

COSTLY CRIMES:

Commercial Crime and Corruption in South Africa

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FOREWORD

Government initiatives to combat crime have largely focused on visible and violent crime, and the 'white-collar crimes' of fraud and corruption have not been high on the policy agenda. Yet these crimes are costing South Africa billions of rands a year, and undermine the national integrity. There is also growing public outrage over corrupt officials and opportunistic fraudsters who appear to be 'getting away with it'.

The National Crime Prevention Strategy (NCPS) adopted in May 1996 commits itself to

addressing commercial crime as a national priority; however, as yet there has been little movement around this programme generally. As regards corruption, initiatives under the NCPS have largely concentrated on interdepartmental efforts to address corruption in the criminal justice system.

Thus, while the public is increasingly interested in commercial crime and corruption, very little local research is available on how government as well as other role players should tackle these issues. This monograph presents two documents that highlight key policy considerations surrounding fraud and corruption, and suggests concrete steps for addressing them effectively in the South African context. It is hoped this will stimulate public awareness and debate around commercial crime and corruption – crimes that can no longer be sidelined as low-level priorities within the crime prevention debate.

The monograph is made up of two parts:

- a comprehensive report drawn up by the Business Against Crime working group on commercial crime to identify blockages and solutions in the criminal justice system in relation to commercial crime; and
- a study on how corruption affects the poor, originally compiled as a working paper for the World Bank/UNDP study on poverty and inequality in South Africa.

Commercial criminals are seldom successfully convicted, largely because overloaded investigators and prosecutors do not have the time, expertise and resources to pursue these cases effectively. Part one, on commercial crime, is the product of a continuous process of consultation between stakeholders burdened with the onerous task of combating commercial crime in South Africa. Following a high-profile exercise in 1996 on re-engineering the criminal justice system as a whole, Business Against Crime's working group on commercial crime decided to undertake a similar exercise to track the way in which the system deals with commercial crime. A task team was formed to conduct this project.¹

The final report, which is published here, is based on interviews with key role players² and the proceedings of a consultative workshop held in November 1996. The report was accepted by the board of Business Against Crime in May 1997, and, following a presentation to the NCPS executive co-ordinating committee in June 1997, has been accepted as a priority project of the NCPS. The challenge will be for NCPS ministries with the necessary decision-making powers to co-ordinate and implement the proposed recommendations.

Part two largely centres on a case study of government corruption in poverty alleviation programmes (ie social pensions), and highlights general problems in transforming the public sector. The final section, which deals with controlling institutions to combat corruption, provides an important link with part one. While the proliferation of such bodies is impressive, and demonstrates the government's political will to address corruption, concerns are raised about their ability to tackle corruption effectively. In conclusion, benchmarks for a successful anti-corruption strategy are considered, and future areas for research outlined.

Commercial crime and corruption increasingly feature in the public consciousness, both locally and abroad. Many a political party has ridden to power on an anti-corruption platform, and recent media reports suggest that the 'politicisation of corruption' has already occurred. The pervasive culture of mistrust and institutional corrosion which such activities encourage, as well as the huge cost to South Africa's struggling economy, make them crimes to be dealt with as a

matter of national priority.

ENDNOTES

1. The project team consisted of representatives of Business Against Crime, the South African Police Service (SAPS) commercial crime branch, Deloitte and Touche Forensic Services, the Deloitte and Touche Consulting Group, KPMG, and the Institute for Security Studies.
2. Interviews to identify key blockages and solutions were conducted with the SAPS commercial crime branch; the Office for Serious Economic Offences (OSEO); the prosecution and justice authorities; the departments of Correctional Services and Trade and Industry; other government institutions with legislated powers; and business.

PART ONE:

Commercial crime and the criminal justice system: blockages and solutions
Business Against Crime working group on commercial crime

INTRODUCTION

This report is a joint effort by the government, Business Against Crime (BAC) and non-government organisations (NGOs) to identify those critical factors which influence the efficiency and the effectiveness of the criminal justice system in addressing commercial crime, which includes fraud, forgery, corruption, money laundering and insider trading.

Government and business collaboration

This report represents a key step in government and business collaboration to address commercial crime. It documents priority issues that block the criminal justice process and their respective solutions. On the basis of this report, implementation plans will be designed and set in motion. Such a way forward will meet some of the key objectives of the National Crime Prevention Strategy (NCPS), the Business Plans of the South African Police Service (SAPS), and those of Business Against Crime.

NCPS objectives

This report takes forward the objective of the NCPS to address what is termed 'white-collar crime'. National Programme 2.4 of the NCPS aims to 'reduce opportunities and increase detection and apprehension for those involved in white-collar crime, commercial crime, large-scale fraud and economic offences'. Ultimately, the aim is to reduce incidents of commercial crime in the private and public sectors. This report highlights commercial crime or white-collar crime as one of the high-priority areas in which government and business collaboration is crucial.

SAPS plan

This report supports the 1996/97 Annual Plan of the SAPS, which lists commercial crime among its 13 policing priorities. The SAPS plan aims 'to establish partnership with businesses ... in the prevention and investigation of commercial crime and corruption'.

BAC objectives

This report satisfies many of the key objectives of Business Against Crime's working group on commercial crime. It involves role players from business, government and civil society in the fight against this type of crime. BAC aims to strengthen the main official investigation, prosecutory and correctional bodies so that they can carry out their task more efficiently and effectively. This entails a partnership approach to enhance the capacity of such units through the improved use of available resources, the acquisition of additional resources and training, as well as putting mechanisms in place that will reduce the opportunities for commercial crime. Such mechanisms include campaigning for a commitment to ethical practices. To this end, the working group has produced a charter on organisational ethics for the public and private sectors as well as a booklet entitled **Beating fraud: commercial crime prevention, detection and response guide for the private and public sectors**.

Police, courts and corrections as deterrents of commercial crime

This report affirms that an effective and efficient criminal justice system can be a meaningful deterrent of commercial crime. In striving for effectiveness, the goal is to assure prospective offenders that their chances of escaping the legal consequences of their unlawful actions are minimal. In working to achieve efficiency, the purpose is to create an expectation in the minds of prospective offenders that they will timeously be held accountable for their actions. In raising the risks of committing crimes by improving the chances of apprehension, successful prosecution and the effective serving of sentences, it can help to discourage opportunist offenders.

Limitations of the police, courts and corrections

The report acknowledges the limitations of the criminal justice system per se in ridding society of crime. The impact of an effective criminal justice system in reducing crime should not be exaggerated. Some of the more developed countries invest a great deal more than South Africa in making their criminal justice systems effective. Such deployment of resources, in some cases, has led to an increase in the prison population without a significant reduction in serious crime. This should warn against putting all hopes on combating crime while neglecting its prevention.

Commercial crime has increased throughout the world, and South Africa is no exception. It is well documented that the financial costs of commercial crime far exceed the value of all street crime. According to official statistics of reported cases, more than 29 000 cases with an estimated cost of more than R7 billion were under investigation by the SAPS commercial branch in 1996. About 80 per cent of these cases involve fraud, and the other 20 per cent theft (from employers) as well as transgressions of more than 50 statutes which the commercial branch investigates. In addition, the Office for Serious Economic Offences (OSEO) was investigating 33 matters involving approximately R8,5 billion.

It is recognised that as soon as a reasonable level of effectiveness has been achieved within the criminal justice system, resource allocation should favour prevention. International experience indicates that a further improvement in crime reduction will be achieved by investing in other complementary strategies. Crime prevention is an area of least investment in many countries, and yet it holds the greatest prospect of success in crime reduction.

THE PROJECT'S OBJECTIVES

- To facilitate communication and co-operation across the relevant government departments, especially those in the criminal justice process.
- To identify and define key commercial crime processes and role players.
- To identify common and specific blockages in the criminal justice system in relation to commercial crime.
- To document priority issues in a consistent and comprehensive manner.
- To prepare a draft report for discussion.
- To confirm a preliminary list of solutions, including short term initiatives and 'quick hits'.
- To prepare a final report which all role players are committed to implementing.

SCOPE

As an extension of the pre-scoping exercise of the broader criminal justice system, the working group on commercial crime undertook to facilitate a similar interdepartmental cross-cutting programme aimed at assessing, in collaboration with relevant stakeholders, the key blockages and possible solutions in the criminal justice system where it concerns the efficient management of commercial crime. The crosscutting exercise took the form of a high-level review of the role players and processes in the criminal justice system to do with the prevention, detection, investigation, prosecution and sentencing of commercial crime. The output from this initiative will serve as an input to subsequent steps related to the detailed definition (scoping) and initiation of specific processes and projects that will be executed in the short, medium and long term.

METHODOLOGY

Define scope and objectives

Conduct interviews

Collate interview material

Facilitate a one day workshop of role players

Prepare a draft report for discussion

Discuss draft report with the NCPS team

Finalise report

Present report

Acceptance of report

Publish report, create awareness

Implementation

Monitoring

PROCESS FRAMEWORK

The process view

The combating and prevention of commercial crime is typically approached in a fragmented manner, focusing on departmental functions rather than the provision of an efficient and effective service to the public, and doing whatever it takes to reach that goal. The greatest deficiencies in existing processes occur at the boundaries between functions, departments, facilities and information systems.

Furthermore, information technology should not be designed to automate existing inefficient processes. To improve the effectiveness of the way in which commercial crime is dealt with by the criminal justice system, it is necessary to re-examine all the processes that deliver this service. Redesigning a process from scratch, to be focused on providing stakeholder value and in a manner which makes best use of the power of technology, people skills and infrastructure, often leads to startling gains in efficiency.

Commercial crime management process model

A core or operational process for a business or organisation is a fundamental process to the organisation's purpose. The occurrence of the process means the organisation is carrying out its operations. The core processes for commercial crime management have been identified as: crime prevention, crime detection, crime investigation, defence, prosecution, and serving the sentence. These core processes include activities that draw on multiple functional skills. Crime detection, for example, includes the legislature (for developing the legislation that declares what constitutes commercial crime), the intelligence (for setting up the capacity to detect when the crime has been committed), the police (for the actual investigation of the offence), and the community (as both the customers and participants in crime detection).

Support processes

Support or infrastructural processes are processes which provide an infrastructure for the core process to take place. An example is the management of finances and accounting process. Money in itself does not prevent crime, but unless it is supplied and properly managed, activities that prevent crime – such as effective investigations – will not take place. Support process are critical to an organisation in that they contribute towards the efficacy of its core process.

Technology, people and infrastructure

Furthermore, these core and support processes take place through the 'carriers' of people, technology and infrastructure. People issues look at whether the existing practices provide for increased creativity, and effective and flexible decision-making. Technology issues look at whether the current technology provides effective and efficient tools and information for solving or preventing crime. Infrastructural issues look at the effectiveness of the organisational, financial, and physical structures in assisting the core processes to take place.

Strategy

Lastly, the nature and extent of each of the core and support processes should foster the strategic goals of government and other stakeholders. The strategic goals themselves are subject to the demands of the external environment (communities and societal needs), since the purpose of the service is to meet the needs of the general community. Consequently, an organisation must first develop its strategic goals; then core and support processes that assist in achieving these objectives should be determined.

Operational process model

Each of the operational processes has subprocesses. Subprocesses are the various 'small processes' that, when taken together, constitute the process. For example, for the crime investigation process to occur, different but related smaller processes must take place, such as the gathering of evidence, communication and co-operation between relevant departments, the management of information, and the administration of bail.

Blockages

Blockages are factors that prevent the occurrence or the effective and efficient occurrence of a process. The solution to a blockage is either to remove it, or if this cannot be done, to redesign the process around it. Examples would include the costs of performing an activity, misplaced accountability, timing, staff morale, approvals, interdependencies, customer interface, etc.

The main blockages and proposed solutions identified in interviews with various units and distilled from the perceptions of the task team are given in the tables that follow. (Please note that the problems and solutions are not necessarily a one-to-one relationship.)

Blockages in the Criminal Justice Process for commercial crime	Deficiencies in resources for commercial crime
1. Prevention	9. Managing commercial crime in the criminal justice system
2. Reporting	10. Managing human resources
3. Investigation	11. Managing information
4. Prosecution	12. Managing finances and assets
5. Defence	
6. Court availability	
7. Sentencing	
8. Sentence enforcement	

BLOCKAGES AND SOLUTIONS

Public safety and justice

Citizens expect safety and justice from government. However, if the machinery within government is not functioning optimally, the chances of meeting the legitimate expectation of the public are diminished. In order to improve the responsiveness of state machinery, 12 areas where major blockages occur have been identified (see table above).

Programmes

Within each of the 12 areas identified there are a number of blockages and deficiencies,

together with their relevant solutions.

Sub-programmes

Each blockage and related solution represent a sub-programme which require further analysis to identify benefits, role players, required skills, other resources and time frames.

Structure to support task flow

Addressing these systemic issues requires the co-ordination of processes across departmental boundaries. The critical success factor is how well structures will be adapted to support the task flows, or whether processes will be fragmented in order to preserve present structures.

Emerging themes

In the crosscutting exercise on commercial crime and the criminal justice system, several issues were raised which need to be addressed with some urgency:

- the lack of competent, experienced and motivated investigators and prosecutors;
- the lack of technology to support competent staff;
- the lack of infrastructure, eg courts and prisons;
- the lack of co-operation and communication;
- the lack of forward planning; and
- no clear policy on the screening and decriminalisation of cases.

On the pages that follow, identified blockages are listed in detail, together with suggested solutions and recommended key role players.

Items marked 'a' deal with blockages that should be regarded as primary priorities, and items marked 'b' with blockages that should be treated as secondary priorities.

1. PREVENTION OF COMMERCIAL CRIME

BLOCKAGES	SOLUTIONS	ROLE PLAYERS
a.1.1 Information: Prevention is handicapped by the poor availability of intelligence information, information on released offenders, crime trends and best practice.	Establish and maintain a comprehensive common database containing all relevant information and statistics. Create a common database network	Commercial Branch Correctional Services SAPS Training College Business Against Crime Media National Intelligence Agency Legal practitioners
a.1.2 Planning: There is little planning done to support the prevention of commercial crime.	Design and implement strategies to support commercial crime prevention. Create joint BAC/commercial branch internet website to provide advice and identify crime areas where prevention is possible.	LEAD DEPARTMENT SAPS commercial branch PROGRAMME CO-ORDINATOR
a.1.3 Training: Crime prevention is not part of the training of commercial branch members.	Include commercial branch members in private sector training initiatives.	Commercial Branch investigator with provincial counterparts.
b.1.4 Prevention measures: There is a lack of measures in organisations to recognize and	Publish codes of conduct and prevention mechanisms, create awareness of the benefit of internal audit functions, and encourage organisations to implement these	

prevent commercial crime.	organisations to implement these. Publicise conviction of offenders. Create website (Internet).
b.1.5 Communication: The role of the SAPS in communicating with the public, including the use of the media, needs to improve.	Improve communication with the public and with private sector. Establish channels of communication. Set up commercial crime working groups each provincial BAC, and appoint a PRO from each.

2. REPORTING OF COMMERCIAL CRIME

BLOCKAGES	SOLUTIONS	ROLE PLAYERS
a.2.1 Policy on prioritization: No clear policy on how to prioritize reported crime and how to deal with huge backlogs.	Establish policy on how to deal with cases, eg first come first investigated. Extend commercial branch capacity with reservists.	<p>OSEO Business Against Crime Safety and Security Policy Unit</p> <p>LEAD DEPARTMENT</p> <p>SA Law Commission SAPS commercial branch OSEO</p> <p>PROGRAMME CO-ORDINATOR Appoint a national co-ordinator for investigations</p>
b.2.2 Poor direct benefits: Cost-benefit ratio is unfavourably against reporting of crime by organisations due to slowness of the criminal justice process.	General improvement in the efficiency of the criminal justice process. Possibly introduce incentives for information supplied.	
b.2.3 Bad publicity: Many organisations are afraid of bad publicity.	Promote a culture of isolating offenders rather than victims - including organisational victims. Media campaign to create awareness and promote good corporate governance	
a.2.4 Whistle-blower vulnerability: Lack of protection for the whistle-blower leads to fear of reporting.	Provide policy on protection for the whistle blower and lobby for the introduction of legislation if necessary.	
a.2.5 Duplication: Too many points of reporting resulting in poor co-ordination and duplication of investigations.	Implement policy that requires all investigators to inform a co-ordinating body about all commercial crime investigations in process. Create an integrated database for reported commercial crime. Construct communication lines between the various investigative agencies. (Link with 1.1)	

3. INVESTIGATION OF COMMERCIAL CRIME

BLOCKAGES	SOLUTION	ROLE PLAYERS
a.3.1 Legislation too broad: Too many activities have been criminalised and are being regulated.	Review existing and proposed legislation with a view to rationalising and decriminalising some of it where appropriate.	<p>Director of Public Prosecuting Commercial branch OSEO Anti-Corruption Unit Customs and Excise South African Reserve Bank Attorney-general Business Against Crime SA Law Commission</p>
a.3.2 Lack of information-sharing between investigative, regulatory bodies and business leads to duplication of effort. There is a low and informal interdepartment co-operation in the investigation of	Formalise and improve information-sharing by investigation bodies via an integrated database and through various forums. (Link with 1.1 and 2.5)	

operation in the investigation of cases.	1.1 and 2.3)	LEAD DEPARTMENT SA Law Commission SAPS commercial branch OSEO
a.3.3 Differing policy on adequate investigation: Differing policies between SAPS and attorney-general on the cut-off point for investigations - leads to duplication and wastage of effort.	Investigators and prosecutors need to agree on cut-off point for each case. Improve mechanism for co-ordination between investigators and prosecutors. Attorney- general to give direction to investigation process. Appoint specialist commercial crime prosecutors.	PROGRAMME CO-ORDINATOR Appoint a national co-ordinator for investigations
a.3.4 No policy on the prioritization of cases to be investigated (refer to 2.1). High backlog of cases hamper through investigations. No system to screen cases with regard to their prospects for successful prosecution.	Establish policy on prioritization of cases for investigation: and on how to deal with cases in the backlog: eg use forensic auditors. Develop criteria for screening of cases that will not be successfully prosecuted.	
b.3.5 Inadequate number of investigations.	After identifying selection criteria, recruit and train new investigators: create career paths to retain present investigators.	
b.3.6 Investigations take too long: public lose faith in criminal justice system (refer to 2.2).	Proactively keep complainants informed of progress on their cases at regular intervals by volunteering status reports. Standardise investigative techniques and documentation.	

4. DEFENCE OF COMMERCIAL CRIME SUSPECTS

BLOCKAGES	SOLUTIONS	ROLE PLAYERS
b.4.1 Excessive use of delaying tactics by defence	Review the rights of victims to a speedy trial balanced against the rights of the accused to a fair trial. Ensure compliance with Section 13 of the Criminal Procedure Amendment Act 86 of 1996.	Department of Justice LEAD DEPARTMENT Department of Justice

5. PROSECUTION OF COMMERCIAL CRIME

BLOCKAGES	SOLUTIONS	ROLE PLAYERS
b.5.1 Loss of experienced prosecutors means more cases are handled by less experienced prosecutors.	Create career paths to retain experienced prosecutors - improve payment. Possible use of private prosecutors.	Commercial Branch OSEO Prosecutors Attorney-general
b.5.2 There is no incentive to take on complicated cases.	Improve guidance in the preparation of cases and reward good preparation in performance appraisals.	LEAD DEPARTMENT Attorney-general
b.5.3 There is no incentive to take on complicated cases.	Give incentives for efficient prosecution of complicated cases. Possible use of private prosecutors.	CO-ORDINATOR A designated prosecutor in each attorney-general's office
a.5.4 No dedicated specialised prosecutors.	Identify and train prosecutors who are to specialise in commercial crime cases.	
b.5.5 Once stolen funds are repaid, many complaints are reluctant prosecute.	Encourage complaints to prosecute where the prospects for success are high. Change the law make it compulsory.	

6. COURT AVAILABLE FOR COMMERCIAL CRIME

BLOCKAGES	SOLUTIONS	ROLE PLAYERS
b.6.1 Long hours of waiting for hearings deter complaints and witnesses from using the courts.	Better management of court scheduling can avoid keeping witnesses waiting.	Attorney-general Prosecutors Magistrates Judges
a.6.4 There is a lack of specialisation on the bench, particularly on commercial crime.	Identify magistrates and judges with commercial experience and knowledge to hear commercial crime cases. (Link to 5.4)	Investigators: commercial branch and OSEO Master of the court
a.6.3 In the major cities, courts are booked up to five months in advance.	Explore the idea of a specialised commercial crime unit consisting of an association of dedicated investigators, prosecutors, magistrates and judges. Possibly funded by business.	LEAD DEPARTMENT Department of Justice
a.6.4 There are no special commercial crime courts.	Explore the idea of establishing a commercial crime court with a possible night court. This court could also hear civil matters.	PROGRAMME CO-ORDINATOR Attorney-general to appoint a co-ordinator

7. SENTENCING OF COMMERCIAL CRIME

BLOCKAGES	SOLUTIONS	ROLE PLAYERS
a.7.1 Sentencing perceived to be too lenient, the impression given is that money can buy freedom from the law.	Sentencing should include the forfeiture of illgotten gains and should fit the crime. Consideration should be given to the imposition of financial penalties in relation to the value of the offence as an alternative to fixed fines. Review international practice.	Magistrates Judges Department of Justice Attorney-general
a.7.2 The value of correctional supervision outside of prison is not appreciated.	Alternative sentencing, including community service, using specialised skills should be considered. However, the impact of a prison sentence on the commercial criminal is a major deterrent.	LEAD DEPARTMENT Department of Justice PROGRAMME CO-ORDINATOR Appoint a project co-ordinator to drive the process.

8. SENTENCE ENFORCEMENT

BLOCKAGES	SOLUTIONS	ROLE PLAYERS
b.8.1 Congestion in prisons.	Decriminalise some of the laws, use alternative sentencing to divert people who do not pose physical danger to society. Possibly exclude white collar crime. See point 7.2 above.	Correctional Services Private sector Non-government organisations BAC
b.8.2 No rehabilitation from criminal behavior taking place.	Revisit rehabilitation programmes and revise them for use.	LEAD DEPARTMENT Department of Correctional Services
b.8.3 Perceptions are that parole is granted too easily.	Review the parole system in view of the need to ensure that justice is done to those few who will be sent to prison.	PROGRAMME CO-ORDINATOR Appoint co-ordinator
b.8.4 Integration into society is poorly managed.	From partnerships with relevant stakeholders to design and implement integration programmes.	

9. MANAGING THE ENTIRE CRIMINAL JUSTICE INFORMATION PROCESS FOR COMMERCIAL CRIME

BLOCKAGES	SOLUTIONS	ROLE PLAYERS
*9.1 There are no clear strategies and goals for the system as a whole.	Develop synergy and a common focus between the priorities and activities of different units by aligning them to the goals of the entire system refer 3.1.	<p>SAPS: Commercial branch OSEO Department of Justice NCPS management Correctional Services</p> <p>LEAD DEPARTMENT</p> <p>Department of Justice, supported by NCPS management</p> <p>COMMERCIAL CRIME CO-ORDINATOR</p> <p>A senior manager from the Department of Justice</p>
*9.2 There is no effective congruency between the priorities and activities of the different units.	Build performance measures around the efficiency achieved at the handing over of cases, and reward it.	
*9.3 The organisational structure is not built around the need for an efficient process flow.	Appoint a Commercial Crime co-ordinator or case manager for the entire criminal justice process to whom co-ordinators of subprocesses, eg prevention, investigation etc, will report. Improve existing structures.	
*9.4 There are too many levels of authorisation , which add little value but hold up the process and waste valuable time.	Restructure the organisational units around the need for an efficient process flow.	
*9.5 Whenever there is a hand-over of cases from one department to another, this results in blockages, delays, and a duplication of effort.	Devolve decision-making to lower levels in the organisation to ensure rapid adaptability and efficiency, and hold them accountable.	
*9.6 Nobody bears responsibility for the success of the entire process , from prevention through to the rehabilitation and release of offenders.	There is a need to set up strategies and goals for the entire system.	
* These considered to be internal issues for the authorities to resolve.		

10. MANAGING HUMAN RESOURCES FOR COMMERCIAL CRIME

BLOCKAGES	SOLUTIONS	ROLE PLAYERS
a.10.1 There is a high staff turnover among investigations and prosecutors, resulting in staff shortages. This is largely due to a lack of career development, low salaries, and unfavorable working conditions.	Fill the vacant posts and develop career paths, improve salaries and working condition.	<p>SAPS commercial branch OSEO Department of Justice BAC</p> <p>LEAD DEPARTMENTS</p> <p>SAPS Justice</p>
a.10.2 There is a low level of experience among both investigations and prosecutors as more skilled people leave for jobs elsewhere, thus reducing the number of competent and motivated personnel.	Design strategies to retain experienced staff.	
a.10.3 Current career advancement takes experts into administrative jobs.	Create career opportunities that retain experts in their field rather than turning them to administrators.	
a.10.4 There is no merit-based reward system to recognize achievement.	Institute performance-based remuneration.	
a.10.5 Enhancement skills training not done ; willingness to outsource skills builds resentment among staff.	Institute staff development programmes.	

11. MANAGING INFORMATION FOR COMMERCIAL CRIME

BLOCKAGES	SOLUTIONS	ROLE PLAYERS
a.11.1 There is no information infrastructure plan for commercial crime.	Develop an information infrastructure plan for commercial crime as part of overall criminal justice information technology.	<p>SAPS OSEO Department of Justice Department of Correctional Services BAC</p> <p>LEAD DEPARTMENT</p> <p>SAPS</p> <p>CO-ORDINATOR</p> <p>Appoint a co-ordinator from the commercial branch</p>
a.11.2 Limited use of computers. Existing information technology does not interface.	Increase use of computers. Ensure that new technology has interface capability and seek to improve interfaces of old ones. There is a general lack of technology. There is a need to provide hardware, software and training.	
a.11.3 No central register for commercial crime and no data on 'modus operandi'.	New information infrastructure should include an accessible register of commercial crime cases under investigation and 'modus operandi' employed.	
a.11.4 There is inadequate information sharing among investigating bodies (including regulatory bodies) due to secrecy clauses.	Address the need for information sharing; review secrecy clauses and balance them against the need to process cases efficiently to serve justice.	

QUICK HITS: COMMERCIAL CRIME

ACTION	HOW	IMPACT	PLAYERS	LEADER	TIME
1 Encourage organisations to put preventive measures in place.	Each member to provide guidelines to organisations they interact with. Use media opportunities to speak about prevention.	To drive home the effect of prevention, and organisations' responsibilities.	Commercial branch OSEO; BAC	SAPS Commercial branch	3 months
2. Establish policy on addressing reported crime, eg first come first served?	Decide on a cut-off date and put together a team of investigations and prosecutors working on new cases on agreed new basis.	Increase the swiftness of criminal justice process in delivery of justice.	Commercial branch; OSEO Department of Justice Attorney-General	SAPS Commercial branch	Within 3 months
3. Volunteer regular status reports to keep complainants informed of progress of their cases at set intervals.	Set regular time intervals to contact the complainant by phone and in writing as to status and prospects of their case.	Greater public appreciation of workload and challenges faced by investigators and prosecutors.	Commercial branch; OSEO Department of Justice Attorney-General	All role players	Within 3 months
4. Give incentives for successful prosecution of complex cases.	Link successful prosecutions to performance-based remuneration.	Greater willingness among prosecutors to take on commercial crime cases.	Department of Justice Attorney-General Prosecutors	Department of Justice	Within 6 months
5. Explore idea of establishing a commercial	Draw up the necessary legislation to establish such a court in each	Swifter court scheduling and short waiting	Department of Justice	Department of Justice	Announcement within 6 months

crime special court.	key province - to be used for other cases when free.	period for court availability.	BAC co-funding	Justice	Within 6 months
6. Present report on alternative sentencing to be considered by magistrates and judges.	Collate international best practice on alternative sentencing.	Offer meaningful service to community while alleviating prison congestion.	Department of Justice Department of Correctional Services Specialised research Institutes; academics	Department of Correctional Services	Report to be completed within 8 months
7. Inform the public of parole system and how it operates.	Use various means of communication including the media.	Growing understanding of criminal justice.	Correctional Services NGOs	Department of Correctional Services	3 months
8. Appoint commercial crime co-ordinator.	Appoint existing employee to oversee the co-ordination.	Greater focus on the success of the entire system.	Safety and Security; SAPS Department of Justice	Department of Justice	Within 6 months
9. Fill vacant posts.	Raise moratorium and advertise posts.	Raising of morale among staff by improving salaries and working conditions.	Safety and Security; Justice Correctional Services	All	Within 12 months
10. Address the need for information-sharing and review of secrecy clauses.	Review secrecy clauses against the need to avoid duplication of efforts.	Effective use of available information, and greater efficiency	Commercial branch; Justice Regulatory bodies; business	All	Within 12 months
11. Prepare audit report of available technological and infrastructural resources.	Each unit to prepare audit.	Show the need for resources in the short term.	Commercial branch; OSEO Attorney-General	All	Within 6 months
12. Tackle backlog of commercial cases.	Determine extent of backlog, get necessary manpower or outsource, and dispose of as many old cases as possible.	Satisfy the public, and free investigations/prosecutors to concentrate on new cases.	Commercial branch; OSEO Attorney-general; BAC	Commercial branch	Within 12 months

12. MANAGING FINANCES AND ASSETS

BLOCKAGES	SOLUTIONS	ROLE PLAYERS
a.12.1 Units have limited or no control over budgets, unit heads cannot authorise expenditure.	Control over own budgets must be devolved to unit heads.	Commercial branch OSEO Attorneys-general Correctional Services BAC
a.12.2 There is inadequate technological (vehicles, communication equipment) and infrastructural (courts, prisons) resources to support staff.	Audit the extent and use of technological and infrastructural resources and identify the needs.	

PART TWO:

Poverty and corruption in South Africa: government corruption in poverty alleviation programmes
Lala Camerer

INTRODUCTION

As far back as 1989, the authors of **Uprooting poverty in South Africa; report of the second Carnegie inquiry into poverty and development in South Africa** predicted that corruption would loom large in a new South Africa. Noting the high degree of corruption bred by apartheid, they argued that even were a democratic government to gain power, the old clerks would not necessarily learn new habits.¹

Their prediction was uncannily accurate. Since the transition, corruption has burgeoned in both the public and private sectors; besides violent crime, it is probably the factor which most preoccupies those who express concern about South Africa's future. Analysts have warned that corruption is the single biggest threat to the Reconstruction and Development Programme, and the establishment of a human rights culture.²

Their comments underline the fact that, contrary to perceptions in some quarters that the effects of corruption are largely confined to the middle classes, this phenomenon – particularly in the public sector – has considerable impact on the poor. It is this aspect which forms the subject of this study.

This monograph, then, examines the way in which government corruption affects the poor. Because this topic spans such a vast area, only one field, social security, is examined in depth. This area was chosen because:

- social security programmes, particularly pensions and other grants, are largely regarded as the state's primary attempt to alleviate poverty;³
- social security programmes, particularly pensions, are known to have been affected by fraud and corruption; and
- the problems surrounding the delivery of social security services to the poor characterise more general problems relating to the transformation and restructuring of government departments.

The first section of this paper provides an analytical framework for examining corruption.

Attention is paid to the relationship between corruption and developing societies, societies in transition to democracy, and the South African experience in particular.

The second section examines the state of social welfare. Particular attention is paid to the composition of the welfare budget, as well as the distributional impact of social security grants on household income. General problems in delivering these grants are examined in the context of the transformation of the public service.

The third section addresses the core issues. Relying heavily on the report of the Committee for the Restructuring of Social Security (CRSS), a body set up by the Department of Welfare in 1996, an attempt is made to understand why a situation has arisen in which huge sums earmarked for social security are lost through fraud and corruption. Several factors that facilitate abuse are highlighted, and proposals for addressing these problems evaluated.

The fourth section identifies and evaluates mechanisms for addressing corruption in the field of social security. Corruption in the criminal justice system and recent proposals to counter it are

also briefly examined. Finally, indicators are suggested against which the impact of anti-corruption efforts – particularly those which affect the poor – may be measured. Future research areas are also flagged.

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CORRUPTION: THE ANTITHESIS OF GOOD GOVERNANCE

The establishment of good governance – the practice by political leaders of accountability, transparency, openness, predictability, and the rule of law – is widely regarded as a critical element in securing sustained economic development, and a virtual prerequisite for market-led economic growth.¹ Governance is not necessarily limited to government, but also refers to the way in which all public affairs are conducted – for instance, in the economic or non-governmental sectors as well.

Good governance depends on the extent to which the general citizenry perceives a government to be legitimate, ie committed to improving the general public welfare; competent to maintain law and order and deliver public services; able to create an enabling policy environment for productive activities; and equitable in its conduct, favouring no special interests or groups.² Corruption is often regarded as the antithesis of good governance.

There is much literature dedicated to defining the rich term of 'corruption'. For the purposes of this monograph, corruption is defined as 'the use of public office for private gain'.³ While recognising that limiting corruption to government activities is a narrow focus, this working definition confines itself to public sector corruption – that is, where the person engaged in corrupt practices is a government official or public representative. The first part of this monograph, by the BAC working group on commercial crime, deals exclusively with commercial crime in the private sector.

RELATIONSHIP TO DEMOCRACY

The corrupt act is inherently undemocratic. It involves the exercise of a public duty contrary to the wishes of the electorate which has determined that duty, and employs the relevant official to perform it properly.⁴

There is no simple correlation between levels of democracy and levels of corruption. Nonetheless, in the long run democratic regimes arguably generate more powerful antibodies against corruption than systems in which political liberties are stifled. A country that has frequent elections, political competition, active and well-organised opposition forces, an independent legislature and judiciary, free media and freedom of expression is bound to place greater limits on the scope and frequency of corruption than one that does not have them.⁵ As the balance of power between leaders and their publics continues to shift in favour of more open democratic governance, with the primary driving force behind this change an 'information-rich' and more transparent environment, leaders are forced to give a fuller public accounting of themselves than ever before.⁶ Growing democratisation hopefully means the emergence of more active national media, and stronger legislatures with the power to hold leaders accountable.⁷ While democratic institutions do open up a long-term prospect of institutional remedies for corruption, these require a powerful political impetus to make them work effectively.⁸ Political will is thus a key ingredient of an effective, well-resourced anti-corruption strategy.

However, while democratisation involves the spread of political and civil freedoms, it can also open up an era of licence without responsibility which benefit existing and emergent economic and political elites.⁹ Democratic systems also provide incentives and opportunities for corrupt behaviour, notably the enormous costs of mounting election campaigns (which can stimulate corrupt practices such as bribing voters in order to get re-elected), the capture of political parties by economic elites, the politicisation of the state apparatus by elected officials, and the desire of the latter to compensate for political uncertainty by building up a capital stake through corruption. These phenomena are particularly strong in fledgling democracies.¹⁰

Thus, for a variety of reasons particularly pertinent to South Africa's young democracy, corruption is likely to spread in periods of economic and political transition from authoritarian rule to democracy. These reasons include vacuums of authority left by the removal of authoritarian controls, conflicting values, a new elite trying to catch up with the old, decentralisation, privatisation, and the opening of the economy to international participation.¹¹ An important way to strengthen the emerging democracies of Latin America, eastern Europe, Africa and Asia is to focus on developing strong institutions for promoting 'good governance'.¹²

RELATIONSHIP TO DEVELOPMENT

Whereas in the past only developing countries were perceived to be plagued by corruption, developed/industrialised countries with well-established democracies have also recently come under the spotlight.¹³ Revelations in Japan, Belgium, Italy, France, Spain and the United Kingdom have shown that pervasive political corruption can also be entrenched in highly industrialised, democratic societies, and is not necessarily related to underdevelopment or authoritarianism.¹⁴ Corruption is however, particularly harmful in developing countries, which tend to have fewer resources, so it is even worse if they are wasted or not used in the most effective or equitable way. In developing countries there may be more opportunities for corruption and less resources, in terms of personnel experienced in auditing, financial analysis and fraud investigation, for fighting it.

While developing countries are struggling against the institutionalisation of certain corrupt practices, it has also been argued that there is a window of opportunity in developing economies for setting up anti-corruption systems and designing new public structures with anti-corruption principles in mind.¹⁵ The route South Africa has taken in this regard is discussed later.

CAUSES AND EFFECTS

While the globalisation of crime via internationally organised criminal syndicates may have a role to play, the causes of corruption are mainly rooted in the political and economic conditions and policies of each country. As such, its causes are as complex as the types of corruption are varied.¹⁶ The spread of neo-liberal economics and liberal-democratic politics has brought to the fore certain basic assumptions and theses about the causes and opportunities for corruption. Klitgaard notes that three factors are particularly critical in creating opportunities for officials to engage in corruption:

- the monopoly power of officials;
- the degree of discretion that officials are permitted to exercise; and
- the degree to which institutions are accountable and transparent.¹⁷

The economic environment contributes to the evolution of corruption in that economic strategies and policy instruments, together with institutions for implementing economic policy, may provide different opportunities for pursuing corrupt practices. In particular, economic reform in a transitional period provides significant new opportunities for corruption, for example risks associated with privatisation projects. Other economic factors that potentially provide incentives for the pursuit of corrupt practices include the nature and extent of poverty, the national distribution of income and wealth, and recent trends in these distributions. A significant level of absolute deprivation may also be significant.¹⁸ The poor may not have many alternative opportunities and may thus be 'forced' to commit crimes, in a way that those who do have alternatives are not.

To the extent that expectations of a 'better life' are frustrated, specific social groupings and individuals could be motivated by the prospect of improving their status to undertake corrupt practices. For its part, poverty has contributed to spreading corruption: those who cannot meet their basic needs in an honest manner may resort to less honest means of subsistence.¹⁹ However, this argument is only relevant to those who have the opportunity to exploit possible openings for corruption. Clearly, the poorest groupings, for whom the incentive may be the greatest in this context, will have almost no opportunities. Rather, questions of absolute or relative deprivation in a society will be relevant to those in lowly government positions, for example where pay is especially poor but where the work provides possibilities of corrupt activities.²⁰

Politically, corruption is often a consequence of the unaccountable monopoly power of authoritarian and totalitarian regimes.²¹ The nature of political structures has a very important bearing on the evolution of corruption, not merely as regards the degree of political centralisation and the extent of democratic accountability but also the manner in which the regime interacts with and exercises political control or influence through state institutions. Where representative processes to enforce governmental accountability are weak or non-existent, political structures provide the greatest opportunities for corruption in view of the absence of political mechanisms through which governments that tolerate, condone or participate in rent-seeking and corrupt practices might be dismissed.²²

It is generally agreed that corruption threatens economic growth, social development, the consolidation of democracy, and the national morale. According to the World Bank, corruption hinders economic efficiency, diverts resources from the poor to the rich, increases the cost of running businesses, distorts public expenditures, and deters foreign investors; it also erodes the constituency for development programmes and humanitarian relief.²³

An electorate's perceptions of widespread corruption may eat away at the popular legitimacy and trust of a government.²⁴ When an administration loses credibility, a climate for instability, unrest and general lawlessness may be created, and this enhanced degree of political risk may significantly deter business activity.²⁵

Corruption can therefore:

- distort the allocation of resources, sharply increasing the cost of goods and services;
- divert scarce resources to lesser or non-priorities, in this way largely neglecting fundamental needs, particularly basic needs such as food, health and education;
- act as a disincentive, possibly deterring prospective economic activities and investment;²⁶ and
- increase the likelihood of committing other crimes.

Corruption therefore becomes both the cause and consequence of underdevelopment and poverty in general.²⁷

While corruption reduces the efficiency of present economic activity, its prevalence arguably acts on the economic environment in a far more insidious manner through the creation of significantly higher levels of risk and uncertainty in economic transactions. These disincentives act to deter economic activity in general and capital investment in productive assets in particular. Uncertainty, which can deter entrepreneurship and thereby restrain development, is present both in the context of individual economic transactions and in terms of heightened fears about future developments in the broader economic environment in question.²⁸ Corruption stifles private initiative and enterprise, and the kickbacks and commissions demanded may act as disincentives to investment by foreign or local entrepreneurs.²⁹ Overseas countries may become cautious about risking investment in a country whose reputation for serious economic offences is growing.³⁰

The uncertainty attached to particular forms of corruption appear to bear most heavily on the development process.³¹ In the poorest countries, where misery and socio-economic inequality abound, corruption among public officials continues to thrive. The bribery of public officials is also theft from the poor, with the immediate effect that corruption not only includes the further impoverishment of the people but also the weakening of democratic institutions – subject to a process of corrosion through corruption.³²

The widespread assumption that corruption necessarily inhibits economic growth has been challenged in some quarters. There is an old debate over whether, under certain circumstances, corruption might actually improve allocative efficiency – that is, corruption as a facilitator of growth.³³ While attempts to model the bribery process to gauge its effects on efficiency have been inconclusive, there are several reasons why corruption is unlikely to have a positive effect on allocative efficiency.

For example, some believe corruption can help speed up the pace of bureaucratic activities when some sort of waiting period or queue occurs. While one specific corrupt activity may therefore be regarded as beneficial, the problem is that such an act is unlikely to remain isolated, and that the individual act will probably help entrench a more systematic and comprehensive form of corruption. For example, the use of corrupt payments to accelerate

official paperwork may prove highly effective for one transaction, but if, as is inevitable, the practice spreads to encompass all transactions, the net impact on efficiency will probably be zero: the queue will not be reordered, and the productivity of the official will remain unchanged.³⁴

There is thus little support for the argument that corruption can actually facilitate economic growth, and there are in fact a number of reasons to believe that it can have a strong distorting and disincentive effect on economic activity.³⁵

CURES

All over the world, national governments as well as international organisations are trying to create effective anti-corruption measures for both the public and the private sectors.³⁶ These initiatives tend to have certain common elements: the reform of substantive programmes; changes in the structure of government and its methods of assuring accountability; changes in moral attitudes; and, perhaps most importantly, the involvement and support of government, the private sector and civil society.³⁷

However, anti-corruption institutions, regulations and laws will remain ineffective without the political impetus as well as the social will to make them effective.³⁸ Besides serving to acknowledge that corruption exists, where political will is lacking the existence of institutions to control corruption may be of no consequence if they lack independence, critical resources, public visibility and respect.³⁹ Comparative experiences of anti-corruption 'clean-ups' within previously authoritarian systems suggest that to be effective, they need to rank high on the national agenda, and political leaders must be committed to doing what has to be done to implement these programmes.

Particularly important here is the notion that a holistic approach to combating corruption must involve the concept of service delivery: bringing the public service closer to the 'customer' (the public), and enhancing its cost-effectiveness through mechanisms of transparency and increased accountability.⁴⁰ The policies and programmes in place in South Africa to support anti-corruption initiatives in a context of public service transformation will be examined later.

SPOTLIGHT ON SOUTH AFRICA

Achieving good governance, and overcoming the practices of profligacy and corruption inherited from the apartheid government and its economy, are two of the most important challenges facing South Africa.⁴¹

The perception exists that, besides spiralling crime, 'white-collar crimes' and corruption are also rife in South Africa's private and public institutions. Various reasons, mostly related to the corrupting nature of the apartheid state, are given for this situation. The apartheid era was structurally conducive to corruption; a culture of secrecy resulted in a lack of transparent and accountable systems, which was advantageous to criminality. An atmosphere of secrecy developed, which spread from the public to the private sector.⁴² Official corruption at all levels was widespread, particularly in the 'homelands', and a mindset of opportunism and not-so-legal enrichment spread far beyond government structures.⁴³

The breakdown of business ethics in the private sector has been partly blamed on the 'sanctions-busting mentality' of that time, which encouraged ingenious but often immoral means to gain access to world markets. In this way, a culture was nurtured in which unethical means of

doing business became a valued activity.⁴⁴ Thus corruption and dishonesty became a feature of South African political and economic life. These factors, combined with increasing opportunities for corruption, a 'get-rich-quick' ethos, and the reluctance of large institutions to publicly prosecute executives or employees guilty of fraud or financial malpractice, has contributed to the growth of corrupt activities. Business Against Crime's working group on commercial crime has recently documented some of the problems surrounding addressing commercial crime in the criminal justice system.⁴⁵

Several victimisation and public opinion surveys have provided some measure of the perception of corruption in South Africa.

The International Crime Survey on criminal victimisation in the developing world, including sub-Saharan Africa, has found that consumer fraud and corruption stand out as the most common forms of citizen victimisation in all the regions of the developing world.⁴⁶

Transparency International's 1997 Corruption Perception Index compiled from several surveys to evaluate the perception of 'improper practices' in 52 countries in the developed and developing world ranked South Africa as the 33rd least corrupt country out of 52 countries. In 1996 South Africa ranked 23 out of 54 countries, ie, it dropped 10 places in a single year.

A survey published by Idasa in February 1996 on **Parliamentary ethics and government corruption: playing with public trust**, detailing popular beliefs about morality and corruption in public life (especially with regard to elected representatives), found the following:

- morality and corruption in public office elicit real and widespread public concern (56 per cent of those sampled felt that people in government worked in their own self-interest rather than in the public interest);
- there is widespread popular concern and even doubt about the current moral standards of elected leaders (almost half, or 46 per cent, of those interviewed thought that 'most' or 'almost all' office bearers are involved in corruption); and
- public corruption is perceived to be increasing (41 per cent of the sample).

Importantly, the survey indicated significant public support for moral reform.⁴⁷

The Idasa survey suggests that despite the major democratic and moral changes that have taken place, South Africans are very distrustful of and cynical about officialdom. The illegitimacy of the previous government, especially in the former homelands, appears to have had a lasting impact on perceptions of state honesty.

Ironically, the fact that so many South Africans think corruption in public life is increasing may be because authorities are making more vigorous attempts than ever before to check corruption. Hence, a side effect of the more open style of government means that there is more information on corruption than ever before.⁴⁸ The argument is that instances of corruption are more likely to be discovered and publicised in a democratic South Africa, compared to the relative lack of scrutiny of the former government. Whether this is in fact the case requires further in-depth research.

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POVERTY AND SOCIAL SECURITY IN SOUTH AFRICA

South Africa is characterised by extremes of wealth and inequality. Classified as a middle-income developing country, it has 'two nations' within it: a small number of very wealthy people, and a large number of very poor.¹ There are various ways in which governments may intervene to provide relief to the very poor, thereby helping them to build pathways out of poverty. In a very unequal society, the social security system can play a stabilising role, and is also a mechanism for distribution. Social welfare policies and programmes that provide for cash transfers, social relief, and enabling and developmental services ensure that people have adequate economic and social protection during times of unemployment, ill health, maternity, child rearing, widowhood, disability, old age and so on. Social welfare programmes of this nature contribute to human resource development by enabling impoverished households to care for their members, especially children and those who are vulnerable. When such programmes are combined with capacity building, people can be released from the poverty trap.²

Social security payments play an important role in the household income of many of South Africa's poor.³ The government is committed to providing a comprehensive national security system, and its Growth, Employment and Redistribution Strategy (GEAR) recognises the importance of a broad social security net comprising social payments and targeted welfare services. Social security, social services and related social development programmes are investments which lead to tangible economic gains, and in turn to economic growth. Without such social investments, economic growth is compromised.⁴

Social security in South Africa is a right upheld by the constitution. The bill of rights (chapter 2) notes in section 27:

"Everyone has the right to have access to ... (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance, and

*"2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights."*⁵

Many South Africans are unaware of their rights to social security. As a result, the Black Sash, in collaboration with the Department of Welfare, recently published an easy to read booklet entitled **You and social grants: the social assistance regulations**.⁶ The Social Assistance Act (no 59 of 1992), which deals with pensions and grants, sets out how these grants may be

accessed, and regulations under this act have the potential to resolve past problems; however, in the light of the report of the Lund committee on child and family support, further changes to the welfare system are likely. The implementation of these new regulations has been delayed by problems experienced with combining the information from the separate welfare administrations of the past into one central database. This issue is dealt with in detail in the next section.

Until recently, the welfare system was administered by 14 departments created for different population groups and homelands. This resulted in fragmentation, duplication, inefficiency and ineffectiveness. Each of these departments had its own procedures, style of work, approach and priorities.⁷ The white paper for social welfare notes that the welfare system is faced by the challenge of devising appropriate and integrated strategies to address the alienation and economic and social marginalisation of vast sectors of the population which are living in poverty, are vulnerable, and have special needs. A further challenge, it states, is to address past disparities and the fragmentation of the institutional delivery of welfare services.⁸

The establishment of one national department and nine provincial departments for social welfare means that the opportunity now exists to build and sustain a uniform and integrated institutional framework. Roles and responsibilities are being clarified, and mechanisms put into place to ensure harmonious and effective working relationships.⁹ Welfare is a concurrent national and provincial function; provinces have some discretion as long as they operate within the framework of national norms and standards (which are far from fully developed as yet).¹⁰ It seems almost certain that provinces will soon no longer be responsible for grants, which will become a national competence. This is certain to lead to a more equitable distribution of benefits nationwide.

SOCIAL SECURITY BUDGET

The 1997/8 welfare budget is R16,2 billion, or 8,7 per cent of total government expenditure and 2,6 per cent of the gross domestic product (GDP). This is an increase of 14,7 per cent over the 1996/7 welfare budget. The budget is made up of two main components: social security, and welfare assistance and services. Administrative costs are relatively small, and a very small part of the overall welfare budget goes to the salaries of personnel, relative to health and education. Social security is the largest item at 88,1 per cent of total welfare expenditure. Nearly 3 million beneficiaries of social grants were paid out almost R12 billion in the 1996/7 financial year.¹¹ As of 31 April 1997 there were 2 899 406 actual payouts. About seven out of every 100 South Africans receive government social assistance of some sort.¹²

Social security and welfare services expenditure have increased significantly over the past five years, due to the redressing of past disparities in social grants – the single largest increase in the social services sector. According to the Department of Welfare, the number of beneficiaries who currently receive social assistance grants through the amalgamated system, but with beneficiaries from the former Ciskei and Transkei excluded, are as follows¹³ :

Types of grants	Number of beneficiaries
Grants for the aged	1 455 110
Grants for the disabled	620 813
War veterans grant	12 071
Grant-in-aid	10 576
Maintenance grant	200 644
Foster care grant	38 412

In the 1997 budget, the social security vote was increased by R1 billion. This means that the grant for elderly persons without other means has increased from R430 to R470 a month from 1

July 1997, an increase of 9,3 per cent.

EFFECTS OF SOCIAL SECURITY ON HOUSEHOLD SECURITY

Although the past social security system was racially discriminatory, difficult to access and unreliable to maintain, it nevertheless made an important contribution to household security. Research increasingly demonstrates the vital role that social security benefits play in alleviating poverty. Surveys show that grants for elderly and disabled people have a significant impact on the incomes of households that receive these grants. Benefits are thus relatively well-targeted for households in poverty, reaching those in rural areas as well as women. While the pension or grant is withdrawn by individual pensioners or disabled people, most grant recipients live in families of three or more generations, and the money is usually pooled as household income. Thus the pension trickles down to many more people than the individual beneficiary.

In **Uprooting poverty** it was noted that perhaps the most striking aspect of poverty uncovered in the course of the Carnegie inquiry was the extent to which the sole source of income of families, often extended families in the rural areas especially, was the pitiful pension paid once every two months to an elderly member of the household.¹⁴

Social security payments thus have an important distributional impact, and play a vitally important role in providing food and general security.¹⁵ It has been estimated that each pensioner helps provide an income for 7 to 11 people; this means that 7 million South Africans benefit from the system, making it the most effective poverty alleviator.¹⁶

SERVICE DELIVERY

Inefficient service delivery may sink the laudable objectives of a government, and hamper sound and urgent economic development. A public opinion survey conducted in July 1996 by the HSRC among 2 000 South Africans illustrates an increase in pessimism over the state of the civil service. The survey found the following:

- In May 1994, 72 per cent of participants in the poll regarded government as effective; in May 1996 this percentage had dropped to 55 per cent.
- Those who regarded government as strong in 1994 declined from 80 per cent to 63 per cent in 1996.
- The percentage of those who regarded government as honest slipped from 74 per cent in 1994 to 59 per cent in 1996.
- Those who were dissatisfied with the manner in which the country was governed rose from 17 per cent in 1994 to 31 per cent in 1996.¹⁷

There appear to be many problems when it comes to efficient and effective service delivery by government departments, and the system of social security is characterised by inefficient delivery as well as fraud and corruption. While some problems are specific to welfare, many relate to the transformation of the public service as a whole. The general problems that affect the state's ability to deliver effective programmes have been identified as:

- low salaries and poor working and service conditions, which have resulted in low morale and productivity, with many experts leaving, and an inability to attract suitable expertise;

- outdated and inefficient financial management, administrative systems, organisational structures, information systems and approaches at national and provincial levels;
- gross inefficiencies and loopholes which are open to exploitation due to the fragmentation of government administration;¹⁸ and
- a lack of access to services, because of general ignorance and illiteracy as a barrier to knowing one's rights.

The green paper on transforming public service delivery notes how a transformed South African public service will be judged by one criterion above all: its effectiveness in delivering services that meet the basic needs of all South African citizens. This will mean a shift away from inward-looking and bureaucratic systems, processes and attitudes towards new ways of working which put the needs of the public first, and is better, faster and more responsive to those needs. The point is made that public sector customers cannot choose to take their business elsewhere, and that a lack of information and complex regulations are two further barriers to citizens/customers in dealing with national departments and provincial administrations.¹⁹

People waiting for benefits and grants experience uncertainty and humiliation, which is compounded by the devastating effect that bureaucratic inefficiency has upon the economic environment in which the poor must live.²⁰ Red tape and official inertia or obstructiveness can substantially increase human suffering. A study conducted by the Black Sash in KwaZulu Natal illustrates the major types of obstacles encountered by beneficiaries of pensions. These problems include:

- a failure to pay benefits promptly (pensioners wait for an average of eight months);
- subsequent payments are often irregular; and
- cheques are lost, especially in rural areas, where postal services do not exist.²¹

The economic and developmental arguments for cash benefits as opposed to in-kind support such as food, food vouchers, school vouchers and the like take account of the fact that there is generally less loss through leakage and corruption. On the whole, cash benefits are easier and cheaper to deliver than in-kind schemes. They also have the virtue of being relatively easy to make more efficient, especially with new information technology.

Furthermore, when delivered efficiently, they hold out greater possibilities than do most other development initiatives that resources will go into the pockets of the poor rather than being skimmed off by middlemen. Unfortunately, the following section highlights the very real problems of leakage and corruption in South Africa's social security system that the cash benefits system is meant to avoid.

CONCLUSION

For effective service delivery, the ideal to aim for is a system that is simple, computerised, and offers the least opportunity for abuse. There is an urgent need to develop more effective management and information systems, uniform rules and procedures, better payment options, and an effective assessment of the nature and scope of fraud in the social security system. Steps which have been taken in this regard will be examined in the following section.

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POVERTY AND CORRUPTION: THE CASE OF SOCIAL SECURITY

Social security represents a significant proportion of government expenditure, and as such requires good administration, careful management, and strict control. It is estimated that fraud, theft and inefficiencies in South Africa's social security system is absorbing 10 per cent of the R11 billion welfare budget, ie an annual loss of R1 billion.¹

The problems being experienced in the social security system are largely related to the system itself. Fraud and corruption, for instance, is largely the result of weaknesses in the existing management and administrative systems. It is therefore not possible to address these factors in isolation; it has to be done in the context of the total restructuring of the system of social security.

In order to address this challenge, the government set up, in 1996, the Committee for the Restructuring of Social Security (CRSS), chaired by Dr Frank Chikane. The committee, situated in the Department of Welfare, established the following task teams:

- a task group and recommendations were released in early 1997.² In general, the report notes how the past fragmentation of the welfare system has led to gross inefficiencies affecting service delivery. The finding that auditing and management systems and procedures of virtually all types of disbursement are weak or non-existent, and the importance of auditing and management controls throughout the system, is highlighted by all three task groups.

Of particular interest are the findings and recommendations of the task group on fraud and corruption (TFC). This team, chaired by Advocate Wim Trengove, was constituted on 17 May 1996 and reported back to the CRSS on 28 October 1996. Its tasks were to:

- evaluate existing information, in order to establish the nature and extent of the problem;³
- conduct a few pilot investigations, in order to gain further information;
- compile evidence to be investigated by the relevant agencies; and
- determine what need there might be for specific investigative powers.

To avoid replicating the findings and recommendations of the TFC, this section draws on a variety of sources to highlight main problems which affect the delivery of services to the poor, especially those which provide opportunities for corruption, and to evaluate policy recommendations aimed at resolving these problems.

PROBLEMS AND SOLUTIONS

Information systems and data integrity

Opportunities for fraud and corruption occur in the absence of a national social security database. While arguments have been made for provincial systems, without a reliable national database even the most sophisticated and costly mechanisms for identity checking at the provincial level will fail to detect the more sophisticated cross-provincial fraud. The CRSS found that a nationally organised system would be more cost-effective, make it easier to co-ordinate, detect and contain fraud, and would lend itself to being devolved to a provincially based system,

should this become necessary. Unless the department is enabled to assume ownership of and responsibility for a national system of social security, and is able to provide the expertise required to manage such a system effectively, provinces will develop their own systems.

In an attempt to improve efficiency and reduce fraud, provincial social security payment systems are being amalgamated into one nationally managed computer system known as Scopen 5 – the automated databank created to include all previous social security databases. While Scopen 5 provides an on-line facility for updating information, because of clerical procedures followed at the stage of applying for a pension the computerised system is merely an 'add-on' to the manual one which preceded it rather than an integral part of the social security system. What is encouraging to note is that all systems have now been amalgamated and, according to the Department of Welfare, are 'talking to each other'.⁴

Since corrupt data undermines the validity of payments made, ensuring the reliability of data is an important additional step. Efforts are being made to root out corrupt data on beneficiary master files, ranging from duplication of payouts to deceased beneficiaries. Recently, millions of rands were saved when Scopen 5 picked up many duplicated, dead or emigrated recipients.

Potential annual savings since amalgamation are the following⁵ :

Estimated beneficiaries		Amount saved (R)
Duplicates	26 000	134 160 000
Deceased	46 600	240 456 000
Emigrated	82	423 000
TOTAL	72 682	375 039 000

Note: This table mainly shows fraud by claimants, because of weaknesses in the system, rather than corruption on the part of officials.

According to the 1997 budget speech, a comparison of records with the population register resulted in the suspension of 46 682 beneficiaries and a resultant saving of R241 million a year.

The CRSS recommended that the national department sets the standard for data accuracy, and that each province creates a task team utilising independent consultants as well as departmental officials to eliminate invalid and duplicated beneficiary master files from the amalgamated system.

Internal controls and management systems

Without proper internal control systems, it is not possible to prevent fraud and corruption in the delivery of social security benefits. The CRSS found that adequate control systems within government departments were either lacking altogether or were not being properly implemented. Auditing and management systems and proper disbursement procedures are either weak or non-existent.

These factors are exacerbated by unduly complex legislation and departmental rules governing internal disciplinary proceedings. There are no uniform procedures in the various provinces for dealing with overpayment, fraud and write-offs. Another factor which has contributed to fraud is a breakdown in communications and a lack of co-operation between the national and provincial welfare departments and local branches of the SAPS. These shortcomings require urgent national attention. Thus priority should be given to designing new systems internal control, and procedures for implementing them.

Robberies and pay points

While the TFC did not regard the problem of armed robberies as part of its area of inquiry, concerns regarding the privatisation of pay points, especially in relation to fraud, are important and require further investigation. Pay points are frequently robbed, and this is a serious problem.

To avoid the risk of armed robberies, and provide a more efficient system than many are currently providing, the outsourcing of payouts has become common in certain provinces. Cash Paymaster Services (CPS), a private contractor which carries all possible losses due to theft and robbery,⁶ has won the tender nationally and has undertaken to produce a more efficient service.

Among the advantages of privatising this function are that security risks are transferred to the private sector, queues may be shorter, and the potential for fraud is reduced. However, a number of complaints have been noted,⁷ among them that:

- pensioners often have to travel long distances to pay points, only to find that no money is available, with no reasons given, making the pensioners access to his/her right to a pension more difficult;
- outsourcing increases the distance between the state and beneficiaries, and in a sense takes the responsibility away from the state and the department; and
- Since payments are made by private firms such as CPS, the development of public infrastructure may not be prioritised.⁸

A Black Sash spokesperson has stated that the 'privatisation of payouts is not a good thing', and has 'introduced a new level of fraud'. Privatising pension payouts costs the Department of Welfare R15 per pension; moreover, CPS's clients are not pensioners but the department itself.⁹

Disciplinary procedures and investigations

A recurring complaint of both national and provincial departments is that there are no effective mechanisms for dealing with staff suspected of fraud and corruption. Because of complicated rules relating to internal disciplinary proceedings in the public service, government officials who are suspected of fraud continue to be employed, and for this reason the fraud simply continues.

The usual practice seems to be as follows: Whenever a member of staff is suspected of fraud or corruption, the matter is reported to the SAPS. However, the SAPS and the criminal justice system are often slow and ineffective. The investigation and prosecution process often takes years to complete and is frequently inconclusive, with suspects either not charged or acquitted for lack of evidence. Also, the very real problem of criminal justice officials being bribed to drop cases cannot be ignored.

Pending investigation and prosecution, a suspect is either kept in his or her job or suspended on full pay. Either route presents severe problems. For obvious reasons, it is intolerable to keep a member of staff suspected of fraud or corruption in a position of trust in his or her department. On the other hand, if suspects are suspended they are effectively given paid holidays which often last for months or even years. Both routes are unacceptable. The responsible departments often blame the SAPS for its slowness; conversely, the SAPS often blames the departments for their lack of co-operation.

An investigation of the relevant provisions of the Public Service Act, regulations and staff code regarding misconduct conducted as part of the CRSS revealed the following major problems:

- The legislation and the departmental rules governing internal disciplinary proceedings are unduly complex.
- The responsible provincial departments often do not have the necessary skills to investigate and prosecute disciplinary transgressions themselves.
- There is a lack of communication and co-operation between the responsible provincial departments and the SAPS in investigating and prosecuting charges against delinquent members of staff.
- SAPS investigating officers and Department of Justice prosecutors are often too inexperienced to be effective.

In this regard, the TFC has recommended that:

- The complexity of the legislation and departmental rules relating to internal disciplinary proceedings should be taken up with the Public Service Commission, which should be urged to simplify them. Internal disciplinary proceedings should be simple enough to be handled quickly.
- The responsible departments should, in consultation with the Public Service Commission and the Department of Justice, develop the skills needed for swift internal proceedings. If this cannot be done within each department, a centralised service department should be established which could help individual departments to investigate and prosecute cases.
- These reforms should enable the various departments to undertake their own investigations and prosecutions, without having to rely on the SAPS.
- They should, however, retain joint responsibility for the criminal investigation and prosecution of charges against the delinquent members of staff. It is important that both internal discipline and criminal sanction be imposed on delinquents. This is not only in the public interest, but also those of the departments themselves. They should therefore not leave responsibility for criminal investigation and prosecution to the SAPS alone.
- The investigation and prosecution of social security fraud and corruption should be done by specialist investigating officers and prosecutors, or should at least be centrally co-ordinated.

Until these recommendations are evaluated and implemented, it is suggested that officials suspected of corrupt activities be suspended until the legal process is completed.

Collusion and organised crime

A significant number of staff members in welfare departments are reported to be involved in fraud and corruption, and in many cases there is prima facie evidence that members or ex-members of the department or other departments in provincial administrations have been involved in such activities.

According to the CRSS chairman, Frank Chikane, the system is rotten and will take a long time to clean out, especially when those involved are police, department officials and members of the SANDF.¹⁰ It is believed that at least some of those involved in fraud and armed robbery at pay points are part of a highly organised network. An organogram of the suspects within government structures is currently being prepared. The intelligence community (co-ordinated by the National Intelligence Co-ordinating Committee) plays a key role in combating organised crime.

Toll-free numbers and whistle-blowers

Reports of fraud include accounts of clerks refusing to process applications unless R50 is included with the form, and demanding bribes as a precondition for appointments with them. Pensioners are often reluctant to lay official complaints for fear of being victimised.¹¹

In the absence of proper internal controls, toll-free numbers to which officials and members of the public can report instances of fraud and corruption may be a useful tool. However, in evaluating this option, the limited access of rural communities to telephones must be considered. Also, a toll-free service of this nature should not be instituted without the resources to follow up complaints and investigate reports of fraud and corruption. In KwaZulu-Natal a highly successful anti-corruption hot line has been established with the assistance of the private sector. Calls are recorded by a voiced logging system, which makes it easier for informants to give information; this is passed on to the SAPS.¹²

The office of the public protector already has a toll-free complaints number, and has offered to receive reports of fraud and corruption in respect of social security benefits as well.

CONCLUSION

If implemented, the recommendations of the CRSS will significantly reduce losses via fraud and corruption. These recommendations, which could easily be applied to other departments with similar problems, include the following:

- establishing a nationally organised social security system;
- developing a national human resources strategy for the Department of Welfare;
- standardising and integrating management systems;
- developing a focused communications plan;
- simplifying legislation and rules relating to internal discipline; and
- developing a costing system as well as a specific budget for the administration of social security at the national and provincial level.

The national cabinet as well as the nine MECs for welfare have been briefed on the recommendations, which are to be phased in from 1998.¹³ While they go a long way towards addressing the problem, the way in which they are implemented will be crucial. As the next section will show, there are already numerous mechanisms for controlling corruption; the problem is that they are underresourced, and stretched to the limit. Any recommendations involving increased investigative and prosecutive capacities dealing specifically with social

security fraud and corruption will need to bear in mind the realities of skills shortages in these fields. To help obviate this, the capacity of well-established paralegal organisations such as the Black Sash to detect corruption and help citizens to exercise their most basic rights should be strengthened.

ENDNOTES

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CONTROLLING CORRUPTION: MEASURES AND INSTITUTIONS

Various mechanisms can be used to control and prevent corruption. How effective they are depends on a range of factors, including independence, sufficient resources, and political will. A nation that is serious about fighting corruption may need to establish new institutions for doing so, or strengthen existing ones.¹

In South Africa, the government's National Crime Prevention Strategy (NCPS), announced in May 1996, names corruption within the criminal justice system as a key priority. Fraud, corruption and graft involving government funds are seen to be undermining public confidence

in democratic government itself, and therefore as deserving urgent attention.

Over the past two decades, numerous international initiatives have been launched to combat and control corruption.² Important international organisations, including the United Nations, the OECD, the Council of Europe and the Organisation of American States, are taking steps to fight corruption.

In Africa, the Southern African Development Community (SADC) has vowed to stamp out corruption, in order to safeguard national economies and instil confidence in investors.³ It has drawn on international instruments such as international conventions, and made formal recommendations to member states.

Of particular interest here is the stance on corruption taken by the World Bank. Under the umbrella of economic policy reform, the bank is working to help governments undertake economic, policy, and regulatory reforms that discourage corruption and fraud. It is also concerned with institutional reform, ie building institutional strength inside and outside the public sector through various reform programmes. Primarily, the bank seeks to guard against corruption in its projects, and emphasises that it will not tolerate corruption in any of the programmes it supports.

SOUTH AFRICAN LEGISLATIVE FRAMEWORK

In South Africa, to bribe someone or accept a bribe is an offence under the Corruption Act (94 of 1992), which provides for the criminalisation of corruption and repeals the common law crime of bribery. To all intents and purposes, corruption and bribery are the same offence.

South Africa's transition to democracy has also opened the country to international organised crime and money laundering syndicates. Several bills have been drafted to counter these threats. The cabinet has approved the following bills, which are designed to increase the capacity of law enforcers to fight corruption:

- the International Co-operation in Criminal Matters Bill;
- the Proceeds of Crime Bill;
- the Extradition Amendment Bill;
- the Money Laundering Control Bill; and
- the Special Investigating Unit and Tribunals Bill.

Also being considered is the Open Democracy Bill, which provides, inter alia, for transparency of government actions, access to government records, and the protection of whistle-blowers, making it a crime to retaliate in any way, with punitive damages paid to victims.⁴ Should this bill become law, it is hoped that it will deter misconduct by encouraging organisations in the public, private and voluntary sectors to adopt more open and accountable cultures, together with codes of ethics that encourage the reporting of malpractice.

INSTITUTIONS FOR COMBATING CORRUPTION

Current institutions and initiatives aimed at addressing corruption are detailed below. There are a large number of institutions, whose functions and jurisdictions often overlap.

The South African Police Service (SAPS)

According to the commercial branch of the SAPS, the following cases of fraud and/or corruption

related to the social security system were being dealt with on 24 February 1997:⁵

Province	No of cases	Total amount involved (R)	Status of investigations
Western Cape	3	2 232 633	3 pending
Northern Cape	3	6 110	3 pending
Free State	6	80 143	5 pending 1 at court
Eastern Cape	18	3 082 016	15 pending 3 at court
Kwa-Zulu Natal	1	3 336 298	1 at court
Mpumalanga	17	488 831	17 pending
Northern Province	31	1 883 747	19 pending 2 at court
Gauteng	11	6 296 768	2 pending 2 at court
North West	12	843 834	10 pending 2 at court

Note: Not all fraud-related cases are reported to the commercial crime unit of the SAPS detective service. These figures refer primarily to cases reported to this unit by the national Department of Health and Welfare, the various provincial departments of Health and Welfare, as well as various health and welfare departments of the former independent and self-governing states.

Besides the commercial branch of the SAPS, special teams responsible for investigating fraud and corruption in government have been established in certain provinces, among them KwaZulu Natal.

Problems related to co-operating with the Department of Welfare to ensure the successful investigation and prosecution of corrupt officials have been referred to in the previous section. Commercial crimes such as corruption are extremely difficult to police; in South Africa, policing resources, including trained staff and equipment, are wholly inadequate to address the problem.⁶

Office for Serious Economic Offences (OSEO)

The Office for Serious Economic Offences (OSEO) was established in 1991 (Act 117) to investigate serious economic offences quickly and effectively, using multidisciplinary investigative teams with far-reaching powers. Cases are prioritised according to the amounts involved, the complexity of the offence, public interest, as well as urgency. At 29 February 1996, OSEO was conducting 33 investigations involving R8,5 billion.⁷

Although OSEO is one of the principal weapons in the fight against corruption, it is poorly equipped and is continually plagued by staff shortages and a lack of skilled personnel.⁸

Chapter 9 institutions

Chapter 9 institutions are state institutions supporting constitutional democracy which are independent and impartial, able to exercise their powers and perform their functions without fear or prejudice, and are subject only to the constitution and the law. These include the office of the

auditor-general, the office of the public protector, and the Human Rights Commission. The first two are particularly relevant to the control of corruption.

The auditor-general

The duty of the auditor-general is to audit the accounts of government at all levels and thus to provide independent control over the financial activities of the executive. The office of the auditor-general conducts forensic and performance auditing of large-scale corruption involving government departments.

In a recent report, the auditor-general noted that serious problems were being experienced with the amalgamation and rationalisation of the administrations of the former TBVC states. These included structural problems related to accountability, as well as financial mismanagement and maladministration, exacerbated by a lack of appropriate expertise.⁹

As regards welfare and the payment of pensions, after applying computer-assisted audit techniques the auditor-general found a number of beneficiaries were registered with different pension providers, and that data had not been verified for falsity, accuracy or completeness, resulting in a high risk of duplication.¹⁰

The auditor-general is increasingly concerned about weak financial management in government bodies. In 1995/6 various departments spent R150 million without authorisation. This refers to money not spent according to strict government specifications, such as when tender procedures are bypassed. While the tender system may in itself encourage corrupt practices, this is indicative of poor financial management. This type of mismanagement extends from central government through the provinces to local governments, where these problems are even worse, especially in areas which include the former TBVC states and self-governing territories; the extent of unresolved financial problems inherited from these former states is formidable.¹¹

In the same financial year, R14 billion of the national budget was not spent at all. This rollover of funds is largely attributable to the one-year budgeting period, which the government is currently addressing. This shows that it is not a case of too little money being available to implement government programmes, but rather of an inability to spend the available funds. The only long-term solution of these problems is to train people and force accounting officers who are not doing their jobs to work within a coherent framework.¹²

The public protector

The public protector, appointed in terms of the Public Protector Act (1994) and the South African Constitution Act (1993), is empowered to investigate:

- maladministration involving the affairs of the state at any level;
- the abuse or unjustifiable exercise of power, improper conduct, or undue delay by a person performing a public function;
- an improper or dishonest act, omission, or corruption with respect to public money; and
- improper or unlawful enrichment, or receipt of any improper advantage by a person as a result of an act or omission in the public administration or in connection with the affairs of government.

The public protector is concerned with maladministration in the broader sense rather than the investigation of crime; evidence of the latter is referred to the police.

A shortage of resources is inhibiting the establishment of nine regional offices to make the office's services more accessible. Because of staff shortages, and the fact that cases have increased by about 400 per cent, from 69 in June 1996 to 289 in August 1996, the office is not able to handle cases effectively; it currently has a backlog of about five months.¹³

Commissions of inquiry

Several independent commissions of inquiry have investigated specific charges of corruption. These include:

- the Skweyiya commission of inquiry into corrupt practices by various government officials and the misuse of state funds in the former Bophuthatswana;
- the Budlender commission of inquiry into irregularities in relation to assets in former homelands;
- the Heath commission of inquiry into matters relating to state and other property in Eastern Cape;¹⁴
- the Browde commission of inquiry into irregularities in awarding contracts, appointments, promotions, and improvement to service contracts;
- the subsequent White commission of inquiry into irregular salary increases awarded to civil servants; and
- the Krugel commission of inquiry into allegations of unprofessional and/or dishonest conduct by attorneys practising under the jurisdiction of the Law Society of the Transvaal.¹⁵

At least nine commissions have investigated various aspects of government during the past two years, many concluding with recommendations to prosecute. The existing Commissions Act only allows commissions the right to investigate and make recommendations; few of these are ever acted upon. Frustration is mounting among officials investigating corruption in the civil service, as it appears their recommendations are seldom acted upon, and there has been little recourse to the courts. For various reasons, the government currently seems to lack either the political will or the capability to address commissions' recommendations.¹⁶

Special investigations units and tribunals

To complement the activities of these institutions, new legislation has been adopted which allow for the creation of special investigating units and special tribunals to deal with corruption. Hopefully, these bodies will deal with such cases more swiftly and decisively, thereby enhancing the public's confidence in the government's commitment to combat corruption.¹⁷

President Nelson Mandela recently abolished the Heath Commission and appointed the first special investigation unit and tribunal to root out corruption in government departments nationwide, and investigate at least R5 billion in government corruption, illegal land deals (which particularly affect the poor) and theft. Along with unprecedented powers to prosecute, the

commission is able to set up task units anywhere in the country, access just about any information required, and allowed to travel anywhere in the world to gather evidence.¹⁸

These legislative steps have not been uncontested.¹⁹ It has been argued that these units, which may investigate criminal offences, will encroach on the jurisdiction of bodies such as OSEO and the public protector, which have similar powers and duties. In effect, this may lead to further fragmentation and a lack of co-ordination of efforts to combat corruption, and it has been argued that, rather than create new mechanisms, existing bodies should be properly staffed and utilised instead.²⁰ However, as ad hoc structures to investigate a very specific situation, others believe these units do not represent a duplication of functions, but rather bolster existing mechanisms.²¹

The creation of this special investigation unit is seen as the strongest move yet by government to stem the rot of corruption. However, the creation of such a powerful new commission could present some ticklish constitutional problems related to the separation of powers.

PREVENTION: SELF-REGULATION AND CODES OF CONDUCT

The major challenge is how to prevent these crimes from being committed in the first place, since it is unlikely that enough resources will be available soon to police and prosecute fraud and corruption once it has occurred. As such, the best protection against white-collar crime and corruption is for government and business institutions to set their own house in order by means of effective and enforceable codes of conduct, internal controls, and vigilant self-regulation.

The first step in preventing corruption must be to determine the scope of acceptable behaviour by public representatives (civil servants and elected representatives). This may be difficult, due to lack of consensus.²² However, there are principles of public life which can be followed.²³ In public service occupations, professional ethics have been described as the values underpinning impartiality, objectivity, integrity, efficiency, effectiveness and discipline of public servants when acting in the public interest in general and exercising discretionary powers in particular.²⁴ The failure of public servants to observe moral obligations has not only affected the efficiency of the public service; it has also brought it into discredit, leading to the public losing faith in government.

A code of conduct for the public service was announced in the **Government Gazette** of 10 June 1997. ²⁵ In order to give practical effect to the relevant constitutional provisions relating to the public service, all state employees are expected to comply with it. It is intended to act as a guideline to what is expected from them morally, both in terms of their individual conduct and in relations with others. It is intended to enhance professionalism, and improve confidence in the public service.

The code consists of five sections, covering:

- the professional nature of public service employees' relationships with the legislature and the executive, stressing loyalty and accountability;
- relationships with the public, emphasising impartiality, fairness and respect in the delivery of services;
- the obligations of individual public servants in their relationships with one another as they interact in the workplace, emphasising co-operation, effectiveness and integrity;

- values associated with the performance of duties, aimed at instilling ideals of honesty, efficiency, accountability, transparency and fighting corruption, fraud, nepotism and conflict of interest among public servants; and
- principles and values related to personal conduct and private interests, in order to inculcate responsible behaviour and integrity, as well as provide guidelines to counteract bribery.²⁶

A manual containing practical examples of how to apply the code is to be released. A video promoting the code will also be prepared, and will be used at workshops held to help public servants assimilate the code.²⁷

The national assembly has also adopted a code of conduct – an important signal that the government wants to regulate the behaviour of its members in a manner conducive to democratic values and commensurate with the ethics of good government. Rules do not in themselves preclude the possibility or even likelihood of serious forms of corruption; however, their complete absence creates ideal conditions for corruption or conflicts of interest – or, more importantly, perceptions of corruption and conflict of interest which, in turn, eat away at the fabric of public trust and confidence in democratic government.²⁸

This code covers all members of parliament and to a limited extent their spouses, and calls for disclosure in 10 areas of financial and other interests relevant to the performance of their public duties, in order to avoid possible conflicts of interest which may result in corruption. The code requires the opening of a register of member's interests, which will be open to the public and must be updated yearly. There is also a private register in which the exact value of certain private interests and the interests of family members is recorded.²⁹

If parliamentary codes are to have any real effect, it must be made plain that they are compulsory rather than advisory and that they will be enforced on pain of dismissal or suspension.³⁰ The current South African code does not have the force of legislation; nor does it bind members of provincial legislatures, or regulate the non-financial conduct of MPs. It appears as if the administrative burden of operationalising the code, as well as the lack of familiarity with the process, has been underestimated.³¹

Civil society watchdogs

The importance of government–civil society relationships for corruption is perhaps best illustrated by considering the role and power of non-governmental organisations (NGOs), particularly the media, in highlighting abuses.

Anti-corruption reforms tend to be enthusiastically supported by the public and the media. By adopting such measures, a government receives credit for its principled approach, and also tends to receive credit when corruption is exposed rather than being blamed for the fact that the corruption existed in the first place.³² However, in many countries new leaders have ridden to office on anti-corruption platforms only to be exposed as thoroughly corrupt in turn.³³ As such it is vital that a citizenry, through the media and other civic bodies, demands a high moral performance from its officials and that the political will is sustained to enforce policy measures designed to tackle the problem of corruption.³⁴

Even the best safeguards, institutions and practices can give way to abuses. For this reason, a crucial safeguard of high standards of public morality and accountability is the ability of citizens

and organisations to hold public officials accountable for their acts, and to ensure that public institutions fulfil their functions and responsibilities properly and effectively. A most effective control against corruption may come from the vigilance exercised in an independent press. By sensitising the public to blatant abuses of power, the media can expose corruption and immoral behaviour and demand that such acts be corrected and punished.

Thus the watchdog role of the non-governmental organisations and other bodies making up civil society is crucial for ensuring good government. The role of opposition parties in holding the government of the day accountable is another important tool.

The history of civil society in South Africa has shown that it has the capacity to successfully oppose structures of state domination; in the new political environment, this sector is challenged to help safeguard the integrity, accountability and transparency of government. The capacity of civil society to expose corrupt practices, hold those responsible accountable and force governments to be more transparent should become a more potent safeguard.³⁵

The establishment in mid-1997 of a South African chapter of Transparency International, the international NGO formally constituted in 1993 to build international and national coalitions against corruption, is a positive development. More independent research on corruption, particularly regarding the crucial role which civil society can play, is needed.

Corruption and the criminal justice system

An independent judiciary and efficient criminal justice system are regarded as the primary agents for controlling corruption. While any corrupt exercise of public office is likely to affect the social, economic and moral fabric of the community, corruption within the criminal justice system is particularly harmful; thus the proper administration of justice is the last resort of those who seek justice, order and stability in the state. As such, those to whom the administration of justice has been entrusted cannot be allowed to bring that administration into disrepute, or reduce its efficiency.³⁶ Corruption in the system seriously undermines justice and the rule of law.³⁷

In South Africa, corruption in the criminal justice system is said to be pervasive. This obviously has severe consequences for public perceptions of the institutions of criminal justice, which many South Africans (especially the poor) already doubt, as the legal system was previously perceived as one of the main vehicles for enforcing apartheid.³⁸

Particularly disturbing is the theft and/or sale of police dockets, with indications that prosecutors, court interpreters and police officials are involved. Within the Department of Justice, the most common acts of corruption involve the theft of warrant vouchers, the destruction of case dockets, and the withdrawal of charges in return for money.³⁹ Low salaries, a lack of accountability and insufficient action against corrupt members are among the reasons cited for such activities, which defeat the ends of justice as well as tarnish the image of the judicial system.

The government has acted to address this problem. There is, however, a dilemma here. Any large-scale crackdown on corruption is bound to undermine flagging confidence in the criminal justice system still further – but a denial of the extent of the problem will continue to undermine public confidence in the institutions of criminal justice altogether. This will be particularly so if, in the longer term, it becomes common knowledge among ordinary citizens that the system's representatives – in the form of the police, court and correctional services (as well as welfare officials) – are open to corruption.⁴⁰ This appears to be the case already.

NCPS proposal on anti-corruption in the criminal justice system

The National Crime Prevention Strategy (NCPS) identifies corruption in the criminal justice system as one of seven priority areas to be addressed. Proposals for developing an anti-corruption strategy in the criminal justice system suggest that a national programme be designed and implemented from the ground up in each of the four main departments: Safety and Security, Justice, Correctional Services and Welfare. Each should establish a working group on corruption comprising all stakeholders who can help to resolve the problem. The working groups would begin by:

- identifying the main types of corruption in each department;
- identifying the main areas where corruption takes place;
- identifying contributing factors to the problem; and
- assessing the impact of departmental strategies adopted to date.

The national programme team, whose brief would be to share lessons and successes across departments and to identify cross-cutting factors which contribute to corruption, would focus on:

- preventive as well as investigative strategies against corruption;
- identifying causal factors;
- identifying possible solutions with the departments and beyond; and
- problem-solving strategies.

The national programme team and departmental working groups will not be responsible for investigating allegations of corruption. Rather, some mechanism for co-ordinating investigations will have to be evolved, forming the basis of a new and entirely independent body responsible for dealing with all corruption in government.⁴¹

This proposal is to be welcomed. However, bearing in mind the implementation and co-ordination problems which other NCPS programmes have experienced – resulting in non-delivery in some crucial areas, for example victim empowerment – a note of caution should be sounded. The establishment of further committees and working groups may be just one of a range of measures needed to address this problem effectively. Also, the absence of civil society representation on the proposed departmental committees may be a cause for concern.

SAPS anti-corruption units

Combating corruption in the SAPS has been defined as a national priority in the 1996/7 Police Plan, and in 1995 the new government established anti-corruption units to give a clear message that corruption in the police would not be tolerated. A total of 582 members were involved in corruption inquiries between January and June 1996, with 15 members convicted.⁴² While this exposes the extent of corruption in the service, it also demonstrates that there is a will to root out the wrongdoers.⁴³ On the other hand, such action may have the effect of stimulating popular perceptions that corruption within the police is increasing.

However, the anti-corruption unit of the SAPS appears to be faced with several difficulties.⁴⁴ For one, it is not independent and is therefore viewed with some scepticism from within – the situation of police investigating other police is fraught with problems – as well as outside the police. The creation of the Independent Complaints Directorate may address the question of independence; however, in the long term the fate of the anti-corruption unit appears uncertain. Further problems are a lack of clarity among members of the unit about their brief, as well as a

shortage of skilled personnel and resources.

CONCLUSION

Internationally, crimes such as fraud and corruption command a relatively small portion of criminal justice resources. Since these crimes are less visible, and therefore a less apparent problem, the natural tendency is for society to focus its investigative resources on situations where victims, witnesses and potential results are readily apparent. Investigations into corruption rarely fall into this category.⁴⁵ However, considerable resources are needed to investigate corruption effectively, and techniques capable of uncovering it must be developed and maintained.⁴⁶

If the criminal justice system is to effectively control corruption, improved training of law enforcement and justice personnel active in this field is urgently needed. In countries such as Mexico, Hong Kong and Singapore, it has been recognised that the scale and nature of anti-corruption activities require a special and well-resourced institution or set of institutions to complement normal police activities.

For example, Hong Kong's Independent Commission against Corruption follows a three-pronged approach:

- repression (investigation and prosecution);
- prevention (aggressive auditing to eliminate situations which could lead to corruption); and
- public education and mobilisation.

There are a number of other lessons to be learned from the Hong Kong experience.

- First, in order to be effective, the investment in the institution(s) fighting corruption needs to be considerable. In 1994 the Independent Commission had 1 300 employees for a jurisdiction of just over 5 million people. An anti-corruption strategy which is understaffed and under-resourced does more harm than good by raising unrealistic expectations of the government's capacity to clean up corruption.
- Second, there has to be a legislative provision which creates a duty to explain, 'an evidential burden', on a government employee who is obviously living far beyond his or her means. There are a number of issues around the constitutionally acceptable wording of such a provision, but there are precedents.
- Finally, public credibility and support is crucial to a successful campaign against corruption. The Hong Kong commission relied on confidential, sometimes anonymous, reports from members of the public to target some of its investigations. It also had four regional offices where citizens could go to make reports. This type of secure public access to the anti-corruption authority is essential, and the Hong Kong Commission received more than 3 000 complaints a year, each of which was followed through.⁴⁷

Establishing independent anti-corruption bodies is a significant and symbolic step by governments, signalling that corruption will not be tolerated and that significant steps will be taken to eradicate it. Importantly, these institutions must be independent of government but subject to the rule of law, or risk becoming forces of repression in their own right. Such bodies

may also have the advantage of protecting honest politicians or public officials against baseless accusations of corruption. This is because those making such allegations will be aware that there is an effective body which may well investigate the allegation and find it to be unfounded or even malicious.⁴⁸

Transparency International has identified the following indicators of any serious and concerted reform effort against corruption:

1. a clear commitment by political leaders to combat corruption wherever it occurs, and to submit themselves to scrutiny;
2. a primary emphasis on the prevention of future corruption, and on changing systems;
3. the adoption of comprehensive anti-corruption legislation implemented by agencies of manifest integrity;
4. the identification of those government activities as well as departments most prone to corruption, and a review of both substantive and administrative procedures;
5. a programme to ensure that salaries of civil servants and political leaders adequately reflect the responsibilities of their posts and are comparable to those in the private sector;
6. a study of legal and administrative remedies to be sure that they are an adequate deterrent;
7. the creation of partnerships between government and civil society; and
8. efforts to make corruption a 'high-risk, low profit' undertaking.⁴⁹

Ways in which anti-corruption efforts can be derailed include:

- the limits of powers at the top (an incoming administration may wish to tackle corruption effectively but inherits a corrupt bureaucracy that impedes efforts for change)
- the absence of commitment at the top
- overly ambitious promises leading to unrealisable and unachievable expectations and a loss of confidence
- reforms that are piecemeal and uncoordinated so that no one "owns" them and no-one is committed to see that the reforms are implemented and kept up to date
- reforms that rely too much on the law or too much on enforcement
- reforms that overlook those at the top and only focus on the small fry
- the failure to establish institutional mechanisms that will outlive the leaders of the reforms
- the failure of government to draw civil society and the private sector into the reform process.⁵⁰

In South Africa, particularly in respect of the restructuring of social security and the criminal justice system, indications are that resources *are* being allocated to support anti-corruption efforts. However, the proliferation of new institutions with resources which are too limited to be effective is a cause for concern.

What is clear, however, is that any attempt to seriously address fraud and corruption in the area of social security will be piecemeal and symptomatic if they fail to address the larger, more difficult issues concerning the restructuring of the public service as a whole. Only then will government's commitment to achieving more effective service delivery to all its citizens be remotely realisable.

In order to effectively address corruption, multidisciplinary and comprehensive policy strategies drawing on a range of resources, including international co-operation, are essential. South Africa is plagued by many of the common problems of developing countries in transition. Resource constraints, especially in the light of rationalising the civil service and remnants of corrupt authoritarian practices familiar to Latin American and East European societies, create conditions under which corruption thrives.⁵¹ More research on appropriate interventions to prevent corruption in such societies is required. Most importantly, South Africa's criminal justice system needs to be bolstered to enable fraudsters and corrupt officials to be successfully prosecuted as well as purged, to ensure that such successes are not undermined from within. For criminal law to be effective, it must be adequately enforced. If there is little chance of this occurring, few will be deterred, and fewer still penalised.

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APPENDIX

Informal interviews and conversations (other than referenced e-mail correspondence)

Date	Person	Organisation	Medium
25 February	Prof Hennie Lotter	RAU, philosophy	1 hour interview
26 February	Prof Renosi Mokate	Pretoria University	1 hour interview
26 February	Dr Jean Triegaard	Department of Welfare: Social Security	1 hour interview
28 February	Sheena Duncan	Black Sash	Telephone
28 February	Seema Narran	Black Sash	Telephone
5 March	Dr Bernie Fanaroff	NCPS	Telephone
5 March	Dennis Nkosi	NICOC	Telephone
11 March	Hennie van Heerden	Corectional Services	Telephone
March	Chris Jennings	Central Paymaster Services	Telephone