the National Hotline' accepted as part of the emergent national strategy against corruption.⁷ Three years later, however, only eight national departments had established such hotlines, while none existed in the Eastern Cape, North-West, and Free State provinces. This was one of the findings of a feasibility study undertaken by the PSC on establishing a single national anti-corruption hotline.⁸ The study revealed that the approach to hotlines in the public service was a 'disparate' one lacking uniform standards. Only the Department of Trade and Industry had a system in place that compared with international best practice. From the data generated through this study, it remained unclear exactly what quality or quantity of human resources and budgetary allocations had been committed to the proper functioning of hotlines. Yet where such information was available, it proved that '[p]rovinces with the most efficient hotlines are those that are well budgeted for and had sufficient resources'.⁹ If a national hotline was to be established, the PSC report was therefore unequivocal that such a 'decision be only taken once there is a firm commitment to

⁶ Appendix IV.

⁷ Appendix IV.

⁸ Public Service Commission 2002, Report on the Effective Management of Hotlines, Pretoria: PSC.

⁹ Ibid

the proper resourcing of the hotline'.¹⁰

Cabinet approved the principle of establishing a single National Public Service Anti-Corruption Hotline to be operational by April 2004 after initially expressing its impatience on the lack of progress. The new hotline was intended to eventually replace all other departmental hotlines, be accessible to the public at any hour of day or night, cater for all official languages, and operate primarily to assist the members of the public and public servants to report cases of corruption, fraud and other irregularities. It would comprise a call centre, a case management and referral system, investigation by relevant departments and agencies, and provisions for maintenance, marketing, monitoring and evaluation. Cabinet had also approved the recommendation that the hotline be housed in the Office of the Public Service Commission. By early 2004 it became apparent that the April deadline would not be met, and the launch date for the hotline was shifted to September 2004.¹¹ The Cabinet Memorandum that was prepared for approval had provided a detailed budget outlining the financial implications of the operation. In the ensuing negotiations with the National Treasury, an initial amount of about R1 million was earmarked for this project to be implemented, which was subsequently increased to R1,5 million per year over a three-year cycle, starting in April 2004.¹²

It is evidently clear from the above discussion that real progress on implementation

¹⁰ Ibid, p 30.

¹¹ OPSC/343/84.

¹² OPSC/343/84.

of a national resolution within the public sector became a possibility when a responsibility agent was identified, a timeframe set for project implementation, and a budget proposed with tangible outputs. Failure to have these three basic conditions in place when related projects of the programme against corruption were contemplated has resulted in their potential for effective implementation being seriously compromised. Such failure further explains why some aspects of the national strategy succeed, while others are met with failure. The designation of the PSC as the responsible agency for the management of the hotline was justified in terms of its investigative role in the public service and its constitutional independence. But this allocation of responsibility can also be problematic. Hotlines are meant to facilitate the reporting of corrupt practices and, more especially, the use of whistle-blowing as a tool in this regard. However, the Protected Disclosures Act No 26 of 2000 makes provision for disclosures to only two constitutional agencies, namely the Public Protector and the Auditor-General. The Minister of Justice is empowered in terms of the Act to add the PSC to these two watchdog agencies, as this seems necessary if the PSC is to effectively manage the national hotline.

While the envisaged anti-corruption hotline is intended primarily for reporting misdemeanours in government service, it remains unclear if, when, and how a cross-sectoral national hotline would be instituted as the summit had hoped. Whether such a hotline is desirable must also be tested, as implementing it in a centralized way might amount to a logistical nightmare. For this reason, the private

sector seems content to encourage a use of multiple hotlines to report mostly incidents of fraud, and which often include promises of a reward for such reporting. In the insurance industry, for example, a toll-free hotline was introduced to report fraud and within the first month of its operation the cost of setting it up had been recovered. Numerous reports were received as large-scale fraud was uncovered by company investigators working in partnership with law enforcement agencies.¹³ The issue of reward for information provided was repeatedly raised by public servants when the PSC conducted its series of provincial workshops on whistle-blowing. Without incentives, there seemed little willingness or motivation for people to come forward and blow the whistle. Neither was this task made easier in terms of Protected Disclosures Act No 26 of 2000, which assumes one's identity will be revealed in making a disclosure. The risk of occupational detriment, though mitigated by the offer of protection against such an occurrence, weighs heavily upon those wishing to blow the whistle. The hotline, on the other hand, offers the possibility of reporting corruption anonymously, and may therefore end up being a more convenient and less threatening route for the public to follow. But hotlines should not be viewed as a substitute for effective whistle-blowing policies, which should be intrinsic to any organisation's internal integrity, anyway. The question remains therefore whether the creation of a hotline, while facilitating the reporting of corruption, does not serve to undermine the promotion of a whistle-blowing culture. The temptation to remain anonymous on a telephone while reporting corruption

¹³ Business Report presented to the Parliamentary Portfolio Committee on Public Administration, 26 March 2003, Parliament, Cape Town.

would be greater than taking the high-risk road of a protected disclosure without monetary gain.

Like with so much else about fighting corruption, the lack of quantifiable data to prove the effectiveness of hotlines in curbing corruption is an obstacle when one has to do a cost-benefit analysis. In the case of the ICAC in Hong Kong, the hotline was extensively used by the public, particularly to report cases of police corruption. In the United States, the General Accounting Office established a hotline in the fight against fraud, abuse and waste of federal funds in 1979.¹⁴ Over the next nine years, about 90 000 calls were received, 13 992 of which required follow up, with allegations substantiated in only 1 589 cases. These cases most commonly involved private use of state property, abuse of office hours, general mismanagement and fraud by recipients of state benefits.¹⁵ The costs of investigation would obviously have been high, yet, as Rosen notes, 'there are no solid figures on actual savings resulting from the hotline operation', and furthermore, 'a strict cost-benefit analysis might very well show no net savings'.¹⁶ Like the American experience of fraudulent claims against state benefits, the Department of Social Development estimated an annual loss in this regard to be about R1,5 billion and consequently took the bold step of establishing its own anti-fraud hotline.¹⁷ This was done despite the pending launch of the national hotline and at a cost of some R8 million.¹⁸ This was clearly an

¹⁴ B Rosen 1989, *Holding Government Bureaucracies Accountable*, second edition, New York: Praeger, p 154.

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Opening Remarks by Minister Zola Skweyiya at launch of the hotline, 16 March 2004, Department of Social Development.

¹⁸ OPSC/CD:PEHRR.

extravagant expense in comparison with the budget for the national effort, but more importantly, it raises again the serious matter of a lack of consultation among the upper echelons of government when plans to fight corruption are implemented.

7.3 Public Procurement

According to Transparency International, few other 'activities create temptations or offer more opportunities for corruption than public sector procurement'.¹⁹ It was therefore no surprise that the need to improve the processes involved in government procurement of goods and services was repeatedly acknowledged as critical to the national strategy against corruption from the outset. The Public Sector Anti-Corruption Conference of 1998 had called for the development of 'simpler and more effective treasury and procurement measures that prevent and pinpoint corruption and ensure value for money', while the National Summit resolved a year later to 'publicise and support the blacklisting of businesses, organizations and individuals who are proven to be involved in corruption and unethical conduct'.²⁰ The rationale for such a measure was provided in the PSAS where it is observed that: 'Employees and businesses that have been party to acts of corruption often change employer within the Public Sector or, in the case of businesses, change name or the segment/location in which they operated.'²¹ Prohibition of corrupt individuals and businesses from any benefits to be derived from government tendering systems

¹⁹ *TI Source Book 2000*, p 205.

²⁰ Appendices IV and V.

²¹ Country Corruption Assessment Report, p 135.

therefore became a strategic consideration in the national programme on corruption, one that would be much less costly to achieve than others.

The PSC issued a 'concept paper' on the subject of blacklisting in April 2002 in which, based on existing provisions and further legal counsel received, extreme caution was urged to prevent litigation being initiated against the state by any tendering party placed on such a list.²² To develop a blacklisting system that would function free of litigious interference was viewed as a rather 'ambitious' undertaking for future consideration. But to assist government over the short and medium term to prevent corruption and unethical conduct by a tendering company, the use of 'anti-corruption pacts' was recommended instead. Based on the Integrity Pact model developed by Transparency International, signing such a pact for a specific project required that neither contractor nor supplier would pay or demand bribes. Each contractor for a project in question would disclose all payments made in connection with the contract to anybody, including agents and family members. Sanctions against the winning contractor would remain in force (if violations of the pact take place) until the contract had been fully executed. Undertakings given by a bidding company would have to involve all its directors, or all members in the case of a close corporation, and consent was to be given for government to blacklist any company guilty of corruption in terms of common law principles.

Furthermore, the PSC document proposed that the exact nature of what would constitute unethical conduct be defined in all anti-corruption pacts. They should set

²² Public Service Commission April 2002, Report on Blacklisting, Pretoria: PSC.

out the procedures to be followed in the event of a breach by the contractor and the type of sanction to be imposed. Through such a mechanism it was hoped that companies would refrain from bribery as they would have assurances that their competitors would behave likewise. Ultimately, the primary objective was to enable government to reduce the high cost, namely wastage, market distortion, and possible litigation, and the overall impact of corruption on public procurement.²³ While the PSC effort is worthy of implementation, for example, when the number of competitors in a capital intensive industry like armaments is quite limited, it does not go far enough to involve civil society in the monitoring process. One of the most effective ways of ensuring transparency in the defence procurement process, for example, is to engage independent teams or individuals in a monitoring role, according to Transparency International.²⁴ Though it encourages bidding companies to develop their own codes of conduct so that their ethical standards are clear, and government as well, so that suppliers will know what best practices are being followed, the PSC recommendations fail to identify the salient principles that should inform the bidding process. Such principles as efficiency, accountability, transparency, fairness and impartiality, which are intrinsic to the public service ethos anyway, must be emphasised in any public procurement framework to prevent corruption.

By the time the Bill on Prevention and Combating of Corrupt Activities was adopted

²³ Ibid, p 28.

²⁴ Transparency International (United Kingdom), The application of Integrity Pacts to prevent corruption in defense contracting, unpublished paper, 2 June 2004, p 12.

by Parliament at the end of 2003, it included a provision for the Minister of Finance to establish a blacklist or 'Register for Tender Defaulters' (the term used in the Act) within the National Treasury that would be open to the public and managed by a registrar. Moreover, a new framework for Supply Chain Management (SCM) in terms of the Public Finance Management Act was regulated and an accompanying Code of Conduct for SCM practitioners simultaneously issued by the National Treasury.²⁵ It binds all SCM practitioners to 'a policy of fair dealing and integrity' in conducting government transactions and 'a position of trust, implying a duty to act in the public interest'. Matters such as conflict of interest, accountability, openness and confidentiality are elaborated upon in the code, including combative practices such as exploiting errors in bids, or suggesting fictitious lower quotations, which are classified as unethical and illegal.

The SCM introduced a significant change in that procurement for goods and services would no longer be required to be done through the State Tender Board only, but alternatively under direction of accounting officers in terms of the PFMA. The rules for most tenders, contracts and orders had been laid out in the Amendment of the State Tender Board: General Conditions and Procedures (ST36).²⁶ Procurement decisions are published in a weekly tender bulletin by reference number only, though results are available upon request.

²⁵ Practice Note Number SCM 4 of 2003, SCM Office, National Treasury, 5 December 2003.

²⁶ State Tender Board, Circular No 5 of 2000.

A 'major limited exception to competitive bidding' was introduced with the Preferential Procurement Policy Framework Act No 5 of 2000, which prescribes the need for regulations to ensure that preference is given to persons historically disadvantaged by unfair discrimination based on race, gender and disability.²⁷ The improvements to the procurement system were overdue (the original legislation was over 35 years old), and accomplished at little cost to government, but neither were added costs envisaged in the new framework. The possible exploitation of the new 'preferential procurement' guidelines for personal gain, at the expense of competitive bidding, is one that the public sector will have to guard against.

7.4 Information Deficit

To advance the cause of fighting corruption one is in constant need of reliable and comprehensive information that must sometimes be filtered through into the public domain. Hence the National Summit's acceptance that to build integrity and raise awareness around corruption in society, there was a need 'to analyse the causes, effects and growth of corruption', and in addition, the need 'to highlight the causes of, and solutions to corruption'.²⁸ The Department of Public Service and Administration and the United Nations Office on Drugs and Crime – Regional Office for Southern Africa entered into a partnership agreement in March 2001 that entailed, among other activities, the compilation of a Country Corruption Assessment Report. The intention was for such a report to 'serve as a baseline to measure

²⁷ Van Vuuren, *National Integrity Systems*, p 24.

²⁸ Appendix IV.

progress in combating and preventing corruption, as well as perceptions of corruption in South Africa'.²⁹ Although comprehensive in nature, the report is regarded as incomplete, since it does not provide detailed information of the incidence of corruption or any consolidated statistics of corruption patterns. Where statistics are provided, they are 'ambiguous', as corrupt practices are often classified as fraud or theft within government. The format of the report is dictated by the strategic considerations of the PSAS and attempts to cover the whole scope of anti-corruption activities in the country. Because of government's distrust of perceptions of corruption, it now sought 'to focus on relating experience to perceptions, in order to make the measurements (of corruption) more meaningful'.³⁰ Surveys were commissioned to measure corruption in business, households, public administration, and establish client satisfaction. A series of what are called 'focus groups' were also undertaken for this purpose. The strong public sector bias of the report was noted, as the assessment 'was severely hampered by a lack of information from the business and civil society sectors'.³¹ Thus 'broader trends' emerging from the data gathered are given more weight than inferences that might be drawn from single and isolated variables.

Specific reference is made in the Country Report to three related surveys to confirm the conclusion that 'there is a fairly low actual experience of corruption by individuals, but there is a perception that corruption is a serious problem and that

²⁹ Country Corruption Assessment Report, p 1.

³⁰ Ibid, p 93.

³¹ Ibid, p 94.

government is not doing enough about it'.³² In the business survey conducted telephonically through 1 000 interviews, 62 % of respondents agreed that bribery was becoming an accepted business practice, with about half feeling that it was relatively easy to find a government official willing to be bribed. Not unexpectedly in terms of the global pattern, the construction industry reported a higher incidence of being approached to pay bribes but, more disturbingly, 39 % believed that bribery was a necessary evil in doing business in South Africa. Even though crime was regarded as the most pervasive problem, 64 % of respondents cited corruption as a problem. In the public service satisfaction survey, 'very few' of the clients surveyed admitted to engaging in corrupt behaviour, though more than 10 % 'indicated that they believe officials expect payment, other than official payment, for services rendered'.³³ Of the public managers interviewed, all agreed that corruption was a matter requiring attention with estimates as high as 75 % in some cases of the presence of untrustworthy staff in the public service. The view that whistle-blowers were not offered adequate protection also surfaced strongly, as did evidence that departments were ill equipped to deal with corruption reporting.

The focus groups mentioned in the Country Report included representatives from the media, trade unions, magistrates, prosecutors and parliamentarians. For most of them, the issues of crime, poverty, unemployment, and HIV/Aids were more urgently in need of redress than corruption, though most agreed that it had become very widespread in South African society. Parliamentary representatives expressed

³² Ibid, p 97.

³³ Ibid, p 102.

reservations about the effectiveness of current systems to monitor the ethical behaviour of their peers and felt constrained by party discipline. Respondents from the media were concerned about litigation for defamation, and internal pressure being exerted to drop sensitive cases when they reported on corruption cases. Public prosecutors felt so strongly about corruption that the suggestion was made for anyone of their kith found to be accepting bribes to be exposed to public humiliation and loss of job. But they, together with interpreters, were more exposed than magistrates, who it seemed, are not themselves above approach where bribes are concerned, especially from leaders in organized crime. Neither prosecutors nor magistrates viewed political interference as a problem in the judiciary system and believed they possessed the requisite skills to handle corruption cases. The trade union respondents in the focus groups tended to apportion greater blame to government for not setting the right example in 'cleaning up its own house first' and called for more decisive action against those convicted of corruption. Thus the information gathered from these focus groups, and the surveys mentioned earlier, have given the national government a solid basis upon which to initiate further research activities to understand the most effective ways of reducing corruption in South African society.

The Country Report concludes that what has hitherto been known about corruption may be 'seriously biased due to its reliance on perceptions' but accepts, despite its attempt, the difficulty in finding 'a measure of data that is consistent with the

experience and occurrence of corruption.’³⁴ What was learnt without question, however, was that the majority of South Africans did not believe that government was doing enough to fight corruption. The most likely sources of corruption in the public sector were the police, local government, customs, and officials of the Department of Home Affairs. Civil society, it was observed, was not playing a sufficiently active role in reporting corruption, as incidents were mostly exposed through ‘official processes’. But a comprehensive analysis of corruption was not possible because of the lack of official data. The writers of the Country Report were highly critical of evaluating levels of corruption on the basis of perceptions alone, presumably because most perception surveys, such as the Corruption Perceptions Index, rated South Africa negatively.³⁵ To bridge the gap between perception and reality, further surveys were commissioned, but since data from government departments was not forthcoming, their analysis was not considered definitive or conclusive by any means.³⁶ Again, it is quite misleading to assume that our knowledge about corruption will be based, either now or in the future, on official data provided by government sources. Even if such data were provided free of political manipulation, it would only approximate to reality, as corruption by its very nature is highly elusive, and difficult to identify, finding a protective niche in daily routines, and seeking new actors and new loopholes when systems change.

The costs incurred in this extensive research project would have been quite

³⁴ Ibid, p 125.

³⁵ Appendix I.

³⁶ Country Corruption Assessment Report, p 94.

substantial, but in terms of the partnership agreement mentioned above, government was again absolved from putting its own resources forward. The UN Office on Drugs and Crime had undertaken to provide the 'technical assistance', which in diplomatic speak meant raising most of the funding for this and other initiatives that would emanate from the agreement.³⁷ Government was, not unlike before, able to benefit greatly from external funding in implementing an important mandate that it had received to fight corruption. The problem of the lack of reliable data and knowledge gaps about corruption, especially from government departments, is one that has been taken up by the Department of Public Service and Administration. In a collaboration with the Council of Scientific and Industrial Research (CSIR) and the Centre for Public Service Innovation, it seeks to create an integrated Corruption Management Information System (CMIS) to undergird government policy and strategy by providing relevant information through an electronic database. The hope is that the system will be used to audit anti-corruption capacity, conduct risk assessments, track the process of data collection, and provide for an integrated document management system. An initial budget of some R4 million has been proposed with the support of donors almost a prerequisite for the project to succeed. Not unexpectedly, the project is being undertaken as a joint venture specifically to 'allow for access to a greater amount of funding from donors'.³⁸

Apart from these attempts to procure comprehensive information about corrupt practices, there was also a need to complement the Prevention of Organised Crime

³⁷ OPSC/ CD:PEHRR.

³⁸ Corruption Management Information System, concept paper, DPSA. See OPSC/343/2

Act No 11 of 1998 with 'a mechanism for the mobilization of information collected from various points vulnerable to the practice' of money laundering.³⁹ Corruption involves much more than the laundering of its proceeds. Banks and bankers usually decide on whether or not to receive the proceeds of crime and corruption after weighing up their financial considerations.⁴⁰ A situation therefore prevails where, 'as long as the possible returns outweigh the risks for both the banks and bankers, money laundering will continue to erode and undermine the financial system'.⁴¹ South Africa had no reporting requirements in place obliging financial institutions to report suspicious activities to a state authority, hence the promulgation of the Financial Intelligence Centre Act No 38 of 2001. The Act requires regulations to be made by which institutions like banks will identify their clients, keep records and set internal rules, and specify the manner in which suspicious and unusual transactions will be reported to the centre. Provision was also made in the Act for the creation of a Money Laundering Advisory Council to assist with the centre's work. While the introduction of the Act money laundering makes South Africa compliant with the requirements of the Palermo Convention, the task of policing serious economic crime requires skilled personnel, appropriate technologies and more financial resources that are in short supply in the developing world.

³⁹ C Goredema & F Montsi 2002, Effective Control of Money Laundering: Some Practical Difficulties, *African Security Review* 11(1):8.

⁴⁰ *Anti-Corruption Tool Kit*, p 144.

⁴¹ *Ibid*

7.5 Public Service Ethics Management

The PSAS includes as a strategic consideration the management of professional ethics. This concern is of course derived from the emphasis it received at the National Summit, where the need ‘to promote and implement sound ethical, financial and related management practices’⁴² was endorsed. Financial and other management reforms will be discussed later, but as far as ethics was concerned, the public sector had been active at least in developing codes of conduct where it was deemed necessary. In 1997 Parliament established a Joint Committee on Ethics and Members’ Interests in terms of its joint rules to implement the Code of Conduct for Assembly and Permanent Council Members and advise on matters thereto. This code is intended to regulate conflict of interest and provides for the disclosure of income, assets, and gifts by members, but is not a code of personal conduct. The purpose of the code is to help members conduct themselves appropriately as public representatives, give specific guidelines based on the tasks of office, hold members accountable for their exercise of power, establish minimum standards of behaviour, and promote transparency through disclosure of members’ interests.⁴³ The declaration of such interests is made in a Register of Members’ Interests, which has a confidential and a public section.

The parliamentary code has to some degree set a standard for public conduct as far

⁴² Appendix VI.

⁴³ Explanatory Document on Code of Conduct for Members of Parliament, Office of Registrar of Members’ Interests, Parliament, Cape Town, p 4.

as conflict of financial interests is concerned. But it is not a legal instrument that can be used with strict sanctions against defaulters, nor does it deal with issues such as post-employment. Members, it seems, are allowed to act as jury and judge in their own cases. Its implementation is managed by a registrar whose restricted functions and status serve only to weaken the perception that the code is an effective instrument. Nonetheless, a number of cases are recorded where members failed to declare registrable interests and suffered detriment as a result. The most prominent case involved the chief whip of the ruling ANC party, Tony Yengeni, who failed to declare a massive discount he received on the purchase of a luxury motor vehicle. After initially denying the allegation, he was subsequently found guilty in court on charges of fraud and resigned, thus preventing Parliament from taking up its case against him. Ms Winnie Madikezela-Mandela, president of the ANC Women's League, was found guilty of failing to declare gifts worth about R50 000 and the Minister of Defence, Mosioua Lekota, who was also ANC chairman, was reprimanded for his failure to declare his business interests in certain oil and wine companies that had transacted with government. These cases aside, there is a strong argument to be made, which is supported by the former Speaker, Ms Frene Ginwala, for the code to be revised.⁴⁴ Most of the shortcomings identified above are in the code itself, and these must be rectified for efficacy's sake.

Those members of legislatures who serve on the Cabinet as ministers, deputy ministers and members of provincial executive councils (MEC) are further subjected

⁴⁴ Government Ethics in Post-Apartheid South Africa: A Report Compiled By The Political Information and Monitoring Service – South Africa, IDASA, Cape Town, 2003, p 26.

to the Executive Members' Ethics Act No 82 of 1998, which was passed in 1998. It provided for a code of ethics to be proclaimed by the President in the Government Gazette that would prescribe standards and rules to promote open, democratic and accountable government by the executive members. This code was published in 2000 after consultation with Parliament and, like the parliamentary code, includes provision for financial disclosures, but with the addition of a list of liabilities to be attached. Also, it goes much further in upholding standards of diligence, honesty, confidentiality, trust and integrity that the relevant members are required to adhere to.⁴⁵ From a public point of view, a critical problem relates to access to the financial disclosure records of the executive members. Officials in the offices of the premiers and the presidency who are responsible for managing the implementation of the above Act face formidable challenges in terms of the Promotion of Access to Information Act No 2 of 2000. IDASA found, as a result, a fairly high degree of inconsistency in the application of the Executive Members Ethics Act No 82 of 1998 across the country and recommended that compliance officers be appointed, especially in provinces, to oversee implementation.⁴⁶ The establishment of a forum was also encouraged to offer such officers a platform to share ideas on how to manage their registers more efficiently and discuss related issues.

The Public Service Regulations were amended in 2001 to introduce a similar financial disclosure framework for senior managers (from director upwards) employed in terms of the Public Service Act No 103 of 1994. This was in line with a

⁴⁵ Executive Ethics Code of 2000 (gazetted on 28 July 2000).

⁴⁶ Government Ethics in Post-Apartheid South Africa, p 20.

resolution taken at the Public Sector Anti-Corruption Conference of 1998, where it was agreed that public service managers 'must report their assets in asset registers held by the relevant legislature'.⁴⁷ Such reporting is done to the relevant executing authority with a copy of the disclosure form being sent to the PSC. However, many managers are negligent about completing such forms or submitting them timeously, and no action is being taken so far against defaulters.⁴⁸ From the forms submitted, it is evident that senior managers share a plethora of business interests in addition to their public duties, with some directors-general holding shares in multiple companies.⁴⁹ One is left wondering about the time that such managers spend in cultivating such interests in the course of public duty, especially as the holding of directorships in private or public companies is not regulated or monitored. One is therefore able to strategically plan one's exit from public service in consultation with potential government contractors who could serve as a source for future employment. This is almost encouraged by the fact that there are no post-employment restrictions at present to prevent such unethical collusion taking place in the public service.

From its experience of managing the financial disclosure system, the PSC has given notice to Cabinet that there is a need for the entire framework to be decentralized to the provinces and national departments of government.⁵⁰ Ethics officers need to be

⁴⁷ Appendix III.

⁴⁸ OPSC/CD:PEHRR. See also the PSC report, *Implementing Financial Disclosure Requirements: A Comparative Desk Study on Best Practices concerning the Implementation of Financial Disclosure Frameworks*, July 2004, Public Service Commission, Pretoria.

⁴⁹ *Implementing Financial Disclosure Requirements*.

⁵⁰ OPSC/ CD:PEHRR, PSC Presentation to Cabinet, 4 August 2004.

appointed to provide a range of functions including administration, enforcement advice, and counselling. Line managers are believed to be the ones best placed to identify conflicts of interest if these exist, and to take appropriate action where necessary.⁵¹ Such managers would be best placed to receive 'transactional disclosures' from employees at the workplace, something that the PSC has not yet considered. Such disclosures are made as soon as a potential conflict of interest arises, for example, in a tendering process, when recusance would be mandatory if an official's relative has tendered. Written reports of managerial intervention in managing such a situation, especially if the official is not recused, should be attached to one's financial disclosure form, which is ordinarily completed only once a year. Only one official at a junior level is responsible for the management of the entire framework, which involves the collection of about 5 000 forms. Clearly, no form of thorough analysis or superficial investigation is possible unless more resources are committed to the maintenance of the system. Worrying trends observed thus far with regard to business activities of managers require urgent attention, if not forensic investigation, if this measure of preventing conflict of interest is to be effectively implemented.⁵²

Transactional disclosures of the kind mentioned above are required as far as the Code of Conduct for the Public Service is concerned but is poorly managed. This standard for professional conduct in public service was promulgated in 1997 and specifically obliges an employee to 'recuse himself or herself from any official action

⁵¹ Implementing Financial Disclosure Requirements.

⁵² OPSC/ CD:PEHRR.

or decision-making process which may result in improper personal gain, and this should be properly declared by the employee'.⁵³ The primary purpose of the code is a positive one, that is, 'to promote exemplary conduct'.⁵⁴ However, a public servant can be charged with misconduct if he or she fails to adhere to any of its stipulations. It provides rules and guidelines regarding an employee's relationship with the legislature and executive arms of government, the public, the immediate employer, one's colleagues, and one's personal conduct and private interests. To assist with its implementation, the PSC regularly conducts workshops and has published an explanatory manual of the code. It remains the responsibility of heads of department to ensure that their staff are familiar with and abide by the provisions of the code. Given that the code is part of a regulatory framework, in a structured and controlled environment, the PSC has further developed an ethics pledge, which it hopes will be used by public servants to advertise their commitment to the highest standards of service delivery as well.⁵⁵

Whether a rules-based code of conduct can be any more effective than a values-based code of ethics in promoting professional conduct is as difficult a question to answer as whether codes of themselves are effective in creating awareness of ethics in public life. Notwithstanding the above, the public sector in South Africa has taken the lead in requiring members of parliament, provincial legislatures, and Cabinet, and all public servants to abide by codified standards of public life. The

⁵³ Code of Conduct for the Public Service, Public Service Regulations, C.4.6 (Pretoria: 2002).

⁵⁴ Ibid, section B.3.

⁵⁵ OPSC/CD:PEHRR.

extent of compliance in this approach may be difficult to measure; nor is any code mentioned comprehensive enough to cover all aspects of public duty. Whether it is a case of the national or provincial legislature, or the public service, the capacity to enforce compliance is severely curtailed by the lack of adequate resources, particularly with regard to managing the financial disclosure system. If it is to be effectively used as an instrument to promote and maintain a high standard of ethics, more specifically to prevent conflict of interest, a greater level of awareness and sense of public responsibility will have to be generated about the instrument. Furthermore, if civil society is to play a meaningful role in holding government accountable to minimum standards of conduct, then its demand for greater transparency and public access to financial disclosures will have to be managed with far less suspicion than at present.

A United Nations study has inferred that in South Africa the 'spirit' prevalent in public service militates against the good intentions of government to improve ethics, and that the absence of an 'overall strategy on building and promoting a culture of appropriate conduct and an ethos of public service' is problematic in South Africa.⁵⁶ Ethics training, where it exists, is 'too brief to be effective and also not focused on important groups of employees, such as new entrants and managers'.

⁵⁶ United Nations Division for Public Economics and Public Administration, *Public Service Ethics in Africa*, Vol. II, United Nations, New York, 2001, p 87.

In an ethics survey undertaken jointly by partners from the public and private sectors and civil society,⁵⁷ it was also revealed that 'ethics criteria do not form part of performance, reward or promotion criteria'.⁵⁸ It concluded that 'a lot of work remains to be done in convincing organisations of the importance of integrating ethics management practices as an integral part of all processes within an organisation'.⁵⁹ It should be noted that while the National Summit challenged all sectors 'to promote training and education in occupational ethics on all levels of South African society', the benefits to be derived from such action where it has been evident can only be calculated in the long term.⁶⁰ Despite the efforts of the PSC, the South African Management Development Institute, the University of Pretoria and other organisations to develop ethics training for public officials, there remains an absence of leadership or national co-ordination in the public sector about how to foster ethics awareness through allocation of new and existing resources. That only two dedicated officials manage financial disclosures for all legislators and all public service managers collectively in the country suggests a drastic need for further training and education in ethics management.⁶¹

Corruption, understood as a manifestation of public sector ethics failure, generates certain types of costs that impact negatively on public service morale. Such ethics failure, according to Gary Zajac, can produce financial costs such as losses owing to

⁵⁷ Ethics Survey – 2001: Ethics in Practice, Johannesburg: KPMG, 2002, p 4.

⁵⁸ Ibid.

⁵⁹ Ibid

⁶⁰ Appendix IV.

⁶¹ OPSC/CD:PEHRR. In 2003 Ms Fazela Mohammed was performing this function for the legislators in parliament, Cape Town, and Mr John Mentoor for the public service in Pretoria.

fraud and expenses incurred for follow-up investigations. Administration costs arise from a reduction in efficiency and effectiveness caused by ethics failure, while the 'democratic cost is the loss of public faith in the good intentions and operations of government that results from widespread ethics failure'.⁶² Zajac also mentions the factor of human costs, by which he means 'the damage to the social fabric of community and dignity that results from abuses of human rights and liberties'.⁶³ It is of course quite difficult to calculate in precise terms what benefits accrue from the numerous measures adopted to promote a high standard of professional ethics in the public service.

Short of using cost-benefit analysis to determine whether programme objectives are economically viable or justified for this aspect of the public service anti-corruption strategy, it seems possible to employ 'cost-effectiveness analysis' to determine 'how much of an objective can be obtained within given cost constraints'.⁶⁴ Such an approach will allow for a number of alternatives to be explored in terms of their capacity to meet specific and desired outcomes and, importantly, it allows one 'to determine how well an organisation is performing now as compared to before a change programme was started'. It also provides for comparisons to be drawn with other countries where, for example, similar programmes have been initiated.

⁶² *Journal of Public Administration Research and Theory*, January 1996 (6):155.

⁶³ *Ibid*

⁶⁴ R D Bingham & C L Felbinger 1989, *Evaluation in Practice: A Methodological Approach*, London and New York: Longman, p 223.

7.6 Management Reforms

The preliminary focus of the anti-corruption strategy that was successfully implemented in Hong Kong was on the public service, particularly the role of police officers in spreading corruption and the speedy enactment of laws to control their illicit activities (see 3:6).⁶⁵ The building of a coherent National Integrity System presupposes, as one pillar of integrity among others, the existence of a public service that will for the most part provide 'frank and fearless' advice to political office bearers. But of equal importance is 'the need for a professional public service, with experience in managing changes in government policy and effectiveness in serving the government of the day'.⁶⁶ In a significant study across several developing countries, Merilee Grindle and John Thomas found that 'policy elites' such as public service managers are 'actively engaged in efforts to influence the scope and nature of change in their societies' and that 'their perceptions, activities, motivations, and impact therefore deserve more systematic analytic attention than has generally been given them in discussions of the policy process in developing countries'.⁶⁷

The National Strategy Against Corruption provided for financial and related management practices to be reviewed as far as their efficacy in fighting corruption was concerned. The PSAS subsequently developed this concern to cover matters such as employment, discipline, risk management, financial management,

⁶⁵ Ibid

⁶⁶ *TI Source Book*, p 109.

⁶⁷ M S Grindle & J W Thomas 1991, *Public Choices and Policy Change: The Political Economy of Reform in Developing Countries*, Baltimore: Johns Hopkins University Press, 1991, p 182.

procurement and management of corruption-related information. The latter two concerns have already been discussed in this case study, and attention will now be given to the others.

To strengthen integrity in public service, a verification exercise was undertaken of the academic qualifications of all managers by the PSC. The timing of this project was linked to a scandal that arose in Mpumalanga province, where a director-general was found to be in possession of bogus degrees in 2000. In anticipation of this screening process, a few managers resigned, while only two cases of misrepresentation were reported from a pool of 2 376, though 1 221 managers had not submitted to the verification process by the due date.⁶⁸ The National Intelligence Agency was also involved in a project to ensure that all employees at senior level, or those in sensitive positions involving high risk, obtain 'positive security clearance' and identify whether any conflict of interest exists.⁶⁹ The strategy also introduced the notion of 'a two-year prohibition to accept employment, directorship or a benefit from a service provider to whom an employee has been instrumental in awarding a contract, tender or partnership arrangement', but this must yet be regulated to have any effect.⁷⁰

The Code of Conduct for the Public Service, which was mentioned in the earlier discussion on ethics management, provides a useful tool for the exercise of

⁶⁸ Verification of Qualifications of Senior Managers in Public Service, Public Service Commission, Pretoria, August 2001.

⁶⁹ OPSC/CD:PEHRR.

⁷⁰ Country Corruption Assessment Report, p 136.

discipline, but managers have mostly failed to use it accordingly. The code provides for an employee to be charged with misconduct if and when necessary, but cases of disciplinary action taken on the basis of code violations are seldom recorded in the public service. Instead management of discipline is mostly conducted within the framework of the Disciplinary Code and Procedures for the Public Service, which was negotiated with employee representatives and came into effect in July 1999. From a PSC investigation, it was established that 985 persons employed at national level, and 2 566 at provincial level were charged with misconduct during the 2000/2001 financial year.⁷¹ Most of these cases were corruption-related but encountered at the lower salary levels, with a dismissal rate of about 43 %. Managers are in need of 'more specific guidelines for clear and unambiguous application of the Disciplinary Code', while a central structure to deal with complex and high profile cases seems necessary, as the PSAS had also recommended. The PSC report called for 'investment in training programmes to improve skills and expertise' and acknowledges that 'funds are not necessarily allocated to support the effective administration of the disciplinary process'. For this reason it was necessary that 'departments should be equipped with the necessary human and financial resources to enable them to meet their regulatory requirements'.⁷² The proper management of discipline, whilst highly desirable as the national summit had observed in the fight against corruption, is contingent upon adequate resources

⁷¹ Report on the Investigation into the Management of Discipline in the Public Service, Public Service Commission, Pretoria, October 2003.

⁷² Ibid

being utilised for that purpose by government departments.

Improvements in financial management were also required to fight corruption. Considered 'one of the most important pieces of legislation passed by the first democratic government', the Public Finance Management Act (PFMA) came into effect in 1999 with one of its key objectives being to 'eliminate waste and corruption in the use of public assets'.⁷³ It is equally an important instrument that 'enables authorities to make sure that the public financial interest is protected'⁷⁴ against abuse for private gain, which is corruption as defined in this study. The PFMA provides for an accounting officer of a state department to be charged with financial misconduct if he or she fails (wilfully and negligently) to carry out his or her fiduciary responsibilities as stipulated.⁷⁵ This can include, unauthorised, irregular, fruitless and wasteful expenditure when it occurs. It further requires that accounting officers be held responsible for taking effective and appropriate steps against other officials who may be guilty of corruption.

From April 2004 a new economic reporting format was implemented 'to improve accountability and modernize the accounts of government by bringing it in line with international best practice'.⁷⁶ Apart from reducing the manual effort in drawing up financial reports, it was believed that through the new reporting format 'South

⁷³ Public Finance Management Act No 1 of 1999, Government Printer, Pretoria. See foreword by Minister of Finance, Trevor Manuel.

⁷⁴ Pauw et al, p 4.

⁷⁵ PFMA Act No 1 of 1999, chapter 10.

⁷⁶ Reference Guide to the New Economic Reporting Format, National Treasury, November 2003 (Version 2), p 1.

Africa's commitment to heightened transparency and accountability in the public sector should be strengthened as it implies a downstream benefit of reduced corruption through "creative" financial reporting'.⁷⁷ It is anticipated that a new chart of accounts will also be developed that will include a standardised list of expenditure items in the budget process that will conform to the latest international best practice for reporting and accounting.

The PFMA also stipulates that accounting officers must maintain 'effective, efficient and transparent systems of financial and risk management and internal control'.⁷⁸ To facilitate action, the Regulations require that a certificate is provided to the relevant treasury, indicating that a risk assessment has been completed and that a fraud prevention plan is operational.⁷⁹ The PSC undertook a provincial survey through consultative workshops in 2001 to identify barriers that inhibited risk management practices and found that a more comprehensive framework to support its implementation was required.⁸⁰ Limited integration had taken place between strategic management processes and risk assessment exercises; neither were fraud prevention plans devised (as required) within a risk assessment framework. The PSC further established that there was no consistency in the models of risk management or fraud prevention being used, especially since consultants were often used to devise these plans. As before, the 'lack of capacity and resources'

⁷⁷ National Treasury, New Economic Reporting Format, p 5.

⁷⁸ Section 38(1)(a)(i)

⁷⁹ Treasury Regulations Schedule, National Treasury, May 2000, Pretoria, Chapter 3:1, p8

⁸⁰ Report on Risk Management: A Provincial Perspective, Public Service Commission, Pretoria, February 2002.

proved to be a significant barrier to effective implementation.⁸¹ With the renewed importance being attached to risk management through the PSAS, the National Treasury started drawing up guidelines in 2003 to assist state departments in integrating risk management into the management culture of the public service and thus contribute to corruption prevention. This was at least the basis upon which the PSC undertook its initiative in risk management when it set up a directorate, conducted the provincial survey mentioned earlier, produced its own draft guidelines (which were subsequently handed over to National Treasury), and conducted selected investigations from 2000 to 2003. The unit has since been integrated into the monitoring and evaluation branch of the PSC office.⁸²

Apart from the PFMA and its risk management requirements, which found expression in the PSAS, other management reforms were adopted in the public sector that, though not intrinsic to the national strategy, served to provide an indirect potential impact on the prevalence of corruption in the country. The introduction of the Senior Management Service (SMS) in 2001 was premised on the capacity of the state to attract and retain many of the best and highly skilled managers and offered very competitive salaries and conditions of service. Job evaluation was made mandatory for all posts at senior level to ensure that 'salaries are determined by the responsibilities, the thinking demands, the knowledge and skills required' for a particular job.⁸³ This has dovetailed with the performance management approach in

⁸¹ Ibid, p 4.

⁸² OPSC/CD:PEHRR.

⁸³ G Fraser-Moleketi 2004, 'Government At The Centre Of Service Delivery', *Sowetan*, 24 March 2004.

which all managers are now required to sign agreements that allow for support to be given to good performers but also appropriate action to be taken against managers who default on their performance. The skills and abilities of the current crop of managers are further being nurtured and developed through an array of training programmes being organized by SAMDI. Evidence is therefore not lacking about concrete measures being taken directly or indirectly by government to root out corruption from among its management echelons. By comparison, the costs of undertaking management reforms such as improved remuneration might be costly to the state, but in view of the multiple benefits they generate, such reforms are often considered an investment in the future by some governments, such as Singapore. One of the key lessons to be learnt from Singapore's successful efforts to reduce incentives for corruption among civil servants (and political leaders) is to ensure that 'their salaries and fringe benefits are competitive with the private sector'.⁸⁴ The above SMS might therefore be viewed as a step to reducing the incentives for public service managers to engage in corrupt actions.

The Code of Conduct for the Public Service prohibits public servants from 'favouring relatives and friends in work-related activities' and requires them to report any form of 'nepotism'.⁸⁵ Legislation also requires that in making personnel appointments and filling vacancies, the evaluation process should be based on skills, training, competence, knowledge, and the need to address historical imbalances such that

⁸⁴ J S T Quah 2001, Combating Corruption in Singapore, *Journal of Contingencies and Crisis Management*, 9(1):35.

⁸⁵ See sections C3.3 and C4.10.

the public service is broadly representative of the country's demography according to race, gender and disability.⁸⁶ Merit remains an important criterion for selection, but must be contingent upon preference being given to those historically disadvantaged. Yet if civil service culture is supposed to be based on political neutrality, it becomes difficult to understand why 'many top positions are occupied and assigned to officials close to the thinking of the top leadership of the majority party'.⁸⁷ On the other hand, it may be understandable if one takes note of the ANC's deployment strategy that required that all cadres are accountable to the party, irrespective of where they were deployed. This would appear to be a breeding ground for ensuring that 'senior managers in the public service are in effect politicians' rather than public servants.⁸⁸ Not surprisingly, judging by the avalanche of grievances received by the PSC, allegations of nepotism, cronyism, and failure to adhere to procedures in personnel selection have become endemic in the public service.⁸⁹

7.7 Conclusion

Apart from the management reforms discussed immediately above, which, as we saw, were only indirectly initiated in compliance with the anti-corruption strategy, the attempts to improve the management of ethics, the collection of information to develop a solid database on corruption information and the co-ordination of

⁸⁶ Public Service Laws Amendment Act No 47 of 1997, section 8.

⁸⁷ Van Vuuren, *National Integrity Systems*, p 18.

⁸⁸ Ibid

⁸⁹ OPSC/CD:PEHRR.

intelligence on money laundering were clearly intended to assist in corruption prevention. The establishment of a national hotline and reforms in public procurement were, on the other hand, mandated in terms of the national strategy and the public service acted accordingly to ensure implementation. While it would appear that most of the public administration reforms covered in this chapter serve to create a more professional culture of integrity and build a more efficient management echelon, it is much less clear that these measures of themselves will actually translate into reduced corruption. Other innovations such as performance management, service standards measurement, staff retrenchments, reduced bureaucratic procedures, and less rigid regulations, may on the other hand make a more tangible contribution to the fight against corruption.

The strength of the management reforms discussed in this chapter, however, show evidence of a more management-oriented approach to the challenge of curbing corruption with due recognition increasingly being given to calculating costs, identifying responsibility agents, doing proper resource allocations, establishing timeframes, and meeting deadlines. Though reliance on the 'technical assistance' of a United Nations agency as partner in fighting corruption as a prior arrangement before the public strategy against corruption was developed remains a matter of regret, a process had been started that would place the anti-corruption agenda firmly within the public service reform programme. Still, no debate or discussion was being given to the possibility of government itself increasing its budgetary spending on efforts to fight corruption except in the public service realm. Neither was any attempt

being made to overcome the duplicity (and save on costs) that existed among state agencies dedicated to tackle corruption.