Prevention is better than cure

Promoting public service integrity

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The prevention of corruption is a common theme of the election manifestos of most political parties in the run-up to the general elections of 2009. This development is without doubt due to the many allegations of wrongdoing among officials within the ruling party and its senior appointments to the public service. The loss of public trust in the South African government and the public service has been the main consequence of these allegations. Internationally, governments have put corruption prevention on their agenda. Many remedies for unethical conduct have been proposed, including a free press, independent courts of law, scrupulous behaviour by political leaders, and government reform. It is then up to individual countries to decide what 'mixture' of remedies should be applied. This article argues that our efforts to enhance ethics and integrity would benefit more by promoting, for example, an ethical organisational culture in the criminal justice system than overly focusing our attempts on prosecuting allegedly corrupt political leaders.

Expenditure by the South African government on the criminal justice system for the financial year 2009/2010 constitutes a total of nearly R71 billion. This is approximately ten per cent of the total national budget of R738,6 billion. Considering the National Treasury's expectation that the value for money maxim for public service expenditure should apply, or to paraphrase a quote from the *2009 Estimates of National Expenditure,*[1] 'to get the biggest bang for every buck', it seems appropriate to put the practices and processes of this cluster of departments (Safety and Security, Justice and Constitutional Development, and Correctional Services) under the spotlight.

Most state departments preside over commodities that are of value to citizens, making them a target for the unscrupulous. Departments are entrusted with special responsibilities and it may be the case that when their functions are not properly executed, it could adversely affect our fundamental rights to life, security, and freedoms. Police officers are required to enforce the law, thereby protecting law-abiding citizens' rights to a safe and secure environment; judicial officers adjudicate criminal and civil offences, ensuring that those transgressing the law are incarcerated; and, finally, correctional services staff detain inmates and take responsibility for their rehabilitation. Cases of corruption, fraud and general unethical conduct should be identified and addressed, especially if we want 'to get the biggest bang for every buck'.

With the professional support of the Department of Correctional Services, the author is engaged in a research project within the department. This empirical research effort was initiated in 2006 and

is a combined qualitative and quantitative research project with the objective to determine the extent to which the department is successful in managing its ethics programmes. Various research tools have been used, including personal and group interviews, site visits, document analysis, and the design and administration of a web-based questionnaire. For the purposes of the project, two regions of the department have been identified, with six management areas randomly sampled. This excludes research visits to an additional three management areas not included in the sample.

The results from this project are expected in 2009 and will serve as baseline data for the department, whereas a follow up project, possibly within the next three years, could provide for culmination data. This project could also be followed up by similar projects in the departments of Safety and Security and Justice and Constitutional Development. Data emanating from such projects could serve to improve integrity and ethics in the criminal justice system, provide value for money and ensure that the rights of law-abiding citizens are upheld.

In the following sections the utility of corruption, its negative consequences on society and, finally, appropriate strategies to promote integrity, will be discussed.

WHAT CORRUPTION OFFERS THE BRIBERS AND BRIBED

In contemporary public service, officials are entrusted with a variety of duties originating from specific legislation, generally known as delegated legislation. In some instances public officials allocate scarce commodities to citizens, using specific policy guidelines, and in other instances public officials are required to regulate public order and enforce compliance with public service regulations. In both these instances, officials are granted discretionary authority that creates opportunities for corruption.[2] In yet a different environment benefits are allocated using a number of pre-determined policy criteria, of which the benefits are not necessarily limited in supply, for example, determining when a 'Grade D' prisoner could be upgraded to a 'Grade C' prisoner and qualify for greater privileges.

Corruption – in the form of paying a bribe, or the act of extortion – serves a number of purposes. *Bribes can serve the purpose of circumventing specific policy requirements*. For example, old age grants might only be payable to elderly citizens with no alternative form of revenue and no capital assets. Knowing that s/he would under normal circumstances not qualify for such a benefit, a citizen could bribe an official to 'qualify' for it. Essentially, bribes undermine the goals of a programme since benefits will be awarded not to the needy or the best qualified, but rather to those with the highest willingness to pay. Even those who qualify may be forced to pay when officials with discretionary powers decide to create scarcity by delaying approvals or withholding them.[3]

Secondly, *bribes can serve as an incentive payment*. Public officials are generally not as well paid as private sector employees, nor properly supervised, and may even go so far as to impose additional delays in the bureaucratic process. Paying a bribe would thus serve as an incentive to public officials to work productively and more efficiently. In another example, unscrupulous offenders with access to money and 'outside connections' can make payments to receive special privileges, whereas honest and poorly resourced offenders are marginalised.[4]

Thirdly, where governments impose costs in the form of taxes, regulations and customs duties, *bribes can serve the purpose of lowering these costs* to those willing to pay. Companies may pay to have regulations interpreted in their favour, or even to reduce the imposed costs of such regulations. Public officials may bend or even ignore rules and regulations to enrich themselves. Payoffs may occur during the issuing of business licences, the inspection of construction and building sites, and the regulation of environmental hazards and workplace safety.

Businesses and individuals may collude with tax collectors and customs agents to avoid paying taxes and customs duties. Public officials may

reduce or eliminate tax liability on property for citizens, and customs officials may overestimate the value of goods to extract payoffs, or even undervalue imports and earn a share of the resulting benefits. Taxpayers and corrupt officials then divide the savings in taxes and duties.[5]

Finally, *bribes permit illegal activity*. Businesses operating illegally frequently attempt to gain protection from the police, politicians and judges by paying them off. Law enforcement authorities (police, judges and prosecutors) can also demand payments to overlook violations of criminal law, or even limit penalties. These criminal groups not only ensure immunity from prosecution through payoffs, but could also demand monopoly power in the illegal market, for example by paying public officials to intimidate their competitors.[6]

CORRUPTION AND ITS CONSEQUENCES

Corruption, for the purpose of this article, is defined as any *intentional* and *unlawful* conduct or behaviour by persons entrusted with responsibilities of public office, who violate their duties as public officials in such a way as to obtain *undue gratification* of any kind for themselves or for others. Such gratification could include the acceptance of bribes in cash, paid holidays, or even expensive clothes, in return for violating the public interest. Corruption manifests itself as bribery, embezzlement, fraud, extortion, abuse of power, nepotism, conflict of interests, insider trading or abuse of privileged information, and favouritism. In defining corruption, caution should be used when referring to corruption interchangeably with inefficiency and ineffectiveness, as is sometimes the case. Corruption takes place as an *intentional* act of behaviour with the purpose of gaining some kind of *advantage*.[7]

Corrupt government activities can take on many forms, for instance public officials who deviate from the prescribed norms, discriminately administer laws, or adopt a subjective or partisan approach in dealing with clients, and are negligent in the performance of official duties. Corruption is also manifested in the biased application of rules and the misapplication of political or administrative power, whether directly or indirectly, for one's own financial or material advantage, or in order to distribute the gains amongst friends, colleagues, relations or supporters.[8]

Corruption is caused by a number of factors, including psychological, social, economic, and organisational factors. Organisational factors refer to excessive discretion, outdated and inadequate policies and procedures and insufficient supervision, complex legislation, a lack of ethical awareness, and deficient control and accountability. Corruption also has many negative consequences, for example weakened public service delivery, the misdirection of public resources, the inhibition of growth that is necessary to pull people out of poverty and, notably, people's loss of trust in the public service. In developing countries, corruption has even worse consequences. Donor countries that might spend millions on development assistance see corruption as negative for development. Corruption results in a levy imposed on the labour of producers in favour of the occupants of power. It causes the national inheritance to be diverted into private or partisan uses, causing a pernicious drain on the general economy.[9]

POPULAR FALLACIES ABOUT PUBLIC SERVICE INTEGRITY

A variety of remedies exist for corrupt behaviour in the public service. It is generally believed that ethics training for public officials and political office-bearers, exemplary ethical behaviour by political office-bearers and senior public officials, adequate and fair compensation, codes of conduct, a free press, and constitutional mechanisms such as the Public Protector, Auditor-General and Public Service Commission will lead to greater integrity.[10] These generic remedies should however be contextualised. When a country's public service is professional, honest, reliable, effective and efficient, exemplary

ethical conduct by political office-bearers is slightly less significant on the integrity agenda. For countries that need an integrity agenda it remains necessary to decide on a unique 'cocktail' of remedies – those that will have the greatest impact on wrongdoing and misconduct.

Public service reform

In the 1980s, the United States president declared that the public service was not the solution to the problem, but *was* the problem. This initiated the establishment of an international public administration reform movement that would see the public service become smaller, operate like its counterparts in the private sector, and become more efficient and effective. Public service managers adopted private sector methods and strategies, and were given the freedom to manage. Privatisation and contracting out became popular means for the delivery of public services. In the world of ethics and integrity, it was believed that as the public sector declined in size and scope, so too would the frequency of corruption and fraud.

Public administration reform turned out to be fraught with contradictions. People soon realised that the private sector was not necessarily more effective and efficient, and that the public interest ideal – one of the cornerstones of the public service – was being sacrificed. In fact, the privatisation of the public service led to the creation of a scarcity of commodities, thereby increasing the demand for goods and services and consequently increasing the motives to pay bribes. The private sector is also not less corrupt, as is popularly believed. The Enron scandal in the United States testified to that.

Nearly two decades have passed since the ideas of Osborne and Gaebler were published in *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* (1992), and today these ideas have been replaced by a more moderate approach to public service reform. A new approach to governance promotes the idea of government 'steering' the activities of a network of role players, including civil society and the private sector. Instead of taking on a reduced role in society, the public service has regained its lost prominence. South Africa – not unlike many other developing states – requires a public service that plays a significant role in addressing the country's myriad of welfare, policing and security challenges.

Exemplary ethical conduct by political office bearers

Political office-bearers are expected to set the example for ethical conduct in society. Prosecuting a political office-bearer for misconduct, it could be argued, would have positive spin-offs for the integrity agenda. However, this remedy needs to be contextualised. Simply stated, legal proceedings have been instituted against the president of the ruling political party, Jacob Zuma. Some may argue that prosecuting Zuma not only provides him with the opportunity to prove his innocence, but also entrenches the rule of law and the independence of the judiciary. These matters have been high on the agenda of opposition parties and the media.

Unfortunately, the matter is more complicated. In the first instance, Zuma must be proven guilty beyond reasonable doubt, something very difficult to establish in a criminal case before the courts. Furthermore, during 1994 to 1999, Zuma was a member of a government that was inexperienced in the art of governing. The majority of members of cabinet had never served in any government before. It can be assumed that international corporations applied a significant amount of pressure on those individuals responsible for procurement in the defence acquisition contract in order to secure a share of its profits. At the time, the payment of bribes to foreign public officials was even tax deductible. It was only in December 1997 that the Organisation for Economic Co-operation and Development (OECD) ratified the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Members of that first democratic government had to simultaneously acquire the skills and expertise to govern, and

resist attempts to fall prey to the unscrupulous. It is thus essential to ask at which point in time the intangible cost of prosecuting Zuma becomes greater than the benefit. Would it not be in the public interest to pursue a more comprehensive approach to corruption and its prevention? These questions raise the need to look at remedies that are of greater long-term value to South African society.

MORE APPROPRIATE MEANS TO PROMOTE PUBLIC SERVICE INTEGRITY

A different mixture of remedies for misconduct and wrongdoing could be considered. These remedies are not 'quick fixes' but would ensure long-term effectiveness and provide for stability in South Africa's maturing democracy. In the following section these remedies will be discussed.

Promoting professionalism in the public service

Making the public service more professional could reduce the incidence of corruption. This could be achieved by ensuring that it acts in a politically neutral way and by advancing the merit principle in appointing and promoting staff. Applying the merit system rather than the spoils system (where supporters of the ruling political party are appointed to positions of government authority) would require the ANC to adopt different human resource practices. The appointment of senior officials with appropriate skills and experience will contribute to the establishment of a public service based on integrity and ethical conduct.

A caveat has been raised pointing to the negative effect of 'managerialism' on a professional public service. New employment trends have been to appoint senior officials on contract, and not to tenure them. The neutrality of the public service is thus inhibited, as officials are not at liberty to provide 'frank and fearless' advice to ministers, fearing that they might be sacked for insubordination. Additionally, appointing senior civil servants on contract allows the minister to impose a network of patronage – possibly appointing new staff with allegiance and loyalty to the governing party and forsaking the experience and expertise built up over the years by serving officials.[11]

A more scientific approach to misconduct

Public service corruption and incompetence receives daily exposure in government reports and the press. This exposure contributes little to developing a comprehensive approach to ethics improvement. Research into ethics management is a contemporary focus of ethics research. As one scholar has noted, it is not the composition of ethics programmes that should be scrutinised – on that we seem to agree. Legislation for whistle blowing and anti-corruption, and policies on fraud, a code of conduct and disciplinary processes are established phenomena in the South African public service. Rather, it is the implementation of these programmes that we should focus on. Empirical research has been vague and provides little indication of how these programmes function. Research results that purport to be empirical are at best anecdotal and impressionistic.

Research into public service misconduct should be of longitudinal nature, starting off with baseline data and following it up with culmination data. This would allow us to trace improvements in the level of corruption and fraud in executive agencies such as the South African Police Service and the Department of Correctional Services. Identifying indicators would allow us to focus our management efforts on developing an appropriate organisational culture; a *sine qua non* for effective ethics and integrity management. The question of cultural relativism in the public service also requires further research attention.

Research into the opportunities for corruption within a public institution requires the researcher

to combine the qualitative and quantitative research approach; triangulated and using a variety of research methods. Whereas quantitative structured techniques such as surveys and experiments provide for a greater measure of reliability, thus ensuring the same findings when measurements are repeated, qualitative research provides for much greater variation and richness in observing a phenomenon, and consequently greater validity. The researcher has to creatively combine these approaches to obtain an appropriate balance between validity and reliability.[12]

Many examples of corruption cited in this publication are of a hypothetical nature. The measurement and observation of corruption is complicated by a number of factors. One such factor is that the phenomenon is generally not visible to the social researcher. As corruption is illegal in most societies, it occurs as a *covert activity*. Perpetrators try to hide their intentions to extort money or gifts from citizens. Citizens bribe public officials to gain an unjust advantage over other citizens. Naturally, when such wrongdoing is exposed, both parties risk the possibility of losing their unjust advantage. Public officials may also lose their upward career prospects, and business owners stand at risk of losing their business reputations and future contractual dealings with the public service. The state is also prohibited from considering tenders submitted by individuals appearing on a *Register for Convicted Corrupt Offenders*. Criminal prosecution, possibly resulting in a conviction accompanied by a criminal record and a fine, may serve as a further deterrent.[13] This obstacle requires social researchers to work innovatively to, among others, determine the levels of corruption and wrongdoing in public institutions.

Promoting an appropriate public service culture

In the above section, reference was made to establishing an appropriate organisational culture in the public service. For this purpose, various indicators have been established, with the objective to improve management efforts in establishing a culture of integrity. Some of these are:

- Imposing sanctions for deviance from ethical norms and principles
- Rewarding exemplary behaviour
- Promoting an organisational culture where employees can openly discuss unethical conduct without the fear of retribution
- Ensuring the promotion and appointment of public servants committed to the cause of integrity
- Lobbying the support of labour unions in promoting workplace integrity[14]

For example, when cases of unethical conduct are openly discussed amongst supervisors and subordinates in a public institution, it could be assumed that unscrupulous members of staff would be less inclined to accept a bribe or extort a favour. Similarly, the visible enforcement of disciplinary sanctions against departmental officials transgressing a code of conduct supports the promotion of ethical conduct. With appropriate tools we can measure the improvement or deterioration of a climate of open debate and discussion, and also the enforcement of sanctions, or lack thereof. These indicators provide management with an indication of their success or failure in preventing wrongdoing.

CONCLUSION

As public resources are a scarce commodity, it makes sense to focus our integrity efforts on worthwhile initiatives, such as establishing a professional public service and undertaking research projects that provide information about interventions that can best contribute to, and result in, long-term gains for both the public service and society as a whole. By comparison, public service reform, and prosecuting individual political representatives for wrongdoing, makes a rather limited contribution to promoting South African public service ethics and integrity.

NOTES

1 National Treasury. *2009 estimates of national expenditure.* <http://www.treasury.gov.za> Documents/ National Budget 2009/ Estimates of National Expenditure, (accessed 22 February 2009).

2 Kivutha Kibwana, Smokin Wanjala & Okech-Owiti, *The anatomy of corruption in Kenya: legal, political and socio-economic perspectives,* Nairobi: Claripress Limited, 1996, 36-81.

3 J Gildenhuys, *Ethics and professionalism,* Stellenbosch: Sun Press, 2004, 85-86; S Rose-Ackerman, *Corruption and government: causes, consequences and reform,* Cambridge: Cambridge University Press, 1999, 10-15.

4 Rose-Ackerman, *Corruption and government,* 15-17; Gildenhuys, *Ethics and professionalism,* 86-87.

5 Rose-Ackerman, *Corruption and government,* 18-21.

6 Rose-Ackerman, *Corruption and government,* 23-25; Gildenhuys, *Ethics and professionalism,* 84-92.

7 Department of Public Service and Administration, *Public service anti-corruption strategy*, 2002, 7-11.

8 H Zafarullah & N Siddiquee, Dissecting public sector corruption in Bangladesh: issues and problems of control. *Public Organisation Review,* 2001, 1(4) 467-470; R Douglas & M Jones, *Administrative law: commentary and materials,* Annandale: Federation Press, 1996, 119.

9 Department of Public Service and Administration, *Public service anti-corruption strategy*, 9-10; Zafarullah & Siddiquee, Dissecting public sector corruption in Bangladesh, 471; J Wolfensohn, Corruption impedes development and hurts the poor, *International Journal of Government Auditing*, 1998, 1.

10 Douglas & Jones, *Administrative law: commentary and materials,* 144; R Louw, The quest for ethical behaviour in the South African public service. *Teaching Public Administration*, 1998, 18(1), 67-69; F Stapenhurst & P Langseth, The role of a national integrity system in fighting corruption, *Economic Development Institute of the World Bank Working Paper*, 1997, 320-327; V Clapper, On seeing the promised land: prospects for public sector right-doing. *Journal of Public Administration*, 1999, 34(4), 380-381.

11 Rose-Ackerman, *Corruption and government,* 69-70; J Pope, *Confronting corruption: the elements of a national integrity system.* Berlin: Transparency International, 2000, 107-110; cf. World Bank, *Anti-corruption in transition: a contribution to the policy debate*, Washington D.C.: World Bank, 2000.

12 E Babbie & J Mouton, *The practise of social research,* Cape Town: Oxford University Press, 2007, 124-125.

13 *Prevention and combating of corrupt activities act*, 2004 (Act 12 of 2004), sections 26 and 28.

14 W Webb, *The significance of triangulation in measuring corruption: some general reflections.* Paper read at the EGPA Conference: Study Group Ethics and the Integrity of Governance. Rotterdam: The Netherlands, September 3-5, 2008.