

**AFTER APARTHEID CONFERENCE**  
**Yale Center for International and Area Studies**  
**Cape Town, South Africa**  
**August 11 – 12, 2006**  
**Panel 5: Legal Order**  
**Corruption - “a reality to be managed”**  
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***Preliminary Draft: Do not cite or circulate***

## **Corruption Time-Line**

April 1994 – ANC wins a landslide victory in South Africa’s first democratic election  
May 1996 – Parliamentary Code of Conduct with regard to Financial Interests  
July 1996 – President Mandela fires ANC MP Bantu Holomisa for blowing the whistle  
March 1997 – National Crime Prevention Strategy released  
March 1997 – Special Investigating Unit Units and Special Tribunals Act comes into effect  
June 1997 – Parliamentary debate on Measures to Combat Corruption  
June 1997 – Code of Conduct for the Public Service  
December 1997 – Thabo Mbeki becomes President of the African National Congress  
April 1998 – The Defence Review setting out a new force design is “approved” by parliament  
September 1998 – Cabinet approves a National Campaign Against Corruption  
October 1998 – A Moral Summit is held in Johannesburg  
November 1998 – Public Sector Anti-Corruption Conference in parliament  
April 1999 – First National Anti-Corruption Summit in parliament  
June 1999 – Thabo Mbeki becomes President of South Africa, Jacob Zuma the Deputy President  
September 1999 – The Strategic Defence Procurement Package (SDPP) is announced  
September 1999 – PAC MP Patricia de Lille blows the whistle on corruption in the arms deal  
October 1999 – 9th International Anti-Corruption Conference (IACC) hosted by South Africa  
March 2000 – The Promotion of Access to Information Act comes into effect  
July 2000 – The Executive Members Ethics Code comes into effect  
September 2000 – Auditor General’s Special Review of the SDDPP finds irregularities  
October 2000 – SCOPA’s 14th Report on the arms deal calls for a multi-agency investigation  
November 2000 – Constitutional Court ruling on SAPIL v Heath and Others  
January 2001 – President Mbeki announces exclusion of Special Investigating Unit from probe  
January 2001 – ANC MP Andrew Feinstein is replaced as study leader of SCOPA  
February 2001 – The Protected Disclosure Acts no 26 of 2001 comes into effect  
March 2001 – Sunday Times reports on ANC Chief Whip Tony Yengeni’s discounted Mercedes  
April 2001 – Strategic Planning Workshop on Anti-Corruption Strategy  
June 2001 – Launch of the National Anti-Corruption Forum in Cape Town  
July 2001 – Mail and Guardian reports on Joe Modise’s house built by Denel  
July 2001 – Post Cabinet Lekgotla anti-corruption measures announced

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August 2001 - SADC Protocol Against Corruption signed by South Africa  
September 2001 – ANC MP Andrew Feinstein resigns from Parliament  
October 2001 – ANC chief whip Tony Yengeni arrested and charged with fraud and corruption  
November 2001 – Release of the final JIT Report in Parliament exonerating government  
January 2002 – Public Service Anti-Corruption Strategy adopted by Cabinet  
February 2002 – IFF MP Dr Gavin Woods resigns as chair of SCOPA  
April 2003 – UN/DPSA Country Corruption Assessment Report released  
May 2003 – South Africa ratifies the SADC Protocol against Corruption  
July 2003 – AU assembly adopts the Convention on Preventing and Combating Corruption  
August 2003 - NPA decision not to prosecute Zuma on corruption charges although they have a “prima facie” case,  
August 2003 - Shaik is charged with corruption, fraud, theft of company assets, tax evasion and reckless trading related to the arms deal  
March 2004 – South African signs the AU Convention on Preventing and Combating  
April 2004 – Prevention and Combating of Corrupt Activities Act 12 of 2004  
November 2004 – South African ratifies the UN Convention against Corruption  
March 2005 – Second National Anti-Corruption Summit in Tshwane  
May 2005 – Judge Squires finds a “generally corrupt” relationship between Shaik and Zuma  
June 2005 – President Mbeki fires Jacob Zuma as deputy President of South Africa  
August 2005 – Provisional Charge sheet, State vs Jacob Zuma

## **Introduction**

Just over a year ago, on 14 June 2005, President Thabo Mbeki made a dramatic announcement. To a joint session of South Africa’s parliament he announced that he would be relieving his deputy president, Jacob Zuma, of all official duties. With this move Mbeki threw wide open the question of the future presidency of the country, considerably upping the ante on the “succession debate”.

The reasons for firing Zuma related to the fact that a few days earlier, Zuma’s financial advisor, Durban businessman and struggle comrade Schabir Shaik, had been convicted and sentenced to 15 years on fraud and corruption charges relating to his role in the arms deal. (The appeal will be heard later this month and it is argued that the state’s case against Zuma will stand or fall on the outcome of this.) In his 160 page judgment, read over three days, Judge Hilary Squires found “convincing and really overwhelming” evidence that Shaik, from whom Zuma had received directly to or for his benefit 238 payments totaling

some R1.2million from October 1995 to September 2002, were party to a “generally corrupt” relationship. With such a cloud hanging over the presidency, it was untenable for Mbeki, with his oft-professed zero-tolerance stance on corruption, to keep on his deputy.

In his judgment Squires argued Zuma was aware of Shaik’s efforts to facilitate a yearly payment, argued to be a bribe, of R500 000 from the French arms manufacturer Thint Holdings – formerly Thomson CSF. This was allegedly in exchange for deflecting the multi-agency probe into the multi-billion rand arms deal. Following Shaik’s conviction and Zuma’s dismissal, the National Prosecuting Authority, whom two years previously had decided not to charge Zuma (they argued then whilst they had a “prima facie” case of corruption against him but it was not in the interests of the country and it was questionable whether the state had a winnable case), would now charge Zuma on two counts of corruption, as well as his co-accused Thint.

The case now before the Durban high court, will be heard next month. For various reasons the prosecution want the case to be postponed until next year, while Zuma’s lawyer, supported by lawyers for Thint, believe any further delay will affect his client’s chance of a fair trial and have argued that Judge Herbert Msimang should either order the trial to go ahead or that charges be dropped altogether.

What can one glean from these dramatic events?

In the anti-corruption literature, a commitment to “fry the big fish” is an oft-cited indicator of political will to address corruption. Is the prosecution of Zuma on corruption charges indicative that the new government is decisively tackling corruption wherever it is found? Or is this simply the Mbeki-camp, using corruption as a weapon, conspiring to get rid of potential challengers to the throne?

Zuma, his defence lawyers and enthusiastic supporters argue that these charges (as well as the previous charge of rape) are being brought as part of a “political conspiracy”. In his affidavit submitted to oppose a prosecution request for a postponement to next year Zuma argues that the investigation was

*“designed solely or mainly to destroy my reputation and political role....My conviction on any possible type of offence is being pursued at all costs...I have been touted as a potential presidential candidate...Just as there are...ANC members who have come out in support of me being the next president, so there are those in public and in government who are very much opposed to me being president and indeed some who wish me not to have a role to play in the politics of this country...The charges against me have been initiated, and certainly fuelled, by a political conspiracy to remove me as a role player in the ANC.”<sup>2</sup>*

Clearly the Mbeki-led government believes it now has a winnable case against Zuma and the necessary moral and legal resources in place to pursue it. As this paper shows, since 1994, numerous policy statements, laws and institutions to control corruption as well as develop a comprehensive national anti-corruption strategy through a conscious partnership approach involving all sectors of society, have been introduced. Twelve years on it is time to critically evaluate the successes and challenges of these reform interventions, with the arms deal case as a backdrop.

## **Reviewing Progress and Pitfalls**

On 9 June 2006 the African Peer Review Mechanism’s (APRM) Country Self Assessment Report for South Africa noted that in response to the problem of public sector corruption the government had initiated a variety of anti-corruption measures. These efforts had culminated in the adoption of a comprehensive

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<sup>2</sup> Zuma Corruption Trial, Sunday Times, August 6, 2006. “Twist in tale of victims and villains”.

Public Service Anti-Corruption Strategy in 2002, a strategy that “has served as a blueprint for consolidating and reinforcing the anti-corruption legislative and regulatory framework as well as strengthening the institutions mandated to monitor, investigate and prosecute corruption.”

A “corner stone” of South Africa’s anti-corruption efforts, noted by the report, is the development of partnerships between the government, civil society and the private sector in fighting corruption. Examples of this partnership include the two National Anti-Corruption Summits (held in 1999 and 2005) and the launch of the tri-partite National Anti-Corruption Forum in 2001. Additionally anti-corruption legislative and regulatory measures adopted since 1994, are listed and “generally regarded as strong and in keeping with international practices”.<sup>3</sup>

The report also lists South Africa’s range of specialized anti-corruption agencies including the National Prosecuting Authority; Directorate of Special Operations; South African Police Services; The Special Investigating Unit; the Independent Complaints Directorate; the Public Protector; the Auditor General; the Public Service Commission and various Parliamentary Committees.<sup>4</sup>

South Africa’s anti-corruption arsenal, developed systematically since 1994, is indeed impressive.

Ten years after transition, in April 2004, South Africa ranked “strong” in the Public Integrity Index, an independent anti-corruption rating of 25 diverse countries that uses in-country experts to assess over 290 indicators relating to the existence, effectiveness and access to citizens, of anti-corruption mechanisms. As Geraldine J. Fraser-Moleketi, Minister of Public Service and Administration, told the press:

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<sup>3</sup> The Public Service Code of Conduct 1997; The Parliamentary Code of Ethics 1997; The Executive Members Ethics Act no 83 of 1998 and Codes of Ethics 2000; The Public Finance Management Act and Municipal Finance Management Act; The Promotion of Access to Information Act; The Protected Disclosures Act no 26 of 2000; The Financial Intelligence Center Act no 38 Of 2001 and The Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

<sup>4</sup> Country Self Assessment Report, APRM, 9 June 2006.

*“Only last month, the highly regarded USA-based Centre for Public Integrity released an exhaustive study on the strength of our integrity framework and, generally, found us to be strong on those integrity mechanisms that fight corruption. In this regard, our anti-corruption mechanisms were favorably compared to those of the USA, Australia, Italy, Portugal and Germany. This is testimony to the success of anti-corruption measures that are aimed at preventing, detecting and punishing corruption by government which are built on strong participation from, and collaboration with, civil society, business, labour and the international community.”*

Having designed the Public Integrity Index and served as the lead social scientist for the Global Integrity Report in South Africa, it is true that in 2004 South Africa did rank “strong” in most categories of the Public Integrity Index. The Index is designed to capture the existence (in law) and effectiveness (in practice) of mechanisms in place in a country to promote public integrity, rather than attempt to measure perceptions of the extent of corruption.<sup>5</sup>

From a free media, to an independent judiciary, a Public Protector to an Auditor General, whistleblower protection and access to information laws, South Africa appears to have in place most of the key institutions cited in the literature as important to prevent abuses of power. What the minister failed to mention was where South Africa does not score strongly. This was both in the arena of civil service reform and of transparency relating to the funding of political parties.

Ten years earlier, in July 1996, President Nelson Mandela had fired one of the most popular members of the ANC’s National Executive Committee, Deputy Minister for environment and tourism and former military strongman in the former homeland of the Transkei. Bantu Holomisa was ostensibly expelled from the

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<sup>5</sup> For a full description of the Public Integrity Index, see Camerer, M. 2006. “Measuring Public Integrity” Journal of Democracy, Volume 16 January.

ANC for accusing then Deputy President Thabo Mbeki, and other ANC officials of accepting money from Sol Kerzner, a businessman under investigation for bribery. Holomisa's speaking out was seen as traitorous. Mandela would later admit that the ANC had indeed accepted a campaign donation from Kerzner, but denied any wrongdoing. Technically, Mandela was right – with no laws in place to regulate private contributions to political parties, there was no wrongdoing.

When it comes to knowing who funds the political process in South Africa, the corrupting nexus between power and money, ten years on, this remains a shocking lacuna in an otherwise impressive array of anti-corruption mechanisms. And it is something that the ruling party (as well as other parties in parliament) seemingly has no real interest in remedying. The area of political party contributions would come to dominate civil society activism around the issue of corruption as this gap would continue to be exploited by the corrupt across political parties. Allegations of corruption in the arms deal have continually harped on whether kickbacks from arms companies to secure lucrative contracts were possibly funneled into ANC party coffers, rather than purely individuals within the process who might have benefited from the deal. At this point there is no way of knowing...

### **Context and Cases**

Transitions from largely authoritarian to more liberal and open systems of government are often characterized by widespread social upheaval and crimes, including corruption. Corruption is therefore not a problem that emerged overnight with South Africa's transition to democracy. None would deny that apartheid South Africa by its very nature and operation, benefiting a minority at the expense of a majority, was not rife with corruption. Indeed if corruption is defined as the abuse of power, the apartheid regime was venal. The "legacy of apartheid" as *the* explanatory cause for the widespread corruption that continues to plague South African society, does however start to ring somewhat hollow in

the second decade of democracy, although other causes, such as need and greed, are close relatives to this argument.

In 1995 a survey conducted by the Institute for Democracy in South Africa (Idasa) found that 46% of South Africans were of the opinion that ‘almost all’ or ‘most’ public officials were involved in corruption, a number which in 1998 had increased to 55%. Perceptions of corruption were fairly widespread across various levels and branches of the public sector with the significant exception of the Office of the President, during Mandela’s presidency, which was significantly lower.<sup>6</sup> The Afrobarometer survey found that corruption as an issue was first mentioned in 1995 by 2% of the population when asked “What are the most important problems facing this country that the government ought to address?” By July 2003 it had risen to 13%.<sup>7</sup> Thus the common perception - which public opinion surveys continue to confirm – is that corruption in South Africa is neither a new nor a declining phenomenon. Public tolerance for corruption is however, declining as local and international expectations for clean government grow.

Clearly the corrupt system of governance did not “disappear into the night in 1994, when the white flag was lowered and a new South African banner hoisted. Rather, it had entrenched itself to such an extent that it would inevitably serve to corrupt the new order and the years before and after 1994 cannot simply be neatly compartmentalized.”<sup>8</sup> Frene Ginwala, Speaker of the National Assembly for the first decade of democracy (1994 – 2004), notes:

*“In South Africa we inherited an intrinsically corrupt system of governance...To survive, it created a legal framework that was based on and facilitated corruption. It has taken years in Parliament to repeal old*

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6 Mattes, R. & Africa, C. 1999. “Corruption – the attitudinal component: tracking public perceptions of official corruption in South Africa, 1995-1998.” Unpublished paper.

7 Afrobarometer, July 2003. Briefing Paper No 15: The Changing Public Agenda: South Africans’ Assessments of the Country’s Most Pressing Problems.

8 Van Vuuren, H. 2006. Apartheid Grand Corruption: Assessing the scale of crimes of profit in South Africa from 1976 to 1994. A report prepared by civil society at the request of the Second National Anti-Corruption Summit, May 2006.

*laws and introduce even the basic legal framework that would enable us to deal with corrupt bureaucrats, politicians and police. The private sector also operated in a closed society and profited by it. There were partnerships with international criminals, and the corruption that was built into the system, is very difficult to overcome.”<sup>9</sup>*

Within the liberation movement, unusual accounting practices emerged as an illicit way to disguise donor funds that were funneled illegally into the country to support the anti-apartheid movement. “Struggle accounting”, was a term coined by the anti-apartheid activist and ambassador elect to the United Nations, Dr Alan Boesak. In February 1995, Boesak was forced to withdraw from an ambassadorial posting as democratic South Africa’s first ambassador to the United Nations. Danida, the Danish Aid agency, had first raised the alarm that Boesak’s Foundation for Peace and Justice had misappropriated aid money designated for the victims of apartheid. An amount of R726 000 earmarked for the production of 12 video cassettes on voter education and democracy were instead spent on building a studio for his wife. Four year later, in 1999, the court found Boesak guilty on charges of theft of R259 000 and fraud involving R1.3 million and sentenced him to six years in prison. Rather than representing South Africa in Geneva, Boesak eventually served a year of a three year jail term in Goodwood prison before being released on parole. He was eventually pardoned by President Mbeki in 2005, although has refused to apologize for any wrongdoing.

In February 1996, Abe Williams, the National Party Minister of Welfare accused of accepting bribes while in office, resigned from the cabinet. He was eventually charged with 35 counts of fraud, 4 of corruption and one of theft. The corruption charges related to two sums of money (R140 000 in total) that he had allegedly received from a technology company, Mercedes Information Technologies (MIT)

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<sup>9</sup> Remarks by Frene Ginwala, Speaker of Parliament, to the Global Forum II, opening session, May 28 2001, The Hague, [www.gca-cma.org](http://www.gca-cma.org).

where in return for the money he had allegedly ensured the purchase of computer software from Unidata (part of MIT) for a literacy project. In 2000 Williams was convicted of corruption and theft and given a three-year prison sentence. From the public's point of view, the system was working! From struggle hero to cabinet minister, it appeared no one was immune from prosecution for corruption in the new South Africa.

Other examples of high profile corruption before the arms deal scandal would come to dominate the political landscape from 1999, included the following:

- Motheo Housing – Here an unknown company run by a close friend of then Housing Minister, Sankie Mthembu-Mahanyele, was awarded a R198 million contract to build more than 10,000 houses. The Director General in the Ministry of Housing, Billy Cobbett blew the whistle on the deal and was fired. The commission of inquiry looking into the matter found no proof of outright corruption, but criticized the Mpumalanga government's irresponsible handling of housing funds.<sup>10</sup>
- Sarafina Two - Health Minister at the time, Nkosazana Zuma (now the Minister of Foreign Affairs) was accused of misleading Parliament about the use of European Union funds in the awarding of a contract of R14.2 million to produce an AIDS-awareness musical, Sarafina Two. An Auditor General Report found that bidding procedures were violated and an inquiry by the Office of the Public Protector found donor money was allocated through improper tender and awarding procedures with a litany of irregularities. The EU ambassador to South Africa stressed categorically there had been no prior authorization and regarded the diversion of funds as a serious misuse of EU support. While no evidence or implication of the abuse of official position for personal gain was found, this was a clear case of diversion of aid in a manner bordering on mismanagement and a lack of both transparency and public parliamentary accountability.

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<sup>10</sup> Corruption Timeline: Global Integrity Report/South Africa [www.publicintegrity.org/ga](http://www.publicintegrity.org/ga)

- Deputy speaker's driving license – Parliamentary deputy speaker Baleka Mbete-Kgositsile (now the Speaker of the National Assembly) was found to have received an improperly issued driving license from a regional driving license testing center in Mpumalanga. In April 1997 investigators had uncovered widespread corruption with licenses being issued in exchange for bribes. Police and prosecutors found no proof that she acted with criminal intent and she returned the license and apologized.
- Independent Broadcasting Authority - In May 1997, five of the seven publicly appointed members of the Independent Broadcasting Authority, which regulates broadcasting in South Africa, resigned after the Auditor General issued a report detailing widespread financial mismanagement at the authority, including misuse of corporate credit cards.

In each of the above cases, as will be seen in the arms deal, once allegations of corruption are raised they are usually addressed by some type of investigative process that may or may not satisfy observers that corruption is being seriously confronted.

In May 1996 Parliament adopted *The Constitution of the Republic of South Africa* that came into effect in February 1997<sup>11</sup>. The new rules underpinning a democratic South Africa were firmly laid and with it the state's commitment to promote public integrity and uphold amongst others, the values of "accountability, responsiveness and openness."

The Constitution establishes the constitutionally mandated role of the legislature to provide oversight over the executive, something that would be tested to the limit by the arms deal scandal. It also establishes a number of key institutions to protect the public interest. These so called "Chapter 9 institutions" such as the Public Protector and Auditor-General are established to promote constitutional democracy and are independent, impartial and must exercise their powers and

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<sup>11</sup> Constitution of the Republic of South Africa No 108 of 1996

perform their functions without fear, favor or prejudice. Once again, the arms deal would test the limits of these agencies.

On 21 May 1996, the Code of Conduct in Regard to Financial Interests was published that would cover the interests of Members of Parliament. The Introduction to the Code notes “In order to achieve a political order in South Africa that is truly open, transparent and accountable, as is envisaged in the Constitution, it is essential that its elected leaders maintain the highest standards of propriety to ensure that their integrity and that of the political institutions in which they serve are beyond question.”<sup>12</sup> It furthermore notes that “no person bound by this Code must place himself or herself in a position which conflicts with his or her responsibilities as a public representative in Parliament nor may he or she take any improper benefit or advantage from the office Member.”<sup>13</sup>

Tony Yengeni, the ANC MP and Chief Whip while serving as chair of the parliamentary Defence Committee would accept and fail to declare a substantial discount (47%) on a 4x4 Mercedes from a company competing for a piece of the defence pie. 23 current and former Members of Parliament and five travel agents have been charged and are currently on trial for allegedly defrauding parliament of about R24million by abusing the travel voucher scheme, using it to pay for luxury holidays, meals and car rentals. Clearly the sentiments expressed in the code have not been adhered to. The “Travelgate” case is being heard by Cape Judge President John Hlope, himself facing a Judicial Services Commission inquiry into conflict of interest charges for failing to disclose business interests and accepting a consultation tariff of R10 000 a month from Oasis Group holdings. Both the Yengeni and Hlope stories were broken by investigative journalists working for the Sunday Times and Noseweek, respectively.

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12 Code of Conduct in Regard to Financial Interests (as adopted by the Joint Committee of the Rules Committee on 21 May 1996.)

13 Code of Conduct in Regard to Financial Interests (as adopted by the Joint Committee of the Rules Committee on 21 May 1996.)

## Committing to the fight against corruption

In June 1997 the National Party, then official opposition in the national assembly, initiated a debate entitled “Measures to Combat Corruption”. The Order Paper’s draft resolution read:

*“That, in the light of numerous incidents of corruption within the State set-up recently, the House calls on the Minister for Public Service and Administration to urgently take steps to curb such incidents, to set in motion all possible measures for the prevention of such corruption, and to have all cases, irrespective of who is involved, investigated forthwith.”<sup>14</sup>*

The debate provided an important opportunity for the ANC to unequivocally state its clear commitment to addressing corruption. ANC Minister Pallo Jordan in his input said: “I think this debate has served one purpose only, and this is to offer us the opportunity to reiterate this Government’s commitment to rooting out corruption and combating corruption anywhere.”<sup>15</sup> Another ANC MP Maria Rantho noted she was virtually without words, not so much from the abundance of evidence of corruption and mismanagement in the public sector, but rather from the short memories of the opposition and the fact that the NP suddenly appeared to have woken from a sleep induced by 46 years of corruption and mismanagement:

*“Let us give them credit. They developed a system over 46 years that allowed corruption not only to take place but to flourish...it was furthermore guaranteed to go undetected, thanks to the draconian measures to silence the media that tried to report anything that sounded even slightly anti-NP regime. We are having this debate today because the ANC is committed to a lean and clean administration. We inherited a bloated, ineffective public service, with an almost total lack of checks and*

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<sup>14</sup> Debates of the National Assembly (Hansard) First Session – Second Parliament, 6 February to 25 November 1997.

<sup>15</sup> Debates of the National Assembly (Hansard) First Session – Second Parliament, 6 February to 25 November 1997.

*balances. But we're not hiding behind this as an excuse for corruption to continue...We don't hesitate to act harshly and openly against people who are appointed to the highest positions... We live in a society that is corrupt. We live in a society that is overburdened with high levels of crime. What on earth made us believe that the public sector would be spared? Corruption is a reality we have to manage. One of the first actions taken by the ANC when it took power was to put in place mechanisms designed, not only to expose corruption, but also to wipe it out."*

The wrangle over who was more corrupt and who was to blame would continue. In July 1997, former president of South Africa and NP leader FW De Klerk would write that crime and corruption were worse since the ANC took power:

*"While it is true that many of today's problems may be related to former policies, it is also true that the ANC-led governments - central and provincial - must accept full responsibility for their new policies and their management, or lack of management...We have more crime and more corruption today than before...And at the heart of the problem lies unbalanced and over hasty affirmative action as well as questionable management of tender procedures and the like. For that the ANC must accept responsibility. It cannot hide its blunders and its failure to deliver, behind the past."<sup>16</sup>*

The release of the National Party's Corruption Barometer later that year, calling for urgent ANC action against corruption and for President Mandela to declare the prevention of corruption a national priority, provided the NP with yet another opportunity to accuse the ANC of being soft on corruption. It noted that although some individuals in the ANC government were concerned about spiraling

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<sup>16</sup> FW De Klerk, Leader of the National Party, "Crime and Corruption are worse since the ANC took power, and it cannot be denied." Star. 2 July 1997.

corruption, a general commitment by government to combat the problem was absent. In reaction the ANC noted it was

*“ironic that the ANC led government, which has put into place its institutions and oversight mechanisms to expose and root out the legacy of corruption, is itself blamed for corruption. The ANC has put these institutions in place on the basis of the realization that corruption spawned and nurtured under National Party rule not attended to expeditiously will in the long run undermine the moral and social fibre of our democratic society. We remain convinced that institutions the government has put into place are not only equal to the challenges but have begun making serious inroads into all forms of corruption.”<sup>17</sup>*

### **A National Campaign to tackle crime and corruption**

In October 1997 an Inter-departmental Committee on Corruption consisting of the Ministers of Justice, Public Service and Administration, Safety and Security and Provincial Affairs and Constitutional Development, was appointed with a mandate to consider proposals for implementing an anti-corruption campaign at national and provincial level.<sup>18</sup> The proposals included amongst others establishing a project team to carry out a feasibility study for an anti-corruption agency and the rationalization of existing bodies, a review of the existing legislation in order to draft new legislation and the holding of a National Summit on Corruption. In July 1998 a committee appointed by the Minister of Justice to make recommendations for a National Campaign Against Corruption submitted its final report to Cabinet. This Report and Cabinet's subsequent decisions would become the foundation of anti-corruption initiatives in South Africa, in particular within the public sector.

Alongside public administration reforms and the passage of laws such as the Prevention of Organized Crime Act and the Executive Members Ethics Act 82

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<sup>17</sup> ANC's reaction on NP's Corruption Barometer, 16 November 1997. [www.anc.org.za/ancdocs/pr/1997/pr1115a.html](http://www.anc.org.za/ancdocs/pr/1997/pr1115a.html)

<sup>18</sup> See Balia, D & Sangweni, S. 1999. Fighting Corruption Series: Strategies for Prevention. UNISA.

(established to provide for a code of ethics governing the conduct of members of the cabinet, deputy ministers and members of provincial executive councils) a concurrent moral debate was occurring in the country. This was precipitated by the scourge of both violent crime and public sector corruption that the government felt great urgency to address, lest it become an entrenched feature of South African life.

ANC leaders from Mandela down would, from 1995, recognize the “moral crisis” facing South Africa and the need for an “RDP of the soul”. This was a reference not only to the dehumanizing levels of violent and often domestic crimes, seemingly unleashed by the vacuum in social authority left by the demise of the apartheid state, but also crimes of fraud and corruption. Examples of these were in the field of social security and social grants, as well as ghost workers, i.e. non-existent state employees drawing salaries, mainly in previous homeland administrations.

Twelve years later, the Special Investigating Unit, a dedicated anti-corruption agency set up in 1996 to protect and recover state money, was reportedly investigating the possibility that more than 400 000 private individuals earning salaries had irregularly received social grants.<sup>19</sup> Business Day reported that in the past year about 44000 government employees receiving grants had been investigated of which nearly half, 21588 were on the system irregularly, and of which nearly 14000 will face prosecution. Already more than 1300 criminal investigations had been completed and 650 government officials convicted or sentenced.<sup>20</sup>

In response to the wave of crime that was threatening to destabilize the country the National Crime Prevention Strategy (NCPS) was released. A National Program on Corruption and Commercial Crime was one of seven key crime

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<sup>19</sup> “South Africa: Massive state probe seeks billions in benefit fraud”. July 28 2006, Business Day.

<sup>20</sup> “South Africa: Massive state probe seeks billions in benefit fraud”. July 28 2006, Business Day.

priorities identified. It was noted that while corruption in all of its forms seriously undermines public confidence in democratic governance itself, this is particularly damaging in respect of such corruption and criminal complicity within the criminal justice system.<sup>21</sup> By March 1997 government ministers responsible for the NCPS had established a program committee to work on corruption in the criminal justice system. Led by the ministry of Safety and Security the intention was to develop a comprehensive strategy that would take into account best international practice and existing oversight structures.

It was recognized early on that the ability to corrupt officials depends on how integrated criminal organizations are within official structures. The relationship between the underworld of organized crime and the upper-world of legality is characterized by its parasitic and symbiotic nature and a less-isolated post-apartheid South Africa had started to attract new threats such as international organized crime and money laundering syndicates. Several bills were drafted by parliament to increase the capacity of South Africa's law enforcement agencies to address these new threats and included the International Co-operation in Criminal Matters Act 75 of 1996, the Proceeds of Crime Act No 76 of 1996, the Extradition Amendment Act no 77 of 1996 and the Money Laundering Control Bill.<sup>22</sup>

### **Confronting the moral crisis**

In June 1997 President Mandela and key South African religious leaders met to discuss the role of religion in nation-building and social transformation. Mandela described the 'spiritual malaise' underpinning the crime problem:

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21 Proposal on corruption, Draft 2, 10 February 1997.

22 Camerer, L. 1996. "Legislation to combat runaway corruption". Southern Africa Exclusive. p14. December; Camerer, L. 1999. Decriminalisation and non-criminalisation - Models for money laundering control in Southern Africa. Money Laundering Control in South Africa, Transaction Series 30, Center for Business Law, edited by L De Koker and J Henning,

*“Our hopes and dreams, at times, seem to be overcome by cynicism, self-centeredness and fear. This spiritual malaise sows itself as a lack of good spirit, as pessimism, or lack of hope and faith. And from it emerge the problems of greed and cruelty, of laziness and egotism, of personal and family failure. It both helps fuel the problems of crime and corruption and hinders our efforts to deal with them.”<sup>23</sup>*

Six months later, in December 1997, when addressing the African National Conference, Mandela further described manifestations of moral failure and decay in the new South Africa:

*“... the corruption of public servants by the private sector; the low level of tax morality, white collar crime and the subversion of business ethics; venality, theft and fraud within the public sector; corruption in the public justice system; the unbridled self-gratification of rape and child abuse; disrespect for human life; the easy resort to the use of force; the acceptance of theft as a means of personal enrichment; mendacity in the conduct of public affairs; contempt for the law; and the virtual collapse of a system of social behavior informed by the precepts of humanism which, historically, have informed African culture.”<sup>24</sup>*

In December 1997 President Mandela resigned as president of the ANC with deputy president Thabo Mbeki nominated as his successor. Linking it to his vision of an African Renaissance, finding embodiment in the New Partnership for Africa’s Development (NEPAD) that seeks to promote and strengthen systems to enhance better governance on the continent, Mbeki would make fighting corruption a hallmark of his presidency.

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<sup>23</sup> N Mandela, From Liberation to Transformation, an address to religious leaders on 24 June 1997 in Johannesburg, in Phakamani: Magazine of the ANC Commission for Religious Affairs, p 9.

<sup>24</sup> Mandela address to ANC congress December 1997.

Policy responses to the “moral crisis” included the “Moral Regeneration Movement” (led by none other than deputy president Jacob Zuma) and the so-called “Moral Summit” held in October 1998 to which President Mandela invited leaders of all political parties and religious communities. At the summit a humanitarian ethics pledge and Code of Conduct for people in leadership positions was signed with leaders committing themselves to the following principles: Integrity; Incorruptibility; Good faith; Impartiality; Openness; Accountability; Justice; Generosity; Leadership.<sup>25</sup> Despite these commitments, the public was somewhat skeptical of the government’s efforts to address corruption.

In terms of the effectiveness with which government at this point in time was perceived to be controlling corruption, public opinion surveys conducted by IDASA/Markinor and the SABC in October/ November 1998 painted a somber picture: 60% of respondents said that government was performing its job of controlling official corruption not very well/ not at all well.<sup>26</sup> Clearly it was time to show some sort of persuasive commitment.

### **Anti-corruption conferences and commitments**

During 10-11 November 1998 the Public Sector Anti-Corruption Conference was held in parliament, Cape Town. Co-hosted by the Portfolio Committee on Public Service and Administration and the Department of Justice it was attended by over 200 delegates including the deputy president Thabo Mbeki, Ministers, heads of agencies and parastatals and a broad spectrum of senior government officials including delegates from parliament, the public service, local government and organized labor in the public sector. The aim of the summit was to develop a concrete plan of action to combat and help prevent corruption in the public sector

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<sup>25</sup> See Balia, D & Sangweni, S. 1999. Fighting Corruption Series: Towards a National Integrity Strategy. Unisa;

<sup>26</sup> Camerer, L. 1999. "Fraud and corruption in South Africa's first national victimisation survey". Nedcor/ISS Crime Index Vol 3. No 1.

in particular. The media, donors and civil society were allowed to attend as observers.

The initial outputs for the November summit were identified as follows:

- To develop a clearly articulated national strategy to fight corruption in all sectors of society
- To create a common understanding of corruption in all its facets
- To obtain a commitment from all stakeholders to deal with corruption
- To affirm key principles necessary for the establishment of effective and coordinated anti-corruption structures
- To provide guidelines for a program of anti-corruption actions
- To recommend legislative measures to give muscle to anti-corruption structures
- To send a clear message that corruption will not be tolerated by government or any other role-players in our new democracy

In his opening address Mbeki noted how “the threatening state of moral degradation in our society is reflected in the high levels of crime, disrespect for authority and the rule of law, and the erosion of key institutions such as the family. The culture of entitlement, so prevalent in our community, has contributed to the “name it, claim it” syndrome where individuals seek an elusive moral justification for engaging in criminal activity. The deepening of the crisis in public value is largely visible in the lack of professional conduct from so many wearing the badge of public honor in the civil service.”<sup>27</sup> Mbeki noted that “zero tolerance” would be offered to the “parasites of our land who have scorned the public interest and that sought their own self enrichment at state expense.” Also that it

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<sup>27</sup> Statement of the Deputy President Thabo Mbeki at the Anti-Corruption Summit Conference, Cape Town, November 10, 1998.

was “incumbent on government unequivocally to affirm its seriousness and desire to stamp out corruption wherever it occurs.”<sup>28</sup>

The November 1998 Conference Statement committed itself to developing a comprehensive strategy that would combine prevention with “ruthless action against transgressions”. It recognized that corruption has “deep roots in our society” and that “while some short term measures can have a significant effect, ending corruption forms part of the long-terms and laborious process of transformation of government and society as a whole.”<sup>29</sup> The adopted conference resolutions called to restore a public service ethos, for civil society to play a role as an “equal partner”, to strengthen financial management and controls and for government to review the scope and jurisdiction of anti-corruption agencies.

In his opening address to the conference Mbeki had noted that it was “a laudable feature” of our new democracy that no less than ten structures exist to counteract corruption in line with their constitutional mandate and that while some might share the view that these bodies are not effective enough, others might feel that they need to be replaced by a single anti-corruption agency.<sup>30</sup> This remark needs to be understood in the context of a debate that had been raging from 1996 following the establishment of the Special Investigating Unit on co-ordination or rationalization of existing anti-corruption agencies.

In August 2001 the Public Service Commission would release a comprehensive audit report reviewing the role of these various agencies and conclude forcefully that South Africa *did not* need a new and separate anti-corruption body, rather

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28 Statement of the Deputy President Thabo Mbeki at the Anti-Corruption Summit Conference, Cape Town, November 10, 1998

29 National Anti-Corruption Initiative, Public Sector Anti-Corruption Conference, 10-11 November 1998, Cape Town. Conference Statement..

30 Statement of Deputy President Thabo Mbeki at the Public Sector Anti-Corruption Conference, Cape Town, 10 November 1998.

that the existing criminal justice capacity and other agencies with an anti-corruption mandate should be bolstered.<sup>31</sup>

*“This report shows that there is no integrated, holistic approach to fighting and preventing corruption amongst existing agencies. Only once the anticorruption capacities of the existing agencies are optimally utilised in an holistic and strategic approach to fighting corruption in the public sector in South Africa can the next step - a single independent anti-corruption agency which deals with all aspects of corruption - be seriously considered.”*

At the November 1998 conference it had been resolved that a working group representing the stakeholders would oversee the implementation of the resolution and declaration and work together to ensure the success of the *February* Summit in developing an effective program for combating corruption.<sup>32</sup> The summit eventually took place in *April*, some believing this may have been a way for the ANC to keep anti-corruption top of its agenda pre the June 1999 election.

The efforts seem to have paid off with public opinion research indicating that government was doing enough to fight corruption. A survey conducted by the Human Sciences Research Council in March 1999 indicates that when asked about corruption in the public sector, 34% of respondents believe the government is giving sufficient priority to fighting corruption. In total 20% said that government was giving the issue of corruption too high a priority, whilst ANC supporters were most likely (27%) to think this was the case. Numerous pre-election statements by president-elect Thabo Mbeki identifying fighting corruption as one of his government's key priorities for the next five years, effectively persuaded citizens that fighting corruption was something the government was dealing with satisfactorily.

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31 A Review of National Anti-Corruption Agencies. Public Service Commission. August 2001.

32 National Anti-Corruption Initiative, Public Sector Anti-Corruption Conference, 10-11 November 1998, Cape Town. Conference Statement

During 14-15 April 1999 the National Anti-corruption summit held in Cape Town, brought together government leaders, political parties, business, organised religious bodies, the NGO sector, donors, the media, organised labour unions, academics, professional bodies and the public sector. The National Anti-Corruption Summit created a powerful platform for the National Campaign Against Corruption in that it recognized the societal nature of corruption, and that the fight against it required a national consensus and co-ordination of activities. The resolutions adopted at this conference would form the main basis for the government's national anti-corruption strategy and subsequent developments and relate to its three-pronged approach, namely 1) combating corruption, 2) preventing corruption, and 3) building integrity and raising awareness.<sup>33</sup>

Following the National Anti-Corruption Summit in April 1999 and the South African elections in June - fought largely on a zero-tolerance anti-corruption ticket - Mbeki's cabinet formally endorsed the Summit resolutions. While highlighting corruption in government was a key election issue raised by opposition parties such as the United Democratic Movement, New National Party and Democratic Party hoping to win votes from an electorate disillusioned by widespread public sector abuses of power, it appeared that the ANC, through a number of high profile conferences and public statements on anti-corruption had effectively undercut this tactic. In June 1999 the ANC won a landslide victory in the general election. Thabo Mbeki, who in December 1997 had replaced Nelson Mandela as the party's leader, becomes president of the country, choosing as his deputy president, Jacob Gedleyihlekisa Zuma, a former MEC from KwaZuluNatal and while in exile, Chief of ANC Intelligence.<sup>34</sup>

In his opening address to Parliament in June 1999, President Mbeki announced the establishment of a special criminal investigation unit to tackle high-profile crimes, including public corruption. This unit - the Directorate of Special

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<sup>33</sup> See Appendix One for progress made on resolutions since 1999.

<sup>34</sup> [www.anc.org.za/people/zumaj.html](http://www.anc.org.za/people/zumaj.html)

Operations (DSO) - more popularly known as the "Scorpions, fell under the National Prosecuting Authority that was headed from August 1998 until his resignation in August 2004 (under a cloud of having abused his powers) by former ANC chief whip and MP, Bulelani Ngcuka. Based on the troika principle of Intelligence, Investigation and Prosecution, the DSO would take on crimes determined by the following criteria:

- High level of seriousness/impact of a national nature
- High level of violence
- High level of organization (enterprise related crime)
- Requiring an integrated multi-disciplinary approach
- Very high profile<sup>35</sup>

Although 90% of crimes would still be dealt with by the South African Police Services, from the beginning the tension between the SAPS and DSO in terms of operational mandates would prevail, resulting in the Khempepe Commission of Inquiry set up in 2005 to investigate the relationship between the two crime fighting bodies. In June 2006 the Commission recommended that an operational committee be formed at director-general level to better coordinate investigative planning between the two security agencies.

The DSO was formally launched on 1 September 1999, not a moment too soon. Later that month allegations of wide-spread corruption in the Strategic Defence Procurement Package would officially surface. The DSO would play a crucial role in the criminal investigations that followed. Down the line its head, Bulelani Ngcuka, would be accused of being a spy for the apartheid regime, and for failing to prosecute Jacob Zuma, although announcing a prima facie case of corruption against him, of abusing the powers of his agency. This would lead to a Judicial Commission of Inquiry (Hefer Commission) and an investigation by the Office of the Public Protector, but that is another story...For now, the Scorpions ambition, captured in its motto, "Loved by the people, feared by the criminals" was seen as

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<sup>35</sup> Pete Richer, Head of Operational Support, DSO, UNODC/NPA Expert Roundtable, Pretoria May 2000

a bright light in government's commitment to effectively address serious crime and corruption.

### **Allegations of Corruption in the Arms Deal**

In June 1999 the Coalition for Defence Alternatives (an NGO that had participated in the Defence Review process) was approached by ANC intelligence operatives on behalf of ANC MPs who believed that the weapons expenditures represented a betrayal of the socio-economic upliftment anticipated by South Africa's impoverished communities. The ANC operatives declared that they had knowledge and evidence of massive corruption involving senior politicians and government officials.<sup>36</sup>

In early September 1999, Patricia De Lille, then a Member of Parliament for the Pan African Congress (PAC) received a briefing document full of allegations of corruption in the arms deal signed by "Concerned ANC MPs". In general, the allegations in the memo, which has an urgent and accusatory tone, point to significant flaws in the procurement process and is highly questioning of the offset agreements:

*"What is happening here? Who are the beneficiaries within the South African private sector? Are government officials involved? Are the officials of the negotiations involved? Why the secrecy?"<sup>37</sup>*

The document points to actual instances of alleged corruption by top officials and leading ANC politicians including a former minister of defence as benefiting unduly from the deal. They are alleged to have peddled undue influence in the conclusion of the main deal and in the closure of scores of smaller sub-contracts handed out to local defence industry companies, or to have received kickbacks

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<sup>36</sup> Terry Crawford-Browne. 28 September 2000. The betrayal of the struggle against Apartheid: a summary of South Africa's R48 billion weapons acquisition programme, related offsets and allegations of corruption.

<sup>37</sup> 1999 Briefing to honorable Patricia De Lille, Member of Parliament.

of, in one case, as much as R10million.<sup>38</sup> There are also allegations that millions of pounds went either to senior ANC members or their families through a web of companies that won lucrative positions as sub-contractors, including speculation that some of the money that changed hands in the arms transactions found its way into one political party's coffers.<sup>39</sup> Among those accused of benefiting illegally from the deal are Joe Modise, defence minister at the time; Tony Yengeni, the ANC chief whip, and Chippy Shaik, head of procurement at the Defence Department, and brother of Schabir Shaik.

Against the backdrop of allegations of high level corruption, from 10-15<sup>th</sup> October 1999 the South African government co-hosted the 9th International Anti-corruption Conference in Durban, a meeting attended by over 1600 delegates from over 135 countries drawn from government, business, civil society and international organizations. In opening the conference President Mbeki hoped that the conference would "give an added impetus to all of us as Africans further to intensify our own offensive against the scourge of corruption."<sup>40</sup> Referring to the writings of international financier, George Soros on the flaws of the market system, Mbeki called for an end to "the unhampered pursuit of self interest" in societies. He said South Africa's past political and social system of apartheid had led people to set their own norms of social behaviour and that condition underpinned the levels of crime and corruption present in South Africa now.<sup>41</sup>

*"I am also convinced that, in this country, another important factor that led to the spread and entrenchment of corruption, was the existence for a long period of time of a political and social system that was clearly morally and politically illegitimate and considered so by the overwhelming majority of the people...The consequence of this was that both the legal system and the institutions of governance lost all possibility to provide for society the*

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38 17/11 Africa News Service

39 2-8/2 Mail and Guardian

40 10 October 1000. Office of the Presidency. Address of the president of South Africa, Thabo Mbeki at the opening of the 9th International Anti-corruption conference, Durban.

41 UNODCCP Drugs and Crime Brief January 2000.

*set of norms that would simultaneously be legally enforceable and morally justifiable...Of course the first thing that we had to do was to end the illegitimate system of apartheid and replace it with a genuinely democratic and inclusive political system. Hopefully this system will succeed to evolve the social norms that will generally be accepted as legally enforceable and morally justifiable. Clearly, this would have a major impact on ensuring that we reduce the negative tendency towards the setting of norms by individuals informed by the concept of 'the unhampered pursuit of self-interest'.<sup>42</sup>*

## **Responding to the allegations**

Following the numerous allegations regarding possible irregularities pertaining to the awarding of contracts the newly appointed Minister of Defence, Mosiuoa "Terror" Lekota, would on 28 September 1999 approve an Auditor-General's special review into the Strategic Defence Procurement package. This review, conducted under South Africa's first black Auditor-General, Shauket Fakie, who assumed his position on 1 December 1999, would come before parliament's Standing Committee on Public Accounts (Scopa) in September 2000, and open the way for a comprehensive investigation into the allegations.

2000 would start the ball rolling on the most significant investigation into corruption in democratic South Africa. The Strategic Defence Procurement Package had been included as part of the Auditor-General's regulatory audit of the Defence Department. The Auditor-General's office confirmed it was liaising with the Office for Serious Economic Offences (predecessor to the Scorpions) and the Heath Special Investigating Unit as allegations of irregularities had been

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4210 October 1000. Office of the Presidency. Address of the president of South Africa, Thabo Mbeki at the opening of the 9th International Anti-corruption conference, Durban.

made to these bodies. Both these bodies were reportedly waiting for the Auditor-General's report before deciding on possible further action.

In mid September 2000, the Auditor-General, Shauket Fakie, tabled the Special Review of the Strategic Defence Procurement Package [RP 161/2000] in parliament.<sup>43</sup> The Auditor General's report found that there had indeed been several irregularities in the procurement process. The Special Review found serious shortcomings in the acquisition process in at least five areas:

1. Conflicts of interest among decision-makers
2. The awarding of the fighter/trainer contract to BAe systems
3. The inadequacy of the offset guarantees
4. The disregard for personnel requirements to operate the equipment
5. The allocation of a naval sub-contract to French interests at a very substantial increase in costs over a local company tender

In short the report highlighted "material deviations" from generally accepted procurement practice and recommended a forensic audit into the deals' subcontracts, an area which fell outside the scope of the Auditor General's probe, and that had been the subject of repeated corruption claims. The report of the Auditor-General would set a number of activities in motion. The first was how parliament would deal with the report, in particular the main oversight committee, namely the Standing Committee on Public Accounts (SCOPA), and secondly which of the numerous anti-corruption agencies would be involved in any investigation into the arms deal allegations.

On 30 October 2000, having considered the Special Review of the Auditor-General as well as certain papers referred to it, and having heard evidence, SCOPA issued its 14<sup>th</sup> Report as part of exercising its oversight function and

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<sup>43</sup> Auditor –General Report on the Selection Process of Strategic Defence Packages for the Acquisition of Armaments at the Department of Defence. See Appendix of important documents.

mandate. The 14<sup>th</sup> report to the National Assembly would call for a multi-agency independent investigation into the arms deal. This step, of parliament taking its oversight role seriously, would be praised by the media and civil society organizations like Idasa who issued a special media statement: *Arms Purchases – Public Accounts Committee’s Recommendations: A test case for accountability*, noting how SCOPA’s recommendations “demonstrate the central role that parliament can play in ensuring that there is meaningful oversight of executive power.” It further noted: “The stakes are high: it is really a litmus test for the various institutions of democratic accountability.”<sup>44</sup>

For those observing parliament’s role in confronting the widespread concern and allegations around the arms deal, the SCOPA report was welcomed as a victory for parliamentary oversight over the executive and as a test of the countries democratic institutions. SCOPA’s call for a multi-pronged probe into the government’s R30 billion defence procurement package was hailed by Business Day as SCOPA asserting “its power and authority over the executive in a dramatic fashion” and that “the case demonstrates the increasing effectiveness with which the committee is performing its watchdog function.”<sup>45</sup>

The euphoria about parliament conducting its own investigation was short-lived. Through an extraordinary series of interventions that cannot be adequately described in the space of this paper, parliament and its oversight role through the Standing Committee on Public Accounts was rendered impotent by an ANC executive that sought to steer the investigation away from parliament, sidelining its own members on the committee who dared to raise objections, and eventually excluding the one dedicated anti-corruption agency, the Special Investigating Unit, from the probe and appointing a Joint Investigation Team made up of the Auditor General, Public Protector and National Directorate of Public

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44 30 October media release from Idasa on arms purchase.

45 3 November 2001, Business Day

Prosecutions. The JIT would release its report to parliament in mid November 2001.

### **Corruption in the ranks**

Earlier in the year, in July 2001, President Thabo Mbeki addressed the media following a three day cabinet lekgotla. Mbeki noted that corruption posed one of the major challenges confronting his government and announced a number of measures. He said that government was working on new regulations that would clarify the role of officials involved in the negotiation of big contracts in order to limit corruption. He cited as an example any cabinet minister who could leave the government to join a field in the private sector which operated in an area covered by the minister during his term. Such a move could be viewed as corruption since the minister would have participated in the award of tenders to a firm that he later joined. Regulations were being proposed that would prevent former cabinet ministers from taking up private sector posts in their fields, making it impossible for instance, for a former defence minister to join the arms industry after leaving government.<sup>46</sup> Asked if the new regulations were being drafted in the light of the controversies emanating from the arms deal probe Mbeki replied “Yes...even if all of the allegations are not proven to be true, the issues are relevant and we need to attend to them.”<sup>47</sup>

Having served his time in government as the first Minister of Defence, struggle hero Joe Modise would resign his position in 1999 to become chairman of Conlog Holdings, a group slated to benefit from BAe industrial participation obligations under the arms deal. It would subsequently emerge that the Armament Acquisition Council (AAC) on which Modise served had recommended a contract be awarded to British Aerospace BAE, even though they were placed 2<sup>nd</sup>

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<sup>46</sup> “Corruption is public enemy No 1, says Mbeki” The Star 27 July 2001

<sup>47</sup> Mbeki reveals new push to combat graft” 27 July 2001. Cape Argus

according to the stipulated criteria and the cost factor was ignored. In October 2001 Modise would be questioned by the Scorpions for his role in the arms deal, but would carry any secrets he might have had to the grave. On 27<sup>th</sup> November 2001 he died of cancer in his home.

In June 2003 The Guardian newspaper would allege that Modise had received a 500 000 Pound bribe and that cash also went to the 1999 election fund of the ANC.<sup>48</sup> In July 2003 BAE Systems plc would confirm funding of the Umkhonto we Sizwe Veteran's Association (MKMVA) and that this was all above board and part of BAE's social responsibility program.

“We wanted to support the effort to provide training for (ex) fighters of the liberation (struggle) to assist in incorporating them into civilian society. The money was deposited into the First National Bank in Pretoria and is administered by a group of trustees called the Airborne Trust. The funds are audited by KPMG. BAE did it to be a good corporate citizen, to become involved in a project that was going to work towards the benefit of the country and to demonstrate that we wish to be good corporate citizens doing business in South Africa.”<sup>49</sup>

In November 2001 the Joint Investigation Team made up of the Auditor-General, Public Protector and National Directorate of Public Prosecutions, would present its report, the largest investigation of its kind ever undertaken in South Africa, to Parliament:

No evidence was found of any improper or unlawful conduct by the Government. The irregularities and improprieties referred to in our report, point to the conduct of certain officials of the government departments involved and cannot, in our view, be ascribed to the President or the Ministers involved in their capacity as members of the Ministers'

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48 Guardian Newspapers Limited 14 June 2003

49 "BAE denies it paid for Modise's cars" Joy Russel. Mail and Guardian online 3 July 2003

Committee or Cabinet. There are therefore no grounds to suggest that the Government's contracting position is flawed.<sup>50</sup>

The report would however note: "It has come to the attention of the investigation teams that the former Minister of Defence was allegedly involved in a company that was to benefit from the SDP procurement. The Minister concerned was actively involved in the procurement process before his retirement. Although no evidence of impropriety was found in this regard during the public and forensic phases of the investigation, such a situation seen extremely undesirable as it creates negative public perception about a process that might otherwise be in order."<sup>51</sup> The report went on to make several recommendations, including its final one:

"Parliament should take urgent steps to ensure that high ranking officials and office bearers, such as Ministers and Deputy Ministers, are not allowed to be involved, whether personally or as part of private enterprise, for a reasonable period of time after they leave public office, in contracts that are concluded with the state."<sup>52</sup>

Five years on, these issues have still not been attended to. A report in last week's Sunday Times referred to a discussion document on members' business interests where the ANC was considering imposing a five year cooling off period to bar officials from doing business in the area they managed while in government.<sup>53</sup>

## **The Public Service Anti-Corruption Strategy**

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50 15 November 2001. JIT Report press release to parliament.

51 Joint Investigation Report into the Strategic Defence Procurement Package, November 2001 p.377

52 Joint Investigation Report into the Strategic Defence Procurement Package, November 2001 p.380

53 "ANC turns on fat-cat comrades" Sunday Times, 6 August 2006.

Following the release of the JIT report to parliament in mid November 2001 Minister of Public Service and Administration, Geraldine Fraser-Moloketi would comment that government's response to the arms deal report would include an anti-corruption strategy with tighter laws to back it up, that this was being worked out between the security cluster of Ministers and herself, and was due to be finalized by the end of the year.<sup>54</sup> One of the lessons learnt from the arms procurement package was to look at employees lower than senior management – for example, deputy directors involved in negotiating large contracts: “We need to ensure we also have appropriate mechanisms to protect the employee as well as the government in terms of those deals to avoid abuse.”<sup>55</sup>

In January 2002 following a Cabinet lekgotla, the Public Service Anti-Corruption Strategy document would be accepted. The strategy is designed to take a “holistic and integrated approach to fighting corruption...that requires a strategic mix of preventative and combative activities and a consolidation of the institutional and legislative capabilities of Government.”<sup>56</sup> It lays out several principles underpinning the strategy and the nine strategic considerations of the Public Service Anti-Corruption Strategy, including thoughts on its implementation. Developed specifically for the Public Service in order to give effect to the expressed commitment of Government to fight corruption in the Public Service, the strategy “represents a further step towards Government's contribution towards establishing a National Anti-Corruption Strategy for the country” and is “sensitive and complementary to national, regional and international requirements.”<sup>57</sup>

Noting that the Public Service already utilizes good management practices, including a code of conduct, modern employment practices, financial disclosures,

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54 “Fraser-Moloketi to tighten screws” The Citizen, 23 November 2001.

55 “Cabinet set to adopt anti-corruption drive” The Star, 23 November 2001.

56 National Anti-Corruption Strategy: Public Service Anti-Corruption Strategy. Department of Public Service and Administration. January 2002.

57 See Anti-corruption timeline - South Africa has signed the UN, AU and SADC conventions against corruption.

fair procurement and a progressive disciplinary system for the ensuring of economic utilization of all state resources, the document notes that “the South African framework does however not function optimally at present.” Reasons for this are demonstrated by “the lack of sufficient resources to fulfil mandates in the light of more pressing problems such as unemployment and health delivery, the fragmentation of the legislative framework, inefficiencies within and between institutions with anti-corruption mandates, a lack of focused socialization programs, inefficient application of the disciplinary system, underdeveloped management capacity in some areas and societal problems (wealth accumulation).”<sup>58</sup> The document also notes that the implementation of resolutions adopted at the first National Anti-corruption Summit (April 1999) have been uneven.<sup>59</sup>

The Purpose of the Strategy “to prevent and combat corruption through a multiplicity of supportive actions” is informed by the following principles to root out corruption:

- a) The need for a holistic and integrated approach to fighting corruption, with a balanced mixture of prevention, investigation, prosecution and public participation as the platform for the strategy
- b) Constitutional requirements for the criminal justice system and public administration
- c) Public service tailor-made strategies are required that operate independently but complementary to national strategies, particularly with regard to detection, investigation, prosecution and adjudication of acts of corruption, as well as the recovery of the proceeds of corruption.
- d) Acts of corruption are regarded as criminal acts and these acts can be dealt with either in the administrative or criminal justice systems, or both if need be

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58 National Anti-Corruption Strategy: Public Service Anti-Corruption Strategy. Department of Public Service and Administration. January 2002.

59 See Appendix 1 for a table benchmarking of anti-corruption resolutions from 1999 to 2005.

- e) Domestic, regional, and international good practice and conventions
- f) All aspects of the strategy must be:
  - i) supported with comprehensive education, training and awareness
  - ii) Coordinated with Government
  - iii) Subjected to continuous risk assessment
  - iv) Expressed in terms of measurable and time-bound implementation targets

The strategy includes a systematic implementation plan where the broad strategy is broken down into various strategic considerations (objectives) needed for the successful implementation of the strategy. Strategic considerations are then broken down into specific elements (goals), each that to be delegated to a specific, applicable and responsible department, for execution. Time frames/target dates as well as cost implication are considered. There are nine inter-related and mutually supportive strategic considerations that comprise the Public Service Anti-Corruption Strategy:

Firstly, ***review and consolidation of the legislative framework***: this requires that the existing Corruption Act be replaced with an effective and modern anti-corruption law. Other related legislation needs to be refined where necessary.

Second, ***increased institutional capacity***: this requires an increase in three areas; the courts' anti-corruption capacity, as well as increased institutional capacity for existing national institutions which have anti-corruption mandates and departmental anti-corruption capabilities.

Third, ***improved access to report wrongdoing and protection of whistle blowers and witnesses***: this focuses on improving application of the protected disclosures legislation, witness protection and hotlines.

Fourth, ***prohibition of corrupt individuals and businesses***: this proposes the establishment of mechanisms to prohibit corrupt employees from employment within the public sector. It also prohibits corrupt businesses from doing business with the Public Service.

The fifth consideration is for ***improved management policies and practices***: practices pertaining to procurement systems, employment arrangements, the management of discipline, risk management, management information and financial management are to be improved. Proposals include the extension of the system of disclosure of financial interests, screening of personnel, establishing mechanisms to regulate post-public service employment and strengthening the capacity to manage discipline.

The sixth area that has been identified is the need to ***manage professional ethics***: this requires a renewed emphasis on managing ethics, including the establishment of a generic ethics statement for the Public Service that is supported by extensive and practical explanatory manuals, training and education.

A seventh consideration is the need for ***partnerships with stakeholders***: partnering is envisaged as a major cornerstone of the establishment of a national anti-corruption strategy.

The eighth consideration, is the need for ***social analysis, research and policy advocacy***: This consideration proposes that all sectors be encouraged to undertake ongoing analysis of the trends, causes and impact of corruption: All the sectors are required to advocate preventive measures.

Lastly, a need has been identified for ***awareness, training and education*** to support the above developments and launch of a targeted public communication campaign: It is proposed that the campaign be

aimed at the promotion of South Africa's anti-corruption and good governance successes both domestically and internationally.

Domestically, the campaign will be hinged on the promotion of *Batho Pele* initiatives and the development of a sense of pride amongst employees.

The Prevention and Combating of Corrupt Activities Act came into force on 27<sup>th</sup> April 2004, the 10<sup>th</sup> anniversary of South Africa's transition to democracy. This comprehensive law was crafted against the backdrop of the finalization of the United Nations Convention Against Corruption and takes into account other regional anti-corruption protocols such as those developed by the OECD, SADC and the African Union.

While the new law is comprehensive, it fails to include specific provisions relating to the regulation of the private contributions and sources that fund political parties (although this was argued by civil society in its submissions to parliament on the legislation). Some would argue that this lacuna in the anti-corruption architecture seriously questions the political will address the corrupting influence of money in politics, a thread which weaves itself through the arms deal allegations.

